

MARCH 13, 1997

[J.S. VERMA AND B.N. KIRPAL, JJ.]

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Service law—Suspension—Employee alleged to have committed forgery and wrongfully withdrawing money from the Bank—CBI conducted investigation resulting in filing of charge sheet—Offence involving moral turpitude—Hence suspension of a bank employee, for whose prosecution for such an offence management had accorded sanction, held valid—Mere fact of 10 years having elapsed was no ground for allowing him to come back to a sensitive post unless he is exonerated—Allahabad Bank First Bipartite Settlement, 1966, Cls 19.3 and 19.2

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The respondent was working as clerk-cum-typist in a Bank. CBI had conducted investigation and submitted its report, whereupon the Superintendent of Police called upon the appellant Bank to accord sanction for prosecution of the respondent and one other person A, *inter alia* for criminal misconduct and cheating. Appellant Bank accordingly, accorded sanction for the prosecution and also passed an order suspension of the respondent on 23-9-1987 as per clause 19.3(a) of the First Bipartite Settlement 1966 between the management and the Union. Pursuant to the sanction CBI filed the charge sheet against the respondent in the trial court.

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The respondent, thereupon, filed a writ petition challenging the order of suspension. The High Court by its impugned judgment quashed the order of suspension on the ground that the mere fact that a person had entered into criminal conspiracy, it could not be regarded that an offence involving "moral turpitude" had been committed and therefore, the appellant had no jurisdiction to pass the order of suspension. Hence, this appeal by way of special leave.

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Appellant Bank contended that the respondent had committed an offence involving moral turpitude, and therefore, the appellant had jurisdiction to suspend the respondent. The respondent on the other hand contended that in view of the fact and circumstances, when nearly 10 years

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A have elapsed this Court should not interfere.

Allowing the appeal, this Court

B HELD : 1. An offence involving "moral turpitude" must depend upon the facts of each case. However, one of the most serious offences involving "moral turpitude" would be where a person employed in a banking company dealing with money of the General public, commits forgery and wrongfully withdraws money which he is not entitled to withdraw. [1060-G]

C *Pawan Kumar v. State of Haryana*, [1996] 4 SCC 17 = [1996] SCC (Cri) 583 and *Baleshwar Singh v. Distt. Magistrate and Collector*, AIR (1959) All 71, relied upon.

D 2. If the allegations made against the respondent are proved, it will clearly show that he had committed an offence of moral turpitude and, therefore, the appellant had jurisdiction to suspend him under clause 19.3 of the First Bipartite Settlement, 1966. The very fact that the investigation, was conducted by CBI which resulted in filing of charge sheet was sufficient for the appellant to conclude that pending prosecution the respondent should be suspended. Allowing such an employee to remain in the seat would result in giving him further opportunity to indulge in the act for which he was being prosecuted. It was the bounden duty of the appellant to have taken recourse to the provision of Clause 19. 3 of the First Bipartite Settlement, 1966. The mere fact that nearly 10 years have elapsed since the charge-sheet was filed, can also be no ground for allowing the respondent to come back to duty on a sensitive post in the Bank, unless he is exonerated of the charge. [1061-F, 1062-C-E]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9216 of 1995.

G From the Judgment and Order dated 23.4.91 of the Allahabad High Court in W.P. No. 6118 of 1988.

S.K. Mehta and Dhruv Mehta for the Appellants.

R.K. Jain and S.R. Setia for the Respondent.

H The Judgment of the Court was delivered by

KIRPAL, J. This is an appeal from the judgment of the Allahabad High Court which had allowed the writ petition filed by the respondent and quashed an order of suspension which had been passed pending prosecution launched against him. Briefly stated the facts are that during the year 1984-85, the respondent was working as Clerk-cum-typist in Allahabad Bank with one of its branch at Lucknow. An investigation was conducted by the Delhi Special Police Establishment and a case was registered on 29.8.1986. The C.B.I./S.P.E., Lucknow, after investigation, submitted a report whereupon the superintendent of Police wrote a letter dated 18.9.1987 to the appellant bank for according sanction for prosecution of the respondent and one other person namely Ajay Bhatia *inter alia* for criminal mis-conduct and cheating.

On the receipt of the aforesaid letter the appellant took steps to accord sanction to prosecute the respondent. It also decided to take action under clause 19.3 (a) of the First Bipartite Settlement 1966 between the management and the Union and to suspend the respondent. Accordingly, the suspension order dated 23.9.1987 was passed which reads as under :

"Since it is revealed that you while functioning as clerk-cum-typist in Allahabad Bank, Aalam Bagh, Lucknow during the year 1984-85 entered into a criminal conspiracy with Shri Ajai Bhatia, Clerk-cum-Cashier under suspension. Shri H.R. Gurnani Advocate, Lucknow and some unknown persons with the common object to commit the offences of criminal misconduct and cheating by adopting corrupt and illegal means or otherwise abusing your position by obtaining undue pecuniary gain for yourself and/or others and since steps to get you prosecuted have been taken, you are hereby placed under suspension with immediate effect under clause 19.3 (a) of the First Bipartite Settlement dated 19.10.1966 pending prosecution proceedings against you.

