Arun Kumar Vs. The Singhbhum Central Co Operative Bank Ltd Thr Its Administrators Cum Deputy Dev Commisioner and Anr

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SooperKanoon Citation : sooperkanoon.com/110076

Court : Jharkhand

Decided On : Apr-17-2017

Appellant : Arun Kumar

Respondent : The Singhbhum Central Co Operative Bank Ltd Thr Its Administrators Cum Deputy Dev Commisioner and Anr

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI L.P.A. No. 773 of 2015 Arun Kumar son of Shri Shashi Bhushan Prasad, Resident of House No. N-10, Shiv Ganga, Sonari, P.O. and P.S. Sonari, Jamshedpur, District Singhbhum East Petitioner/Appellant Versus 1. The Singhbhum Central Co-operative Bank Ltd. through its Administrator-cum-Deputy Development Commissioner, West Singhbhum at Chaibasa P.O. & P.S. Chaibasa, West Singhbhum 2. Managing Director, the Singhbhum Central Co-operative Bank Ltd., Chaibasa, P.O. Chaibasa, P.S. Sadar, Dist. West Singhbhum ... ... Respondents/Respondents ------ CORAM: HON'BLE MR. JUSTICE D.N. PATEL HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR ----- For the Appellant: Mrs. Gouri Devi, Advocate For the Respondents: Mr. M.K. Roy, Advocate ----- th 16/Dated 17 April, 2017 Per D.N.Patel,J.

The appellant has challenged order dated 04.12.2015 passed in W.P.(S) No. 6895 of 2012.

2. The delinquent-appellant, who was working as Assistant at Gamharia Branch of the Singhbhum Central Co-operative Bank Limited, on the allegation of committing gross misconduct by sanctioning the payments unauthorizedly was put under suspension on 26th October, 2004 and thereafter, chargesheet was issued. On 7th September, 2005, enquiry officer was appointed and departmental enquiry was conducted after giving adequate opportunity to the appellant-delinquent to defend himself, however, this appellant-delinquent chose not to remain present in the enquiry at his own peril and risk. Enquiry officer submitted his report on 19th January, 2006 (Annexure 4 to the memo of this Letters Patent Appeal) on the basis of evidences on record. Charges levelled against this appellant have been found proved; there were unauthorised sanctions of sizable amounts by this appellant to different persons. On the basis of the report of the enquiry officer, disciplinary authority passed an order on 7th February, 2006 dismissing this appellant-delinquent from his service. This order was challenged by the appellant in W.P.(S) No. 6895 of 2012, which was dismissed by the learned Single Judge vide order dated 4th December, 2015 and hence, the original petitioner has preferred this Letters Patent Appeal. Counsel for the appellant contended that charges -2- framed against the delinquent were not proved, in as much as, the appellant could not put his defence during the enquiry. Counsel appearing for the respondents has submitted that no error has been committed by the respondent-department in holding the departmental enquiry and punishment inflicted upon this appellant cannot be labelled as shockingly disproportionate or unreasonably excessive and hence, this Letters Patent Appeal may not be entertained, and this aspect of the matter has been properly appreciated by the learned Single Judge in W.P.(S) No. 6895 of 2012 vide order dated 4th December, 2015.

3. Having heard counsels appearing for both the sides and looking to the facts and circumstances of the case, we see no reason to entertain this Letters Patent Appeal for the following reasons: (I) This appellant, while in service of the respondent Bank, had allowed unauthorised sanctioning of sizable amount. There were ten pay orders prepared unauthorisedly, for which the payment was made by this appellant. For this misconduct, this appellant-delinquent was suspended on 26th October, 2004 and later on chargesheet was issued. (II) Inspite of adequate opportunity to defend given to the appellant-delinquent, he did not remain present

