PETITIONER:
CENTRAL BANK OF INDIA

Vs.

RESPONDENT:
C. BERNARD

DATE OF JUDGMENT09/10/1990

BENCH:
AHMADI, A.M. (J)
BENCH:
AHMADI, A.M. (J)
PANDIAN, S.R. (J)
REDDY, K. JAYACHANDRA (J)

CITATION:
1990 SCR Supl. (2) 196 1991 SCC (1) 319
JT 1990 (4) 142 1990 SCALE (2)704

ACT:
Labour Law--Bank Employee---Chargesheet--Departmental Enquiry--Bank Official appointed as Enquiry Officer and Disciplinary Authority--Superannuation of Enquiry Officer--Continuance and conclusion of Enquiry after superannuation and imposition of punishment-Held Enquiry Officer's order is incompetent and without jurisdiction--Absence of bias prejudice or mala fides of the Enquiry Officer cannot cure the defect as to his competence--De facto doctrine held inapplicable.

HEADNOTE:
The respondent, a bank employee, was chargesheeted for claiming L.F.C. on the basis of fake travel receipts. The Bank appointed one of its officers as Enquiry Officer as well as Disciplinary Authority who conducted the departmental enquiry against the respondent. However, during the pendency of the enquiry the Enquiry Officer retired from service. Notwithstanding his retirement from service he proceeded with the enquiry and concluded the same against the respondent. The respondent participated in the enquiry without raising any objection against the continuance of the said Enquiry by the said Enquiry Officer. After giving an opportunity to the respondent to be heard on the question of punishment the Enquiry Officer/Disciplinary Authority imposed the punishment of discharge. The respondent fried a departmental appeal which was dismissed. Thereafter, the respondent filed a writ petition in the High Court challenging the order of discharge on the ground that the order passed by the Enquiry Officer was without jurisdiction.

A single judge of the High Court allowed the Writ Petition, quashed the order of punishment with all consequential benefits to the respondent on the ground that after retirement the Enquiry Officer was nobody in the hierarchy of authorities to impose punishment on the delinquent-employee and hence his order imposing punishment was incompetent and without jurisdiction.

Against the order of the single judge the Bank preferred a Letter Patent Appeal before a Division Bench of the High Court which was dismissed.
197

In appeal to this Court it was contended on behalf of the appellant Bank; (i) that the decision of the Enquiry Officer could be saved on the basis of de facto doctrine because (a) his initial appointment being valid his actions and decisions could not be invalidated by his subsequent retirement since he continued to function as a de facto Enquiry Officer; (b) even otherwise the Bank could have appointed a non-official as Enquiry Officer; (ii) that since the High Court quashed the punishment not on merits but on a mere technicality, it erred in directing payment of all consequential benefits to the respondent; and (iii) since the respondent submitted to the jurisdiction of the Enquiry Officer and there was no prejudice caused to him he was estopped from raising the contention as to the competence or jurisdiction of the Enquiry Officer for the first time in the Writ Petition.

Allowing the appeal in part, this Court,

HELD: 1. The de facto doctrine has to requisites, namely, (i) the possession of the office and the performance of the duties attached thereto, and (ii) colour of title, that is, apparent right to the office and acquiescence in the possession thereof by the public. According to this doctrine the acts of officers de facto performed within the sphere of their assumed official authority, in the interest of the public or third parties and not for their own interest, are generally held valid and binding as if they were performed by de jure officers. This doctrine can be invoked in cases where there is an appointment to office which is defective; but notwithstanding the defect to the title of the office, the decisions made by such a de facto officer clothed with the powers and functions of the office would be as efficacious as those made by a de jure officer. The same would, however, not be true of a total intruder or usurper of office. The doctrine envisages that acts performed de facto by officers within the scope of their assumed official authority are to be regarded. as binding as if they were performed by officers de jure. While the de facto doctrine saves official acts done by an officer whose appointment is found to be defective the private parties to a litigation are precluded from challenging the appointment in any collateral proceedings. But the doctrine does not come to the rescue of an intruder or usurper or a total stranger to the office. Obviously the doctrine can have no application to the case of a person who is not the holder of an office but is merely a bank employee, for that matter an ex-employee. [202E-F; 203BF-G; 204A-C]

1.1 In the instant case, the Enquiry Officer can hardly be described as a person occupying or being in possession of an office to which certain duties affecting the members of the general public can be

198

said to be attached. Therefore in the facts and circumstances of this case the de facto doctrine can have no application. [203H; 204A; 201G]

Pulin Behari Das v. King Emperor, [1911-12] 16 Cal. Weekly Notes 1105; Immedisetti Ramkrishnaiah Sons v. State of Andhra Pradesh, A.I.R. 1976 A.P. 193; Jai Kumar v. State, [1968] All. L.J. 877; Gokaraju Rangaraju v. State of A.P., [1981] 3 S.C.R. 474; referred to.

