

ALLAHABAD DISTRICT CO-OPERATIVE
BANK LTD., ALLAHABAD

A

v.

VIDHYA VARIDH MISHRA

AUGUST 11, 2004

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[S.N. VARIAVA AND A.K. MATHUR, JJ.]

Service Law :

Termination of service—Charges against employee—Disciplinary proceedings and criminal trial—In disciplinary proceeding minor punishment by Authority—Minor punishment not approved and subsequently services terminated—Acquittal by Criminal Court—Application for reconsideration of termination rejected by Authority—Writ petition—Termination order not challenged—Courts below directed reinstatement on the ground that double punishment awarded—On appeal, held : Reinstatement not correct as there was no double punishment as minor punishment was not awarded—Also because termination order not challenged—Disciplinary Authority may arrive at a conclusion different from that of criminal Court.

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Respondent was employed with appellant-Bank. After a disciplinary enquiry he was found guilty of embezzlement and enquiry officer terminated his services and ordered for recovery of money. Administrative Committee proposed punishment of withholding two annual increments and recording adverse entries in character roll. However, the Registrar, Co-operative Societies, opined to terminate his services in view of the gravity of the charges. Hence, his services were terminated. In criminal trial for the offence, respondent was convicted by trial court but was exonerated of the charges by appellate Court. After being exonerated, he filed application to the Bank to reconsider the order of termination, but the same was rejected. He filed Writ Petition in High Court but therein did not challenge the order of termination. High Court allowed the petition holding that he was subjected to double punishment for the same offence, i.e., withholding of two annual increments and adverse entry in character roll and also termination of services. The order was upheld by Division Bench of High Court. Hence the present appeal.

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A Appellant contended that termination was on the basis of conviction and that the matter be remitted to High Court to give opportunity to respondent to amend the writ petition to show that the order of termination was on the basis of conviction in criminal trial.

B Allowing the appeal, the Court

C HELD : 1. 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. The participation of the respondent in the embezzlement having been proved, in a disciplinary inquiry, the proper punishment was termination of services. Moreover, the order of termination had not been challenged in the Writ Petition. There being no challenge to that Order, reinstatement could not have been directed. [482-E-F]

D 2.1. The termination was pursuant to a disciplinary inquiry. 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 guilty in a criminal court, is not required in disciplinary proceeding. 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. [482-H; 483-A-B]

E 2.2. 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 and hence the matter cannot be remitted back to High Court. [483-C; 483-B]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5179 of 2004.

G From the Judgment and Order dated 20.7.2001 of the Allahabad High Court in S.A. No. 214 of 1998.

H Amrendra Sharan, D.K. Goswami and Mukesh K. Giri for the Appellant.

M.N. Rao, Satya Mitra Garg and Mrs. Manju Aggarwal for the Respondent. A

The Judgment of the Court was delivered by

S.N. VARIAVA, J. : Leave granted. B

Heard parties.

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

Briefly stated the facts are as follows. C

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 services and recovery of money. D

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. E F

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. G

After the Appellate Court exonerated the Respondent, he made an H

A application to the Appellant-Bank to reconsider the order of termination. This application was rejected on 20th December, 1991.

B 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.

C 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 he could not again be subjected to double punishment.

D 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.

E 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 services. 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.

G 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 A
burden of proof required to establish guilt in a Criminal Court is not
required in disciplinary proceeding. 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. B

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 C
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 D
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.

K.K.T.

Appeal allowed.