During suspension period you will be paid subsistence allowance as per rules. You will also not leave station without prior permission of the competent authority during suspension period.

Your are also required to submit in writing your local postal address where you want to be communicated hereafter."

Pursuant to the sanction of the prosecution, a charge sheet dated

- A 29.9.1987 was filed in the court against the respondent. Thereupon, the court issued summons on 26.11.1987 to the respondent. After a few months, the respondent filed a writ petition in the Allahabad High Court challenging the aforesaid order of suspension. By the impugned judgment dated 23.4.1991 the High Court came to the conclusion that by the mere fact that a person had entered into the criminal conspiracy, it could not be regarded that an offence involving "moral turpitude" had been committed and, therefore, the appellant had no jurisdiction to pass the order of suspension. The High Court, accordingly, quashed the suspension order and directed the payment of full salary and allowances to the respondent. This appeal arises as a consequent to special leave having been granted to the appellant.

- D It has been contended by the learned counsel for the appellant that the respondent had committed an offence involving moral turpitude and, therefore, the appellant had the jurisdiction to suspend the respondent. The submission of Mr. R.K. Jain, learned senior counsel on behalf of the respondent, however was that on the facts and circumstances of the case when nearly 10 years have elapsed, this Court should not interfere. It was further submitted that there had been no application of mind by the bank to the passing of the suspension order and the High Court was, consequently, right in quashing the order of suspension.

- E The charge sheet, which was filed, specifies the acts of commission and omissions which were alleged to have been committed by the respondent and others. The acts as specified by the charge-sheet are as follows :

- F "Shri Ajai Bhatia, while functioning as Clerk-cum- Cashier Allahabad Bank, Alam Bagh Branch, Lucknow during the year 1984-85 had shown the issue of cheque books bearing Sl. No. 7771 to 7780 against account No. 2618 in the name of Shri Gajraj Sharma, and he made the endorsement in the cheque issue register against this entry. Shri Deepak Kumar Bhola signed as Rajendra for having received the said cheque book on behalf of A/c holder, the ledgers of S.B. A/c Nos. 2284 belonging to Sri Lekha Ram. SB/A/c NO. 1103 belonging to Sri Shanti Parkash and Smt. Prem Lata, show that the cheque book containing cheque Nos. 7631, 7640, 7581 to 7590 and 7551-7560 respectively were issued to these
- H A/c holders when actually none of these account holders had ever

applied for any cheque book nor actually cheque book was issued A
to any of these persons and fictitious entries were made in the
ledger account.

The cheque No. 7631 amounting to Rs. 9560.62 paisa and B
cheque No. 7632 for Rs. 7532.00 was purportedly to have been
issued by genuine account holder Lekha Ram of Account Holder
of A/c No. 2484. Another cheque No. 7551 amounting to Rs.
1400.00 cheque No. 7552 amounting to Rs. 14,800.00 purportedly
have been issued by Sri Shanti Prakash A/c holder of account No.
1103 and cheque No. 07775 for Rs. 12800.51 purported to have
been issued by Sri Gajraj Sharma account holder of A/c No. 2618 C
were presented in the Corporation Bank, Quiaser Bagh Lucknow
by Sri Deepak Kumar Bhola aforesaid who was working as Clerk
cum Typist in Allahabad Bank Alam Bagh Branch, Lucknow in
the name of Rajendra Rathore. Shri H.R. Gurnani. Advocate,
Lucknow had introduced Shri D.K. Bhola as Rajendra Rathore at D
the time of opening of account and Shri H.R. Gurnani Advocate
had his own account No. 87 in the said Corporation Bank, Sri
Deepak Bhola, aforesaid submitted five pay in slips for depositing
the cheque No. 7551 for Rs. 11400.60, 7552 for R. 14800.00, 7632
for Rs. 7532, 7631 for Rs. 9560 and 7775 for Rs. 12800.51 through
five cheque No. 021781 dated 24.4.84 for Rs. 11000.00. 021762 E
dated 1.9.84 for Rs.. 1500.00 021763 dated 15.8.84 for Rs. 17000.00.
021765 dt. 25.9.84 for Rs. 11000.00, 021762 dated 1.9.84 for Rs.
1500.00, 021763 dated 15.8.84 for Rs. 17000.000, 021765 dated
25.9.84 for Rs. 21900.00 and 021767 dated 25.9.84 for Rs. 203.73
paisa. Said Deepak Kumar Bhola impersonating himself as F
Rajendra Rathore operated S.B. A/c No. 3206 in Corporation
Bank. Quiserbagh Lucknow and withdrew the entire amount.
Whereas, the aforesaid account holders Sri Lekharam having A/c
No. 2484, Shri Shanti Prakash and Srimati Premrata A/c No. 1103
and Sri Gajraj Sharma A/c No. 2618 never issued these cheques
and never availed the cheque facility in operating their respective G
accounts.