Abbe de Fountaine decided in 143 1; cited.

1.2 An Enquiry Officer need not be an officer of the bank: even a third party can be appointed an Enquiry Officer to enquire into the conduct of an employee. But there can be no doubt that a non-official cannot act as a Disciplinary Authority and pass an order of punishment against the delin-

quent employee. Therefore, where punishment is imposed by a person who has no authority to do so the very foundation on which the edifice is built collapses and with and it fails the entire edifice. It is a case more or less akin to a case tried by court lacking in inherent jurisdiction. Absence of bias, prejudice or mala fides, is of no consequence so far as the question of competence of the Enquiry Officer is concerned. [202B; 204D-E]

Saran Motors (P.) Ltd. v. Vishwanath & Anr., [1964] 2 L.L.J. 139; referred to.

Delhi Cloth and General Mills Co. Ltd. v. Labour Court, Tis Hazari & Ors., [1970] 1 L.L.J. 23; Held inapplicable.

2. In the instant case, the impugned order of punishment was quashed not because the merits of the case so demanded but because the technical plea of incompetence succeeded. Therefore, the High Court was right in quashing the impugned order of punishment but having regard to the special facts and circumstances of the case, it should not have ordered payment of 'all consequential benefits' flowing from the declaration that the impugned order was bad in law. The order of the High Court is modified to the extent that the respondent will be paid 50% of the consequential benefits and not all the consequential benefits. Except for this modification, the rest of the order of the High Court will stand. [205E-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3071 of 1988.

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199

From the Judgment and Order dated 8.4.1988 of the Karnataka High Court in Writ Appeal No. 563 of 1988.

Narayana B. Shetye, D.N. Misra and O.C. Mathur for the Appellant.

S.R. Bhatt for the Respondent.

The Judgment of the Court was delivered by

AHMADI, J. The short question which arises in this appeal by special leave is whether the departmental enquiry entrusted to and conducted by a Bank official stands vitiated if the said official proceeds with the enquiry and concludes the same after his superannuation. during the pendency of the enquiry? The High Court of Karnataka has held that such an enquiry is incompetent and without jurisdiction and, therefore, null and void. The facts giving rise to this appeal, briefly stated, are as under:

The respondent C. Bernard while serving as a Relieving Head Cashier in the K.G. Road Branch of the Bank in Bangalore city availed of 15 days leave from April 17, 1978 to May 1, 1978 and was allowed an advance of Rs.2,500 on April, 1978 under LFC to be adjusted later on his submitting the LFC Bill. He submitted a bill for Rs.2,800 on May 5, 1978 along with a stamped cash receipt purported to have been issued by M/s. Shri Manju Travels of Bangalore and claimed reimbursement for the same. The said bill was passed by the bank on May 15, 1978 but subsequent investigations revealed that the firm of M/s. Shri Manju Travels was a spurious one which indulged in issuing fake travel receipts. Thereupon the respondent was served with a Memo dated August 1, 1978 by the Divisional office of the Bank calling for his explanation. A letter was also addressed on the same day to M/s. Shri Manju Travels, Bangalore requesting them to furnish the details of the persons who traveled and the amounts received

