

Item-
19. 19-02-2024

sg Ct. 8

MAT 2070 of 2023
CAN 1 of 2023

Lalmohan Jana
Versus
Canara Bank & Ors.

Mr. Subir Sanyal, Adv.
Mr. Nayan Rakshit, Adv.
Mr. Sourojit Mukherjee, Adv.
...for the appellant/petitioner
Mr. Anjan Kumar Paul, Adv.
...for the Canara Bank

1. The appeal is arising out of an order dated 4th October, 2023 passed by the learned Single Judge in a writ petition filed by the employee of Canara Bank ventilating the grievance of non-payment of overtime allowance.
2. Initially on 12th June, 2023, an order was passed by a learned Single Judge directing the respondent no.4 to file a report in the form of an affidavit on the issue how the employees of the bank are directed to perform their overtime hours at the bank and also to address whether the names of the employees appearing at page 88 of the writ petition have been given overtime allowance.
3. Thereafter, this matter was taken up on 4th October, 2023.
4. The learned Single Judge, on consideration of the report, observed that the record of the bank demonstrates prima facie interpolation and fraud committed by the writ petitioner without giving any opportunity to the writ petitioner to respond to the said report in which allegations have been made against the writ petitioner.

5. It seems that the learned Single Judge accepted the submission made on behalf of the bank regarding interpolation and on that basis, granted liberty to the bank to take action against the petitioner by filing a criminal complaint in accordance with law, if so advised. However, the impugned order at the same time also records that the attendance sheet shows that the petitioner worked overtime. The learned Single Judge has accepted the contention of the respondent bank that the claim of the petitioner of the excess amount is unwarranted and unjustified. However, it is overlooked that for almost two years, several communications have been made through proper channel to the Manager of the bank claiming overtime by annexing photocopies of the attendance register. The Manager seems to have not responded to any of the representations made by the writ petitioner.
6. In our view, the writ petition ought to have been decided by directing the parties to file affidavits and by giving an opportunity to the writ petitioner to respond to the report filed by the bank making certain allegations. Without giving any opportunity to the writ petitioner to deal with the allegations in the report filed by way of affidavit no such liberty for filing a criminal complaint could have granted.
7. If the writ petitioner is able to demonstrate that in spite of repeated and numerous communications addressed to the Manager of the bank for almost two years giving particulars with regard to date and time for which he worked beyond

office hours, it was for the bank to respond such allegation and deny the claim based on record. The attendance register, prima facie, shows signature on each page by the Manager of the bank. It is, thus, for the Manager of the bank to explain under what circumstances he had signed the attendance register showing the entry and exit time mentioned by the petitioner in the attendance register. After all, the Manager of the bank is the custodian of all the documents. For the last two years, the bank did not find it necessary to issue any show cause notice alleging interpolation or over-writing of record by the writ petitioner and it was only after an observation was made by the learned Single Judge that a disciplinary proceeding has been initiated.

8. In our view, the order of the learned Single Judge could not form the basis of the disciplinary proceeding as the issue raised in the writ petition is first required to be decided upon exchange of affidavits by the parties.
9. In view thereof, we set aside the order dated 4th October, 2023. We permit the writ petitioner to file an affidavit taking exception to the report within two weeks from date, upon prior service to Mr. Anjan Kumar Paul, learned Counsel for the bank.
10. The bank shall file affidavit-in-opposition to the writ petition within three weeks from date. Reply thereto, if any, shall be filed within two weeks thereafter. The bank shall in the affidavit disclose the relevant Rules regarding attendance and

overtime.

11. Liberty to mention before the appropriate Bench after completion of affidavits.

12. The appeal and the connected application are, accordingly, disposed of.

13. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)