

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Arindam Sinha
And
The Hon'ble Justice Suvra Ghosh

M.A.T. 1016 of 2017

The Executive Director & Appellate Authority, Bank of Baroda & Ors.

Vs.
Sri Chandra Sekhar

For appellants : Mr. Imtiaz Ahmed, adv.
Mr. Apurba Kumar Bandhopadhyay, adv.
Mrs. Ghazala Firdous, adv.

For respondent : Mr. Soumya Majumder, adv.
Mr. Victor Chatterjee, adv.

Heard on : 11.01.2021, 20.01.2021, 05.02.2021, 08.03.2021 and
16.03.2021.

Judgment on : 16.03.2021.

Arindam Sinha J.: We had recorded dispensation of all formalities with consent of parties, for hearing of this appeal on papers disclosed in the stay application. Mr. Majumder, learned advocate appearing on behalf of respondent/writ petitioner, had waived service of notice of appeal.

Mr. Ahmed, learned advocate appears on behalf of appellants and relies on clause (b) in sub-section (1) of section 10 in Banking Regulation Act, 1949. He submits, the provision, as applicable, is, no banking company shall employ any person who has been convicted by the criminal Court of an offence involving moral turpitude. He draws attention to show cause notice dated 6th December, 2012. It recites that vide orders dated 26th April, 2012 and 1st May, 2012 the criminal Court had convicted respondent under

section 302 of Indian Penal Code, for causing death of his wife. He was told that as he had been convicted by competent Court for an offence amounting to moral turpitude, under said provision of the Act of 1949, he cannot be continued in employment of the Bank. Respondent replied to the show cause by letter dated 24th December, 2012 informing he had appealed against the conviction. That he was under suspension with effect from date of conviction and, inter alia, as follows :-

“It would amount to gross miscarriage of justice if any further action is contemplated against me, prior to hon’ble court’s verdict in the matter. I shall be highly obliged if you will take a compassionate view in the matter.”

He submits, on long pendency of the appeal, there was delay and finally order dated 30th January, 2016 was passed imposing punishment of compulsory retirement and that the period of suspension will be treated as ‘time not spent on duty’.

He relies on regulation 11 in Bank of Baroda Officer Employees’ (Discipline and Appeal) Regulations, 1976. Regulation 11 is reproduced below:-

“11. SPECIAL PROCEDURE IN CERTAIN CASES

“Notwithstanding anything contained in regulation 6 or in regulation 7 or in regulation 8 the Disciplinary Authority may impose any of the penalties specified in regulation 4 if the officer employee has been convicted on a criminal charge, or on the strength of facts or conclusions arrived at by a judicial trial.

Provided that the Officer Employee may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made.”

He cites judgment of Supreme Court in **Sushil Kumar Singhal vs. Punjab National Bank** reported in **(2010) 8 SCC 573**, paragraphs 18 and 23 to 26, on moral turpitude.

Mr. Mazumdar draws attention to section 19 in Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, to submit, thereby was given power to Board of Directors of a corresponding new bank, as is appellant, to make regulations after consultation with Reserve Bank and with previous sanction of the Central Government. The Regulations are

Bank of Baroda Officer Employees' (Discipline & Appeal) Regulations, 1976. He submits, this subordinate legislation gives discretion to the disciplinary authority, regarding imposition of any of the penalties, if the officer employee has been convicted on a criminal charge, or on the strength of facts or conclusions arrived at by a judicial trial. There is a proviso. The consequence under section 10(1)(b) in Banking Regulation Act, 1949, by the Regulations, has been transformed to discretion on imposition of penalty. Procedure in regulations 6, 7 or 8 must be followed as applicable to imposition of penalties.

He submits further, his client has not committed any act in relation to his service, for which there can be initiation of disciplinary proceeding against him. On query Mr. Majumder submits, no cross-objection was filed. An alleged crime, where he is the accused, has rendered him exposed to a situation suffered, regarding his service. By April, 2016 his client would have achieved pensionable service, but the penalty order says that period under suspension will be treated as 'not spent on duty'.

On Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 he submits, it is an Act providing for acquisition and transfer of undertakings of certain banking companies to, inter alia, serve better the needs and development of the economy. In that context he relies on section 19, for power to make regulations. The power is to make regulations for all matters expedient for the purpose of giving effect to the provisions of the Act. The Regulations were duly made and they are to be enforced. He reiterates, for imposition of penalty referred to in regulation 11, disciplinary proceeding to determine the case for imposition is necessary.

On **Sushil Kumar Singhal vs. Punjab National Bank** (supra) he submits, case of appellant before Supreme Court was for reinstatement, on having obtained probation under Probation of Offenders Act, 1958. Said Court formulated the sole question involved to be whether the benefit granted

to appellant under provisions of the 1958 Act makes him entitled to reinstatement in service. Said Court answered the question with regard to the word 'disqualification', contained in section 12 of the Act. He, however, does not dispute that conviction suffered by his client is for an offence involving moral turpitude.

Mr. Ahmed relies on firstly, judgment of Supreme Court in **The Deputy Director of Collegiate Education vs. S. Nagoor Meera** reported in (1995) 3 SCC 377, paragraph 8. Following passage in the paragraph is extracted below.

“We need not, concern ourselves any more with the power of the appellate court under the Code of Criminal Procedure for the reason that what is relevant for clause (a) of the second proviso to Article 311(2) is the “conduct which has led to his conviction on a criminal charge” and there can be no question of suspending the conduct. We are, therefore, of the opinion that taking proceedings for and passing orders of dismissal, removal or reduction in rank of a government servant who has been convicted by a criminal court is not barred merely because the sentence or order is suspended by the appellate court or on the ground that the said government servant-accused has been released on bail pending appeal.”

