Arun Kumar Vs. The Singhbhum Central Co Operative Bank Limited Th Its Administrator Cum Deputy Dev Commissioner Anr

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Court : Jharkhand

Decided On : Dec-04-2015

Appellant : Arun Kumar

Respondent : The Singhbhum Central Co Operative Bank Limited Th Its Administrator Cum Deputy Dev Commissioner Anr

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S.) No. 6895 of 2012 .... Arun Kumar, son of Shri Shashi Bhushan Prasad, resident of House No. N-10, Shiv Ganga, Sonari, P.O. & P.S.-Sonari, Jamshedpur, District- Singhbhum East ... Petitioner Versus 1. The Singhbhum Central Co-operative Bank Limited through its Administrator cum Deputy Development Commissioner, West Singhbhum, Chaibasa.

2. Managing Director, The Singhbhum Central Co-operative Bank Ltd., Ranchi. ... Respondents ... CORAM:HON'BLE MR. JUSTICE PRAMATH PATNAIK ... For the Petitioner : Mr. Ashok Kumar, Adv. Mr. Rakesh Ranjan, Adv. For the Respondents : Mr. Mrinal Kanti Roy, Adv. .... CAV on 31st October,2015 Pronounced on :

4. 12 /2015 In the accompanied writ application, the petitioner has, inter-alia, prayed for issuance of appropriate writ setting aside the order issued by the respondent no. 2 vide Memo dated 07.02.2006 pertaining to dismissal from the

services.

2. Sans details, the facts as disclosed in the writ application, in a nutshell is that while the petitioner was working as Assistant at Gamharia Branch of the Singhbhum Central Co-operative Bank Limited certain allegations were levelled against the petitioner and the petitioner was placed under suspension vide memo dated 26.10.04. Manager audit of the Bank was appointed as conducting officer. While the petitioner was under suspension the petitioner was served with a charge-sheet and the said charge-sheet related to fraudulent withdrawal from pay orders without crediting the pay orders. After superannuation of the Conducting Officer new Conducting Officer vide memo dated 07.09.05 was appointed. Even after appointment of new Conducting Officer no notice whatsoever was issued to the petitioner fixing the date of inquiry in the said departmental proceeding. During these period the father of the petitioner was suffering from illness, so he went to Patna to attend his father. Subsequently, the petitioner came to know a notice had been 2 issued to his Chaibasa address and that notice had also been published in the local dailies of the area, however, the petitioner was not in receipt of any notice. The Conducting Officer without hearing the petitioner submitted an enquiry report on the basis of the documents available in the Bank. After submission of the enquiry report, no second show-cause notice was issued to the petitioner and without providing an opportunity of hearing the respondents issued memo dated 07.02.2006 imposing the major penalty of dismissal from services. After having come to know about the order of dismissal from services, the petitioner submitted a representation praying, inter-alia, for setting aside the order of dismissal and reinstating him back in the service. However, the said representation did not evoke response from the respondents.

3. Being aggrieved by the impugned order of dismissal from services vide memo dated 07.02.2006 issued by respondent no.

2. , the petitioner left with no other alternative efficacious remedy has invoked the extraordinary jurisdiction of this Court under article 226 of the Constitution of India.

4. Per contra, a counter-affidavit has been filed on behalf of the respondents controverting the averments made in the writ application. In the counter-affidavit it

has, inter-alia, been submitted that after absorption, the petitioner was posted at Gamharia Branch but soon after his posting at Gamharia branch his service was placed at Golmuri branch on deputation vide order dated 22.08.2000 annexed at Annexure-A to the counter-affidavit.

5. Despite necessary efforts made by the bank, the petitioner did not appear before the Conducting Officer and the respondent-Bank published a notice in the local dailies having circulation in the area vide Annexure-B to the counter-affidavit. Moreover, the bank was not supposed to issue notice on the permanent address to the petitioner. Notices had been issued to on the last known address of the petitioner and on receiving no response notices had been published in the local 3 dalies. Therefore, the Conducting Officer had no option but to proceed ex-parte. It has also been submitted even those who had cleared the cheque bearing single signature have been proceeded against in the departmental proceeding and punished accordingly and Mr. Akhtar Hussein, the then Branch Manager of Golmuri Branch has also been punished. Since the petitioner having been dismissed from service, the respondent had no authority to entertain the representation of the petitioner seeking reinstatement in service.

6. Heard Mr. Ashok Kumar, learned counsel appearing for the petitioner and Mr. Mrinal Kanti Roy, learned counsel appearing for the respondents.

