

Dusane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.37 OF 2016
WITH
CIVIL APPLICATION NO.53 OF 2016
WITH
CIVIL APPLICATION NO.1237 OF 2017**

Shri. Saroj Kumar Gupta ...Appellant

V/s.

The Chairman & Managing Director ...Respondents
& Reviewing Authority, Union Bank
of India & Ors.

Mr. A.V. Anturkar, Senior Counsel i/by Atul P.
Vanarase for Appellant/Applicant.

Mr. Ashok D. Shetty a/w Ms. Rita K. Joshi for
Respondent Nos. 1 and 2.

**CORAM: MADHAV J. JAMDAR, J.
DATE: 13th FEBRUARY, 2023**

P.C.:

1. Heard Mr. Anturkar, learned Senior Counsel appearing for the Appellant. He raised the following substantial questions of law for consideration in this Second Appeal.

- (i) Whether the learned First Appellate Court, which is the final fact finding Court has analysed all the facts and given appropriate findings on all the factual aspects?

(ii) Whether the enquiry conducted is vitiated as principles of natural justice are not followed?

(iii) Whether the disciplinary authority passed the order of removal of the Plaintiff from service without giving proper opportunity of hearing to the Appellant?

2. Mr. Shetty, learned Counsel appearing for the Respondents submitted that the principles of natural justice were followed by the enquiry officer as well as opportunity of hearing was given by the disciplinary authority.

3. Before going through the rival contentions, it is necessary to set out certain factual aspects as set out in the synopsis filed by the Appellant:

i] 4th August 1971 :

The Plaintiff/Appellant joined the service of the Respondent bank as Agricultural Field Officer after completion of his M.Sc. (Agricultural) degree. Since then the Appellant served about 25 years in the Respondent bank at various officers level.

ii] 27th August 1993 :

The Plaintiff/Appellant in tenure of his services in middle management cadre secured promotion to Scale-II, Scale-III and Scale-IV in the first stroke. On this date, the Appellant was transferred as Chief Manager at Shaktinagar Branch and discharged the services till 1st October 1994 (1 year

and 1 month).

(iii) 16th September 1994 :

As per order passed on this date, the Appellant transferred on deputation in designation as Chairman to Rewa Siddhi Gramin Bank, Rewa (M.P.) in Scale-IV. The authority also allowed the Appellant the deputation allowance and officiating allowance with effect from 1st January 1996 in Scale-V as per Respondent's letter dated 22nd January 1996, as per the norms laid down in banking regulations.

(iv) 24th September 1996 :

The Defendant/Respondent authority issued letter in violation of the provision under Section 11(1-A) without the permission of National Bank For Agriculture and Rural Development- NABARD, in violation of Regional Rural Bank Act 1976 and terminated the term of the Appellant as Chairman in the said bank and directed the Appellant to report to the duties in the office of the Deputy General Manager, Zonal Office, Union Bank of India, Bhopal (M.P.).

4. The further factual aspects which are relevant are as follows:

(i) On 28th October 1996, charge-sheet was served on the Appellant.

- (ii) Thereafter Enquiry Officer conducted the enquiry.
- (iii) On 7th February 2000, the enquiry officer submitted his detail report along with his findings on each point with reasoning.
- (iv) On 13th March 2000, the Plaintiff has submitted representation to Disciplinary Authority on the finding recorded by enquiry officer in enquiry report.
- (v) On 7th September 2000, Disciplinary Authority passed an order of removal of Plaintiff from service of the Bank.
- (vi) On 6th October 2000, the Plaintiff preferred appeal challenging order passed by the Disciplinary Authority.
- (vii) On 27th November 2000, the appellate authority dismissed the appeal.
- (viii) On 24th August 2001, the Plaintiff has filed application for review of order passed by the appellate authority.
- (ix) On 12th February 2003, Reviewing Authority rejected the application filed by the Plaintiff for review of order passed by the Appellate Authority.

5. The learned Trial Court on the appreciation of evidence on record, recorded findings that the Plaintiff failed to prove that the departmental enquiry was illegal and unfair, the Plaintiff failed to prove that the order of punishment of removal of

Plaintiff from service is disproportionate to misconduct and required to be set aside. With these findings, the learned Trial Court dismissed the suit.

6. The Appellant filed appeal challenging the Judgment and Decree of the learned Trial Court before the learned First Appellate Court. The learned First Appellate Court has held that the Appellant was appointed in Scale-IV and he was never promoted in Scale-V and therefore enquiry conducted by officer of Scale-V was by the competent authority.

7. The other contention *inter alia* raised by the Appellant that the enquiry report was submitted out of grudge against the Appellant is examined by the learned First Appellate Court. The learned First Appellate Court on the basis of various findings recorded by the enquiry officer which are recorded on the basis of evidence on record held that this is not the case where it can be said that the enquiry report was submitted out of grudge against the Plaintiff.

8. In the above background, it is necessary to appreciate the substantial question of law raised by the learned Senior Counsel. The first substantial question is that the First Appellate Court is the last Court of fact finding and therefore should have considered all the aspects of the matter. To substantiate the said contention, Mr. Anturkar, learned Senior Counsel has relied on

the judgment of the Supreme Court in **Santosh Hazari Vs. Purushottam Tiwari (Deceased) by LRs¹**. He more particularly relied on the following portion of paragraph 15 of the said judgment.

