IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JUNE, 2024

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PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

WRIT APPEAL NO. 7791 OF 2003 (S-DIS)

BETWEEN:

VIJAYA BANK
A BODY CORPORATE CONSTITUTED UNDER THE
BANKING COMPANIES (ACQUISTION &
TRANSFER OF UNDERTAKINGS) ACT, 1980
HAVING ITS HEAD OFFICE AT 41/2,
TRINITY CIRCLE, M G ROAD, BANGALORE - 1,
REP. BY GENERALMANAGER (PERSONNEL)

...APPELLANT

(BY SRI.PRADEEP S SAWKAR.,ADVOCATE)

AND:

M RAVINDRA SHETTY ,
S/O LATE M V SHETTY,
AGED ABOUT 53 YEARS,
NOW R/O NO.162, K.H.B.COLONY,
5TH BLOCK, KORAMANGALA,
BANGALORE 560 095.

...RESPONDENT

(BY SRI.MOHITH KUMR K.,ADVOCATE-ABSENT)

THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION NO.29566/1997 DATED 15/10/2003.

THIS APPEAL, COMING ON FOR ORDERS THIS DAY, **KRISHNA S DIXIT.J.,** DELIVERED THE FOLLOWING:

J U D G E M E N T

This intra court appeal by the employer-bank seeks to call in question the learned Single Judge's order dated 15.10.2003 whereby the respondent-employee's Writ Petition No.29566/1997 having been favoured, the dismissal order dated 03.04.1997 as affirmed by the Appellate Order dated 05.08.1997 have been set at naught, with a direction for his reinstatement into service. Further direction also follows for according service & monetary benefits that otherwise would have accrued to him during the interregnum.

2. After service of notice, the respondent employee has entered appearance through his counsel who is not present before the court to assist in the proceedings. However, that would not deter the court from adjudging the two-decade-old cause. A litigant should know at the earliest point of time where he stands and from that view the matter has been heard this day, without unnecessarily elongating its pendency.

3. BRIEF FACT MATRIX:

(a) The respondent-employee who was in the Senior Manager Cadre ie., MMGS-III was charged for certain lapses in relation to lending money to the fictitious persons without duly securing the repayment of loans. This happened during the period between 02.06.1986 and 11.05.1990. On account of this, the bank has been put to a huge financial loss. The disciplinary proceedings having been held, penalty order by way of dismissal from service came to be passed by the Competent Authority on 03.04.1997. The Departmental Appeal laying a challenge to the same came to be negatived by the Appellate Authority namely the General Manager (Personnel) on 05.08.1997.

(b) In the meanwhile, the same set of facts had resulted into the prosecution of employee in Spl.CC No.141/2005 for the offences punishable u/ss. 120B r/w Secs.420, 468, 471 of IPC and u/ss.13(1)(d) & Sec.13(2) of the Prevention of Corruption Act, 1988. The charges having been framed, trial was held by the Criminal Court

that eventually resulted into his conviction vide order dated 19.06.2010 and he was sentenced to undergo a Simple Imprisonment for a period of 3 years coupled with levy of fine of Rs.70,000/- in aggregate, with a usual default clause. His Criminal Appeal No.664/2010 c/w Crl.Appeal No.678/2010 came to be negatived by a learned Single Judge of this court vide order dated 19.09.2022. The matter having been carried in SLP No.12145/2022, the Apex Court vide order dated 02.01.2023 granted some reprieve to him. The sentence came to be modified by reducing the period of Imprisonment from three years to one year; however, the fine came to be enhanced from Rs.70,000/- to Rs.2 lakh.

(c) Learned Panel Counsel appearing for the appellant-bank seeks to falter the impugned order of the learned Single Judge arguing that: Once the disciplinary proceedings are duly held and penalty order has been passed, a Writ Court should be loathe to interfere and it is more so when delinquent employee's departmental appeal has been negatived. Secondly, on the same set of facts

the employee having tried is convicted & sentenced for the offences involving moral turpitude. This happened subsequent to disciplinary proceedings and therefore even otherwise he is liable to be discontinued from service in terms of Sec.10(1)(b)(i) of the Banking Regulation Act, 1949. He has placed reliance on certain rulings in support of his submission. So contending, he seeks for allowing of the appeal. As already mentioned above, there is none to controvert the above submission from the side of respondent-employee.

4. Having heard the learned counsel for the appellant-Bank and having perused the appeal papers along with those produced with leave of the court, we are inclined to grant indulgence in the matter for the following reasons:

(i) During the relevant period the respondent had indiscriminately lent bank's money to the fictitious persons without securing the repayment thereof and therefore bank has been put to a huge financial loss of more than Rs.13 lakh. This has been duly established in a disciplinary enquiry conducted with his participation. A copy of the

enquiry report was supplied to him and his written say on the same was also obtained. After considering all that, the disciplinary authority handed a punishment of dismissal from service vide order dated 03.04.1997. Employee's Departmental Appeal against the same was negatived vide order dated 05.08.1997. That being the position, learned Single Judge could not have allowed his writ petition and set at naught the said orders, that too with a direction for reinstatement with full service & monetary benefits. In matters like this Writ Courts should be slow in granting interference, subject to all just exceptions.

