M. Marimuthu Vs. the General Manager (D and Pb) and

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Court : Chennai

Decided On : Apr-30-2010

Judge : M. Jeyapaul, J.

Acts : State Bank of India Officers Service Rules

Appeal No. : W.P. No. 9145 of 2001

Appellant : M. Marimuthu

Respondent : The General Manager (D and Pb) And; the Chief General Manager, (Appellate Authority), State Bank of

Advocate for Def. : P.D. Adikesavalu, Adv.

Advocate for Pet/Ap. : A.V. Subramanian, Sr. Counsel for; P. Tamilavel, Adv.

Disposition : Petition allowed

Judgement :
ORDER

M. Jeyapaul, J.

1. The petitioner was serving as Assistant Manager, State Bank of India at Avinashi during the year 1996. During that point of time, he was looking after agricultural crop loans. He was transferred to Mettupalayam Branch as Assistant

Manager in July 1996. ON 15.7.1996, the Branch Manager, Avinashi Branch sent a communication to the controlling authority alleging certain irregularities in the loan sanctioned during his tenure at Avinashi Branch. One Mr. Ramakrishnan, Manager, Ganapathy Branch, on deputation, investigated the matter. The petitioner was placed under suspension on 13.2.1997. A memo was issued calling for explanation from the petitioner on 23.2.1998. The petitioner sent a detailed reply on 8.5.1998. A charge memo was issued by the Deputy General Manager, Coimbatore on 9.6.1999. The Deputy General Manager ordered enquiry on 4.8.1999. An enquiry was conducted on 25.8.1999 and the same was concluded in the month of December 1999. The enquiry officer submitted his report on 24.9.2000. The petitioner, on receipt of a copy of the report, submitted his explanation on 5.6.2000. The first respondent imposed the punishment of compulsory retirement vide his proceedings dated 21.10.2000.

2. It is contended by the petitioner that the entire proceedings are grossly vitiated by serious irregularities which go to the root of the matter. The authority did not examine any witness and as such the documents marked as prosecution exhibits should not have been relied upon. It is contended that the impugned findings are perverse. NO reasonable man could have come to such a conclusion, it is submitted.

3. The respondents filed counter stating that the enquiry was conducted properly after giving opportunity to the petitioner. The statements of the petitioners recorded during interrogation was marked as Ex.P2. After a detailed examination of the documents produced during the course of enquiry, the enquiry officer submitted his report on 29.4.2000. The finding is that the charges had been proved. A copy thereof was furnished to the petitioner. The first respondent, who is the appointing authority, agreed with the conclusions of the Enquiry Officer and recommended to the second respondent for imposition of penalty of compulsory retirement. As per the State Bank of India Officers Service Rules, the second respondent imposed the punishment of compulsory retirement and treated the period of suspension as such. Respondents 1 and 2 have passed a well considered order strictly in accordance with law and in consonance with the principles of natural justice after proper application of mind to relevant materials

borne out by records. It is further submitted that the petitioner, during the course of investigation, admitted in clear terms the gross irregularities and lapses committed by him. His admission was corroborated by other documentary evidence borne out by records. The petitioner did not dispute the written statement given by him, but, his contention that he was under immense mental pressure and was in a depressed state of mind while making those statements was not established. The penalty imposed on the petitioner is commensurate with the gravity of misconduct committed by him. Further, such a penalty is absolutely necessary to deter the recurrence of such abuse of official position and wilful dereliction of duty. Otherwise, confidence in the public on the functioning of the nationalised will be shaken. Therefore, the respondents pray for dismissal of the writ petition filed by the petitioner.

