

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Obaidul Hassan, C.J.

Mr. Justice M. Enayetur Rahim

Mr. Justice Md. Abu Zafor Siddique

Mr. Justice Jahangir Hossain

CIVIL APPEAL NO.168 OF 2023

(From the judgment and order dated the 24th September, 2020 passed by a Division Bench of the High Court Division in Writ Petition No.5495 of 2003)

Ansar V.D.P. Unnayan Bank : . . . Appellant

-Versus-

Ajoy Kumar Lodh and others : . . . Respondents

For the Appellant : Mr. Mahbub Shafique, Advocate
instructed by Ms. Madhumalati Chy.
Barua, Advocate-on-Record

For the Respondent : Mr. Ajoy Kumar Lodh (in person)

Date of Hearing : **The 20th and 28th day of February, 2024**

Date of Judgment : **The 29th day of February, 2024**

J U D G M E N T

M. Enayetur Rahim, J: This appeal, by leave, is directed against the judgment and order dated 24.09.2020 passed by the High Court Division in Writ Petition No.5495 of 2003 making the Rule absolute.

The relevant facts for disposal of the instant appeal are that, the present respondent No.1 (hereinafter referred to as writ-petitioner) was appointed as an Officer in the Ansar VDP Unnayan Bank on 13.04.1998 and while he was performing his duty as a manager at Companygonj Branch, Sylhet, a departmental

proceeding was initiated against him bringing 16 charges and allegations under Rules 38(Ka) (Kha) and (Cha) of the Sonali Bank Employees Service Regulations, 1995 (briefly, Regulations 1995). The writ-respondent No.5, Deputy General Manager (Admin) of the aforesaid Bank on 18.01.2001, issued a show cause notice upon the petitioner asking him to reply, if any, within 10 (ten) working days in connection with the allegations brought against him. In response to the show cause notice, the writ-petitioner had submitted his reply on 12.02.2001 denying all the material allegations levelled against him.

Thereafter, on 11.03.2001 the concerned authority formed an enquiry committee consisting of two members to inquire into the charges and the committee after having conducted the inquiry, filed a report on 29.03.2001 holding that the writ-petitioner is liable for the charges Nos.1, 2, 9, 11 and 15 as recorded therein, and some charges have been found partially established, and three charges being Nos.3, 4 and 10 were found without basis.

Afterwards, on 30.10.2001, the writ-respondent No.4, General Manager (Administration), issued the final show cause notice upon the writ-petitioner with a view to remove him from service asking him to reply to that effect within 7 (seven) working days, if any (Annexure-E to the writ-petition) and pursuant to that notice, the writ-petitioner submitted a written reply on 15.11.2001

to the respondent No.4 categorically denying all the allegations and charges brought against him. On receipt on the reply, the writ-respondent No.5, issued an office order dated 30.12.2001 removing the writ-petitioner from his service under Rule 39(kha)(e) of Sonali Bank Employees Service Regulations, 1995(Annexure-G), against which the writ-petitioner filed a departmental appeal before the writ-respondent No.3, Managing Director, Ansar VDP Unnyan Bank, on 27.03.2002, which was disallowed by the appellate authority.

Feeling aggrieved by the decision of the appellate authority the writ-petitioner filed review petitions twice before the writ-respondent No.3, Managing Director and writ-respondent No.2, Chairman, Board of Directors of the bank on 11.09.2002 and 13.05.2003 respectively, which were not considered by the bank authorities vide their orders dated 01.04.2003 and 23.06.2003 respectively.

The writ-petitioner finding no other alternative and efficacious remedy, had moved before the High Court Division by filing writ-petition No.5495 of 2003.

Mr. Mahbub Shafique, learned Advocate appearing for the appellant having assailed the impugned judgment has submitted that as per Rule 42(1)(Ka) of the Regulations, 1995 of the relevant service Rules, the charge sheet dated 17.01.2001 was prepared and the same was served upon the writ-petitioner and having received the same the writ-petitioner submitted his reply on 12.02.2001 as

evident from Annexure-`B` to the writ-petition, but the High Court Division without considering this aspect of the case passed the impugned judgment.

He also submits that the High Court Division in the impugned judgment and order held that the writ-petitioner was not provided with the inquiry report, but it transpires from final show cause notice served upon the writ-petitioner under Rule 42(6) of the Regulations, 1995 (Annexure-`E` to the writ-petition) that the inquiry report consisting of 22 (Twenty two) pages was attached with the said final show cause notice as such the impugned judgment and order is liable to set aside.

Mr. Mahbub lastly submits that 42(2)(Ga) of the Regulations, 1995 empowered Ansar VDP Unnayan Bank to form a 1(one) member or 3(three) members inquiry committee to conduct the inquiry against the delinquent employee and in the instant case the inquiry committee consisted of 2(two) members for which the inquiry cannot be vitiated as the inquiry committee was not the decision making authority, but the High Court Division without considering the aspect passed the impugned judgment and order as such the same is liable to be set aside.

However, the Respondent No.1 himself appeared in the case and supports the impugned judgment passed by the High Court Division.

A Division Bench of the High Court Division after hearing the Rule made the same absolute, and thereby

declared the order of dismissal without lawful authority and is of no legal effect.

Being aggrieved with the said judgment and order the present appellant filed civil petition for leave to appeal No.816 of 2021 and eventually, leave was granted.

Hence the present appeal.

We have considered the submissions of the learned Advocate of the appellant as well as the Respondent No.1, perused the impugned judgment and other materials as placed before us.

Rule-42(Ga) of the relevant service Regulatory is as applicable in the instance case runs as follows:

“৪২। (গ) উক্ত কার্যধারায় অভিযুক্ত ব্যক্তির উপর গুরুদণ্ড আরোপের জন্য পর্যাপ্ত কারণ আছে, তাহা হইলে অভিযোগ তদন্তের জন্য অভিযুক্ত ব্যক্তির পদমর্যাদার নিম্নে নহেন এমন একজন তদন্ত কর্মকর্তা নিয়োগ করিবে অথবা অনুরূপ তিনজন কর্মকর্তা সমন্বয়ে একটি তদন্ত কমিটি গঠন করিবে” (Underlines supplied).

From the above rule, it is crystal clear that to impose higher punishment the authority may appoint an inquiry officer to inquire into the matter or to form a inquiry committee consisting of three members, but in the instant case it is admitted fact that the inquiry committee was formed by two persons and it is our considered view the whole inquiry proceeding suffers from lack of jurisdiction and the authority relying on such inquiry report committed serious error of law in awarding the punishment to the respondent No.1.

In view of the above, we are of the view that the inquiry and as well as the punishment awarded on the respondent No.1 is illegal and without jurisdiction and

as such there is no illegality or infirmity in the judgment passed by the High Court Division.

Accordingly, the appeal is dismissed.

However, the period while the respondent was not in the office shall be treated as leave without pay and the respondent No.1 is entitled to get other benefit, if any in accordance with law.

C.J.

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