by the said firm. No reply was received from the said firm but the respondent sent a reply on August 10, 1978 which was not found to be satisfactory. Some correspondence ensued between the respondent and the appellant in this connection but finally the respondent was served with the charge-sheet dated October 12, 1978 which was followed by a departmental enquiry. It is not necessary to go into the details in regard to proceedings at the departmental enquiry but it would be sufficient to state that the respondent participated in the departmental enquiry till it was completed by the enquiry officer Shri U.B. Menon.
200
Paragraph 9.14 of the Memorandum of Bi-partite Settlement dated October 19, 1966 empowers the Chief Executive Officer, etc., of he Bank to decide which officer(s) would be empowered to hold enquiry and take disciplinary action in the case of each office or establishment. Accordingly Shri U.B. Menon, Special Officer, was appointed an Enquiry Officer under the Chief Executive Officer's Order dated January 9, 1979, which reads as under:
"Pursuant to the powers vested in the Executive Director by the Chairman and Managing Director of the Bank, as per his office Order dated 20th December, 1978, authorising him to appoint Enquiry Officers and Appellate Authorities under the provisions of Chapter 19 of the Bi-partite Settlement dated 19th October, 1966, the undersigned is pleased to appoint Shri U.B. Menon, Special Officer, to work as an Enquiry Officer, to hold and conduct departmental enquiries against the members of the staff governed by the provisions of the Award and Bi-partite Settlement, and to pass necessary orders under the provisions of Chapter 19 of the Bi-partite Settlement dated 19th October, 1966."
By a subsequent circular dated January 17, 1979 all offices of the Bank were informed about the appointment. Shri U.B. Menon was intimated about the same by the Assistant General Manager's letter dated January 23, 1979. The said Enquiry Officer conducted the departmental enquiry against the respondent. However, during the pendency of the departmental enquiry he retired from service on January 31, 1979. Notwithstanding his retirement he continued to function as an Enquiry Officer and concluded the enquiry against the respondent by the end of 1979. He then gave an opportunity to the respondent to be heard on the question of punishment and then passed the impugned order of discharge on January 14, 1980. The respondent's departmental appeal was also dismissed on June 17, 1980. The respondent did not raise any objection against the continuance of the enquiry by the said Shri U.B. Menon at any time during the pendency and till the disposal of the departmental appeal preferred by him. Suffice it to say that he raised this objection for the first time in Writ Petition No. 18 140 of 1980 filed against the impugned order of discharge in the High Court.
A learned Single judge of the High Court by his order dated January 18, 1988 came to the conclusion that on the retirement of Shri U.B. Menon 'he was nobody in the hierarchy of authorities' to impose
201
punishment on the respondent and hence the order imposing punishment was clearly incompetent and without jurisdiction. The argument that since the impugned order of discharge got merged in the appellate order, the initial defect, if any, stood removed, was repelled by the learned Judge on the ground that 'as the original order was without jurisdiction or competence, there was nothing for the Appellate Authority to confirm'. The learned Single Judge, therefore, allowed

the writ petition, quashed the impugned order of punishment and directed that the respondent be paid all consequential benefits. The appellant preferred a Letters Patent Appeal against the said order of the learned Single Judge. The Division Bench of the High Court which heard the appeal dismissed it by a one line order: 'no ground for interference is made out'. It is against this order that the appellant has approached this Court under Art. 136 of the Constitution.

Shri Narain Shetye, the learned counsel for the appellant strongly urged that the High, Court ought not to have permitted the respondent to question the competence or jurisdiction of Shri U.B. Menon to act as an Enquiry Officer as well as a Disciplinary Authority after his superannuation since he had participated in the enquiry throughout without a demur. According to him, by conduct the respondent was estopped from raising such a contention for the first time in a writ petition, more so because he had submitted to the jurisdiction of Shri U.B. Menon and there was no prejudice caused on him on that account. Lastly, he submitted that even otherwise the appellant could have appointed a non-official as an Enquiry Officer and therefore his decision could be saved on the de facto doctrine.

Taking the last submission first we think that in the facts and circumstances of this case the de facto doctrine can have no application. Under paragraph 19.14 of the by-parties agreement the Chief Executive Officer was entitled to decide which officer should be empowered to hold an enquiry and take disciplinary action in the case of each office or establishment. Under this paragraph only an officer of the bank could be empowered to hold an enquiry and take disciplinary action against a delinquent. The names of officers so empowered were required to be published on the bank's notice board. Accordingly, Shri U.B. Menon was appointed an Enquiry Officer/Disciplinary Authority under paragraph 19.14 of the bi-partite agreement while he was still in service. It is indeed surprising that an officer who was due to retire within a few days only was chosen to act as an Enquiry Officer and Disciplinary Authority by the order dated January 9, 1979. Shri U.B. Menon was intimated about his appoint-

