

PETITIONER:
SUDHIR VISHNU PANVALKAR

Vs.

RESPONDENT:
BANK OF INDIA

DATE OF JUDGMENT: 06/05/1997

BENCH:
CJI, S. P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:
Present:

Hon'ble the Chief Justice
Hon'ble Mr. Justice S. P. Kurdukar

K.K. Singhvi, Sr. Adv., B.N. Singhvi, Anil Kumar Gupta,
Adv. with him for the appellant

Raj Birbal, Sr. Adv., Rakesh Khanna, Anand Chandra,
Surya Kant, Adv. with him for the Respondent

J U D G M E N T

The following Judgement of the Court was delivered.

J U D G M E N T

S.P. KURDUKAR, J

The appellant on February 9, 1961 was appointed as an Officer in Grade III in the respondent Bank (for short 'the Bank'). He was promoted on April 1, 1968 to the Grade officer in the Foreign Exchange Department in the Head Office of the Bank. Sometime in 1964, Manoj Co-operative Housing Society (for short 'the Society') was formed of which the appellant was one of the chief promoters and thereafter its Secretary. The object of the Society was to construct residential premises for the employees of the Bank and its other members. It appears that the complaint was received in respect of the affairs of the Society relating to misappropriation of the funds of the Society and consequently, in exercise of the powers under Section 83 of the Maharashtra Co-operative Societies Act (for short 'the Act'), the Registrar on April 23, 1969 instituted an inquiry thereof. Mr. A.S. Rangnekar was appointed the Registrar's nominee who on October 4, 1969; submitted the report holding the appellant and two other office bearers of the Society negligent in dealing with the funds of the Society causing a loss to the tune of Rs. 3,59,000/-. The Registrar on October 21, 1969, passed an order appointing an officer under Section 88 of the Act to assess the loss caused to the Society. However, the Government by its order dated November 29, 1969 annulled the Registrar's order dated April 23, 1969 and October 21, 1969 and directed a fresh inquiry into the affairs of the Society.

2. On December 17, 1969, the Bank issued show cause notice to the appellant to explain within fifteen days his alleged negligent conduct in dealing with the affairs of the Society

as revealed in the report dated 4th October, 1969. In the meantime, Mr. Godbole came to be appointed by the Registrar vide his order dated 26th July, 1969, to make inquiries under Section 88 of the Act. Petitioner by his reply dated 18/22th January, 1970 submitted his explanation and also challenged the legality of the inquiry and the findings recorded therein. On 5th March, 1970, Mr. M.S. Mavalkar, treasurer of the Society and an employee of the Bank criminal complaints in the Court of Addl. Chief Presidency Magistrate, Bombay alleging that the appellant and two other office bearers of the society had dishonestly misappropriated a sum of Rs. 51,000/- and Rs. 80,000/- respectively which was entrusted to the appellant in his capacity as Promoter and Secretary of the Society and thereby committed criminal breach of trust. The Magistrate framed the charges against the appellant under Sections 409 and 109 of the Indian Penal Code. The Bank having regard to the serious misconduct of the appellant involving moral turpitude vide its order dated 3rd November, 1970 suspended the appellant pending trial. The appellant protested this action of the Bank complaining that he was not given an opportunity of hearing before passing the order of suspension. In the meantime, Mr. Godbole, the authorized officer appointed by the Registrar vide his order dated 9th October, 1971 held the appellant liable to pay Rs. 2,36,000/- to the Society in addition to the amount of Rs. 2,03,000/- for which he (the appellant) and two other office bearers of the Society were held jointly liable. The Bank in view of this finding, vide its order dated 29th November, 1971 terminated the services of the appellant with effect from 1st December, 1971 along with notice pay. The appellant protested against the action of the Bank and on 3rd December, 1971 filed detailed representation against the order of termination. The Bank replied to the appellant's representation and justified its action. The appellant on 28th December, 1971 submitted his reply to the Bank stating, inter alia, that the termination of his services was not simplicitor and was in violation of the principles of natural justice; that no opportunity of hearing was given to him; that the termination order attached stigma. The appellant aggrieved by the findings and order made by Mr. Godbole preferred appeal No. 22 of 1972 before the Maharashtra State Co-operative Tribunal, Bombay. In the meantime, the criminal proceedings ended in conviction vide order dated 27th March, 1972 passed by the Addl. Chief Metropolitan Magistrate, Bombay. The appellant challenged the order of conviction and sentence in the Bombay High Court being Criminal Appeal No. 4020 of 1972 and during the pendency of the said appeal, the Maharashtra State co-operative Tribunal vide its order dated April 12, 1973 dismissed the appellant's appeal but reduced the liability by Rs. 72,000/-. On November 12, 1973, the High Court allowed the criminal appeal and acquitted the appellant. The High Court, however, in its order observed that since the services of the appellant were terminated in view of the criminal proceedings and since the appellant has been acquitted, representation, if any, by the appellant to the Bank for reinstatement may be considered sympathetically. Taking clue from the observations made by the High Court, the appellant filed three representations, the last being dated 3rd May, 1975 requesting the Bank to revoke the order of termination and be reinstated. The Bank vide its communication dated May 21, 1975 refused to reinstate the appellant. The appellant, therefore, on July 23, 1975 filed the writ petition in the High Court for quashing the orders

dated 29th November 1971, 27th December, 1971 and 21st May, 1975 passed by the Bank.

