

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAI PUR BENCH JAI PUR

O R D E R

S. B. Civil Writ Petition No. 3392/1999
Mam Raj Sharma Vs. State of Rajasthan & Ors.

Date of Order :::: 30.09.2014

PRESENT
HON' BLE MR. JUSTICE VEERENDR SINGH SIRADHANA

Mr. P. N. Paliwal, for the petitioner.
Mr. R. S. Bhati, for the respondents.

The petitioner, in the present writ application is aggrieved the orders dated 28.7.1987 (Annexure-5), order dated 8.1.1990 (Annexure-6) and order passed on his Revision Application dated 14.9.1998 (Annexure-7), upholding the penalty of dismissal from service for proved misconduct committed by the petitioner, and therefore, has approached this Court, praying for the following relief(s).

(i) by an appropriate order writ or direction the punishment order dated 28.7.1987, Annexure-5, judgment dated 8.1.1990 Annexure-6 and judgment dated 14.9.1998 Annexure-7 may be quashed and set aside.

(ii) by an appropriate writ order or direction the respondents may be directed to reinstate the petitioner in service right from 26.9.1982 with all consequential benefits.

(iii) by an appropriate writ order or direction an exemplary cost of

Rs. 50,000/- may be imposed on the respondents.

(iv) Any other order which may be deemed fit and proper in the facts of the case may be also be passed in favour of the petitioner.

2. Briefly, the material skeletal facts necessary for appreciation of controversy raised are: that the petitioner while working as Manager, Co-operative Society in Village-Deva Bamanwas, Panchayat Samiti, Thanagaji, District-Alwar, was placed under suspension on 26th November, 1982 and was served with the charge-memo dated 10.1.1983. The charge-memo was responded by the petitioner on 22.1.1983. A departmental inquiry was initiated under Rule 17 of the "*Krishi Rindatri Sahakari Samitiyan Ke Vyavasthapako Ke Seva Niyam, 1977*" (hereinafter referred to as 'Rules of 1977', for short). The Enquiry Officer conducted the inquiry against the petitioner in accordance with the procedure prescribed under the Rules of 1977, affording ample opportunity to the petitioner to defend himself.

3. The enquiry report was submitted on 7.2.1987. The Enquiry Officer returned a finding of guilt on the charges levelled against the petitioner leading to

termination of his services for proved misconduct of financial illegalities and embezzlement as well as for absence from headquarters without information to the competent Authority.

4. The Disciplinary authority in exercise of powers under Rule 17(4) of the Rules of 1977, terminated the services of the petitioner. Appeal preferred against the order of termination before the Appellate Authority was dismissed by the appellate authority vide order dated 8th January, 1990 (Annexure-6). The revision petition was also dismissed in view of the fact that the Rules of 1977, were not in force when the matter came up for adjudication before the authority, leaving it open for the petitioner to avail of the remedy available under the law.

5. In response to the notice of the writ application, the respondent No.1, 2 and 3 have filed their counter affidavit whereas respondent No.3 and 4 have submitted their reply separately. The learned counsel appearing on behalf of respondent No.4, submits that the reply filed on behalf of respondent No.3 and 4, in fact, is a reply on behalf of respondent 4 alone.

6. The respondents, in their counter

affidavit, have supported the action of the respondents in terminating the services of the petitioner vide impugned order dated 28th July, 1987 (Annexure-5). According to the respondents, the inquiry was conducted strictly in accordance with the prescribed procedure under the Rules of 1977, and the petitioner was afforded ample opportunity to defend his case and lead evidence. It is further submitted that from the materials available on record, it is evident that the petitioner was guilty of the charges levelled against him. Moreover, the petitioner was absent from duty and committed interpolation in the attendance register, which was in his possession, and therefore, the findings arrived at by the enquiry officer cannot be faulted. The petitioner was found guilty for financial irregularities and illegalities as well as for illegal retention of money of the Co-operative Society. According to the respondents, the penalty imposed cannot be said to be disproportionate by any stretch of imagination for the proved misconduct.