202

ment by the letter of January 23, r979, i.e., hardly a week before his superannuation on January 31, 1979. After his retirement from service he proceeded with the enquiry and concluded it by the end of 1979. The respondent was then served with a second show cause notice on the question of punishment and thereafter the impugned order of discharge was passed on January 14, 1980. There is nothing on the record to show that any formal decision was taken by the appellant to continue the services of Shri U.B. Menon as an official of the bank. Shri Shetty is right when he contends that an Enquiry Officer need not be an officer of the bank; even a third party can be appointed as Enquiry Officer to enquire into the conduct of an employee. See: Saran Motors (P) Ltd. v. Vishwanath & Anr., [1964] 2 LLJ 139. But there can be no doubt that a non-official cannot act as a Disciplinary Authority and pass an order of punishment against the delinquent-employee. It is for this reason that the learned Single Judge of the High Court observed that on retirement Shri U.B. Menon was nobody in the hierarchy of authorities to impose punishment on the delinquent. He therefore, held that the order of punishment was clearly incompetent and without jurisdiction. The learned counsel for the appellant submitted that since the initial appoint-

ment of Shri U.B. Menon was valid, his actions and decisions could not be invalidated by his subsequent retirement. According to him he continued to function as an Enquiry Officer de facto and hence his actions and decisions were saved. The de facto doctrine has two requisites, namely, (i) the possession of the office and the performance of the duties attached thereto, and (ii) colour of title, that is, apparent right to the office and acquiescence in the possession thereof by the public. According to this doctrine the acts of officers de facto performed within the sphere of their assumed official authority, in the interest of the public or third parties and not for their own interest, are generally held valid and binding as if they were performed by de jure officers. This doctrine dates back to the case of Abbe de Fontaine decided way back in 1431 to which reference was made by Sir Asutosh Mookerjee, 3. in Pulin Behari Das v. King Emperor, [1911-12] 16 Calcutta Weekly Notes 1105 at 1120. Mookerjee, J. held that as the complaint was made after complying with section 196, Criminal Procedure Code, by the order of or under authority from Local Government which was de facto, the proceedings were valid. On the same principle it was further held that the Court of Sessions, assuming it was not the holder of a de jure office, was actually in possession of it under the colour of title which indicated the acquiescence of the public in its actions and hence its authority could not be collaterally impeached in the proceedings arising from the conviction of Pulin and his co-accused. Again, in Immedisetti Ramkrishnaiah Sons
203
v. State of Andhra Pradesh, AIR 1976 A.P. 193, the Government nominated nine persons on a Market Committee which nomination was later set aside by the High Court. However, before the High Court pronounced its judgment, the Market Committee had functioned as if it had been properly constituted. Between the date of its constitution and the date of the High Court decision it had taken several decisions, issued notifications, etc., which were the subject-matter of challenge on the ground that its constitution was ab initio bad in law. Chinnappa Reddy, J. relying on the observations of Mookerjee, J., in Pulin's case concluded that the acts of the Market Committee de facto performed within the scope of its assumed official authority, in the interest of the public or third persons and not for his own benefit are generally as valid and binding as if they were performed by a de jure Committee. The Allahabad High Court in Jai Kumar v. State, [1968] All. L.J. 877 upheld the judgments of the District Judges whose appointments were later struck down by this Court on the principle that the acts of officers defacto are not to be questioned because of the want of legal authority except by some direct proceeding instituted for the purpose by the State or by someone claiming the office de jure, or except when the person himself attempts to build up some right, or claim some privilege or benefit by reason of being the officer which he claims to be. In all other cases, the acts of an officer de facto are valid and effectual, while he is suffered to retain the office, as though he were an officer by right and the same legal consequences will flow from them for the protection of the public and of the third parties. This Court in Gokaraju Rangaraju v. State of A.P., [1981] 3 SCR 474=AIR 1981 SC 1473 was required to consider the question of the effect of the declaration of this Court holding the appointment of an Additional Sessions Judge invalid on judgments pronounced by him prior to such declaration. This Court observed that the defacto doctrine is rounded on good sense, sound policy and practical experi-

ence. It is aimed at the prevention of public and private mischief and the protection of public and private interest. It avoids endless confusion and needless chaos. It, therefore, seems clear to us that the de facto doctrine can be invoked in cases where there is an appointment to office which is defective; but notwithstanding the defect to the title of the office, the decisions made by such a de facto officer clothed with the powers and functions of the office would be as efficacious as those made by a de jure officer. The same would, however, not be true of a total intruder or usurper of office.

