

HIGH COURT OF KERALA

Bench: Justice P.V. Kunhikrishnan

Date of Decision: 14th February 2024

W.P.(C) No. 29338 of 2014

T.D. SREEJAKUMARI ...PETITIONER

VERSUS

UNION BANK OF INDIA

DEPUTY GENERAL MANAGER (PERSONNEL)

THE CHIEF MANAGER, HRM DEPARTMENT, KOTTAYAM

...RESPONDENT(S)

Legislation and Rules:

Not specified in the judgment.

Subject: Challenging the dismissal from service of the petitioner, a Full-Time House Keeper cum Peon at Union Bank of India, on grounds of alleged misconduct for possessing higher educational qualifications than required for the post.

Headnotes:

Labour Law – Disciplinary Proceedings – Misconduct Allegation and Dismissal – Petitioner, employed as Full-Time House Keeper cum Peon, dismissed for allegedly possessing SSLC qualification instead of required 7th standard – Dismissal based on charges of submitting fraudulent certificate and making false statements [Paras 2, 6, 13].

Opportunity of Hearing – Violation of Natural Justice – held – The court held that the failure to provide an opportunity for the petitioner to respond to the enquiry report before the disciplinary authority’s conclusion constituted a violation of natural justice. This principle is aligned with the precedent established in

Managing Director, ECIL, Hyderabad and others v. B. Karunakar and others [1993 (4) SCC 727]. [Para 7-9, 14]

Disciplinary Action – Disproportionate to Allegation – The court noted the disproportionate nature of the disciplinary action (dismissal from service) against the petitioner for possessing higher educational qualifications than required for the position of Full Time House Keeper cum Peon. [Para 10-22]

Re-evaluation of Disciplinary Proceedings – The court directed the respondents to re-evaluate the necessity and appropriateness of continuing the disciplinary proceedings, considering the petitioner’s age, service duration, and subsequent changes in the bank’s employment qualification requirements. [Para 21-22]

Decision – Quashed the disciplinary proceedings against the petitioner and directed the respondents to reconsider the proceedings in compliance with the principles of natural justice and the specific circumstances of the case. [Para 23]

Referred Cases:

- Managing Director, ECIL, Hyderabad and others v. B. Karunakar and others [1993 (4) SCC 727].

Representing Advocates:

Adv. Sri P.C. Sasidharan for the petitioner.

Adv. Sri A.S.P. Kurup, SC for the respondents.

JUDGMENT

Kerala is a state known for its high rate of literacy. But in some cases higher qualification itself is a disqualification for getting appointment in certain posts. Petitioner who was appointed as Part time sweeper in the respondent bank is dismissed from service after 5

years with a charge that she suppressed her pass in SSLC, whereas the qualification for the post is 7th standard. I am sure that, now in Kerala almost all youngsters in the new generation will be with a qualification of 10th standard at least. That may be the reason why the respondents now changed the qualification for the post occupied by the petitioner to 12th standard in Ext.P10 notification. This writ petition is filed with the following prayers:

“i) issue a writ of certiorari or any other writ, order or direction to quash Exhibits-P5, P7 and P8; ii) declare that the action of the respondent in dismissing the petitioner from service is disproportionate to the allegation leveled against the petitioner; iii) further declare that in view of the judgment of the apex court and also in view of the fact that the academic qualification to the post has been raised by the bank itself the action of the bank in dismissing the petitioner from service is highly unjust and illegal; iv) issue a writ of mandamus or any other writ, order or direction commanding and compelling the respondents to reinstate the petitioner in the service of the bank forthwith;

And

v) to issue such other writ, order or direction as this Honourable Court may deem fit and proper in the circumstances of this case.”[SIC]

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2. Petitioner was appointed as part time Sweeper in the service of the respondent bank as per Ext.P1 appointment order dated 22.09.2008. On completion of the period of probation, she was appointed as Full Time House Keeper cum Peon in the service of the bank. While holding the post of Full Time House Keeper cum Peon at its Thankamony Branch of the bank, the petitioner was issued with a memo of charges on 16.08.2013 alleging that while taking employment in the service of the bank, the petitioner has produced fraudulent