7. The learned counsel for the petitioner reiterating the pleaded facts vehemently argued that penalty of dismissal is highly disproportionate, having regard to the

nature of misconduct alleged. Learned counsel for the petitioner would further submit that the enquiry was not proper and the charges were not proved as would be evident from the materials available on record. According to the learned counsel for the petitioner, a bare perusal of the order dated 27th February, 1999 (Annexure-8), would reveal that the proceedings initiated under Section 74 of the Rajasthan Co-operative Societies Act, 1965 (hereinafter referred to as 'Act of 1965', for short), were closed and the matter was remanded back in exercise of powers under Section 74(2) of the Act of 1965, by the Assistant Registrar of Co-operative Societies, Alwar, with a direction to initiate enquiry under Section 70 of the Act of 1965, and this fact itself shows that the findings arrived at by the enquiry officer and penalty imposed are absolutely contrary to the materials available on record.

8. Heard the learned counsel for the petitioner and Mr. R. S. Bhati, appearing on behalf of the respondent No. 4 and with their assistance, perused the materials available on record.

9. The petitioner was charged under charge No. 1, for retaining an amount of Rs. 8286.38 upto 15.10.1977, and the charge was found to be proved. Under charge No. 2, the petitioner

was charged for leaving the headquarters without prior intimation or information to the competent authority. Charges for embezzlement and misuse of the finance of the society were also levelled. Under charge 3, misappropriation of money of the Samiti and embezzlement was highlighted with allegations of interpolation and over-writing in the attendance register, which was in his custody. The charges for misuse of money in sale and purchase of clothes and sugar were also substantiated on the basis of evidence and materials available on record.

10. From a bare perusal of the detailed order passed by the Disciplinary Authority, dated 28th July, 1987 (Annexure-5), it is evident that the petitioner was afforded ample opportunity to defend the charges levelled against him. The disciplinary authority keeping in view the findings arrived at by the enquiry officer, on the basis of evidence and materials available on record, concluded that the charges levelled against the petitioner, for fraudulent retention of the money of the Co-operative Society and for leaving the headquarters without information to the competent authority as well as misappropriation of the finance of the Co-operative Society so also embezzlement in sale and purchase of the clothes and sugar, were

proved.

11. While entertaining the reply to the memo of appeal, an opportunity of rejoinder to the petitioner, was also accorded. After a careful perusal of the evidence and materials on record, the Appellate Authority, concurred with the findings arrived at by the inquiry officer and the disciplinary authority as well as the penalty imposed. The Appellate Authority, further observed that retention of the petitioner in the service of the Co-operative Society was not in the interest of the Society keeping in view the misuse of financial resources of the Society and proved misconduct of embezzlement committed by the petitioner.

12. Learned counsel for the petitioner has vehemently argued that in view of the above, order dated 27th February, 1999 (Annexure-8) whereby the petitioner was called upon to repay an amount of Rs. 8280.38 along with an interest @ 18% as well as surcharge of Rs.500, he was found guilty of gross negligence in the capacity of the Manager of the Society; was set aside and therefore, the findings arrived at by the inquiry officer and penalty imposed by the disciplinary authority is not sustainable in the eye of law, is absolutely misconceived.

13. A bare perusal of section 74 of the Act of 1965, would reveal that the section empowers the Registrar to order repayment or restoration of any money or property or to pay contribution and

costs or compensation to such extent as may be determined by the Registrar just and convenient. The mandate of section 74 provides for a special procedure applicable to particular persons and in particular circumstances, which has speedy and summary. Be that as it may, even while liability of repayment along with interest and imposition of surcharge was set aside vide order dated 27th February, 1999 (Annexure-8). The matter so far order for appointment of an inquiry officer to conduct an enquiry under Section 74 of the Act of 1965, and for the embazlement committed fixed the accountability. The learned counsel for the petitioner, on being quari ed about the subsequent proceedings in view of the directions issued vide order dated 27th February, 1999 (Annexure-8) did not furnish any satisfactory explanation. Section 70 of the Act of 1965 provides for an enquiry by the Registrar on his own motion, by himself or by a person authorised by him by order in writing, hold an enquiry into the constitution, working and financial condition of a Co-operative Society. Moreover, section 74 of the Act of 1965, is a remedy which is speedy and summary in nature providing for repayment or restoration of the money or property or to pay contribution and costs or compensation to such extent, as may be determined by the Registrar to be just and equitable for the loss caused to the Society by any person who has taken part in the

organisation or management of such Society or who is or has at any time been an officer or an employee of the Society, has made any payment contrary to the Act of 1965, the rules or the bye-laws, has caused any deficiency in the assets of the Society by breach of trust or wilful negligence or has misappropriated or fraudulently retainted any money or other property belonging to such Society.

