



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 4729/2023

1. Kotak Mahindra Bank Ltd., Through Authorized President 947 Prm Plaza 10Th D Loader Sardarpura, Jodhpur.
2. Kotak Mahindra Bank Ltd., Through Managing Director Registered Office 27 Bkc C27 G Block Bandra Kurla Complex Bandra (E) Mumbai.
3. Senior Vice President Human Resources Kotak Mahindra Bank Ltd., Kotak Infinity Building No. 21, Infinity Park Off Western Express Highway, General A K Vaidya Marg, Malad (East) Mumbai.

----Petitioners

Versus

1. Aaraj Sharma
2. Prescribed Officer, Rajasthan Shops And Commercial Establishment Act, 1958 Jodhpur.

----Respondents

For Petitioner(s)	:	Mr. Vinay Jain Mr. Darshan Jain
For Respondent(s)	:	Mr. Siddhart Tatia

HON'BLE MR. JUSTICE ARUN MONGA

Order

07/11/2023

Petition is directed against an order dated 17.11.2022 (Annexure-9) passed by the Court of Prescribed Officer Rajasthan Shops and Commercial Establishment Act, Jodhpur whereby termination of services of the respondent no.1 by petitioner bank was held illegal and it has been directed to reinstate him with consequential benefits.



2. Succinct facts first, as pleaded in the instant writ petition.

2.1 Petitioner is a duly registered banking company, with its registered office located in Mumbai. Respondent No.1 was appointed on the post of Senior Manager at the Jodhpur Branch, in M-4 grade, w.e.f. 02.07.2018.

2.2 Terms and conditions of service were conveyed vide bank letter dated 22.05.2021 to respondent No.1. Termination clause no. 19 contained therein states as under :-

Termination.

19. Your services can be terminated by the Bank, without any notice or payment of any kind in lieu of notice, in the following cases:

19.1 Any incorrect information furnished by you or on suppression of any material information; and/or

19.2 Any act, which in the opinion of the management is an act of dishonesty, disobedience, insubordination, incivility, intemperance, irregularity in attendance or other misconduct or neglect of duty or incompetence in the discharge of duty on your part or the breach on your part of any of the terms, conditions or stipulations contained in this letter or a violation on your part of any of the Bank's rules and policies; and/or

19.3 You being adjudged an insolvent or applying to be adjudged an insolvent or making a composition or arrangement with your creditors or being held guilty by a competent court of any offence involving moral turpitude; and/or

19.4 You being convicted of a serious criminal offence or a criminal offence which, in the Bank's opinion compromises your ability to perform your duties; and/or

19.5 The results of any background checks or searches conducted by the bank are found to be unsatisfactory in the opinion of the Bank in its absolute discretion; and/or

19.6 Any misconduct pertaining to moral turpitude, riotous/disorderly behaviour, theft, misappropriation, conviction by any court of law.





19.7 Any act or omission which could be construed as loss of confidence in you by the Management.

19.8 Any act subversive of discipline or any conduct prejudicial to the interest and reputation of the Bank.”

2.3 It is the petitioner-bank’s case that Respondent No.1 was working against the interests of the bank and was involved in fraudulent activities, including routing direct business through DSA and was receiving commissions. The bank formed this opinion based on a purported confession letter dated 01.12.2021 of one Ravindra Singh Parihar, another employee of the bank stated to be then working under the supervision of respondent no.1. Subsequently, based on the opinion thus formed, the management decided to terminate the services of Respondent No.1 by invoking the power under Clause 19 ibid.

2.4 Accordingly, services of the respondent no.1 were summarily terminated vide bank letter dated 17.01.2022. Upon receipt of termination letter, respondent No.1 filed a complaint before respondent no.2/Labour Commissioner, Jodhpur. Pursuant thereto, a notice was issued to the petitioner bank leading to passing of the order dated 17.11.2022 impugned herein. Hence the petition herein.