during the domestic enquiry and on the basis of the evidences on record, enquiry officer submitted his report dated 19th January, 2006 (Annexure 4 to the memo of this Letters Patent Appeal). (III) It has been held by the enquiry officer in his report that charges levelled against this appellant have been proved. On the basis of the report of the enquiry officer, the disciplinary authority, vide order dated 7th February, 2006 has imposed a punishment of dismissal. This order was challenged by this appellant in W.P.(S) No. 6895 of 2012, which was dismissed by the learned Single Judge vide order dated 4th December, 2015. (IV) Looking to the facts and circumstances of the case, it appears that no error has been committed by the respondents in holding departmental proceeding against this appellant. Adequate opportunity of being heard was given and the enquiry conducted by the respondents is true, valid and legal. Once the enquiry is held legal and valid, only point that remains to be decided by this Court is the quantum of punishment vis- e-vis the misconduct. -3- This appellant was in the service of the respondent Bank and the relationship between this appellant and the respondent bank is fiduciary and therefore, the nature of misconduct, i.e. sanctioning payments unauthorizedly, which is not a minor error, reflects the mens rea on the part of the appellant-delinquent for which the disciplinary authority has rightly dismissed this appellant from service and the said punishment cannot be labelled as shockingly disproportionate or unreasonable. (V) We are in full agreement with the reasons given by the learned Single Judge while dismissing the W.P.(S) No. 6895 of 2012 vide order dated 4th December, 2015, paragraph no. 9 of which is quoted hereunder for ready reference;

9. Having heard learned counsel appearing for the respective parties at length and on perusal of the records, I am of the considered view that the petitioner has not been able to make out the case for interference of this Court due to following facts, reasons and judicial pronouncements: (I) In the instant case, the petitioner being employee of a bank was involved in fraudulent withdrawal which was a serious misconduct. Despite notices, since the petitioner did not appear, the inquiry was conducted exparte but the inquiry officer has found the charges to be proved accordingly, the impugned order of punishment has been passed by the disciplinary authority. Being the employee of the bank, the petitioner ought to have discharged his duties in fair manner and with utmost probity. On perusal of the

inquiry report, it is quite apparent that the inquiry officer has found the petitioner guilty of charges. The petitioner has not right to continue in the service so the order of dismissal of the petitioner from the service has rightly been passed. (II) On perusal of the inquiry report and the impugned order of punishment it is quite manifestly clear that the punishment is quite commensurate with the proved misconduct so far the quantum of punishment is concerned it does not require any interference by this Court. The order of the punishment is the exclusive domain of the disciplinary authority and unless the impugned order is not shockingly disproportionate to the alleged charges this Court under article 226 of the Constitution of India cannot interfere. In the instant case taking into account the holistic view of the matter, the impugned order of punishment does not warrant any interference by this Court which is quite commensurate to the proved charges. (VI) It has been held by Honble Supreme court in the case of Divisional Controller, N.E.K.R.T.C. v. H. Amaresh, reported in (2006) 6 SCC187 in paragraph no.18 as under: 18. In the instant case, the misappropriation of the funds by the delinquent employee was only Rs 360.95. This Court has considered the punishment that may be awarded to the delinquent employees who misappropriated the funds of the Corporation and the factors to be considered. This Court in a 4 catena of judgments held that the loss of confidence is the primary factor and not the amount of money misappropriated and that the sympathy or generosity cannot be a factor which is impermissible in law. When an employee is found guilty of pilferage or of misappropriating the Corporations funds, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of dismissal. In such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment. The judgment in Karnataka SRTC v. B.S. Hullikatti was also relied on in this judgment among others. Examination of the passengers of the vehicle from whom the said sum was collected was also not essential. In our view, possession of the said excess sum of money on the part of the respondent, a fact proved, is itself a misconduct and hence the Labour Court and the learned Judges of the High Court misdirected themselves in insisting on the evidence of the passengers which is wholly not essential. This apart, the respondent did not have any explanation for having carried the said excess amount. This omission

was sufficient to hold him guilty. This act was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his was bound to result in financial loss to the appellant irrespective of the quantum. (emphasis supplied) (VII) It has been held by Honble Supreme court in the case of U.P. SRTC v. Suresh Chand Sharma, reported in (2010) 6 SCC555 in paragraph no. 23 as under: 23. In NEKRTC v. H. Amaresh and U.P. SRTC v. Vinod Kumar this Court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption/misappropriation, the only punishment is dismissal. (emphasis supplied) (VIII) It has been held by Honble Supreme court in the case of Nirmala J.