14. A glance at the text of Section 74 of the Act of 1965, would reflect that the proceedings under Sections 70 to 74 of the Act which are speedy and summary in nature operate absolutely in different field and has nothing to do with the domestic enquiry proceedings conducted under Section 17 of the Rules of 1977. Moreover, the validity of the Rules of 1977 is not under challenge. Hence, the argument advanced is devoid of any substance.

15. The scope and extent of interference with the quantum of punishment has been subject matter of a catena of judgments by the Hon'ble Supreme Court. It has been held in no uncertain words by the Hon'ble Supreme Court that such an interference cannot be a routine matter and referred to the observation of Lord Greene in the case of **Associated Provincial Picture Houses V. Wednesbury Corpn.** (1948) 1 KB 2 : (1947) 2 All ER 680 (CA); wherein it has been observed that when a statute gave discretion to an administrator to take a decision, the scope

of judicial review would remain limited. An interference was not permissible unless the order was contrary to law or relevant factors were not considered or irrelevant factors were considered or the decision was one which no reasonable person could have arrived at. The principles have been consistently followed while conducting scrutiny of the validity of such an administrative action as aforesaid. The Hon'ble Supreme Court in the case of **Om Kumar v. Union of India**: (2001) 2 SCC 386, held that 'proportionality' will have to be considered in the backdrop of the question as to whether, while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measures have been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order. Where the administrative action is assailed for being arbitrary under Article 14; in cases where punishments in disciplinary cases are challenged, the criteria for scrutiny would be as to whether the administrative order is 'rational' or 'reasonable' and whether it stands the *Wednesbury* test. In such matters, the Courts are confined only to a 'secondary role' while examining the 'primary role' of the administrator as to whether he has acted illegally or has omitted relevant factors or has considered irrelevant factors or the view

arrived at is one which no reasonable person could have arrived at. This principle has been reiterated by the Hon'ble Supreme Court time and again and the common feature that runs through all the decisions on the subject matter, is to the effect that the Court should not interfere with the decision of the administration until and unless the decision was illogical or suffered with procedural impropriety or was so shocking, to the conscious of the Court, that same was in defiance of logic or moral standard. Thus, the scope of judicial review and scrutiny in such matters is limited only to the decision making process. The punishment imposed by the Disciplinary Authority or the Appellate Authority unless is found to be in defiance of logic or moral standard or shocks the conscious of the Court, the same is not open for interference.

16. The disciplinary authority in exercise of the powers under Rule 17(4) of the Rules of 1977, inflicted the penalty of dismissal from service, with a further direction to the petitioner to deposit the amount due, failing which the executive officer of the Society would be free to institute proceeding under the criminal law. The disciplinary authority further observed that the petitioner would not be entitled any payment for the period of suspension. The Appellate Authority afforded ample opportunity of hearing to the petitioner.

17. The Revision Petition was rightly dismissed on 7th September, 1998, in view of the fact that the Rules of 1977, by that time were repealed and Rules of 1991, were promulgated.

18. The facts and materials available on record and findings arrived at by the enquiry officer, concurred by the Disciplinary Authority as well as Appellate Authority, in view of the evidence brought on record; is not open to re-appreciation by this Court in exercise of writ jurisdiction under Article 226 of the Constitution of India. Further, the petitioner could not point out any perversity or illegality sustainable in law, on the basis of which the findings arrived at for the gross and proved misconduct could be construed to be perverse. There is illegality in decision making process. The penalty imposed cannot be said to be disproportionate and having regard to the nature of gross mis-conduct committed by the petitioner.

19. For the reasons and discussions hereinabove, I find no illegality in the action of the respondents in terminating the services to the petitioner for the proved charges of gross misconduct.

20. The writ petition is devoid of any substance and lacks in merit, and therefore, deserves to be dismissed.

21. Ordered accordingly.

22. However, in the facts and circumstances of

the case, there shall be no order as to costs.

(VEERENDR SINGH SIRADHANA)J.

*A. Sharma/14
All corrections made in the judgment/order have been incorporated in the
judgment/order being e-mailed:*

*(Anil Sharma)
Jr. P. A.*

