

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/02/2004

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN

Writ Petition No.29980 of 2002

S.Jegannathan ... Petitioner

-Vs-

1.The Assistant General Manager
SBI, Region II, Regional Office
Madurai-2.

2.The Zonal Manager
S.B.I., Madurai-2.

3.The Central Government Industrial
Tribunal-cum-Labour Court,
Chennai-6. ... Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for the issue of a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.M.Muthusamy

For Respondents : Mr.P.Sukumar-for RR 1 & 2

:O R D E R

Aggrieved by an award dated 1.4.2002 made in I.D.No.105 of 2001 on the file of the third respondent, the Central Government Industrial Tribunal-cum-Labour Court (hereinafter referred to as the tribunal), confirming the order of dismissal of the petitioner from the post of clerk in State Bank of India, represented by the first and second respondents herein, with effect from 3.1.1998, the petitioner had preferred the above writ petition seeking a writ of Certiorarified Mandamus calling for the records pertaining to the award dated 01.04.2002 passed in I.D.No.105 of 2001 by the third respondent herein and quash the same and further directing the 2nd respondent to reinstate the petitioner with entire backwages along with all other attendant benefits.

2. In a nut shell, a disciplinary proceeding was initiated against the petitioner in terms of paragraph 521 of the Shastri Award for certain

alleged misconduct, which according to the respondents 1 and 2, are grave in nature; an enquiry was conducted; charges were held proved and an order of dismissal was passed on 3.1.1998, of course, after giving an opportunity to the petitioner. The misconducts alleged by the respondents in their final and revised charge sheet dated 30.11.1996 was the subject matter of the enquiry in the disciplinary proceedings and the charges read as follows,

- i. The petitioner passed vouchers for payment unauthorisedly.
- ii. The petitioner raised a withdrawal slip for a sum of Rs.354/- from his savings bank account No.S32 in S.B.I., Tiruchuli, even though he had only Rs.2/- to the credit of his account.
- iii. Instead of signing in the attendance register, the petitioner had written his grievances as to his inability to come to office at 10 O'clock and that his seniority in the respondent bank was not properly appreciated.
- iv. The petitioner had written certain unwarranted comments in the day book to the effect that the management did not follow its own orders; nor respond to the orders of the Court.
- v. The petitioner cancelled the savings bank vouchers dated 23.7.1996 and 25.7.1996, when he had no power to do so.
- vi. The petitioner had cancelled the initials of the checking officials with respect to the savings bank ledger namely S.B.P1/41, 24.35281; 24/3545; 25/3665.
- vii. The petitioner shouted at the Branch Manager in louder voice on 15.2.1996, presuming that the branch manager refused to exercise his power when he approached him for renewing the overdraft facility.
- viii. The petitioner is in the practice to attend the office late everyday.
- ix. The petitioner came late on 18.7.1996, and however asked the branch manager to be punctual.
- x. The petitioner placed placards on 23.8.1996 with derogatory remarks on the officials of the bank.
- xi. The petitioner was working in the counter between 19.6.1996 to 24.6.1996 without wearing the shirt, spoiling the entire decorum of the bank and causing much embarrassment to the transacting customers as well as the staff.
- xii. The petitioner made some derogatory comments in the bank hall against officials of the local head office at Chennai.

3.1. But, the petitioner denied all the charges and contended that he never committed any of the above mistakes, neither made any derogatory statement against the officers concerned; nor shouted against the branch manager; nor used any harsh words against the officers as alleged in the

charge sheet. According to the petitioner, the charges were not specific, but vague and he was constrained to protest inside the bank by discharging his duties, without wearing his shirt, as a peaceful demonstration. Similarly, the petitioner also explained that he made remarks in the attendance register expressing his grievance only as a mark of protest, as the respondent management failed to consider his request for due position in the bank inspite of his repeated requests; and as he was humiliated by frequent transfers viz., from Sattur branch to Manali in the year 1986, from there to Rajapalayam from 4.6.1992 and within two years to Thiruchuli from 1.6.1994, which caused much hardship to him.

3.2. The enquiry officer, however, rejected the explanation offered by the petitioner and in his report dated 18.11.1997, found all the charges were proved, based on which the disciplinary authority passed an order of dismissal from service by an order dated 3.1.1998.

3.3. Aggrieved by the same, the petitioner approached the tribunal and the tribunal, by its award dated 1.4.2002, confirmed the order of dismissal, rejecting the contentions of the petitioner that the findings of the enquiry officer and the decision taken thereof are perverse, revengeful, without any basis and in any event the punishment of dismissal from service imposed by the management is excessive and disproportionate to the misconduct alleged to have been committed by the petitioner.

3.4. Hence the above writ petition.

4.1. Mr.Muthusamy, learned counsel for the petitioner assails the impugned order of dismissal dated 3.1.1998, made by the management and confirmed by the tribunal in the award dated 1.4.2002, of course reiterating the contentions made by the petitioner before the management as well as the tribunal, as referred to above.