4. Learned Senior Counsel appearing for the petitioner would submit that principles of natural justice were violated by the respondents inasmuch as the documents sought for by the petitioner were not produced. The borrowers, who gave statements, were not examined by the bank. Inspite of the fact that the petitioner was not the sanctioning authority, the charge memo would misread that the petitioner was the loan sanctioning authority. The finding rendered by the enquiry officer is inchoate. Neither the author of Ex.P1 Mr. A.R. Subramanian nor the investigating official Mr. V. Ramakrishnan, who submitted the report, Ex.P2 alongwith the enclosures was examined. The documents, which were not marked through the official concerned to establish the same, were simply referred to not only by the enquiry officer but also by the disciplinary authority and the appointing authority viz., respondents 2 and 1. Though the signature affixed by the petitioner in the alleged confession was admitted by the petitioner, he has come out with certain reasons for putting his signature. It is his submission that the respondents failed to appreciate that the content of the alleged confession was not admitted by the petitioner. Even in the explanation submitted by the petitioner, borrowal from three persons, who were close family friends, alone was admitted. But, the bank failed to establish that such borrowal had any connection with the loan sanctioned by the bank to those borrowers. It is his last submission that the punishment awarded also is not proportionate to the charges allegedly established.

5. Learned Counsel appearing for the respondents would vehemently contend that in enquiry proceedings, it is not always necessary that the author of the statement recorded by the officials of the bank shall be examined in order to prove the content of the statement exhibited during the course of enquiry. It is his submission that the petitioner has unambiguously admitted the fact that he borrowed loan from the borrowers of bank and thereby he placed himself under pecuniary obligation embarassing the banking industry. It is his further submission that even in the explanation submitted by the petitioner, he has admitted part of the charges levelled as against the petitioner. The documents produced on the side of the bank corroborated the admissions made by the petitioner both in his confession made prior to the proceedings initiated and also in the explanation submitted by him. He would submit that the case projected by the bank was not at all denied by the petitioner during the course of enquiry. The petitioner failed to examine the bank officials to challenge the content of the statement recorded from him. Even if the court comes to the conclusion that one of the charges stood established, the punishment awarded by the appointing authority cannot be reduced. The last submission made by the learned Counsel appearing for the respondents is that in case the court comes to the conclusion that there is a defective enquiry, the respondents may be directed to conduct the enquiry from the stage at which the defect is pointed out by the court.

6. As rightly submitted by the learned Senior Counsel appearing for the petitioner, Exs.P1 to P27 were simply exhibited by the respondent bank without associating the author thereof to speak to the content of those documents. Ex.P2 refers to not only the statement alleged to have been obtained from the petitioner but also the statements recorded from various borrowers. Quite unfortunately, the enquiry officer had not thought it fit to examine the investigating official Mr. Ramakrishnan, who reportedly recorded the statements not only from the delinquent officer but also from the borrowers.

7. Unless the authors of those statements are examined to substantiate the fact that the statements were recorded by the investigating official, no reliance can be placed on those statements even in disciplinary proceedings. The petitioner has been completely prejudiced on account of the fact that those documents were

simply exhibited by the respondent bank during the course of enquiry without giving an opportunity to the petitioner to subject the authors of those statements to cross-examination.

8. First two charges would read that the petitioner, who sanctioned and disbursed ACC loan of Rs. 15,000/- each to Smt. Karuppathal, Shri Periya Karuppasamy and Shri Chinna Karuppasamy, borrowed a sum of Rs. 15,000/- each from those borrowers and thereby he placed himself under pecuniary obligation which is against the Service Rules of the bank.

9. All borrowals are not prohibited under the Service Rules of the bank. The petitioner has explained that Karuppathal was his landlady and as such she was his family friend. M/s. Periya Karuppasamy and Chinna Karuppasamy were her brothers. As he was residing with them for more than four years, he had developed a close family relationship with them. They were of mutual help at times of need, it has been explained. It has been further stated by the petitioner that the borrowal from them has no connection with his official duty. The transaction was clinched by him only on account of his personal and family relationship with them.

10. There is no dispute to the fact that borrowal from close relationship by an official of the bank is not prohibited under the Service Rules.

11. To implicate an official on the ground that he placed himself under pecuniary obligation, the bank should establish that the pecuniary obligation incurred by the bank official has proximate connection with his official function in the bank.

12. Though the borrowals from those three persons were admitted, the respondents failed to establish during the course of enquiry that those borrowals have direct proximity with the loan sanctioned to those borrowers.

13. It has been mentioned in the charge memo that the petitioner not only sanctioned but also disbursed ACC loans to those borrowers. Very curiously, the enquiry officer as well as the appointing authority would observe that the term 'sanction' includes recommendation, sanction and disbursement of loan. I am unable to subscribe to such a broader definition given to the word 'sanction' by the

enquiry officer as well as the appointing authority. If such a meaning is attributed, the charge would not read that the petitioner not only sanctioned the amount but also disbursed the loan amount. Even otherwise, it is a settled position of law that the charge shall be specific and shall not be vague.

