

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.4858 of 2012

Prashant Shrivastava, S/o Late Kashi Prasad Shrivastava, aged about 50 years, Special Assistant (Dismissed), State Bank of India, Agriculture Development Branch, (A.D.B.), Bhatapara, R/o Bhatapara, Tahsil Bhatapara, District Raipur (C.G.)

---- Petitioner

Versus

1. State Bank of India, A body incorporated under the State Bank of India Act, 1955 through its Chairman, Corporate Centre, Madame Cama Marg, Mumbai, Maharashtra, Pin-400021
2. Deputy General Manager (B & O) Appellate Officer, State Bank of India, Disciplinary Proceeding Section, Administrative Office, Byron Bazaar, Zonal Office, Raipur Zone, Raipur (C.G.)
3. Regional Manager, State Bank of India, Regional Business Office (Region 7), Byron Bazaar, Raipur (C.G.)
4. Branch Manager, State Bank of India, Agriculture Development Branch (A.D.B.), Bhatapara, District Raipur (C.G.)

---- Respondents

-----  
For Petitioner: Mr. H.B. Agrawal, Senior Advocate with Ms. Richa Dwivedi, Advocate.

For Respondents: Mr. P.R. Patankar, Advocate.  
-----

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board  
(Through Video Conferencing)

27/08/2021

1. The petitioner herein calls in question legality, validity and correctness of order dated 23-3-2012 passed by the appellate authority dismissing the appeal preferred by the petitioner and affirming the order of the disciplinary authority dismissing the petitioner from bank service under clause 6(a) of the Memorandum of Settlement dated 10-4-2002.
2. The petitioner, at the relevant point of time, was working as

Agricultural Assistant in State Bank of India, Baloda Bazaar, District Baloda Bazaar-Bhatapara. On the basis of complaint, the petitioner and some other officers were charge-sheeted by the Central Bureau of Investigation for offences punishable under Sections 120B, 420 read with Section 120B, 468 read with Section 120B, 471 read with Section 120B of the IPC and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and thereafter, in full-fledged trial, the petitioner was convicted and sentence was awarded to him by the trial Court as per judgment dated 30-7-2011 against which appeal is pending consideration before this Court. Meanwhile, the disciplinary authority on the basis of his conviction in criminal charges by the jurisdictional criminal court, inflicted him with penalty of dismissal from bank service by order Annexure P-1 dated 6-1-2012 in terms of clause 5(s) read with clause 6(a) of the memorandum of settlement dated 10-4-2002. Feeling aggrieved against that order, the petitioner preferred appeal before the appellate authority and the appellate authority by order dated 23-3-2012 (Annexure P-2), affirmed the order of dismissal from service holding that since the petitioner has been convicted for offences under the provisions of the IPC as well as under the provisions of Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act which are the offences involving moral turpitude, he has rightly been dismissed from service by the disciplinary authority in terms of clause 5(s) read with clause 6(a) of the memorandum of settlement dated 10-4-2002 against which this writ petition has been preferred questioning the order of the disciplinary authority duly affirmed by the appellate authority.

3. In the writ petition, the petitioner has pleaded that he has served more

than 26 years in bank service unblemished and he has wrongly been convicted on the basis of material which is not available on record and his act would not fall within the category of the offence involving moral turpitude, therefore, he could not have been dismissed. It has also been pleaded that though the petitioner has been convicted, but under clause 3(b) of the memorandum of settlement, two options were available to the disciplinary authority i.e. he may be dismissed with effect from the date of his conviction or he may be given lesser form of punishment as mentioned in clause 6, but that has not been followed and he has been dismissed from service which has been affirmed by the appellate authority without due application of mind.