3. Learned counsel for the petitioner submits that the impugned order dated 17.11.2022 is illegal and without jurisdiction. He argues that no judicial order was passed by the competent authority directing service of the complaint filed by the respondent no.1. In the premise, the competent authority could have taken cognizance of the complaint and





lacked the jurisdiction to pass the final order which is assailed herein.

3.1. Furthermore, he urges that respondent No.1 was since working as Senior Manager and does not fall within the definition of a workman. He refers to Section 2(5) of the Act of 1958, and urges that Respondent No.1 does not fall within the definition of a workman. The case is instead covered under Section 2(6) of the Act of 1958. Therefore, Respondent No.2 has no authority to decide the complaint filed by Respondent No.1.

3.2. He further contends that after his appointment, the conduct of Respondent No.1 was not good. He was found working against the interests of the bank by engaging in fraudulent activities. Consequently, his services were rightly terminated. Learned counsel further argues that respondent No.2 without perusing the appointment letter and without giving any finding on the illegality of the termination order, simply allowed the complaint without application of mind, resulting in a miscarriage of justice.

3.3. He further submits that respondent No.1 was issued an appointment letter that outlined all terms and conditions, including the provision that if the employee is found involved in any illegal activity, the bank has the right to terminate his service. Therefore, in accordance with Section 28(A) of the Act of 1958, Respondent No.1 has no case. Consequently, the impugned order dated 17.11.2022 deserves to be quashed and set aside.



4. Learned counsel for the respondent no.1 vehemently opposes the petition and the contentions raised therein. He asserts that the action of the petitioner bank to terminate the services of petitioner is prima facie illegal, being in absolute derogation of the applicable law. The impugned order is just and legal, passed after due and proper application of mind and appreciation of the material available on record.

5. I have heard the rival contentions of the learned counsel and perused the case file.

6. I am unable to convince myself with the over pedantic view taken by learned counsel for petitioner, that in the absence of a formal judicial order directing service of summons/notice, the competent authority could not have passed the final order under the Rajasthan Shops and Commercial Establishments Act, 1958. His contention also is that even the service of the summons/notices issued by the said authority could not have been given cognizance in the absence of any order on file directing service, even if the petitioner was aware of the proceedings and was duly served. Assuming, that in the case in hand, competent authority did not pass a formal judicial order of issuing notice to bank/employer before directing service of the summons, there is no gainsaying that administrative authorities, while performing quasi-judicial functions, are not expected to adopt the same formal procedures matching those of the Judicial Officers or that of a Regular Civil Court or a Judicial Tribunal. An administrative authority, when simultaneously



wears the hat of a quasi judicial authority, upon receipt of a complaint, is not ordinarily supposed to conduct a pre notice preliminary judicial hearing and then pass an appropriate judicial order directing issuance of summons. Suffice for his purpose, at that stage, once he has issued the notice in the form of summons, the same is deemed to have been done after seeing the contents of the complaint and due application of mind.

6.1. As regards the service report, having perused the same, I am of the opinion that effective service was indeed effected on the petitioner- bank. And yet, it chose to deliberately abandoning to appear before the respondent no.2/competent authority after giving its detailed written response dated 09.03.2022 (Annexure-7 herein) to the complaint of the employee filed in the office of the respondent no.2. Having consciously not chosen to appear and join the proceedings, it is too belated now to get into the technicalities that, in the absence of there not being any judicial order, the service of notice cannot be taken cognizance of. More particularly, when after service the bank caused its appearance and also file its reply to the complaint of the respondent no.1.