14. The admitted position is that the petitioner was not the sanctioning authority. As Agricultural Officer, he is supposed to recommend sanction of loan to the borrowers. The recommendation may or may not be considered favourably by the sanctioning authority. Even after sanction, if the sanctioning authority comes to a decision that the disbursement of loan may not be conducive to the interest of the bank, he may stop the disbursement of loan to the borrowers. Therefore, in my considered opinion, recommendation is totally different from sanction and sanction is totally different from disbursement of loan. As rightly pointed out by the learned Senior Counsel appearing for the petitioner, an unspecific allegation has been made as against the petitioner that he sanctioned and disbursed the loan to those borrowers.

15. There is nothing on record to show that the borrowal of loan from those borrowers by the petitioner synchronizes with the sanction and disbursement of the loan by the bank. The bank has come out with a case that there was a thorough investigation into the lapses committed by the petitioner beforeever he was charge sheeted. The day on which the loan was obtained by those borrowers was not specifically referred to in the charge memo. As already pointed out by this Court, Karuppathal, Periya Karuppasamy and Chinna Karuppasamy, who had allegedly given statements before the investigating officials that they lent money to the petitioner on sanction and disbursement of the loan by the Bank, were not examined before the enquiry officer. When the petitioner has come out with a case that he borrowed loan from those persons using his family relationship with them, the bank is bound to establish that the loan was obtained by the petitioner from those borrowers misusing his official position as Agricultural Officer of the bank. Under such circumstances, it cannot be construed that the petitioner placed himself under pecuniary obligation misusing his official position and embarassing the status of the bank.

16. The third charge would read that petitioner delayed renewal of ACC limit to one S.N. Subramanian though he had already obtained ACC blank renewal documents duly signed by him. The delaying tactics adopted by the petitioner in disbursement of loan to S.N. Subramanian forced him to seek for no due certificate to enable him to avail credit facility from Indian Bank. The further allegation is that the petitioner, who was pleased to issue no due certificate to S.N. Subramanian facilitating him to avail the credit facility extended by another bank, misused the blank signed documents already obtained from him. The serious charge is that the petitioner, having misused the blank signed documents and vouchers already obtained from S.N. Subramanian, disbursed the loan amount in his name.

17. The petitioner comes out with an explanation that there were large number of I.R.D.P and agricultural borrowers in Avanashi Branch and there was no practice of maintaining any record for issuance of 'no due certificate' to the borrowers. He would further contend that no due certificate would have been issued to S.N. Subramanian at his request. At the time of heavy work pressure, the loan was disbursed as per the branch practice without obtaining the 'no due certificate'. But, he categorically says that he has not misused the loan amount meant for S.N. Subramanian.

18. In this context, the learned Counsel appearing for the respondents would submit that there is an admission by the petitioner that he did issue 'no due certificate' to S.N. Subramanian.

19. The explanation submitted by the petitioner was conveniently truncated to suit the case of the respondents. On going through the whole explanation submitted by the petitioner responding to the third charge, I find that the petitioner had not come out with any categorical version that he did issue 'no due certificate' to S.N. Subramanian. The very references made by him that there were large number of IRDP and agricultural borrowers in Avanashi and surrounding villages, that there was no practice of maintaining any records for issuance of 'no due certificates' to the borrowers and that 'no due certificate' would have been issued to S.N. Subramaian, would go to show that he was not certain that he issued 'no due

certificate' to S.N. Subramanian. To fasten the liability on the delinquent, the admission should be specific. In the absence of specific admission, the burden heavily lies on the bank to establish the charge levelled against the delinquent. Neither S.N. Subramanian nor any of the officials from Indian Bank, was examined to establish the said charge.

20. Of course, the learned Counsel appearing for the respondents would refer to a decision in State Bank of India v. Tarun Kumar Banerjee : (2000) 8 SCC 12 wherein it has been held that a customer of a bank need not be involved in a domestic enquiry as such a course would not be conducive for proper banker-customer relationship and, therefore, would not be in the interest of the bank.