(ii) Learned counsel for the appellant is right in contending that no error has been committed by the management in taking the opinions of Central Vigilance Officer inasmuch as, such a course is internalized vide Regulation 19 of Vijaya Bank Officer Employees' (Discipline and Appeal) Regulations, 1981 which has the following text:

> *"19. CONSULTATION WITH CENTRAL VIGILANCE COMMISSION:*
>
> *The Bank shall consult the Central Vigilance Commission wherever necessary, in respect of all disciplinary cases having a vigilance angle".*

The CVC is constituted under Section 3 of the Central Vigilance Commission Act, 2003 and it has statutory duties. One such duty is to advice the banks in matters of disciplinary proceedings of the kind. We do not subscribe

to the views of learned Single Judge that the vigilance opinion should always be shared with the delinquent employee and that his say should be had on that. The object of consulting the Vigilance Commission is not in the interest of the employee but in the larger interest of the banking institution. There is no scope for assuming the contra position, in the absence of any such indication in the Regulations. In taking this view, we are mindful of the presumption that the principles of natural justice are not ordinarily excluded.

(iii) We have also adverted to the observations of Apex Court decision in **NAGARAJ SHIVARAO KARJAGI vs. SYNDICATE BANK (1991) 3 SCC 219**:

> *"19… The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellant authority as to how they should exercise their power and what punishment they should impose on the delinquent officer."*

Similarly, it is observed in **ORIENTAL BANK OF COMMERCE vs. S.S.SHEOKAND, (2014) 5 SCC 172** that it could not be ignored that CVC report was sought by the management and thereafter punishment was imposed and

that the apprehension of the employee that the decision was taken under pressure, could not be ruled out. However, the ratio in these decisions could have been invoked from the side of delinquent employee, had there been no provision like regulation 19 of 1981 Regulations. Such a provision was conspicuously absent in the aforesaid two decisions. This aspect has not been discussed in the impugned order even though it was very essential.

(iv) Mr.Sawkar is also right in contending that there is a wealth of material on record that justified dismissal of the delinquent employee. That being the position, we hardly find any reason for upsetting the findings of guilt as recorded by the Enquiry Officer and accepted by the disciplinary authority while awarding the punishment of dismissal from service. The same has been examined by the Appellate Authority who has upheld the same. Therefore the impugned order of the learned Single Judge who has treated the matter as if he was sitting in appeal suffers from legal infirmity and therefore cannot be sustained. It hardly needs to be reiterated that the focal point of examination of record in writ proceedings is the decision making process and not the decision itself. Such an approach is not reflected in the impugned order. Thus the same suffers from grave infirmities warranting our interference.

(v) In all civilized jurisdictions, banking has traditionally been treated not just as a business but as a profession. The Bombay Provincial Banking Enquiry Committee (1929-30) had famously observed ***'Banking is my brains and other people's money'.*** Funds are parked with the banks by broad segments of the public and this establishes a public trust which compels the banker to act with a greater care than what individuals engaged in commerce ordinarily do. **Mr.Robert C.Holland,** an American Economist and Member, Board of Governor of the Federal Reserve System (1973) had given a slogan to the bankers **"HUSBAND YOUR BANKING RESOURCES".** This becomes prominently relevant nowadays when two dozen public sector banks have been closed down or merged with other banks, one of the reasons being 'bad debts'. This is not a happy thing to happen in a growing economy. Indiscriminate lending in gross violation of prescribed protocol in terms of extant Circulars & Manual of Instructions is unscrupulous & culpable. Such a reckless act that obviously lacking in *bona fide* would put the banking institutions to the risk of losing public money which they have to husband, the borrowers being fictitious and securities proving futile. Mr.Sawkar is justified in banking upon the decision in **DISCIPLINARY AUTHORITY-CUM-REGIONAL MANAGER & OTHERS vs. NIKUNJA VIHARE PATNAIK 1996 (9) SCC 69** to the effect that while recording the findings of guilt

and awarding punishment commensurate with the same, the question whether bank is actually put to loss, pales into insignificance.