6.2 De-hors the controversy as above, the contention on merits that respondent no. 1 is not a workman given the nature of work and salary, also appears to be against the mandate contained in the definition of an "employee" as per Section 2(5) of the Rajasthan Shops and Commercial Establishments Act, 1958. The said definition has to be read



in conjunction with the definition of "commercial establishment" as contained in Section 2(3). The aforesaid Sections, for ready reference, are reproduced herein below:

"2. Definitions-

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(3) "commercial establishment" means a commercial or trading or banking or insurance establishment, an establishment or administrative service in which the persons employed are mainly engaged in office work, a hotel, a restaurant, boarding or eating houses, cafe or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes every such establishment as the State Government may, by notification in the Official Gazette, declare to be a commercial establishment for the purposes of this Act;

xxx

(5) "employee" means a person wholly or principally employed in, or in connection with any establishment and includes an apprentice but does not include a member of the employer's family; it also includes any clerical or other staff of a factory or industrial establishment who falls outside the purview of the Factories Act, 1948 (Central Act LXIII of 1948);"

A perusal of the above sub Sections leave no manner of doubt that the petitioner-Bank is a commercial establishment within the meaning of Sub-section 3 of Section 2 and respondent no. 1 is an employee with the bank within the meaning of Sub-section 5 of Section 2(supra).

6.3. Once it is established that the aforesaid Act is applicable to the petitioner-Bank as well as to its employees, the applicability thereof has to be strictly adhered to by the employer.

6.4. In the aforesaid context, compliance of the provisions of the Act and the Rules framed there under are of significant importance. Relevant section 28-A of the





Rajasthan Shops and Commercial Establishments Act, 1958 and Rule 24-A(2) of the Rajasthan Shops and Commercial Establishments Rules, 1959 are both reproduced herein below:

Rajasthan Shops and Commercial Establishments Act, 1958:

28-A. Notice of dismissal of discharge by employer.- (1) No employer shall dismiss or discharge from his employment any employee who has been in such employment continuously for a period of not less than 6 months except for a reasonable cause and after giving such employee at least one month's prior notice or on paying him one month's wages in lieu of such notice:

Provided that such notice shall not be necessary where the services of such employee are dispensed with for such misconduct, as may be defined in the rules made by the State Government in this behalf, and supported by satisfactory evidence recorded at an enquiry held for the purpose in the prescribed manner. (emphasis supplied)

(2) Every employee so dismissed or discharged may make a complaint in writing in the prescribed manner to a prescribed authority within 30 days of the receipt of the order of dismissal or discharge on one or more of the following grounds, namely-

- (a) that there was no reasonable cause for dispensing with his services; or
- (b) that no notice was served upon him as required by sub section (1); or
- (c) that he had not been guilty of any misconduct:

Provided that the prescribed authority may condone delay in filing such a complaint if it is satisfied that there was sufficient cause for not making the complaint within the prescribed time.

(3) The prescribed authority shall cause a notice to be served on the employer relating to the said complaint, record briefly the evidence produced by the parties, hear them and make such enquiry as it may consider necessary and thereafter pass orders in writing giving reasons therefor.

(4) While passing an order under sub-section (3), the prescribed authority shall have power to give relief to the employee by way of re-instatement or by awarding money compensation or by both.

(5) The decision of the prescribed authority under this Section shall be final and binding both on the employer and the employee.





The Rajasthan Shops & Commercial Establishments Rules, 1959

"24. Precautions against fire.-

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24A. List of acts which may be termed as misconduct.-

(1) The following Acts shall each be treated as misconduct for the purpose of the proviso to sub-section (1) of section 28-A of the Act :-

(a) Willful in subordination or disobedience, whether alone or in combination with others, of any lawful and reasonable order of a Superior;

(b) willful damage or loss of employer's property;

(c) taking or giving bribe or any illegal gratification;

(d) theft, fraud or dishonesty in connection with the employer's business or property;

(e) habitual absence without leave or absence without leave for more than ten days;

(f) habitual breach of any law applicable to the establishment;

(g) habitual late attendance;

(h) riotous or disorderly behavior during working hours at the establishment or any act subversive of discipline;

(i) striking work or inciting others to strike work;

(j) habitual or gross negligence or neglect of work; in contravention of the provisions of any law or rule having the force of law;

(k) breach of the provisions of the Standing Orders applicable to the establishment and certified under the Industrial Employment (Standing Orders) Act, 1945.