Total sum of Rs. 56.103.77 was withdrawn from said fake
account No. 3206 by Sri Deepak Kumar Bhola by issuing five
cheques by signing as Rajendra Rathore."

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- A On the basis of the aforesaid allegations, the respondent was charged for offences punishable under Sections 120(B)/419/420/467/468/471 I.P.C. and 5(2) read with Section 5(1)(d) of Prevention of Corruption Act, 1947.

- B It will be appropriate to refer clauses 19.2 & 19.3 of the First Bipartite Settlement under which orders were passed suspending the respondent. These clauses read as follows :

"19.2. By the expression "offence" shall be meant any offence involving moral turpitude for which an employee is liable to conviction and sentence under any provision of law.

- C 19.3(a) When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted, the bank may take steps to prosecute him or get him prosecuted, the bank may take steps to prosecute and in such a case he may also be suspended.

- D (b) If he is convicted, he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in Clause 19.6 below."

- E It is evident from the bare perusal of the aforesaid clauses that if in the opinion of the management, an employee has committed an offence, then the bank may take steps to prosecute him and in such a case, he may also be suspended. The word "offence" occurring in clause 19.3 (a) has been defined in clause 19.2 to mean any offence involving "moral turpitude" for which an employee is liable to conviction and sentence under any provision of law.

- F What is an offence involving "moral turpitude" must depend upon the facts of each case. But whatever may be the meaning which may be given to the term "moral turpitude" it appears to us that one of the most serious offences involving "moral turpitude" would be where a person employed in a banking company dealing with money of the general public, commits forgery and wrongfully withdraws money which he is not entitled to withdraw.

- G This Court in *Pawan Kumar v. State of Haryana and Another*, [1996] 4 SCC 17 at page 21 dealt with the question as to what is the meaning of expression "moral turpitude" and it was observed as follows :

"Moral turpitude" is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity". A

This expression has been more elaborately explained in *Baleshwar Singh v. District Magistrate and Collector, Banaras*, AIR (1959) All. 71 where it was observed as follow : B

"The expression 'moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or goods morals. It implies depravity and wickedness of character of disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If therefore the individual charged with a certain conduct owes duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man." C D

In our opinion the aforesaid observations correctly spell out the true meaning of the expression "moral turpitude". Applying the aforesaid test, if the allegations made against the respondent are proved, it will clearly show that he had committed an offence involving moral turpitude and, therefore, the appellant had the jurisdiction to suspend him under the aforesaid clauses 19.3. The High Court observed that there was nothing on record to suggest that the management had formed an opinion objectively on the consideration of all relevant material available against the petitioner that in the circumstances of the case the criminal acts attributed to the petitioner implied depravity and vileness of character and are such as would involve moral turpitude. It did not regard entering into a criminal conspiracy to commit the aforesaid offences as being an offence involving moral turpitude. We are, to say the least, surprised at the conclusion which has been arrived by the Allahabad High Court. There was material on record before the appellant, in the form of the report of the C.B.I./S.P.E., which clearly indicate the acts of commission and omissions, amounting to E F G H

- A "moral" turpitude" alleged to have been committed by the respondent. Further more the respondent has been charged with various offences allegedly committed while he was working in the bank and punishment for which could extend upto ten year imprisonment (in case the respondent is convicted under Section 467 I.P.C.).
- B We are unable to agree with the contention of learned counsel for the respondent that there has been no application of mind or the objective consideration of the facts by the appellant before it passed the orders of suspension. As already observed, the very fact that the investigation was conducted by the C.B.I. which resulted in the filing of a charge-sheet,
- C alleging various offences having been committed by the respondent, was sufficient for the appellant to conclude that pending prosecution the respondent should be suspended. It would be indeed inconceivable that a bank should allow an employee to continue to remain on duty when he is facing serious charges of corruption and mis-appropriation of money. Allowing such an employee to remain in the seat would result in giving him
- D further opportunity to indulge in the acts for which he was being prosecuted. Under the circumstances, it was the bounden duty of the appellant to have taken recourse to the provisions of clause 19.3 of the First Bipartite Settlement, 1966. The mere fact that nearly 10 years have elapsed since the charge-sheet was filed, can also be no ground for allowing the
- E respondent to come back to duty on a sensitive post in the bank, unless he is exonerated of the charge.

- In our opinion, the High Court was not justified in quashing the orders for suspension. We accordingly, allow this appeal, set- aside the impugned judgment of the Allahabad High Court and dismiss the Writ
- F Petition No. 6118/1988 which has been filed by the respondent. There will, however, be no order as to costs.

B.K.S.

Appeal allowed.