4. Return has been filed by the respondent Bank stating inter alia that since the petitioner has been convicted for offences under Sections 120B, 420, 468, 471 of the IPC, 13(1)(d) and 13(2) of the Prevention of Corruption Act and also fined to the extent of Rs.5,000/-, as such, it is the offence involving moral turpitude, therefore, in terms of clause 5(s) read with clause 6(a) of the memorandum of settlement and in line with Section 10(1)(b)(i) of the Banking Regulation Act, 1949, he has rightly been dismissed from service by the disciplinary authority and same has rightly been affirmed by the appellate authority.
5. Rejoinder has been filed controverting the statement made in the return.
6. Mr. H.B. Agrawal, learned Senior Counsel appearing for the petitioner, would submit that both the authorities have not noticed the provisions relating to disciplinary action and procedure for workmen contained in the memorandum of settlement dated 10-4-2002 which has been filed as Annexure P-11. Clause 3(b) of the memorandum of settlement

provides that if an employee is convicted, he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in clause 6, but this provision has not been considered and harsh punishment of dismissal from service has been given to the petitioner which is unsustainable and bad in law. As such, other penalties as mentioned in clause 6 of the memorandum of settlement, apart from sub-clause (a), could have been inflicted upon the petitioner which will serve the ends of justice which has also not been considered either by the disciplinary authority or by the appellate authority. The petitioner has only filled the loan documents being Agricultural Assistant and admittedly, he has not disbursed the loan, therefore, harsh penalty could not have been inflicted upon him and it is liable to be set aside.

7. Mr. P.R. Patankar, learned counsel appearing for the respondents, would submit that clause 5 of the Bipartite Settlement dated 10-4-2002 defines "gross misconduct" and sub-clause (s) of clause 5 includes conviction by a criminal court of law for an offence involving moral turpitude. By virtue of clause 5(s) read with clause 6(a) of the said Bipartite Settlement, an employee found guilty of gross misconduct can be dismissed without notice. He would further submit that virtue of Annexure P-12 issued by the Bank on 2-12-2008, it has clearly been held that as per Section 10(1)(b)(i) of the Banking Regulation Act, 1949, if an employee is convicted for the offence involving moral turpitude, his services are required to be terminated. As such, the petitioner having been convicted for the offences punishable under Sections 120B, 420, 468, 471 of the IPC, 13(1)(d) and 13(2) of the Prevention of Corruption Act, which is admittedly offence involving

moral turpitude, his services have rightly been dismissed by the disciplinary authority which has rightly been confirmed by the appellate authority and therefore the writ petition deserves to be dismissed.

8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.
9. In order to consider the plea raised at the Bar, it would be appropriate to firstly notice the Memorandum of Settlement on Disciplinary Action Procedure for Workmen issued on 10-4-2002. Clause 1 of Terms of Settlement prescribes Disciplinary Action and Procedure therefor. Clauses 1, 2 and 3(b) of the Memorandum of Settlement provide as under: -

“1. A person against whom disciplinary action is proposed or likely to be taken shall in the first instance, be informed of the particulars of the charge against him and he shall have a proper opportunity to give his explanation as to such particulars. Final orders shall be passed after due consideration of all the relevant facts and circumstances. With this object in view, the following shall apply.

2. By the expression “offence” shall be meant any offence involving moral turpitude for which an employee is liable to conviction and sentence under any provision of Law.

3. (a) xxx    xxx    xxx

(b) If he be convicted, he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in Clause 6 below.”

10. Similarly, “gross misconduct” has been defined in clause 5 of the Memorandum of Settlement dated 10-4-2002, sub-clause (s) of which reads as follows:-

“5. By the expression “gross misconduct” shall be meant

any of the following acts and omissions on the part of an employee:

(a) to (r)     xxx    xxx    xxx

(s) Conviction by a criminal Court of Law for an offence involving moral turpitude.”

11. Clause 6 of the Memorandum of Settlement dated 10-4-2002

prescribes punishment for gross misconduct. It provides as under: -

“6. An employee found guilty of gross misconduct may:

(a) be dismissed without notice; or

(b) be removed from service with superannuation benefits i.e. Pension and / or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or

(c) be compulsorily retired with superannuation benefits i.e. Pension and / or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or

(d) be discharged from service with superannuation benefits i.e. Pension and / or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or

(e) be brought down to lower stage in the scale of pay up to a maximum of two stages; or

(f) have his increments stopped with or without cumulative effect; or

(g) have his special pay withdrawn; or

(h) be warned or censured, or have an adverse remark entered against him; or

(i) be fined.”