21. That was a case where a cashier of a bank retained the excess money given inadvertently by a customer. Two officers, who witnessed the incident, have given evidence during the course of enquiry conducted by the bank. Their evidence established the fact that the petitioner had retained the excess money given by the customer. Further, the delinquent failed to adduce any defence evidence disputing the veracity of the evidence by those bank officials. In such circumstances, the Industrial Tribunal was pleased to reverse the finding of guilty reached by the enquiry officer and set aside the consequential order of dismissal passed by the disciplinary authority on the ground that the bank had not produced all available evidence. The Supreme Court has rendered the aforesaid decision in that background of the case. But, in the instant case, none of the officials was examined to establish the charges levelled as against the petitioner. None of the borrowers, who had allegedly lent money to the petitioner, was also examined to establish the case of the bank. The bank is not supposed to just exhibit voluminous documents without substantiating the same through the witnesses concerned on the ground that summoning a customer would not be conducive to the banker-customer relationship. Therefore, the aforesaid decision of the Supreme Court cannot be usefully cited on the side of the respondents.

22. When the petitioner stoutly denied the allegation that he himself utilised the loan amount raised in the name of S.N. Subramanian, in all fairness, the bank should have examined S.N. Subramanian to establish such a serious charge

levelled as against the petitioner. The non-examination of Mr. S.N. Subrmanian goes to the root of the case and as a result of which charge number 3 stands not established. The enquiry officer, in the absence of any evidence to establish such a charge, arrived at a decision that charge number 3 also stood established.

23. Charge number 4 would read that the petitioner forged the loan documents in respect of ACC loans sanctioned to Smt.Marathal and Smt.Palaniammal. The serious charge is that the petitioner misappropriated the entire loan amount sanctioned to them. The further allegation is that those borrowers were not at all engaged in any agricultural activities whereas agricultural loan was sanctioned in their names.

24. Though the investigating officials examined Marathal and Palaniammal during the course of examination and recorded their statements, they were not examined during the course of enquiry. In the absence of examination of the authors of those statements, the statements exhibited during the course of enquiry before the enquiry officer only attains the value of trash and it cannot have any evidentiary value. In the absence of any evidence from those two persons whose names were allegedly misused by the petitioner and also in the absence of any other material to substantiate the charge, the enquiry officer comes to a decision that the said charge also was established. The disciplinary authority as well as the appointing authority have simply gone by the decision arrived at by the enquiry officer without any foundation.

25. Charge number 5 would read that the petitioner sanctioned the ACC loan of Rs. 10,000/= to Smt.Meenakshi and renewed the same subsequently for Rs. 10,000/= even though the borrower had no agricultural lands. As already pointed out by me, the petitioner was not the sanctioning authority. Meenakshi was not examined to establish that she had no agricultural lands. Independently the bank would have established that Meenakshi did not have agricultural land. No substantial evidence is forthcoming to establish that charge also. As far as the second limb of charge number 5 that the petitioner failed to conduct a pre and post inspection, the enquiry officer himself had found that the said limb of the charge was not established. The aforesaid discussion with respect to charge number 5

would also cover charge number 6. The only difference is that the borrower under charge number 6 was one A.Shanthi.

26. A very serious allegation is made as against the petitioner under charge number 7 that the petitioner destroyed ACC transaction sheets relating to certain loan accounts and he also resorted to manipulation of those accounts and ultimately appropriated the entire loan proceeds. The account holders viz., N.Karumanda Gounder, Shri.S.N.Subramanian and Smt.Masariathal were not examined during the course of enquiry. Not even a scrap of evidence is mobilised to establish that the petitioner behaved improperly, destroyed the ACC transaction contents, manipulated those documents and misappropriated the loan proceeds.

27. The learned Counsel appearing for the respondents would submit that the entire allegations made by the bank as against the petitioner were admitted unambiguously by the petitioner during the course of investigation done by Mr. V. Ramakrishnan.