certificate showing that her qualification is 7th Standard and on verification it has been found that she has passed the 10th Standard examination and that making such a false statement is a misconduct. Ext.P2 is the show cause notice. Petitioner immediately submitted a detailed explanation denying the charges. In the explanation it was brought to the notice that the petitioner has produced the true and genuine certificate of passing the examination and that the allegation contained in the memo is not correct and further that the possession of higher qualification is not a disqualification at all and that the petitioner has disclosed only the necessary certificate to prove her eligibility for employment. Ext.P3 is the explanation. According to the petitioner, without considering the objection preferred by the petitioner, an enquiry officer was appointed simultaneously. It is further submitted that the appointment of the enquiry officer in the absence of consideration of the explanation submitted by the petitioner by the disciplinary authority itself vitiates the entire matter and it is also an aspect brought to the notice of the authorities. But the enquiry officer so appointed proceeded with the enquiry is the further submission. It is submitted that, before the enquiry officer, except the production of certain documents by the presenting officer, no materials whatsoever has been produced to prove the charges leveled against the petitioner. But the enquiry officer without adverting to any of the legal facts and aspects found that the petitioner is guilty of the misconduct alleged is the submission. Ext.P4 is the copy of the enquiry proceedings. It is submitted that the disciplinary authority on receipt of the enquiry report, even without giving an opportunity to make any representation to the finding of the enquiry report, accepted the views of the enquiry officer and held that the petitioner has committed the misconduct alleged and proposed to impose a punishment of dismissal from

service and a show cause notice was issued to the petitioner seeking explanation as to why the punishment shall not be imposed. Ext.P5 is the show cause notice. It is submitted that the proposal to impose the punishment accepting the enquiry report without giving an opportunity of hearing to the petitioner is in violation of the principles of natural justice. Petitioner submitted an explanation to the show cause notice as evident by Ex.P6. But without considering any of the aspects noted by the petitioner, she was imposed with a punishment of dismissal from service as evident by Ext.P7 is the submission. Aggrieved by the above action, the petitioner filed an appeal before the appellate authority. But the appellate authority also took the same decision and dismissed the appeal as evident by Ext.P8. It is submitted that, the appellate authority has not considered any of the contentions raised by the petitioner, including the gravity of penalty imposed. It is submitted by the petitioner that, while the petitioner was working as a casual sweeper, the bank invited applications for the post and the petitioner was also one among the applicants responded to that notification. It is further submitted that the casual labourers working in the service of the bank were given preference for appointment along with direct recruits. The further contention of the petitioner is that the bank itself had issued circulars regularizing the contingent employees in the service of the bank after giving chance to furnish the details of the higher qualification they possessed. Ext.P9 is the circular relied on by the petitioner. It is further submitted that the bank arrived at a settlement on 25.11.2013, by which the employees were given relaxation in qualification and age and that in the notification issued thereafter the qualification to the post was amended as pass in 10th standard (but should not have passed 12th standard). Further the new notification issued by the bank also positively evidences that the bank

itself had revised the qualification and in terms of the same the candidate with the qualification of pass in 5th standard and has not completed 12th standard can apply for the post. The petitioner produced Ext.P10 notification to prove the same. In such situation, this Writ petition is filed.

3. Heard the learned counsel appearing for the petitioner and the learned Standing counsel appearing for the respondents.

4. Counsel for the petitioner, Adv. P.C. Sasidharan raised a short point regarding the violation of natural justice in the disciplinary proceedings. The counsel takes me through Ext.P2 charge sheet and thereafter Ext.P4 proceedings of the departmental enquiry. Thereafter Adv.P.C.Sasidharan takes me through Ext.P5, the notice issued by the disciplinary authority. Adv. P.C. Sasidharan takes me through paragraphs 2 and 3 of Ext.P5 and submitted that the disciplinary authority concurred with the views/findings of the enquiry officer without giving an opportunity of hearing to the petitioner and held that the petitioner is guilty of the charges. It is the specific case of the petitioner that, in the light of the principle laid down by the Apex Court in **Managing Director, ECIL, Hyderabad and others v. B. Karunakar and others** [1993 (4) SCC 727], the disciplinary authority should give notice to the employee before deciding the matter based on the enquiry report. The same is flouted in this case is the submission. Counsel also takes me through Ext.P6 explanation submitted by the petitioner in which also this point is raised. Hence it is submitted that the entire procedure adopted by the disciplinary authority is in violation of the principles of natural justice.

5. The learned Standing counsel appearing for the respondents seriously opposed the contentions raised by the

petitioner. The Standing counsel submitted that the petitioner has not even challenged the original notification in which the qualification is specifically stated. The Standing counsel takes me through the counter affidavit filed by the respondents and submitted that there is nothing to interfere with the proceedings.

6. This Court considered the contentions of the petitioner and the respondents. Ext.P2 is the charge sheet and based on the charge sheet Ext.P3 explanation was submitted by the petitioner. Ext.P4 is the enquiry report. Based on the enquiry report, Ext.P5 is issued. A perusal of Ext.P5 would show that no opportunity of hearing was given to the petitioner by the disciplinary authority before accepting the enquiry report. Without doing so, it is concluded that the petitioner is guilty of the charges based on the enquiry report. It will be beneficial to extract the relevant portion of Ext.P5:

“This has reference to the Departmental Enquiry held into the charges/allegations levelled against Smt.T.D.Sreejakumari, Full Time House Keeper / Peon, Thankamoni Branch vide Charge

Sheet No.NRO:E:HRMD:3409/13 dated 16.08.2013. Enquiry Officer has since submitted his findings dated 29.04.2014 and the same is enclosed.