12. As such, it is apparent from the aforesaid provision that if a workman of the Bank is convicted by a criminal court of law for an offence

involving moral turpitude, under clause 5(s) of the Memorandum of Settlement dated 10-4-2002 and by virtue of clause 6(a), he can be dismissed without notice, however, clause 3(b) prescribes that he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in clause 6.

13. On the basis of clause 3(b) of the Memorandum of Settlement, Mr. Agrawal, learned Senior Counsel appearing for the petitioner, would contend that award of dismissal from service on criminal charge or even for the offence involving moral turpitude is concerned, it is not necessary or imperative that the petitioner should be dismissed from service, he may be given any lesser form of punishment as mentioned in clause 6 which was opposed by Mr. Patankar, learned counsel for the respondents / Bank, and he would submit that the provisions of Section 10(1)(b)(i) of the Banking Regulation Act, 1949, would apply by virtue of circular dated 2-12-2008 and if an employee has been convicted of an offence involving moral turpitude, his services are mandatorily required to be terminated and the Bank is under obligation to terminate him and he cannot be allowed to continue in service by virtue of the provisions contained in Section 10(1)(b)(i) of the Banking Regulation Act, 1949.

14. In order to resolve the dispute, it would be appropriate to notice Section 10(1)(b)(i) of the Banking Regulation Act, 1949, which states as under: -

**“10. Prohibition of employment of managing agents and restrictions on certain forms of employment.—(1) No banking company—**

(a)    xxx    xxx    xxx

(b) shall employ or continue the employment of any person—

(i) who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by a criminal court of an offence involving moral turpitude;”

15. A focused perusal of the aforesaid provision would show that Section 10 of the Banking Regulation Act, 1949, prohibits employment of management agents and puts restrictions on certain forms of employment. Section 10(1)(b)(i) mandates that banking company shall not employ or continue the employment of any person who is, or at any time has been, convicted by a criminal court of an offence involving moral turpitude. The expression ‘shall employ a person’ in Section 10 means and includes ‘shall have in employment’ and in this respect the amendment of 1956 merely makes clear what was already meant by the section. (See The Central Bank of India v. Their Workmen, etc.<sup>1</sup>.)
16. Section 10(1)(b)(i) of the Banking Regulation Act, 1949 came up for consideration before the Supreme Court in the matter of Sushil Kumar Singhal v. Regional Manager, Punjab National Bank<sup>2</sup> in which their Lordships have clearly held that management is under obligation under Section 10(1)(b)(i) to discontinue the services of an employee who is or has been convicted by a criminal court of an offence involving moral turpitude.
17. The Supreme Court in the matter of State Bank of India and another v. Mohammed Abdul Rahim<sup>3</sup> has clearly held that the provisions

1 AIR 1960 SC 12

2 (2010) 8 SCC 573

3 (2013) 11 SCC 67

contained in Section 10(1)(b)(i) of the Banking Regulation Act, 1949 imposes clear ban on banking company from employing or continuing to employ a person who was convicted by criminal court of an offence involving moral turpitude.

18. In the considered opinion of this Court, the provision of Section 10(1)(b)(i) of the Banking Regulation Act, 1949 is mandatory and once a person has been convicted by a criminal court of an offence involving moral turpitude, he has to be discontinued mandatorily by the banking company / bank and it is a clear bar for a banking company to continue a convicted person for an offence involving moral turpitude. Now, in order to attract Section 10(1)(b)(i), the banking company taking the plea that the employee has been convicted for the offence involving moral turpitude, the offence has to be proved that it is the offence involving moral turpitude.