(2) No order of dismissal or discharge on ground of misconduct shall be made except after an enquiry in which the employee concerned has been informed in writing of the misconduct alleged against him and is given a reasonable opportunity of being heard in respect of that misconduct. " (emphasis supplied)

A perusal of the proviso of the section 28-A read with sub rule 2 of the Rule 24 supra, clearly reflects that in the event of an employer dispensing with the services of an employee for misconduct, the same has to be supported by





satisfactory evidence to be recorded by way of conducting an enquiry specifically held for the purpose of proving the misconduct in the prescribed manner, in accordance with law. Concededly, in the present case, no such enquiry has been conducted by the employer-Bank. The impugned order is, therefore, liable to be set aside.

7. Adverting further on merits of the case regardless whether an employee is a workman or not, there is no quibble on the factual position that the impugned order of dismissal of the respondent employee is stigmatic in nature. The same was passed without affording any opportunity to the employee to put forth his defense. It is a settled position of law that a stigmatic order cannot be passed in violation of the natural principles of justice i.e. without holding an enquiry against the delinquent in accordance with law.

8. Even otherwise, trite law it is in service jurisprudence that a stigmatic order passed on ground of alleged misconduct cannot be sustained unless a proper enquiry in accordance with law has been conducted. Any stigma on the delinquent red flags him for rest of his life and almost renders him unemployable in future with any employer. Deprivation of livelihood violates the very fundamental right of a citizen enshrined under article 21 of the Constitution of India. Employer must, therefore, be circumspect before summarily taking away the livelihood of an employee on stigmatic grounds. Reference may be had to the Judgment rendered by the Division bench of this Court at Jaipur Bench



in **Cox and Kings Limited Vs. Narendra Singh Rathore &**

Ors¹. The relevant part thereof is reproduced as below: -

“ 15. Both Section 28-A and Rule 24-B make it apparent that the dismissal or discharge contemplated therein has to be in writing, subject however to the compliance of the pre-emptory prerequisites, as statutorily stipulated. That either a reasonable cause or misconduct is an indispensable essentially for enabling the employer to invoke the power under Section 28-A is writ large on the face of that provisions. Whereas in the first eventuality, one month’s prior notice or payment of wages in lieu thereof is a condition precedent, it is not so, if the services of the employee are proposed to be dispensed with for any misconduct, however, supported by satisfactory evidence recorded in an enquiry held for the purpose in the prescribed manner. In other words, in absence of either a reasonable cause or a proved misconduct, dismissal or discharge of the employee under Section 28-A cannot permissibly ensues.

X-X-X-X-X-X

27. To reiterate, there is neither any reasonable cause disclosed and proved by the appellant nor any misconduct by him has been alleged and established. The offer or three months’ notice pay and other financial releases, by no means, did absolve the appellant of its statutory duty to comply with the inalienable and sacrosanct prerequisites for a valid dismissal or discharge of an employee under Section 28-A.”

9. I see no reason as to why the respondent no.1 be not given the benefit of the views expressed in the judgment *ibid*, in addition to the reasons recorded by me in the preceding paragraphs.

¹ **[D.B. Civil Special Appeal (Writs) No. 1571/2012]**





10. As an upshot, the petition is dismissed. The bank is directed to forthwith comply with the impugned order, failing which the bank will be liable for the consequences.

11. At this stage, the learned counsel for the petitioner states that liberty be now granted to conduct an inquiry against the respondent no.1 and proceed further thereafter.

I am unable to accept the said request merely because it has been cornered for committing flagrant violation of the mandate of law. In any case, the conduct of the bank clearly reflects prejudice against the delinquent employee. In any case, the post- decisional inquiry would most certainly prejudice the delinquent employee as the same would definitely not be conducted in an impartial manner. The said request is accordingly declined.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA),J

17-Dharmendra & DivyaP/-

Fit for reporting? Yes/ No