4.2. Mr.Muthusamy, vigorously contends that the petitioner was humiliated right from the date of appointment, by transferring him from one place to another frequently. He also invited my attention to the explanation offered by the petitioner that in spite of his earnest requests, seeking due position in the bank, the same was not properly considered by the authorities; and that even though the petitioner was appointed as clerk-cum-cashier, he was never treated with due dignity.

4.3. Mr.Muthusamy explains that as the respondent bank refused to renew the overdraft facility, he could not even avail a loan even for purchasing a bicycle for his daughter.

4.4. Learned counsel also brought to my notice that the charge Nos.8 and 12 are vague and not specific, inasmuch as the management failed to furnish any details of the dates relating to the misconduct referred to thereunder, and therefore the petitioner was deprived of his liberty of making his effective explanation to disprove the said charges.

4.5. With regard to the allegations that the petitioner unauthorisedly passed the vouchers viz., charge No.1, as evident from the

records, it is not in dispute that the said vouchers alleged to have been passed by the petitioner, were ultimately not accepted and no amount was passed; nor there was any allegation as to the misappropriation of funds due to any of the misconduct alleged to have been committed by the petitioner. In this aspect, learned counsel relies on ' Kailash Nath Gupta .v. Enquiry Officer, Allahabad Bank (AIR 2003 SC 1377)'.

4.6. Mr.Muthusamy contends that the allegation as well as the charge made against the petitioner that he made derogatory statements against the officials and also used unparliamentary words, were vague and without any substance and even if the allegations were found to be proved, the punishment of dismissal is too excessive. In this regard, Mr.Muthusamy he places reliance on the decision of the Apex Court in 'Ved Prakash Gupta .v. M/s.Delton Cable India (P) Ltd. (1984) 2 S.C.C.569'.

5.1. Per contra, learned counsel for the respondent bank invited my attention to the reasons given by the enquiry officer in arriving at the findings that the charges were proved against the petitioner and the consequential punishment of dismissal i ed by the management as well as the reasons that weighed the tribunal for confirming the same.

5.2. Mr.Sukumar, learned counsel for the respondent contends that the petitioner being an employee, is expected to follow the regulations of the management. Any indiscipline or misconduct, which would affect the routine business of the bank shall be considered seriously, warranting a major punishment such as dismissal from service.

5.3. According to Mr.Sukumar, learned counsel for the respondent bank, the plea of peaceful agitation inside the bank during the business hours by attending the duty without wearing the shirt, not only caused embarrassment to the co-employees, but also affected the business of the bank.

5.4. The petitioner, by his own misconduct committed an act of unbecoming an employee of the bank.

5.5. In any event, it is contended that the findings of the enquiry officer, as well as the consequential punishment imposed by the management and the tribunal cannot be interfered by this Court by exercising the power of judicial review conferred under Article 226 of the Constitution of India.

6. I have given careful consideration to the rival submissions made by the parties.

7. It is settled law that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that, it was in defiance of logic or moral standards. The scope of judicial review is limited to the deficiency in decisionmaking process and not the decision. But, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court/tribunal, this Court cannot interfere. Further, to shorten the litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in

support thereof. In the normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed, vide *United Commercial Bank v. P.C.Kakkar*, (2003) 4 S.C.C.364.

8. In the instant case, the petitioner challenges the findings of the enquiry officer as well as the decision taken by the management of imposing the punishment of dismissal from service, based on the findings of the enquiry officer, on the ground that the charges themselves were vague and there was no evidence to substantiate the same; and that in any event the punishment imposed is excessive and disproportionate.

9.1. As rightly pointed out by Mr.M.Muthusamy, learned counsel for the petitioner, there are no materials on record to show that the petitioner passed vouchers for payment unauthorisedly (vide charge No.1), cancelled the savings bank vouchers (vide charge No.5); and cancelled the initials of the checking officials in the Savings Bank ledgers (vide charge No.6), even though he was not authorized to do so.

9.2. That apart, the mere fact of issuing a withdrawal slip for a sum of Rs.354/- while the petitioner had balance of only Rs.2/- to the credit of his account (vide charge No.2), in my considered opinion, could not be a serious charge because, such withdrawal slips are liable to be rejected in any other case of insufficient funds.

9.3. Ofcourse, the allegation made under charge Nos.3 and 4, namely that the petitioner was making derogatory statements against the officers in the attendance register and unwarranted comments in the day books are proved based on material, to which the petitioner explains that the petitioner was constrained to do so as the management consistently refused to look into the grievances of the petitioner.

9.4. As pointed out by Mr.M.Muthusamy, the respondents have not furnished any details to the late coming of the petitioner in charge No.8 and therefore the same is vague and the findings of the enquiry officer that the same were proved, is perverse.