19. "Moral turpitude" has been defined in Black's Law Dictionary (8<sup>th</sup> Edn., 2004) as under: -

"Conduct that is contrary to justice, honesty, or morality. In the area of legal ethics, offenses involving moral turpitude—such as fraud or breach of trust. ... Also termed moral depravity. ...

'Moral turpitude means, in general, shameful wickedness—so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act of baseness, vileness, or depravity in the private and social duties which one person owes to another, or to society in general, contrary to the accepted and customary rule of right and duty between people.' "

20. In the matter of **Pawan Kumar v. State of Haryana**<sup>4</sup>, the Supreme Court has observed as under:-

4 (1996) 4 SCC 17

"12. 'Moral turpitude' is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity."

21. The aforesaid decision in Pawan Kumar (supra) has been considered by the Supreme Court again in the matter of Allahabad Bank and another v. Deepak Kumar Bhola<sup>5</sup> and reliance has been placed upon the matter of Baleshwar Singh v. District Magistrate and Collector<sup>6</sup> in which it has been held by the Allahabad High Court as under: -

"The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man."

22. In Deepak Kumar Bhola's case (supra), the respondent (therein) was a bank employee, the CBI/SPE conducted an investigation and registered a case pursuant to which the Superintendent of Police asked the bank to accord sanction for prosecuting the respondent. The Bank accorded the requisite sanction and also, resorting to clause 19.3 of the First Bipartite Settlement, 1966 suspended the respondent. The charge-sheet filed in the Court by the police for offences under [Sections 120B, 419, 420, 467, 468, 471 of the IPC](#), [5\(1\)\(d\) and 5\(2\)](#) of the Prevention of Corruption Act, 1947, showed

<sup>5</sup> (1997) 4 SCC 1

<sup>6</sup> AIR 1959 All 71

that the respondent had participated in false issuance of cheque books and had withdrawn money through a fake account in another bank by depositing the cheques issued from those cheque books. The order of suspension was set aside by the High Court and in turn, in appeal preferred by the Allahabad Bank challenging the order of the High Court, their Lordships of the Supreme Court held as under:-

“8. What is an offence involving “moral turpitude” must depend upon the facts of each case. But whatever may be the meaning which may be given to the term “moral turpitude” it appears to us that one of the most serious offences involving “moral turpitude” would be where a person employed in a banking company dealing with money of the general public, commits forgery and wrongfully withdraws money which he is not entitled to withdraw.”

Their Lordships of the Supreme Court finally held that material on record before the appellant, in the form of the report of the CBI/SPE clearly indicates the acts of commission and omission, amounting to “moral turpitude” alleged to have been committed by the respondent.

23. In **Sushil Kumar Singhal** (supra), it has been held by their Lordships of the Supreme Court that moral turpitude means anything contrary to honesty, modesty or good morals. It means vileness and depravity. In fact, the conviction of a person in a crime involving moral turpitude impeaches his credibility as he has been found to have indulged in shameful, wicked, and base activities. Their Lordships finally held that in case of an employee who stands convicted for an offence involving moral turpitude, it is his misconduct that leads to his dismissal.

24. Now, the question would be, whether the offences under Sections 120B, 420 read with Section 120B, 468 read with Section 120B, 471 read with Section 120B of the IPC and 13(2) read with Section 13(1)

(d) of the Prevention of Corruption Act with which the petitioner has been convicted, are the offences involving moral turpitude or not?

25. This question is no longer res integra. The Supreme Court in the matter of State Bank of India and others v. P. Soupramaniane<sup>7</sup> has clearly held that there can be no manner of doubt about certain offences which can straightaway be termed as involving moral turpitude e.g. offences under the Prevention of Corruption Act, the NDPS Act, etc.

26. In the matter of State of Maharashtra Through CBI, Anti Corruption Branch, Mumbai v. Balakrishna Dattatrya Kumbhar<sup>8</sup>, their Lordships of the Supreme Court held that corruption is violation of human rights and observed as under: -

“17. ... Corruption is not only a punishable offence but also undermines human rights, indirectly violating them, and systematic corruption, is a human rights’ violation in itself, as it leads to systematic economic crimes. ...”