28. The signature in the said statement given to Mr. Ramakrishnan alone was admitted by the petitioner. The admission of the signature in a particular document cannot be considered as the admission of the content of the document. When the content has not been admitted by the author of a document, the burden lies heavily on the person who wants to establish that the signatory of the document was the author of the content of the said document also. Of course, the petitioner has come out with a cock and bull story that he was not in a conscious state at the time when he subscribed his signature in the statement recorded by Mr. V. Ramakrishnan. Considering the position he occupied in the bank and lack of material to show that he was not in the conscious state at the time when he subscribed his signature one can safely come to a conclusion that the signature was affixed by the petitioner in a conscious state of mind. When the petitioner has taken a stand that he simply subscribed his signature but he was not the author of the stuff written in the document, the bank should have examined the scribe as well as Mr. V. Ramakrishnan in whose presence the statement was allegedly recorded by the scribe.

29. In this context, it is relevant to refer to the decision of the Constitution Bench of the Supreme Court in Jagdish Prasad Saxena v. State of Madhya Bharat (now Madhya Pradesh) AIR 1961 SC 1070 wherein it has been held as follows:

The departmental enquiry is not an empty formality; it is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such enquiry it would not be fair to strain facts against the appellant and to hold that in view of the admissions made by him the enquiry would have served no useful purpose. That is a matter of speculation which is wholly out of place in dealing with cases of orders passed against public servants terminating their services.

30. That was a case where the statement given by the delinquent during the course of previous enquiry was sought to be made use of by the Department. Certain admissions were allegedly made by the delinquent in the said enquiry. The Supreme Court, considering the seriousness of the proceedings, held that on the basis of the admissions alleged to have been made by the delinquent in the previous enquiry, he cannot be clamped with termination of service.

31. The enquiry officer, the disciplinary authority and the appointing authority had largely banked on the statements recorded during the course of investigation by the investigating official Shri. V. Ramakrishnan and the statement given by the delinquent. But, unfortunately, those materials cannot be construed as substantial evidence to rope in the delinquent to the serious charges levelled against him.

32. The Supreme Court in a Sur Enamel and Stamping Works (P) Ltd. v. Their Workmen : 1964 SCR Volume 3 pg 616 has held as follows:

An enquiry cannot be said to have been properly held unless (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined--ordinarily in the presence of the employee--in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report.

33. The employee proceeded against should be informed of in uncertain terms the charges levelled against him. All the witnesses should be examined only in the presence of the employee so that he will have an opportunity to witness the demeanor of the witnesses in order to subject them to cross-examination effectively. The delinquent should be afforded with a fair opportunity to subject all the witnesses on the side of the Department to cross examination. The delinquent also should have been allowed to examine witnesses on his side. The findings recorded by the enquiry officer should stand to reason.

34. In the instant case, unfortunately, the bank has proceeded that the delinquent employee had admitted the entire charge levelled as against him. The admission alleged to have been made by the officer also was not established as per the procedure known to law.

35. As regards the necessity to examine the important witness during the course of enquiry, this Court in Erajan P. v. the Deputy Inspector General of Police : 2005 (4) CTC 202 has observed as follows:

The enquiry officer should have examined the said Kulandaivelu or she should have allowed the petitioner to examine Kulandaivelu as defence witness. Such non-examination of the important and indispensable witness makes the second charge as baseless. Further, in our opinion, in the wake of non-examination of Kulandaivelu as prosecution witness, the enquiry officer should have permitted the petitioner to examine Kulandaivelu as defence witness. But the claim of the petitioner was denied. Such denial, closed the door of both sides, namely cross examination or chief examination of Kulandaivelu by the petitioner and prevented him to prove his case and therefore, such denial, is a clear violation of principles of natural justice, we are of the view that the finding of the enquiry officer and the punishment imposed thereupon as well as the order of the Tribunal have to be set aside. Accordingly they are set aside.

36. In the enquiry that was held against the employee in the said case, one Mr. Kulandaivelu was considered to be the star witness. But, the prosecution failed to examine the said Kulandaivelu on its side. The Department has gone a step further and refused to accede to the request of the delinquent employee to give an

opportunity to him atleast to examine the said witness. In that context of the matter, this Court made an observation that such a denial completely seals the chief examination and cross-examination of a material star witness who would have highlighted the entire case relied upon by the prosecution.