9.5. The allegation that the petitioner retorted against the superior authority as to their punctuality (charge No.9), when he was questioned for his late coming on 18.7.1996, again in my considered opinion, cannot be considered as a serious misconduct, when it is not in dispute that the authorities themselves were at fault.

9.6. Of course, the explanation offered by the petitioner for having removed his shirt during the duty hours and displaying placard during business hours (charge Nos.11 and 10), as a mark of peaceful protest, is not convincing.

9.7. With regard to charge No.12 that he made derogatory comments against the officials of the Local Head Office at Chennai, the reliance placed by the learned counsel for the petitioner to the decision of the Full bench of

the Apex Court in Ved Prakash Gupta [vs- M/s. Delton Cable India (P) Ltd., reported in (1984) 2 S.C.C.569, is of course more appropriate and convincing, wherein it is held as follows:

"No responsible employer would ever impose in like circumstances the punishment of dismissal on the employee and that victimization of unfair labour practice could well be inferred from the conduct of the management in awarding the extreme punishment of dismissal for a flimsy charge of abuse of some worker or officer of the management by the appellant within the premises of the factory. We therefore hold that the termination of the appellant's service is invalid and unsustainable in law, and that he is entitled to reinstatement with full back wages and other benefits including continuity of service. The appeal is allowed accordingly with costs quantified at Rs.1000/-"

9.7.1. This Court by an order dated 1.8.1994 in W.P.No.12933 of 1994 (Vridhachalam Co-op Urban Bank Ltd., .v. Labour Court, Cuddalore and Another), where an employee of the urban bank was dismissed from service for having used indecorous language in his explanation to the charge memo, held that such indecorous language per se cannot be the basis for dismissal and held as follows,

[The gravity of charge of using indecorous language contained in the explanation to the charge memo has to be viewed in the light of the surrounding circumstances also keeping in view the action of the management, which has driven the worker to resort to such method. Though Court ought not to encourage the use of indecorous language exhibiting thereby indiscipline, yet the indiscreet use of language per se cannot be the basis of an order of dismissal. Having regard to the language employed by the worker in the explanation, the Labour Court was right in coming to the conclusion that the punishment of dismissal was grave and disproportionate to the seriousness of the charges, held proved. The modified punishment imposed by the Labour Court is sufficiently harsh and more than sufficient for the proved charges.]

10. From the above discussion, it is obvious that while some of the charges are vague and some are not proved, the findings on some of the charges are to be held based on 'no evidence' and even though other charges were proved, but they were not considered to be serious, in any event they do not require a punishment of dismissal, particularly when none of the charges are related to fraud or misappropriation of funds of the bank.

11. As held in State Bank of India .v. Samarendra Kishore Endow and another reported in 1994 AIR SCW 1465), this Court, while exercising the powers of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty, if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court, it would appropriately mould the relief, either directing the disciplinary authority/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof.

12. In a recent judgment of the Apex Court, reported in AIR 2003 Supreme Court 1377 (Kailash Nath Gupta .v. Enquiry Officer, Allahabad Bank), where a bank employee was terminated from service and the irregularity or misconduct of the delinquent officer therein relates to certain irrecoverable advances due to procedural irregularity, but without any evidence that he either misappropriated any money or had committed any fraud, nor caused any loss to the bank, the Apex Court held that such misconduct does not warrant an extreme punishment of dismissal and the matter was remanded for fresh consideration, as to the quantum of punishment.

13. In the background of what has been stated above, it is apparent on the face of the record that,

i. Out of the 12 charges referred to the enquiry officer, who found that all of them are proved, charge Nos.8 and 10 are vague, but however the same were found proved, but based on 'no evidence'.

ii. With regard to the charges relating to the passing of vouchers unauthorisedly (charge No.1), issuing a withdrawal slip when the funds are insufficient (Charge No.2), making entries in the attendance register (charge No.3), writing remarks in the savings day book (charge No.4), cancelling the savings bank vouchers (charge No.5), cancelling the initials of the checking officials in the savings bank ledgers (charge No.6), assuming if they are

proved based on the records, would amount only to a minor misconduct, inasmuch as the same neither amount to any fraud or misappropriation, causing loss to the bank.

iii. Thirdly, the allegations as to the uttering of derogatory statements against the officials, vide charge Nos.7,9,10,11 and 12 does not warrant any punishment of dismissal in the light of the decision of the Apex Court in Ved Prakash Gupta .v. M/s.Delton Cable India (P) Ltd.

14. Under such circumstances, I am inclined to quash the impugned proceedings and direct the management to reinstate the petitioner in service, with a further direction to reconsider the quantum of punishment and pass appropriate orders as to the quantum of punishment within thirty days of the date of receipt of a copy of this order, taking into consideration the fact that the petitioner was kept out of employment from 3.1.1998 till now, which itself would be a substantive punishment to the misconduct found proved. With the above observations, the writ petition is disposed of. No costs.

Index : Yes

Website : Yes

KST.

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