

HIGH COURT OF GUJARAT (D.B.)

**J M PAREKH, EX SENIOR MANAGER EC NO 4277 B O B
V/S
CHIEF MANAGER, BANK OF BARODA & 3**

Date of Decision: 04 December 2017

Citation: 2017 LawSuit(Guj) 1955

Hon'ble Judges: [M R Shah](#), [Biren Vaishnav](#)

Case Type: Letters Patent Appeal; Special Civil Application

Case No: 903 of 2017; 20248 of 2005

Final Decision: Appeal dismissed

Advocates: [Hemant Makwana](#), [Darshan M Parikh](#)

Reference Cases:

[Cases Referred in \(+\): 2](#)

Judgement Text:-

M R Shah, J

[1] Feeling aggrieved and dissatisfied with the impugned judgment and order dated 22.04.2016 passed by the learned Single Judge in Special Civil Application No.20248/2005 by which the learned Single Judge has dismissed the said petition in which the original petitioner challenged the order of punishment confirmed by the appellate Authority as well as the Revisional Authority and also challenged the order rejecting the application for compassionate allowance, the original petitioner employee has preferred the present Letters Patent Appeal under Clause 15 of the Letters Patent.

[2] The facts leading to the present Letters Patent Appeal in nutshell are as under:

[2.1] That the appellant herein original petitioner (hereinafter referred to as "original petitioner") was serving as a Senior Manager (Credit) with the Bank of Baroda, Gandhi Road Branch, Ahmedabad, during the period between May 1994 to September 1997. That he was served with the departmental charge-sheet containing the following charges

"1. He did not take steps to ensure and protect the interest of the Bank.

2. He adopted such steps and took such actions as were derogatory, prejudicial, detrimental and injurious to the interest of the Bank.

3. He did not discharge his duties with integrity and honesty and took such actions and committed such omissions which showed a lack of probity, integrity and honesty.

4. He did not discharge his duties with devotion and diligence and took such actions and committed such omissions which showed a lack of care and caution and which were grossly negligent in nature.

5. He accommodated certain groups/borrowers by way of suppressing material facts while preparing appraisal note and recommending various credit facilities by violating Bank's rules, norms and prescribed procedures, thereby he put Bank's huge funds to jeopardy.

6. He acted in a manner unbecoming of a Bank Officer."

On conclusion of the departmental inquiry the Inquiry Officer held some of the charges partly proved, one charge proved and three charges not proved.

[2.2] The allegations which were held to be proved and partly proved would

be that (1) he did not take steps to ensure and protect the interest of bank; (2) he adopted such steps and took such actions as were derogatory, prejudicial, detrimental and injurious to the interest of the Bank; (3) he accommodated certain groups / borrowers by way of suprising material facts by preparing appraisal note and recommending various credit facilities by violating the bank rules, norms and prescribed procedures thereby he put bank's huge funds to jeopardy and (4) he acted in a manner unbecoming of a bank officer. That thereafter the Disciplinary Authority by order dated 29.03.2003 passed an order of removal from bank service with a stipulation that the same shall not be disqualification for future employment. The order passed by the Disciplinary Authority of removal came to be confirmed by the appellate authority vide order dated 08.12.2003. A review application before the Chairman and Managing Director of the bank also came to be dismissed. That the petitioner also prayed for the compassionate allowance which also came to be specifically rejected vide order dated 27.07.2004.

[2.3] Feeling aggrieved and dissatisfied with the order passed by the Disciplinary Authority of removal and rejecting the application for compassionate allowance, the original petitioner preferred the present Special Civil Application before the learned Single Judge. That by impugned judgment and order the learned Single Judge dismissed the Special Civil Application and has confirmed the order of removal passed by Disciplinary Authority and has also confirmed the order rejecting the application for compassionate allowance.

[2.4] Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Single Judge, the original petitioner has preferred the present Letters Patent Appeal under Clause 15 of the Letters Patent.

[3] Shri H.K. Makwana, learned Advocate has appeared on behalf of the original petitioner and Shri Darshan Parikh, learned Advocate has appeared on behalf of the respondent Bank.

[3.1] Shri Makwana, learned Advocate appearing on behalf of the appellant has reiterated what was submitted before the learned Single Judge.

[3.2] Now, so far as the challenge to the impugned judgment and order passed by the learned Single Judge confirming the order of removal is concerned, at the outset it is required to be noted that as such there are concurrent findings of fact recorded by the Inquiry Officer, appellate Authority and by the learned Single Judge. Considering the fact that in the departmental inquiry, some of the charges and the misconduct were held to be proved / partly proved and when it was found that the original petitioner as such acted prejudicial to the interest of the Bank and he acted in a manner unbecoming of a bank officer and thereafter when the order of removal was passed, the same is rightly confirmed by the learned Single Judge. We are as such in complete agreement with the view taken by the learned Single Judge.