37. In the instant case, leave alone the material star witnesses, the bank thought it fit not to examine even a single witness on its side at least to speak about the documents projected by them during the course of enquiry. Therefore, it is not a case of defective enquiry as contended by the learned Counsel appearing for the respondents. It can be safely construed that there was no enquiry as against the delinquent officer to conclude that he was the culprit of the charges levelled as against him.

38. The Supreme Court has succinctly observed the nature of evidence that would be required to clamp an erring official during the course of departmental enquiry. In M.V. Bijlani v. Union of India and Ors. : (2006) 5 SCC 88, the Supreme Court has held as follows:

It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e., beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on he basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

39. The disciplinary proceedings are considered as quasi-criminal proceedings inasmuch as the moment the charges are established, even the corporal punishment of dismissal from service is awarded to the employee concerned. But, in quasi-criminal proceedings, the Department is not supposed to prove to the hilt

the charges levelled against the employee beyond reasonable doubt. The concept of proving the case beyond doubt is alien to disciplinary proceedings. But, like a civil matter, the Department should come out with all evidence to establish that there is preponderance of probability to nail the erring employee on the charges levelled as against him.

40. The learned Counsel appearing for the respondents referred to a decision of the Supreme Court in Firestone T. and R. Co. v. Workmen : AIR 1968 SC 236 wherein, it has been observed by the Supreme Court, referring to the ratio already laid by it, as follows:

These cases no doubt lay down that before a delinquent is asked anything, all the evidence against him must be led. This cannot be an invariable rule in all cases. The situation is different where the accusation is based on a matter of record or the facts are admitted. In such a case it may be permissible to draw the attention of the delinquent to the evidence on the record which goes against him and which if he cannot satisfactorily explain must lead to a conclusion of guilt. In certain cases it may even be fair to the delinquent to take his version first so that the enquiry may cover the point of difference and the witnesses may be questioned properly on the aspect of the case suggested by him. It is all a question of justice and fair play. If the second procedure leads to a just decision of the disputed points and is fairer to the delinquent than the ordinary procedure of examining evidence against him first, no exception can be taken to it. It is, however, wise to ask the delinquent whether he would like to make a statement first or wait till the evidence is over but the failure to question him in this way does not ipso facto vitiate the enquiry unless prejudice is caused. It is only when the person enquired against seems to have been held at a disadvantage or has objected to such a course that the enquiry may be said to be vitiated. It must, however, be emphasised that in all cases in which the facts in controversy are disputed the procedure ordinarily to be followed is the one laid down by this Court in the cited cases. The procedure of examining the delinquent first may be adopted in a clear case only.

41. The question that arose for consideration in the said case was as to who should be first examined during the course of departmental enquiry. The Supreme Court holds ultimately that it is all a question of justice and fair play. If the facts emphasised by the Department are not controverted by the delinquent officer, there is nothing wrong in first asking the delinquent to get into the box. But, in cases where the controversy arisen out of the charges levelled against the officer is seriously disputed, the Department should first examine its witnesses and mark its documents so that the delinquent will have a fair view of the case of the Department in order to satisfactorily explain during the course of cross-examination of those witnesses.

42. Very similar is the dictum laid down by the Supreme Court in Central Bank of India v. Karunamoy : AIR 1968 SC 266. In the said case, it appears that the workman previously admitted the truth of the allegations levelled against him. There was also a categorical admission in the explanation submitted by the workman responding to the charge memo issued to him. Ignoring the above fact situation, it appears that the Labour Court chose to hold that the principles of natural justice were not adhered to inasmuch as the Department did not think it fit to lead its evidence first. The Supreme Court held that there was no reason for the management to enquire into in the face of the categorical admission made by the delinquent workman and that therefore, the comment made by the Labour Court was quite uncharitable. Those two decisions have no relevance to the facts of this case where the question as to whose side the witnesses should have been examined was not the point in controversy.

43. As regards the scope of intervention of the writ court with respect to the punishment awarded by the disciplinary authority or the appointing authority as the case may be, the learned Counsel appearing for the respondent bank submitted the following decisions:

1) Union of India v. Sardar Bahadur : (1972) 4 SCC 618.

2) Janatha Bazar v. Secretary Sahakari Noukarara Sangha : (2000) 7 SCC 517.

3) Regional Manager Upsrtc Etawah v. Hoti Lal : (2003) 3 SCC 605.