27. Similarly, in the matter of Nimmagadda Prasad v. Central Bureau of Investigation<sup>9</sup>, the Supreme Court has held that the economic offence is a grave offence affecting the economy of the country as a whole and observed as under: -

“23. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fibre of the country’s economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In *State of Gujarat v. Mohanlal Jitmalji Porwal*<sup>10</sup> this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:

7 (2019) 18 SCC 135

8 (2012) 12 SCC 384

9 (2013) 7 SCC 466

10 (1987) 2 SCC 364

“5. ... The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.”

25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”

28. As such, the petitioner’s conviction under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act can certainly be termed as offence involving moral turpitude, as offences under the said Act are grave offences affecting the economy of the country as a whole and in view of the fact that corruption is really a human rights’ violation specially right to life, liberty and equality. Thus, the Bank has been able to prove that the petitioner has been convicted for an offence involving moral turpitude.

29. At this stage, the argument of learned Senior Counsel for the petitioner that any lesser form of punishment could have been awarded to the petitioner in terms of clause 3(b) of the Memorandum of Settlement dated 10-4-2002, needs to be considered.

30. True it is that clause 3(b) of the Terms of Settlement of the Memorandum of Settlement provides that if a person has been

convicted, he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in clause 6 of the Memorandum of Settlement dated 10-4-2002. As held herein-above, the provision contained in Section 10(1)(b)(i) of the Banking Regulation Act, 1949 is mandatory. In any case, if a person is convicted for an offence involving moral turpitude, it is misconduct within the meaning of clause 5(s) of the Memorandum of Settlement dated 10-4-2002 and in that case, by virtue of the mandate contained in the aforesaid provision, the respondent Bank is under legal obligation to discontinue the services of the employee who has been convicted by the criminal court for the offence involving moral turpitude. Section 10(1)(b)(i) of the Banking Regulation Act, 1949 will prevail over the provisions of the Memorandum of Settlement dated 10-4-2002 (Annexure P-11). Merely because clause 3(b) of the Memorandum of Settlement provides that any lesser form of punishment be given, even if the person has been convicted for the offence involving moral turpitude, the provision contained in Section 10(1)(b)(i) of the Banking Regulation Act, 1949 cannot be given a go-by, it has to be followed mandatorily, otherwise, it will lead to non-compliance of the mandatory provisions. The Bank has to follow the provision contained in Section 10(1)(b)(i) of the Banking Regulation Act, 1949 in its true letter and spirit. Once an employee is convicted by a criminal court of law for the offence involving moral turpitude, the Bank is under legal obligation to take appropriate steps for his dismissal/removal from service.

31. As such, in the instant case, the petitioner having been convicted by the criminal court for the offence involving moral turpitude, the Bank

has rightly dismissed him from service in exercise of power under clause 5(s) read with clause 6(a) of the memorandum of settlement dated 10-4-2002 read with Section 10(1)(b)(i) of the Banking Regulation Act, 1949. The learned appellate authority is absolutely justified in affirming the order of the learned disciplinary authority dismissing the petitioner from bank service. I do not find any merit in the petition. The writ petition is liable to be and is accordingly dismissed.

32. It is made clear that the criminal appeal pending against the petitioner against the judgment of conviction and order of sentence shall be decided on its own merit and this Court has not expressed any opinion on the merits of the matter qua conviction and sentences of the petitioner.

33. No order as to cost(s).

Sd/-  
(Sanjay K. Agrawal)  
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.4858 of 2012

Prashant Shrivastava

Versus

State Bank of India and others

Head Note

Section 10(1)(b)(i) of the Banking Regulation Act, 1949 is mandatory in nature.

बैंककारी विनियमन अधिनियम, 1949 की धारा 10(1)(ख)(i) आज्ञापक प्रकृति की है।