Jhala v. State of Gujarat, reported in (2013) 4 SCC301 in paragraphs no.s 25 and 26 as under: 25. In Municipal Committee, Bahadurgarh v. Krishnan Behari this Court held as under: (SCC p. 715, para 4) 4. In a case of such nature-indeed, in cases involving corruption-there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant. 5 26. In NEKRTC v. H. Amaresh this Court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption, the only punishment is dismissal. Similar view has been reiterated in U.P. SRTC v. Vinod Kumar and U.P. SRTC v. Suresh Chand Sharma. (emphasis supplied) (IX) It has been held by the Honble Supreme court in the case of Rajasthan SRTC v. Bajrang Lal, reported in (2014) 4 SCC693 in paragraphs no.21 and 22 as under: 21. As regards the question of disproportionate punishment is concerned, the issue is no more res integra. In U.P. SRTC v. Suresh Chand Sharma, it was held as under: (SCC p. 561, para 22)

22. In Municipal Committee, Bahadurgarh v. Krishnan Behari this Court held as under: (SCC p. 715, para 4) 4. In a case of such nature-indeed, in cases involving corruption-there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant. Similar view has been reiterated by this Court in Ruston & Hornsby (I) Ltd. v. T.B. Kadam, U.P. SRTC v. Basudeo Chaudhary, Janatha Bazar

(South Kanara Central Coop. Wholesale Stores Ltd.) v. Sahakari Noukarara Sangha, Karnataka SRTC v. B.S. Hullikatti and Rajasthan SRTC v. Ghanshyam Sharma. 22. In view of the above, the contention raised on behalf of the respondent employee, that the punishment of removal from service is disproportionate to the delinquency is not worth acceptance. The only punishment in case of the proved case of corruption is dismissal from service. (emphasis supplied) (X) It has been held by the Honble Supreme Court in the case of LIC V. S. Vasanthi, reported in (2014) 9 SCC315 para no. 9 and 11 as under: 9. We have already reproduced paras 61 and 62 of the impugned judgment of the High Court. After detailed discussion of the various contentions advanced by the respondent herein (appellant before the High Court), the High Court repelled all those contentions and in para 61 summed up the position by holding that the respondent herein was very much guilty of deliberately tampering with the premium position as detailed in the report. So much so, it expressed its complete agreement in regard to the conclusions arrived at by the authorities concerned that the charges levelled against the respondent had been proved. As noticed above, charges pertain to tampering with the premium position and other records pertaining to 17 insurance 6 policies. It had resulted in pecuniary loss to LIC as well. Charge of tampering with the record is a very serious charge and it adds to the gravity when it is coupled with financial implications. Even for such a severe charge, the disciplinary authority had inflicted the penalty of reduction in basic pay to the lowest timescale. The High Court has not even stated as to how this penalty was bad in law and simply labelled it to be harsh that too with no reasons. While intermeddling with this penalty, the only epithet used is to secure the ends of justice. In the absence of any exercise undertaken by the High Court that how it perceived such a penalty to be harsh, there was no reason to interfere with the same. Even otherwise, we do not find such a penalty at all to be shockingly disproportionate having regard to the very serious charge levelled against the respondent. 11. We are of the opinion that the High Court transgressed its limits of judicial review by itself assuming the role of sitting as a departmental appellate authority, which is not permissible in law. The principles discussed above have been summed up and summarised as follows in Lucknow Kshetriya Gramin Bank v. Rajendra Singh: (SCC p. 382, para 19) 19.1. When charge(s) of misconduct is proved in an enquiry the quantum of

punishment to be imposed in a particular case is essentially the domain of the departmental authorities. 19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority. 19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court. 19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case. 19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the codelinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the codelinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of chargesheet in the two cases. If the codelinquent 7 accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable.

4. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, we find that no error has been committed by learned Single Judge while dismissing W.P.(S) No.6895 of 2012 vide order dated 4th December, 2015.

5. There is no substance in this Letters Patent Appeal, which is, accordingly, dismissed. (D.N.Patel, J.) (Shree Chandrashekhar, J.) s.m.