In our view, the submission of Shri Shetty based on the defacto doctrine is clearly misconceived. Shri U.B. Menon can hardly be described as a person occupying or being in possession of an office to

204

which certain duties affecting the members of the general public can be said to be attached. The de facto doctrine, as explained earlier, envisages that acts performed de facto by officers within the scope of their assumed official authority are to be regarded as binding as if they were performed by officers de jure. While the de facto doctrine saves official acts done by an officer whose appointment is found to be defective the private parties to a litigation are precluded from challenging the appointment in any collateral proceedings. But the doctrine does not come to the rescue of an intruder or usurper or a total stranger to the office. Obviously the doctrine can have no application to the case of a person who is not the holder of an office but is merely a bank employee, for that matter an ex-employee. We, therefore, see no merit in this contention'.

True it is that the respondent did not attribute any bias or mala fides to the Enquiry Officer nor did he complain that he was in any manner prejudiced on account of the said Enquiry Officer conducting he domestic enquiry but that will not cure the defect as to his compensence. Where punishment is imposed by a person who has no authority

do so the very foundation on which the edifice is built collapses and with and it fails the entire edifice. It is a case more or less akin to a case tried by a court lacking in inherent jurisdiction. We, are, therefore, of he opinion that absence of bias, prejudice or mala fides, is of no consequence so far as the question of competence is concerned. The cases which were cited at the bar (i) Delhi Cloth and General Mills Co., Ltd. v. Labour Court, Tis Hazari & Ors., [1970] 1 LLJ 23 and (ii) Saran Motors, (supra) also have no application to the special facts and circumstances of this case.

Shri Shetye next submitted that if a third party non-official can validly be appointed an Enquiry Officer, though not Disciplinary Authority, his report upto the stage preceding the issuance of a second ,how-cause notice could be saved because both sides to the proceedings had not raised any objection to the continuance of the enquiry by the said Enquiry Officer and therefore the High Court ought to have remitted the matter to the competent Disciplinary Authority to take a fresh decision based on the report of the Enquiry Officer. To put it differently, according to the learned counsel for the appellant, the High Court should have remanded the matter with a direction that the competent Disciplinary Authority will proceed to dispose of the departmental enquiry from the stage of the report submitted by the Enquiry Officer. We would have considered it necessary to examine this submission had the delinquent not retired in the meantime on August 21, 1986. The High Court pronounced

its Judgment thereafter
205
on January 18, 1988. No useful purpose, therefore, can be served by adopting the procedure suggested by Shri Shetye as the respondent had admittedly retired from service in 1986 and if the order imposing punishment is quashed he would ordinarily have to be paid his wages etc., upto the date of his retirement. We, therefore, do not think that, in the facts and circumstances of this case, the course suggested by Shri Shetye can be usefully adopted.

Lastly, Shri Shetye submitted that in any event the respondent succeeded in getting the order of punishment quashed on a mere technicality and that too on the contention belatedly raised before the High Court for the first time and, therefore, the High Court was in error in directing payment of all consequential benefits. We think there is merit in this contention. If the objection was raised at the earliest possible opportunity before the Enquiry Officer the appellant could have taken steps to remedy the situation by appointing a competent officer to enquire into the charges before the respondent's retirement from service. It is equally true that the penalty has not been quashed on merits. On the contrary, if one were to go by the charge levelled against the respondent and the reply thereto one may carry the impression that the respondent had made the claim on the basis of the fake receipt; whether the respondent himself was duped or not would be a different matter. The fact, however, remains that the impugned order of punishment has to be quashed not because the merits of the case so demand but because the technical plea of incompetence succeeds. In the circumstances, we think that the ends of justice would be met if instead of directing 'all consequential benefits' the appellant is ordered to pay '50% of the consequential benefits' to which the respondent would be entitled on superannuation. For the above reasons, we are of the opinion that the High Court was right in quashing the impugned order of punishment but we think having regard to the special facts and circumstances pointed out earlier, it should not have ordered payment of 'all consequential benefits' flowing from the declaration that the impugned order was bad in law. We, therefore, modify this part of the order by substituting the words fifty percent' in place of the word 'all' in the penultimate paragraph of the learned Single Judge's order. To put the matter beyond the pale of doubt we clarify that the respondent will be paid 50% of the consequential benefits and not all the consequential benefits. Except for this modification, the rest of the order of the High Court will stand. The appeal will stand allowed to the above extent but, in the facts and circumstances of this case, we think the parties should be directed to bear their own costs.

T.N.A. Appeal allowed partly.
206