[3.3] Now, so far as the challenge to the impugned judgment and order passed by the learned Single Judge confirming the order rejecting the application for compassionate allowance is concerned, learned Advocate appearing on behalf of the original petitioner has heavily relied upon the decision of the Hon'ble Supreme Court in the case of [Bank of Baroda vs. S. K. Kool \(D\) through L. Rs. and Another](#), 2014 2 SCC 715 as well as the decision of the Division Bench of this Court in the case of [Bank of Baroda vs. Girish Shantilal Shukla](#), 2014 2 GLR 174. Relying upon above decisions it is vehemently submitted by Shri Makwana, learned Advocate appearing on behalf of the original petitioner that even after the order of removal the original petitioner shall be entitled to compassionate allowance which has been awarded by the Hon'ble Supreme Court as well as the Division Bench of this Court in the aforesaid decisions.

Making above submissions and relying upon above decisions, it is requested to admit / allow the present Letters Patent Appeal.

[4] To the aforesaid Shri Darshan Parikh, learned Advocate appearing on behalf of the respondent bank has vehemently submitted that the order passed by the Bank rejecting the application for compassionate allowance was absolutely in consonance with Article

22 of the Regulation. It is submitted that Article 22 of the Regulation specifically provides forfeiture of service in case of resignation or dismissal or removal or termination of an employee from the service of the bank.

[4.1] Now, so far as the reliance placed upon the decision of the Hon'ble Supreme Court in the case of S.K. Kool (D) and the decision of the Division Bench of this Court in the case of Girish Shantilal Shukla are concerned, it is vehemently submitted by Shri Parikh, learned Advocate appearing on behalf of the respondent Bank that on facts the said decisions shall not be applicable at all. It is submitted that in the case before the Hon'ble Supreme Court in the case of S.K. Kool (D) , the concerned employee of the Bank was removed from service on the basis of the bipartite settlement which specifically provides that employee shall be entitled to all the pensionary benefits. It is submitted that therefore the Hon'ble Supreme Court observed that in such a situation Article 22 of the Regulation shall not be applicable.

[4.2] It is further submitted that so far as the decision of the Division Bench of this Court in the case of Girish Shantilal Shukla is concerned, the concerned employee of the bank was removed from service with all superannuation benefits such as pension, provident fund and gratuity and in fact in order of removal itself it was so provided. It is submitted that in the present case no such condition is stipulated in the order of removal. It is submitted that therefore the decision of the Division Bench of this Court in the case of Girish Shantilal Shukla also shall not be applicable to the facts of the case on hand.

Making above submissions it is requested to dismiss the present appeal.

[5] Now, so far as the challenge to the order of removal passed by the Disciplinary Authority confirmed by the appellate authority and further confirmed by the learned Single Judge is concerned, as stated hereinabove and for the reasons stated hereinabove, we see no reason to interfere with the same. In the facts and circumstances of the case and on the basis of the charges / misconduct proved, the order of removal is justified. No interference of this Court is called for.

[5.1] Now, so far as the challenge to the order rejecting the application for

compassionate allowance is concerned, at the outset it is required to be noted that the same is absolutely in consonance with Article 22 of the Regulation, which provides that in case of resignation or dismissal or removal or termination, the concerned employee shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits. In the present case the original petitioner has been removed from service of the bank and therefore, Article 22 of the Regulation shall be applicable and therefore, the original petitioner shall not be entitled to any pensionary service / compassionate allowance.

[5.2] Now, so far as the reliance placed upon the decision of the Hon'ble Supreme Court in the case of S. K. Kool (D) , the same shall not be applicable to the facts of the case on hand. In the case before the Hon'ble Supreme Court it was a case of removal of an employee of the bank pursuant to bipartite settlement and in which it was specifically provided that the concerned bank employees shall be entitled to all pensionary benefits. To that the Hon'ble Supreme Court observed that Article 22 of the Regulation shall not be applicable and the concerned employee shall be entitled to pensionary benefits as per the order of removal pursuant to the bipartite settlement.

[5.3] Now, so far as the reliance placed upon the decision of the Division Bench of this Court in the case of Girish Shantilal Shukla is concerned, on facts the same shall also not be applicable to the facts on hand. In the case before the Division Bench, in the order of removal it was so specifically mentioned that the concerned employee shall be entitled to the superannuation benefits like pension, provident fund and gratuity. That is not the case here. Under the circumstances, the aforesaid decision also shall not be applicable to the facts of the case on hand.

[6] In view of the above and for the reasons stated above, when the original petitioner was removed from service after holding departmental inquiry and he has been removed from service by way of punishment considering Article 22 of the Regulation, he shall not be entitled to any pensionary benefits and his entire past service is required to be forfeited and therefore, the application of the original petitioner for compassionate

allowance is rightly rejected by the appropriate authority.

[7] In view of the above and for the reasons stated above, present Letters Patent Appeal fails and the same deserves to be dismissed and is, accordingly, dismissed. No costs.