(vi) Added to the above, on substantially similar allegations, the respondent-employee was prosecuted by the CBI in Spl.CC No.141/2005 for the offences already mentioned above. After holding trial, he was convicted & sentenced too by the learned XXI Addl. City Civil & Sessions Judge, Bangalore for CBI cases. Obviously, these offences involved moral turpitude. The Criminal Appeals No.664/2010 & 678/2010 also came to be dismissed by a learned Single Judge of this Court vide common order dated 19.09.2022. A further challenge by the employee in SLP (Crl) No.12145/2022 also met the same fate at the hands of Apex Court vide order dated 02.01.2023. However, some reprieve by way of reducing the period of imprisonment from three years to one, is granted, is true. But that does not rob off the elements of moral turpitude even in the least, more particularly when the fine came to be enhanced from Rs.70,000/- to Rs.2 lakh. That being the position, Sec.10(1)(b)(i) of the 1949 Act becomes invocable as rightly contended by appellant's counsel. The said provision reads as under:

> *"10. Prohibition of employment of managing agents and restrictions on certain forms of employment.*

(1) No banking company-

(a)……

(b) shall employ or continue the employment of any person-

(i) who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by a criminal Court of an offence involving moral turpitude, …"

[Remaining parts of the section not being relevant, are not reproduced.]

(vii) The provisions of Section 10(1) of the 1949 Act enact a Parliamentary injunction to the bank to discontinue the employment of a person who is convicted for an offence involving moral turpitude, whether he is sentenced or not. In other words, mere conviction results into the obligation to disrupt employer-employee relationship. This provision leaves with the bank no discretion to disobey the direction. It is relevant to state that there is no challenge to the vires of this provision, which continues on the Statute Book with impunity & efficacy.

(viii) The provisions of Sec.10(1)(b)(i) of the 1949 Act were examined by the Apex Court in **STATE BANK OF INDIA vs. P.SOUPRAMANIANE, (2019) 18 SCC 135.** What has been observed at para 7 being relevant, is reproduced below:

> "*We do not agree with the reasons given by the High Court for setting aside the order of discharge and directing the reinstatement of the Respondent in service. A show- cause notice was issued to the Respondent in which it was categorically mentioned that the Respondent cannot continue in service after his conviction in a criminal case involving moral turpitude in view of Section 10(1)(b)(i) of the Banking Regulation Act, 1949. After considering the explanation of the Respondent, an order of discharge was passed. The High Court is not right in holding that no reasons had been given by the bank for discontinuing the Respondent from service. The High Court committed an error in holding that the order of discharge should be set aside on the ground that the provision of law under which the Respondent was discharged was not mentioned in the order. Yet another reason given by the High Court for interference with the order of discharge is that the criminal court released the Respondent on probation only to permit him to continue in service. The release under probation does not entitle an employee to claim the right to continue in service. In fact the employer is under an obligation to discontinue the services of an employee convicted of an offence involving moral turpitude…."*

The Apex Court at para 16 has specifically stated that the offences punishable *inter alia* under the provisions of PC Act, 1988 do involve moral turpitude. Apparently, the respondent-employee in the subject Criminal Case has been convicted & sentenced not only for the offences punishable under the aforesaid provisions of IPC but also u/ss.13(1)(d) & 13(2) of the PC Act. When one is convicted for the offence involving Sec.420, 468 & 471 of

IPC, it cannot be contended that his conduct does not involve moral turpitude.

(ix) Once an employee of a bank is convicted for an offence involving moral turpitude as has happened in this case, he is liable to be discontinued from employment as discussed above. However, the text of Sec.10(1)(b)(i) does not indicate as to whether such disruption of *vinculum juris* is by way of dismissal or discharge simplicitor. When moral turpitude is involved and the bank is put to considerable financial loss, one can safely assume that the legislative intent is dismissal of the delinquent employee. This view gains support from the text of Regulation 11 of Vijaya Bank Officer Employees' (Discipline and Appeal) Regulations, 1981 which reads as under:

> "11.SPECIAL PROCEDURE IN CERTAIN CASES
>
> Notwithstanding anything contained in Regulation 6 or Regulation 7 or Regulation 8 the Disciplinary Authority may impose any of the penalties specified in Regulation 4 if the officer employee has been convicted on a criminal charge or on the strength of facts or conclusions arrived at by a judicial trial.
>
> Provided that the officer employee may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made."

True it is that the respondent-employee has been dismissed from service after holding a disciplinary enquiry

in terms of Regulation 6. We are adverting to the provisions of Regulation 11 only as an additional ground that has been generated subsequent to disciplinary proceedings that eventually resulted into dismissal from service and after the disposal of writ petition. As already mentioned above, there were criminal appeals that ended in vain. Matter was carried forward to the highest court of the country that did not set aside the conviction although the period of imprisonment was reduced; in fact, fine has been enhanced almost three-fold. All this subsequent development adds extra merits to the case of appellant-bank and against the respondent – employee.

In the above circumstances, this appeal succeeds; the impugned order of learned Single Judge is set aside and respondent-employee's writ petition is dismissed, costs having been made easy.

Sd/-
JUDGE

Sd/-
JUDGE

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