4) State Bank of india and Ors. v. Ramesh Dinkar Punde : (2006) 7 SCC 212

5) State Bank of India and Ors. v. S.N. Goyal : AIR 2008 SC 2594.

44. It has been held therein that ordinarily, the court shall exhibit restraint in interfering with the quantum of punishment awarded by the authority concerned. Fixing the quantum of punishment falls within the realm of the authority of the management after coming to a conclusion that the charges levelled against the delinquent stood established. The court should not interfere with the quantum of punishment which was awarded by the management considering the fact that all the charges levelled against the employee stood established. But, in a case where the punishment awarded by the bank is shockingly disproportionate to the charges established, there is a scope for the court to go in for substitution of the punishment awarded by the management which was disproportionate to the shock of the court.

45. The ratios laid down in the above judgments would have no application to the facts and circumstances of this case where the court finds that the charges levelled against the petitioner were never established by the bank.

46. The learned Counsel appearing for the respondents submitted a decision of the Supreme Court in State Bank of India State of Punjab v. Dr. Harbhajan Singh Greasy : (1996) 9 SCC 322 wherein it has been held as follows:

It is now a well-settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits. Mater requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. Pending enquiry, the delinquent must be deemed to be under suspension. The consequential benefits would depend upon the result of the enquiry and order passed thereon. The High Court had committed illegality in omitting to give the said direction. Since the respondent had retired from service, now no useful purpose will be served in directing to conduct enquiry afresh.

47. The aforesaid decision is cited by the learned Counsel appearing for the respondents to bring home the point that the court can direct an enquiry afresh from the stage at which the enquiry was found defective. That was a case where the High Court, having found that the enquiry conducted by the enquiry officer was defective, ordered reinstatement of service. Further, the Supreme Court thought it fit not to order re-enquiry as the employee had already retired from service and no useful purpose would be served in giving any such direction to conduct enquiry afresh. Further, that was a case where based only on the admission made by the employee, the enquiry was concluded and punishment of dismissal from service was ordered. But, in this case, materials were produced but, witnesses were not examined by the bank for reasons best known to them. The delinquent officer was examined and thereafter, a finding was given by the enquiry officer which was accepted by the disciplinary authority and punishment was rendered by the appointing authority. The petitioner has been out of service for so long a time. It is not a case where the principles of natural justice were violated. If such is the case, the bank can be directed to adhere to the principles of natural justice and go ahead with the enquiry afresh from the stage at which the violation of principles of justice were violated. Here is a case where a full-fledged enquiry was conducted by the bank, but, they failed to produce reliable materials to establish the charges levelled against the petitioner. Under such circumstances, the court is not inclined to accede to the final request made by the learned Counsel appearing for the respondents that if the court comes to the decision that the enquiry was defective, a fresh enquiry may be ordered.

48. The learned Counsel appearing for the respondents finally submitted a decision of the Supreme Court in Union of India v. Y.S. Sandhu Ex-Inspector (2008) 12 SCC 30. That was a case where the court found that the principles of natural justice were violated inasmuch the enquiry report was not furnished to the delinquent before ever the final order was passed by the disciplinary authority. Under such circumstances, a fresh enquiry was ordered. But, here is a case where the petitioner could not make out any case that there was violation of principles of natural justice or there was failure on the part of the management to give fair opportunity to the petitioner to defend the charges levelled as against him. A full-fledged enquiry was conducted in this case. Materials were produced on the side

of the bank with a view to establish the case. The petitioner also was examined on his side. But, quite unfortunately, the bank could not establish the charges levelled against the petitioner with the materials produced before the enquiry officer. Therefore, the question of ordering fresh enquiry in the peculiar facts and circumstances of this case does not arise for consideration.

49. As it is found that a perverse finding was rendered by the respondents, the court is competent to quash the entire proceedings issued by the respondents as against the petitioner.

50. In view of the above, the impugned proceedings are quashed and the petitioner is directed to be reinstated in service with 25% of backwages from the date when he was suspended from service. It is made clear that the petitioner is entitled to all the attendant benefits on account of his reinstatement in service. In the aforesaid terms, the writ petition stands allowed. There is no order as to costs.