

CASE NO.:
Appeal (civil) 5179 of 2004

PETITIONER:
Allahabad District Co-operative Bank Ltd., Allahabad

RESPONDENT:
Vidhya Varidh Mishra

DATE OF JUDGMENT: 11/08/2004

BENCH:
S. N. Variava & A. K. Mathur

JUDGMENT:
J U D G M E N T

[Arising out of S.L.P. (C) No.16141 of 2001]

S. N. VARIAVA, J.

Leave granted.

Heard parties.

This appeal is against the judgment of the Allahabad High Court dated 20th July 2001.

Briefly stated the facts are as follows.

The Respondent was working as a Clerk-cum-Cashier in the Appellant-Bank. In October 1978 he was suspended in connection with embezzlement of Rs.15,000/-. A disciplinary inquiry was held against the Respondent. In the disciplinary inquiry, the Respondent was found to have had a hand in the embezzlement. The Inquiry Officer proposed punishment of termination of service and recovery of money.

It appears that the Administrative Committee of the Bank decided to take a lenient view and proposed to impose a punishment of withholding two annual increments and recording adverse entries in the character roll. When this proposal was sent to the Registrar, Co-operative Societies, the Registrar opined that the charges were serious and that they had been held proved in the disciplinary inquiry. It was opined that on these charges termination should take place. The Registrar did not, therefore, approve the minor punishment proposed to be imposed on the Respondent. The Bank thus decided to dismiss the Respondent. By a letter dated 6th April 1989 the services of the Respondent were terminated.

It must be mentioned that the Respondent was also charge sheeted and faced a criminal trial. The Trial Court had found the Respondent guilty and had convicted him. However, subsequent to 6th April 1989, the Appellate Court exonerated the Respondent on the ground that he was merely negligent in his duties and that no criminal offence had been made out.

After the Appellate Court exonerated the Respondent, he made an application to the Appellant-Bank to reconsider the order of termination. This application was rejected on 20th December, 1991. The Respondent filed a Writ Petition in the Allahabad High Court challenging the Order dated 20th December, 1991. In this Writ Petition, there was no challenge to the order of termination dated 6th April, 1989.

A Single Judge of the Allahabad High Court allowed the Writ Petition and directed reinstatement. It was held that for this very act the Respondent had already been awarded punishment of withholding two annual increments and an adverse entry in the character roll. It was held that for the same offence that he could not again be subjected to double punishment.

The Appeal filed by the Appellant has been dismissed by the

Division Bench by the impugned judgment. It was pointed out to the Division Bench that there was no double punishment as the earlier proposal had not been approved by the Registrar. The Division Bench holds that as the Bank had itself thought it fit to impose only a minor punishment, they could not now terminate the services of the Respondent.

We have heard counsel for the parties. In our view, the Single Judge has gone completely wrong. There was no double punishment. The earlier proposal to impose minor punishment had not been approved by the Registrar. Therefore, the minor punishment had not been awarded or imposed. In our view, the Division Bench has clearly erred. The participation of the Respondent in the embezzlement having been proved, in a disciplinary inquiry, the proper punishment was termination of service. More importantly, both the learned Single Judge as well as the Division Bench completely overlooked the fact that the termination was by the Order dated 6th April 1989. This Order had not been challenged in the Writ Petition. There being no challenge to that Order, reinstatement could not have been directed.

Mr. Rao submitted that the Respondent had been exonerated by the Criminal Court. He submitted that the termination was only on the basis of his conviction. He submitted that as his conviction is set aside, the Courts below were right in reinstating the Respondent. We are unable to accede to this submission. The termination was pursuant to a disciplinary inquiry. It is settled law that in a disciplinary inquiry a conclusion different from that arrived at by a Criminal Court, may be arrived at. The strict burden of proof required to establish guilt in a Criminal Court is not required in disciplinary proceedings. The Respondent had not claimed that the disciplinary proceedings were not conducted fairly. As the termination was based on findings of the Disciplinary Committee, the fact that the Appellate Court exonerated the Respondent was of no consequence.

Mr. Rao next submitted that the matter should be remitted back to the High Court with an opportunity to the Respondent to amend his Writ Petition and to show to the Court that the order of termination was based on the Respondent being convicted by the Criminal Court. We are unable to accede to this request also. We have gone through all the documents. It is clear that the order of termination was based on the findings given in the disciplinary proceedings. On these findings, it cannot be said that the order of termination was not correct.

Under these circumstances, the Appeal is allowed. The impugned Order as well as the Order of the learned Single Judge are set aside. The Writ Petition filed by the Respondent stands dismissed. There will be no order as to costs.