

L. Kumar Vs. State Bank of Mysore, rep.by its Managing Director and Others

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Court : Chennai

Decided On : Aug-10-2016

Judge : B. Rajendran

Appeal No. : W.P.No. 27016 of 2008

Appellant : L. Kumar

Respondent : State Bank of Mysore, rep.by its Managing Director and Others

Judgement :

(Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the order of the 3rd respondent in DPD/1019 dated 09-07-2003; the order of the 2nd in DPD 971/C/1121 dated 18-08-2004; the order of the first respondent in DPD/C.1121/2034 dated 09-02-2005 and the subsequent orders of the 2nd respondent in DPD/C.1121 dated 22- 04-2005 and DPD/C.1121 dated 16-07-2007, quash the same and consequently directing the respondents to fix the pay of the petitioner herein at Rs.15,000/- as basic pay with effect from 09.07.2003 and further directing payment of arrears of pay and other allowances with effect from the said date.)

1. This writ petition has been filed to quash the order of the third respondent in DPD/1019 dated 09-07-2003, the order of the second respondent in DPD 971/C/1121 dated 18-08-2004, the order of the first respondent in

DPD/C.1121/2034 dated 09-02-2005 and the subsequent orders of the second respondent in DPD/C.1121 dated 22.04.2005 and DPD/C.1121 dated 16-07-2007, and to direct the respondents to fix the pay of the petitioner herein at Rs.15,000/- as basic pay with effect from 09.07.2003 and to further direct payment of arrears of pay and other allowances with effect from the said date.

2. The petitioner joined the service of the State Bank of Mysore on 30.05.1974 as Cashier-Clerk and he was promoted as an officer in the Junior Management Grade Scale-I in January 1987 and further promoted as Middle Management Grade-II in the year 1996. When the petitioner was working as Deputy Manager in Sudhamanagar Branch, Bangalore, on 07.01.2000, the third respondent herein placed him under suspension on the ground that certain disciplinary proceedings have been contemplated. Subsequently, charges were framed and an order was passed by the third respondent agreeing with the findings of the Enquiry Officer, and imposing a punishment of removal of service on the petitioner, under Regulation 67(i) of the State Bank of Mysore Officers' Service Regulations, 1979 and on appeal, the Appellate Authority modified it to one of a reduction to a lower cadre ie., JMGS-I at the minimum scale in terms of Regulation 67(g) of the State Bank of Mysore Officers' Service Regulations, 1979. The petitioner states that one Suresh Aditya, working as Branch Manager of the same Bank, and was subjected to suspension during the same period and absorbed in service, was punished, but he was given the penalty of reduction in rank from Senior Management Grade IV to Middle Management Grade III and placed at Rs.15,760/- the highest pay in time scale applicable to Middle Management Grade-III and only two increments were reduced, whereas in the case of the petitioner herein, originally the petitioner was removed from service, and in the appeal the Appellate Authority modified it to one of a reduction to a lower cadre ie., JMGS-I at the minimum scale in terms of Regulation 67(g) of the State Bank of Mysore Officers' Service Regulations, 1979, and thus there is discrimination in respect of the petitioner herein.

3. The learned Senior Counsel appearing for the petitioner, submits that though the petitioner admits the punishment, there is disparity between the punishment imposed upon the petitioner and the said Suresh Aditya, Branch Manager. The petitioner has retired from service and the reduction of increments will affect very

much in his pension. The learned Senior Counsel further submits that even as per Regulation 67(g) of the State Bank of Mysore Officers' Service Regulations, 1979, there may be reduction to a lower grade and not otherwise, but here in this case, the Disciplinary Authority has combined the reduction to the lower stage along with minimum time scale of pay. Therefore, it amounts to double punishment and it is discriminatory. The learned Senior Counsel would also submit that as per the judgment of the Hon'ble Supreme Court in *Rajendra Yadav v. State of Madhya Pradesh and others*, reported in (2013) 3 SCC 73, there should be parity with co-delinquents with regard to punishment. When a harsher punishment is given to one person and lesser punishment is given to another, it is not acceptable, according to the above judgment of the Hon'ble Supreme Court. Stating so, the learned Senior Counsel appearing for the petitioner submits that the case of the petitioner may be considered to the extent of rectifying the said parity.

4. Contrarily, the learned counsel for the respondents would only contend that there is distinction between the very charge itself. The petitioner being a Deputy Manager, has got more responsibility, whereas the Branch Manager was not involved in the day to day affairs and therefore, the punishments between these two, are distinguishable. Therefore, according to the learned counsel for the respondents, the impugned orders passed by the authorities, need not be interfered with by this Court.

5. Heard the learned counsel on either side and perused the materials available on record.

6. On a careful perusal of the argument advanced by the learned senior counsel appearing for the petitioner, one thing is certain, i.e., both the Deputy Manager and the Branch Manager were involved in the offence. No doubt the Branch Manager is a supervisory authority and he is not involved in the day to day affairs, but as a superior officer, his responsibility is more to check any mistake. If that superior person has got lesser punishment, a person working under him though it might be his direct work, should not be discriminated, by imposing more punishment. In this case, according to the petitioner, he retired from service. He has been given punishment of reduction in the rank, which was also accepted. But the punishment

in respect of fixing the minimum time scale of pay as per Regulation 67(g) of the State Bank of Mysore Officers' Service Regulations, 1979, is not in accordance with law and it would affect 24 increments, according to the learned Senior Counsel. It will definitely have impact on his pension. The petitioner has also undergone ordeal for so many years and he also retired from service. As held by the Hon'ble Supreme Court in the judgment cited supra, there should not be any discrimination between the co-delinquents. Paragraphs 8 to 12 of the said judgment reads as under:

8. We have gone through the inquiry report placed before us in respect of the appellant as well as Constable Arjun Pathak. The inquiry clearly reveals the role of Arjun Pathak. It was Arjun Pathak who had demanded and received the money, though the tacit approval of the appellant was proved in the inquiry. The charge levelled against Arjun Pathak was more serious than the one charged against the appellant. Both appellants and other two persons as well as Arjun Pathak were involved in the same incident. After having found that Arjun Pathak had a more serious role and, in fact, it was he who had demanded and received the money, he was inflicted comparatively a lighter punishment. At the same time, appellant who had played a passive role was inflicted with a more serious punishment of dismissal from service which, in our view, cannot be sustained.

9. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

10. The principle stated above is seen applied in few judgments of this Court. The earliest one is Director General of Police and Others v. G.Dasayan (1998) 2 SCC 407, wherein one Dasayan, a Police Constable, along with two other constables

and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India.

11. In *Shaileshkumar Harshadbhai Shah* case, (2006) 6 SCC 548, the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.

12. We are of the view the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-delinquent Arjun Pathak and at the same time, harsher punishment to the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re-instated from the date on which Arjun Pathak was re-instated and be given all consequent benefits as was given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs.

7. In such view of the matter, this writ petition is allowed to the limited extent that the punishment imposed upon the petitioner shall be only with respect to reduction in the cadre as held by the Disciplinary Authority, the third respondent herein, and the punishment imposed in respect of fixing the minimum time scale of pay alone is set aside. No costs.