

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.29714 OF 2010

DATED:15-9-2015

Between:

Mr. Ajaya Kumar ... Petitioner

And

The District Cooperative Central Bank Ltd.,

Eluru,

Represented by its Managing Committee

and others ... Respondents

... Respondents

COUNSEL FOR THE PETITIONER: Mr. M.R.K. Chakravarthy

COUNSEL FOR RESPONDENT NOs.1 and 2: Smt. Bobba Vijayalakshmi

COUNSEL FOR RESPONDENT NO.3: Mr. Sreenivasa Rao Velivela

THE COURT MADE THE FOLLOWING:

ORDER:

-

This writ petition is filed for a certiorari to quash proceedings in Rc. No.Estt/2010-11, dt.03.9.2010, of respondent No.2, as confirmed in proceedings No.Estt/2010-11, dt.15.11.2010 of respondent No.1.

Brief facts which are not in dispute are that the petitioner was initially engaged as NMR by respondent No.1 bank and his services were lent to respondent No.3 on deputation on 1.11.1995 for working as Managing Director of the said respondent. It

is not in dispute that the petitioner's services were regularized and accordingly he has become permanent employee of respondent No.1. Respondent No.1 has recalled the petitioner to work in the parent department. As the petitioner has not joined in his parent department, a final reminder was issued on 14.5.2010 by respondent No.2 wherein he has instructed the petitioner to relieve himself from duty and report to duty at Tanuku Branch as Supervisor, or otherwise his conduct will be viewed seriously and suitable disciplinary action will be initiated. As the petitioner has not left respondent No.3 and joined respondent No.1 in spite of the reminder, respondent No.2 has terminated the petitioner's services by the impugned proceedings.

At the hearing, Mr. M.R.K. Chakravarthy, learned counsel for the petitioner, submitted that the petitioner being permanent employee of respondent No.1, it has to initiate disciplinary proceedings, hold an enquiry and pass an appropriate order thereafter, and that as it has failed to follow this procedure, the impugned order terminating the petitioner's services is void.

Smt. Bobba Vijayalakshmi, learned counsel for respondent No.1, while admitting that no enquiry was held, however, sought to justify the action of the respondents by placing reliance on Clause (iii) of Chapter XIII of the I.T. Award, dt.28.5.1970, which reads as under:

*"If after steps have been taken to prosecute an employee or to get him prosecuted, for an offence, he is not put on trial within a year of the commission of the offence, the management may then deal with him as if he had committed an act of "gross misconduct" or of "minor misconduct", as defined below:*

*Provided that if the authority which was to start prosecution proceedings refuses to do so or comes to the conclusion that there is no case for prosecution, it shall be open to the management to proceed against the employee under the provisions set out in clauses (x) and (xi) infra relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full wages and allowances and to all other privileges for such period. In the event of the management deciding after enquiry, not to continue him in services shall be liable only for termination with three months pay and allowances in lieu of notice as provided in clause (ii) supra. If within the pendency of the proceedings thus instituted he is put on trial such proceedings shall be stayed pending the completion of the trial, after which the provisions mentioned in clause (ii) above shall apply."*

On a careful perusal of the above reproduced clause, I find myself unable to agree with the submission of the learned counsel for respondent No.1 that under this

clause the petitioner's services can be terminated without holding an enquiry. Indeed, clause (iii) is continuation of clause (ii) which deals with an employee who has committed an offence. Under clause (ii), if, in the opinion of the management, an employee has committed an offence, unless he be otherwise prosecuted, the bank may take steps to prosecute him or get him prosecuted and in such case he may also be suspended. Clause (iii) gives liberty to the management to hold an enquiry into the misconduct of an employee if prosecution was pending and trial was not commenced within a year. Therefore, even under this clause the management is bound to hold an enquiry for the alleged misconduct whether it is gross misconduct or minor misconduct before terminating the services of an employee. Admittedly, this procedure was not followed by respondent No.1.

Therefore, the impugned orders cannot be sustained and they are accordingly quashed. This order, however, does not preclude respondent No.1 from initiating an enquiry, if it so chooses, and pass a fresh order after giving the petitioner an opportunity of participating in the enquiry.

The writ petition is accordingly allowed to the extent indicated above.

As a sequel to disposal of the writ petition, W.P.M.P. Nos.45830 of 2013 and 26662 of 2014 shall stand disposed of as infructuous.

---

C.V. NAGARJUNA REDDY, J

15-9-2015

bnr