7. Learned counsel for the petitioner during course of hearing has referred supplementary affidavit filed on 13.05.2013 wherein it has been submitted that after retirement of conducting officer one Shri Nagendra Prasad, In-charge Branch Manager of the Chaibasa was made the Conducting Officer and the said Nagendra Prasad was Assistant who was officiating as In-charge, Branch Manager. Thus the Conducting Officer was of the rank as that of the petitioner. The Conducting Officer must be of a higher rank than that of the petitioner. In the instant case this principle has been violated. On this ground alone the entire departmental proceeding is vitiated. Learned counsel for the petitioner has also referred the rejoinder filed on 24.07.2013 wherein it has been submitted that had opportunity of hearing been given to the petitioner, he would have putforth his stand before Conducting Officer. In the absence of opportunity of hearing relevant

aspects have not been gone into by the Conducting Officer. Moreover, it has been submitted in the rejoinder that no departmental proceeding had been initiated against Mr. Akhtar Hussein nor any punishment has been issued to him. In fact, the petitioner has been singled out and punished. Learned counsel for the petitioner has further submitted that the departmental proceeding and the order of dismissal is disproportionate to the offence alleged to have been committed by the petitioner. 4 Learned counsel for the petitioner further submits that the entire departmental proceeding has been vitiated since no show-cause notice has been issued to the petitioner nor the inquiry report has been supplied to the petitioner prior to infliction of punishment. Learned counsel for the petitioner further reiterates that the officer of the same rank cannot be an inquiry officer under the Service Rules Central Cooperative Bank's in Bihar. To buttress his submissions learned counsel for the petitioner referred the decision reported in (2008) 8 SCC236 8. Learned counsel for the respondent-Bank vehemently submitted that petitioner did not appear before the Conducting Officer despite best efforts of the bank to get notice served upon him, the respondent bank got paper publication in local daily having circulation in the area vide Annexure-B to the counter-affidavit. The disciplinary authority has passed the order of punishment of dismissal from services which is quite commensurate to the proved charges therefore no interference is called for by this Hon'ble Court so as to invoke the extraordinary jurisdiction under article 226 of the constitution.

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 ex-parte 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 no right to continue in the 5 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. (III) In the case of Regional Manager, U.P.S.R.T.C., Etawah and Ors. V. Hoti Lal and another reported in AIR 2003 SC1462the Hon'ble Apex Court held that:

10. It needs to be emphasized that the Court or Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment does not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. (See Alexander Machinery Dudley Ltd. v. Crabtree (1974 LCR120. A mere statement that it is disproportionate would not suffice. A party appearing before a Court, as to what it is that the Court is addressing its mind. It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trust- worthiness is must and

unexceptionable. Judged in that background, conclusions of the Division Bench of the High 6 Court do not appear to be proper. We set aside the same and restore order of learned Single Judge upholding order of dismissal. Further in the case of Suresh Pathrella v. Oriental Bank of Commerce reported in 2007(1)SCC(Cri)621 the Apex Court Held as under:

21. In Chairman and MD, United Commercial Bank v. P.C. Kakkar, this Court said in para 14 at SCC pp. 376-77 as under :

14. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to project the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court In Disciplinary Authority-cum- Regional Manager v. Nikunja Bihari Patnaik , It is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court".

2. In the present case the appellant acted beyond his authority in breach of bank's Regulation. Regulation 3(1) of the bank's Regulation required that every officer of the bank at all times take all possible steps to protect the interest of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which will be unbecoming of a bank officer. It is a case of loss of confidence in the officer by the bank. In such a situation, it would be a futile exercise of judicial review to embark upon the decision of the disciplinary authority removing the officer from service, preceded by an enquiry, and to direct the bank to take back the officer in whom the bank has lost confidence, unless the decision

to remove the officer is tainted with mala fides, or in violation of principles of natural justice and prejudice to the officer is made out. No such case is made out in the present case. In the case of Bank of India & Anr. v. Degala Suryanarayana reported in 1999(5)SCC762Hon'ble Apex Court held as under:

7. 11 Strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of mala fides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings. The Court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In Union of India v. H.C. Goel the Constitution Bench has held :- "The High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not." 13 In the case at hand a perusal of the order dated 5.1.1995 of the disciplinary Authority shows that it has taken into consideration the evidence, the finding and the reasons recorded by the Enquiry Officer and then assigned reasons for taking a view in departure from the one taken by the Enquiry Officer. The Disciplinary Authority has then recorded its own findings setting out the evidence already available on record in support of the finding arrived at by the Disciplinary Authority. The finding so recorded by the Disciplinary Authority was immune from interference within the limited scope of power of judicial review available to the Court. We are therefore of the opinion that

the learned Single Judge as well as the Division Bench of the High Court were not right in setting aside the finding of the Disciplinary Authority and restoring that of the Enquiry Officer. The High Court has clearly exceeded the bounds of power of judicial review available to it while exercising writ jurisdiction over a departmental disciplinary enquiry proceeding and therefore the judgments of the learned Single Judge and the Division Bench cannot be sustained to that extent. The appeal filed by the bank of India deserves to be allowed to that extent.

10. As a cumulative effect of the facts, reasons and judicial pronouncements and as the logical sequitor to the submissions made in 8 the foregoing paragraphs the impugned order of punishment issued vide Memo dated 07.02.2006 does not warrant any interference of this Court.

11. Accordingly, the writ petition is dismissed being devoid of merit. (Pramath Patnaik, J.) The Jharkhand High Court, Ranchi Dated: /12/ 2015 MM /AFR/NAFR