He also relies on view taken by a learned single Judge of Delhi High Court in **Bank of Maharashtra vs. Om Prakash Malvaliya** reported in (1997) LAB. I.C. 1932. Paragraph 15 is reproduced below.

“Taking all these factors into consideration it can be said that since the respondent was involved in “moral turpitude”, hence the disciplinary authority of the Bank was justified in dismissing him from service by invoking the provisions of S. 10(1)(b) of the Banking Regulation Act read with clause 19.3(b) of the Bipartite Settlement.”

Mr. Majumder replies with reference to, inter alia, paragraph 7 in **S. Nagoor Meera** (supra) that the respondent had status of being in government service. There is distinction between said respondent and his client, who is in bank's service. Article 311(2) and second proviso, in the Constitution of India, were being considered by Supreme Court, where contention was that respondent had been released on bail without suspension of sentence of

conviction. In that context said Court said, inter alia, as in paragraph 7 reproduced below.

“This clause, it is relevant to notice, speaks of “conduct which has led his conviction on a criminal charge”. It does not speak of sentence or punishment awarded. Merely because the sentence is suspended and / or the accused is released on bail, the conviction does not cease to be operative.

.....

”

We find from the writ petition, prayer was to set aside order of compulsory retirement and continue the position of status quo as maintained since December, 2012, till appeal before the High Court is finally decided. We also made query and got submission from Mr. Majumder that the Act of 1970 is not in derogation of the Act of 1949. We notice, by section 20 in the Act of 1970, certain amendments were made to the provisions in the Act of 1949 but section 10 was not touched.

On facts, order of deemed suspension dated 31st May, 2012 says it took effect from date of detention being 26th April, 2012. The order was issued in terms of regulation 12(a). Then came show cause notice dated 6th December, 2012, reciting the conviction vide order passed by Additional Sessions Judge of Purnea, invoking section 10(1)(b) of the Act of 1949 and calling for respondent’s reply. Respondent’s response was by letter dated 24th December, 2012. It was followed by order dated 30th January, 2016, of disciplinary authority, imposing penalty of compulsory retirement of respondent and saying that the period of suspension will be treated as ‘not spent on duty’. This order says it was issued as per statutory provision in section 10(1)(b). Respondent preferred appeal. Appellate authority by order dated 6th August, 2016 said, inter alia, as follows.

“The contention of Mr. Chandra Shekhar in any way does not affect the Judgment passed by the Hon’ble Court of Additional Sessions Judge, Purnea convicting Mr. Chandra Shekhar of offence under Section 302 of IPC by the Hon’ble

Court of Additional Sessions Judge, Purnea vide order dated 26.04.2012 and 01.05.2012 in Case No.532/2006.”

We do not find any procedural irregularity, on the manner in which the bank proceeded pursuant to respondent being convicted. Respondent had preferred criminal appeal and the appeal is still pending. It has also been submitted on behalf of respondent that he did not commit any act in the line of service, for which there can be initiated disciplinary proceeding. It is our interpretation of regulation 11 that in spite of it providing for imposition of penalty, a special procedure, on exercise of discretion to impose such a penalty, has also been provided. We are unable to accept the contention of respondent that regular procedure of disciplinary proceeding must be followed in event a penalty is imposed under the regulation. Keeping in mind that by the Act of 1970, Parliament caused amendments to certain enactments in the Banking Regulation Act, 1949 but left section 10 therein untouched and power to make regulation under section 19 is for purpose of giving effect to the provisions of the Act, our above interpretation. There does not appear to be a dispute raised or any controversy regarding operation and applicability of section 10(1)(b) of the Act of 1949.

In **S. Nagoor Meera** (supra) Supreme Court considered clause (a) in second proviso under article 311(2). Said Court interpreted the proviso as relating to conviction simpliciter inasmuch as it does not speak of sentence or punishment awarded. As such the Court said, merely because the sentence is suspended and/or accused is released on bail, the conviction does not cease to be operative. Suspension of sentence, by which the accused is convicted or the accused is released on bail, can only happen as on a direction in appeal from the order of conviction. Bail is granted by appellate Court. In the circumstances, Supreme Court said, the conviction does not cease to be operative. Going by that we do not find reason to interfere with the procedure followed by the bank.

However, we cannot be unmindful of the conduct of the bank. On receipt of information regarding detention, it promptly issued the order of deemed suspension. Contents of the order of deemed suspension bears reference to the conviction. It is true that regulation 12 provides for suspension as in clause (b) under sub-regulation (2). The show cause notice regarding respondent, as cannot continue to be in employment of the bank, was issued on 6th December, 2012 and cause shown on 24th December, 2012. The disciplinary authority passed order of compulsory retirement on 30th January, 2016. Post 24th December, 2012 and till before 30th January, 2016 respondent may have had reason to think that his reply stood accepted and the bank had decided to wait for decision in appeal. The bank suddenly turned around and issued order imposing penalty of compulsory retirement coupled with denial of entitlement to pension. This appears to be added punishment. In the facts and circumstances we are minded to exercise our power in appeal, to make any order as the case may require although respondent has not preferred a cross objection. We vary impugned order to the extent that the order of disciplinary authority, as confirmed by the appellate authority, shall remain stayed till decision in the criminal appeal. It will become operative on the conviction being confirmed. It goes without saying that acquittal by the appellate Court will make our order of stay, permanent. Respondent will continue in the position of being under suspension, till acquittal or confirmation of the penalty. He will be entitled to arrears and current subsistence allowance, till decision in appeal or he achieves age of superannuation, whichever is earlier. The latter contingency, if fulfilled, respondent will be retired on giving him the notional benefit of continuous service. The relief we are giving to respondent is on his prayer. He will be estopped from claiming back wages on any eventuality.

The appeal is disposed of.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)