I have gone through the aforesaid Charge Sheet issued to Smt.T.D.Sreejakumari, Enquiry Proceedings, Exhibits and Findings recorded by the Enquiry Officer & all other papers related to the said Enquiry. Smt. T.D.Sreejakumari attended the enquiry alongwith Shri.Jameskutty her defense representative. The following allegations have been proved in the Enquiry from the oral/documentary evidence brought on enquiry record:

- Smt. T.D.Sreejakumari has submitted fraudulent certificate while taking employment

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in the Bank showing that her qualification is 7th Standard. She has passed 8th Standard during the Academic year 1995-96 from

St. Mary's H.S. Vazhavara. Further, she has passed SSLC in April, 1998. (MEX-11). CSE has produced a fraudulent certificate (MEX-6) while taking employment in the Bank showing that her qualifications is 7th.

- The CSE has passed SSLC in April, 1998. Transfer Certificate is issued by St. Mary's H.S. Vazhavara (dated 05.06.1998) for higher studies on 17.10.1998. The CSE made a false statement stating that her educational qualification is pass in 7th Standard. Hence it is clear CSE knowingly made a false statement.

I concur with the views/findings of the enquiry officer and hold Smt.T.D.Sreejakumari guilty of the following charges for the proved gross and minor misconducts.”

7. From the above, it is clear that the disciplinary authority concurred with the enquiry officer without giving an opportunity of hearing to the petitioner to submit her explanation to the enquiry report. This is illegal and against the principle laid down by the Apex Court in **ECIL's** case (supra). It will be beneficial to extract paragraph Nos.25, 27, 28 and 29 of the above judgment:

“25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment.

27. It will thus be seen that where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary

authority arrives at its conclusions on the basis of the evidence, enquiry officer's report 15 and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings. 28. The position in law can also be looked at from a slightly different angle. Article 311(2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry officer, particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any 16 opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority (the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply to the enquiry officer's report and consideration of such reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the inquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is dispensed with is the opportunity of making representation on the penalty proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of time at which it was to be exercised

had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.(Underline supplied)

8. After the above discussion, the incidental questions were answered by the Apex Court in which serial No. (iv) in paragraph No.30 of the above judgment is relevant and the same is also extracted hereunder:

“[iv] In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan case should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or

not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.”(Underline supplied)

9. From the above dictum laid down by the Apex Court, it is clear that the right to make representation to the disciplinary authority against the finding recorded in the enquiry report is an integral part of the opportunity of defense against the charges and it is a breach of principles of natural justice to deny the said right. The law laid down in this regard should apply to employees in all establishments whether Government or non Government, Public or private. This will be the case even if there are rules governing the disciplinary proceedings or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, the Apex Court held that, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority records its findings on the charges levelled against him. In this case, a perusal of Ext.P5 would show that no such opportunity is given to the petitioner to give explanation about the enquiry report before the disciplinary authority conclude that the petitioner committed the misconduct. Therefore, I am of the considered opinion that in the light of the principle laid down by the Apex Court, the enquiry proceedings is to be quashed. The respondents are free to proceed in accordance with law, if they advised so.

10. Before deciding to proceed with the

enquiry, the respondents should bear in mind that the petitioner is a lady aged 31 years at the time of filing the writ petition. She worked in the Bank for about 5 years and her probation was also declared. Now the petitioner is over-aged. At this distance of time, whether the enquiry should be continued or not is given to the wisdom of the respondents. After all, the petitioner was working as a Sweeper and the misconduct alleged is that she passed 10th standard whereas the qualification for the post was 7th standard. Moreover the bank itself had issued circulars earlier regularizing the contingent employees in the service of the bank after giving chance to furnish the details of the higher qualification they possessed. Ext.P9 is the circular. It is also to be noted that the bank arrived at a settlement on 25.11.2013, by which the employees were given relaxation in qualification and age and that in the notification issued thereafter the qualification to the post was amended as pass in 10th standard (but should not have passed 12th standard). Further the new notification issued by the bank also positively evidences that the bank itself had revised the qualification and in terms of the same, the candidate with the qualification of pass in 5th standard and has not completed 12th standard can apply for the post. The petitioner produced Ext.P10 notification to prove the same. These aspects also should be in the mind of the authority, while deciding, whether to continue the disciplinary proceedings against the petitioner. I leave it there.

Therefore, this writ petition is disposed of with following directions:

1. Exts.P5, P7 and P8 are quashed.
2. The respondents are directed to decide whether the disciplinary proceedings is to be continued in the peculiar facts of this case first, and if it is decide to proceed with the enquiry, the

respondents will follow the procedures established by law and in the light of the observations in this judgment.

3. Necessary steps shall be taken, as expeditiously as possible, at any rate, within four months from the date of receipt of a copy of this judgment.

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