3. The learned Single Judge of the High Court by his judgment and order dated December 6/7, 1979 granted desired relief to the appellant. The Bank aggrieved by the judgment and order passed by the learned Single Judge preferred an appeal under Clause 15 of the Letters Patent. The appeal was heard by the Division Bench. The Division Bench of the High Court did not agree with the judgment passed by the learned Single Judge and consequently by its judgment and order dated April 16 1985 allowed the appeal and dismissed the writ petition the ground of laches and also on merits. It is this judgment and order of the High Court which is impugned in this appeal.

4. Mr. K.K. Singhvi, the learned Senior Advocate appearing in support of this appeal contended that the Division Bench of the High Court was wholly unjustified in rejecting the claim of the appellant on the grounds of delay and laches. The learned Single Judge while granting the relief to the appellant had condoned the delay and this being the discretionary exercise power, the Division Bench committed serious error in interfering with such a discretionary order. It is common premise that the termination order was made by the Bank on November 29, 1971 whereas the writ petition was filed on July 23, 1975. Obviously, there was a delay of about three and half years. The only justification sought to be pleaded by the appellant was the pendency of the criminal proceedings which ultimately ended in his acquittal vide order dated 24/25th July, 1974. Mr. Singhvi, therefore, contended that there was no delay whatsoever on the part of the appellant in approaching the High Court by way of writ petition.

5. Mr. Raj Birbal, learned Senior Advocate appearing for the Bank contested this contention and urged that the termination order was the simplicitor termination without being influenced by the criminal proceedings and there was no reason for the appellant to wait until the disposal of the criminal proceedings. Delay of three and half years in the event of a reinstatement involves financial implications relating to back wages. On perusal of judgments of learned Single Judge as well as the Division Bench on this issue, we are of the considered view that having regard to the facts and circumstances of the present case, the Division Bench was right in holding that the writ petition suffered from the vice of delay and laches. At this stage, it needs to be stated that the termination order was a simplicitor termination. However, the appellant who insisted for the reasons for his termination and, therefore, the bank was constrained to inform the appellant that the termination was resorted to because of loss of confidence. It also needs to be emphasised that the appellant was grade III officer in the Bank who was required to deal with the customers and, therefore, if the Bank thought it fit to terminate the services of the appellant on the ground of loss of confidence, Such an action could not be said to be unwise or malafide action. We, therefore, find no illegality in upholding the finding of the Division Bench that the writ petition filed by the appellant suffered from the vice of delay and laches.

6. It is an admitted position that appellant's services were terminated, the Bank though nationalised had not prescribed the conduct and Disciplinary Rules or Regulations. It is in these circumstances, the general principles of natural justice held the field. Mr. Singhvi contended that the appellant be a permanent employee, his

services could not have been terminated without holding a departmental enquiry. Merely because the services of the employees of the Bank were not governed by any Conduct and Disciplinary rules or Regulations, an employee could not be put to a greater disadvantage and the disciplinary authority could be permitted to violate the principles of natural justice. The main thrust of the contention of Mr. Singhvi was that the termination order of the appellant was totally in violation of principles of natural justice and also an arbitrary action on the part of the Bank. The order of termination was thus violative of Articles 14 and 16 of the Constitution. In Support of this submission, Mr. Singhvi relied upon various decisions of this Court and in particular, the decisions in West Bengal State Electricity Board and others. Vs. Desh Bandhu Ghosh and others 1985(3) SCC 166, Central Inland Water Transport Corporation Limited and anr. vs. Brojo Nath Ganguly and anr 1986 (3) SCC 156 and Delhi Transport Corporation vs. D.T.C. Mazdoor Congress and others 1991 Suppl(1) SCC 600. We have very carefully gone through these decisions. In all these reported decisions, the Rules and/or Regulations relating to conduct and Disciplinary matters, fell for consideration in the context of Articles 14 and 16 of the Constitution of India. As Indicated earlier, the Bank had framed no Rules and Regulations in regard to the service conditions etc. of its employees. It is in these circumstances, we do not think it necessary to refer to these decisions in detail since they are not applicable to the facts of the present case. The Division Bench of the High Court in its judgment has exhaustively dealt with the various decisions of this Court and the High Courts and very succinctly drew the distinction and pointed out how those decisions were not applicable to the facts of the present case. We are in complete agreement with the reasons given by the High Court.

7. The only ground that survives for our consideration is as to whether the Bank was justified in terminating the services of the appellant on the ground of loss of confidence and in the facts and circumstances of the case, whether any-such inquiry was necessitated. From the material placed on record before us, it is quite clear that the appellant was involved in misappropriation of Society's funds. The proceedings initiated under Section 88 of the Act went upto the Maharashtra Co-operative Tribunal and after contest by the parties, the Tribunal held the appellant guilty of certain charges involving moral turpitude relating to misappropriation of Society's funds. Mr. Singhvi, however, urged that some of these documents were not the subject matter of proceedings before the High Court and, therefore, they cannot be relied upon by the Bank in this appeal. He also urged that these documents/papers are from the proceedings before the Registrar and that they have no bearing upon the issue involved in this case. He also urged that the Bank had not produced the entire correspondence before this Court for its appreciation and proper decision. Ordinarily, this plea could have been sustained but no stateable reasons could be given on behalf of the appellant nor the correctness thereof could be challenged. All these documents were filed by the Bank along with its counter affidavit of which the copy and the documents were furnished to the appellant long time back. Although, the rejoinder was filed by the appellant but he could not dispute the correctness of all these documents. It is in these circumstances, we are of the view that these documents could be relied upon by the Bank to justify the order of termination on the ground of loss of confidence. On perusal

of the material produced before us, we are of the opinion that the order of termination passed by the Bank does not suffer from any vice and the Division Bench of the High Court was right in upholding the termination order.

8. In the result, we find no merit in this appeal and the same is dismissed. Parties are directed to bear their own costs.

JUDIS