"15. A perusal of the judgment of the trial Court shows that it has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issues on which the parties went to trial. It also found that in support of his plea of adverse possession on the disputed land, the defendant did not produce any documentary evidence while the oral evidence adduced by the defendant was conflicting in nature and hence unworthy of reliance. **The first appellate Court has, in a very cryptic manner, reversed the finding on question of possession and dispossession as alleged by the plaintiff as also on the question of adverse possession as pleaded by the defendant. The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. The task of an appellate Court affirming the findings of the trial Court is an easier one. The appellate Court agreeing with the view of the trial Court need not restate the effect of the evidence or reiterate the reasons given by the trial Court; expression of general agreement with reasons given by the Court, decision of**

¹ (2001) 3 SCC 179

which is under appeal, would ordinarily suffice (See Girijanandini Devi & Ors. Vs. Bijendra Narain Choudhary, AIR 1967 SC 1124). We would, however, like to sound a note of caution. **Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate Court for shirking the duty cast on it. While writing a judgment of reversal the appellate Court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial Court must weigh with the appellate Court, more so when the findings are based on oral evidence recorded by the same presiding Judge who authors the judgment.** This certainly does not mean that when an appeal lies on facts, the appellate Court is not competent to reverse a finding of fact arrived at by the trial Judge. **As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate Court is entitled to interfere with the finding of fact** (See Madhusudan Das Vs. Smt. Narayani Bai & Ors.². The rule is ___ and it is nothing more than a rule of practice ___ that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judges notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate Court should not interfere with the finding of the trial Judge on a question of fact.(See Sarju Pershad Ramdeo Sahu Vs. Jwaleshwari Pratap Narain Singh & Ors., AIR 1951 SC 120). **Secondly, while reversing a finding of fact the appellate Court must come into close**

² (1983) 1 SCC 35

quarters with the reasoning assigned by the trial Court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the first appellate Court had discharged the duty expected of it. We need only remind the first appellate Courts of the additional obligation cast on them by the scheme of the present [Section 100](#) substituted in [the Code](#). **The first appellate Court continues, as before, to be a final Court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal.** Now the first appellate Court is also a final Court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate Court even on questions of law unless such question of law be a substantial one."

(Emphasis added)

9. Perusal of the discussion of the Appellate Court shows that the Appellant has *inter alia* raised following contentions before the learned Appellate Court:

- (a) enquiry conducted by the Officer of Scale-V was not competent authority,
- (b) enquiry report was submitted out of grudge against the Plaintiff.

10. Both the above grounds are adequately dealt with by the learned First Appellate Court.

11. As far as first contention that the enquiry was conducted

by the Officer of Scale-V who was not the competent authority as the Appellant was also officer of Scale-V is concerned, the learned First Appellate Court has held that the Appellant was appointed in Rewa Siddhi Gramin Bank, Rewa in Scale-IV and there is no document on record to show that the Appellant was promoted to Scale-V. Therefore, the learned First Appellate Court has come to the conclusion that it cannot be held that the enquiry officer of Scale-V was not competent to hold enquiry.

12. As far as the second contention that the enquiry report was submitted out of grudge against the Appellant in paragraph 33, the learned First Appellate Court set out various facts of omission and commission of the Appellant, which have been mentioned in the enquiry report. In paragraph 34 of the impugned judgment of the First Appellate Court, it has been observed that the enquiry officer has given detailed findings on each allegation and specifically which charge is proved and which is not proved against the Plaintiff is set out in the report of the enquiry officer. Therefore it has been held that it cannot be said that the Enquiry Officer had any grudge against the Appellant. In paragraph 35, the learned First Appellate Court has considered various aspects considered by the enquiry officer. Said paragraph 35 of the learned First Appellate Court reads as under:

"35. The enquiry officer has mentioned in report that the **Plaintiff did not consider financial needs and capabilities of the respective parties. Huge excesses were allowed on regular basis beyond his delegated powers or limits exposing banks funds by abusing the powers vested him. Equitable mortgages were not created before disbursal of advances. LIC policies were not assigned in favour of the Bank before disbursal of advances. Excesses were allowed in accounts which were already became non-performing assets.**"

13. On the basis of above findings, the learned First Appellate Court has held that the Appellant has failed to prove that the enquiry report was submitted out of grudge against the Appellant.

14. The learned First Appellate Court after considering the material on record has come to the conclusion that fair opportunity was given to the Appellant. Various factual aspects in this behalf are considered by the learned First Appellate Court in detail from paragraphs 15 to 29.

15. Therefore, the points which are raised before the learned First Appellate Court are considered by the learned First Appellate Court and said facts are considered and reasons are given for negating the said points. Therefore, there is no

substance in the first substantial question of law raised by the learned Senior Counsel that the learned First Appellate Court has failed to consider all the issues and all the contentions putforth.

16. The second and third substantial questions of law as raised by the learned Senior Counsel are that the principles of natural justice are not followed by the enquiry officer as well as opportunity of being heard was not given by the disciplinary authority. However, perusal of the discussion by both the Courts show that fair opportunity was given to the Appellant.

17. Therefore, there is no substantial question of law as raised by the learned Senior Counsel. As there is no substantial questions of law in this Second Appeal, the Second Appeal is dismissed, however with no order as to costs.

18. In view of disposal of the Second Appeal, nothing survives in the Civil Applications and the same are also disposed of.

BHALCHANDRA
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(MADHAV J. JAMDAR, J.)