

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 500 of 2013**

1. Anand Kumar Jain, S/o Shri Hukumchand Jain, Aged About 55 (47) years, Occupation Clerk-Cum-Cashier, Posted At State Bank of India, Branch Rajhara Civil & Revenue Dist. Durg (C.G.) Presently R/o 21 Vikash Nagar, Lokholi, Rajnandgaon, Tahsil & Distt. Rajnandgaon (C.G.)

---- Appellant**Versus**

1. The Chairman, State Bank of India, Mumbai, Maharashtra
2. Regional Manager, State Bank of India, Raipur, Tahsil & District Raipur (C.G.)
3. Disciplinary Authority Cum Deputy General Manager Zonal Office State Bank of India, Byron Bazar, Raipur (C.G.)
4. The Branch Manager, State Bank of India, Branch Rajhara, District Durg (C.G.)

---- Respondents

For Appellant	:	Shri P.K.C. Tiwari, Sr. Advocate with Shri Shashi Bhushan, Advocate.
For Respondents	:	Shri Abhishek Sinha, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri Justice P. Sam Koshy****C A V JUDGMENT****Per, P. Sam Koshy, Judge****Delivered on 24.07.2015.**

1. The present appeal has been preferred against the judgment dated 09.07.2013 passed in Writ Petition No. 3539 of 2005, whereby the Writ Petition challenging the order dated 29.04.2005, by which the services of Petitioner stood terminated from Respondent-Bank, was rejected.

2. The brief facts relevant for consideration of this appeal is that, the appellant herein was working as Clerk-cum-Cashier with the Respondents-Bank. The appellant was charged for criminal offences punishable under Sections 294,506-B and 323/34 of the IPC. The nature of allegation against the appellant was that he had abused and assaulted a Security Guard of the Bank. The matter was put to trial before the Magistrate Court and the appellant was found guilty only for the offence under Section 323/34 of the IPC and was sentenced to undergo Rigorous Imprisonment of three months. The said judgment of conviction was further affirmed in the appeal and was also affirmed in the Revision Petition filed before this High Court vide judgment dated 31.07.2001.
3. That, the Respondent-Bank meanwhile, on account of conviction of appellant treating it to be conviction for offence involving moral turpitude, invoking the provisions of Section 10(1)(b)(i) of the Banking Regulations Act, 1949 (for short, the Act, 1949) passed an order dated 29.04.2005 dismissing the services of petitioner from service with immediate effect. This order was put to test before the Writ Court and the learned Single Bench held that the act on the part of petitioner squarely falls within the ambit of moral turpitude and dismissed the Writ Petition vide the impugned order dated 09.07.2013. It is this judgment dated 09.07.2013 which has been assailed in the instant Writ Appeal by the appellant.
4. Learned Senior Counsel Shri P.K.C. Tiwari representing the appellant, submitted that the impugned order deserves to be interfered amongst other on the following grounds :
 - (i). That, the Writ Court has wrongly appreciated the fact that allegation

against the petitioner would fall within the ambit of moral turpitude and in support of his argument he relied upon the judgment of MP High Court reported in 2003(1)MPJR Short Note No.11 (Dhan Singh Thakur Vs. State of M.P. & Others).

- (ii) That, the alleged incident for which the Appellant was charged, had taken place outside the Bank premises and beyond the working hours of the Bank, and therefore, it cannot be construed to be an act amounting to moral turpitude.
- (iii) That, the order of Single Bench also deserves interference on the ground that Learned Single Bench failed to appreciate the fact that the disciplinary authority has not properly appreciated the provisions of the Shastri Award by which the service conditions of the employees of Bank are governed. Counsel for Appellant referred to the provisions of Shastri Award particularly the Clause dealing with Disciplinary Action And Procedure Thereof. Clause-3 of above referred Disciplinary Action and Procedure Thereof deals with a delinquent employee charged for having committed offence and is prosecuted or stands convicted. The relevant provisions of Clause-3 is being reproduced for ready reference:

“3(a) When in the opinion of the management an employee has committed an offence, unless he be otherwise prosecuted, the bank may take steps to prosecute him or get him prosecuted and in such a case he may also be suspended.

(b) If he be convicted, he may be dismissed with effect from the date of his conviction or be given lesser form of punishment as mentioned in Claus 6 below.”

Further, Clause-6 of said provisions of Disciplinary Action and Procedure deals with the actions which could be taken if an employee is found guilty of gross misconduct. For ready reference, the said provision of Clause-6 is also reproduced as under :

- “6. An employee found guilty of gross misconduct may-
- (a) be dismissed without notice, or
 - (b) be removed from service with superannuation on benefits of Pension and/or Provident Fund and Gratuity be removed from service with superannuation benefits i.e. pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment , or
 - (c) be compulsory retired with superannuation benefits i.e. Pension and /or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment, or (d) be discharged from service with superannuation benefits i.e. Pension and /or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment, or
 - (e) be brought down to lower stage in the scale of pay up to a maximum of two stages, or
 - (f) have his increment/s stopped with or without cumulative effect, or
 - (g) have his special pay withdrawn, or
 - (h) be warned or censured, or have an adverse remark entered against him, or
 - (I) be fined.”

5. Learned Senior Counsel Shri Tiwari referring to the provisions enumerated in Clause-6 of above Disciplinary Action and Procedure Thereof submitted that once when in Clause-6, nine options of disciplinary action is stipulated, the disciplinary authority was duty bound to spell out the reasons as to why the disciplinary authority found it fit for imposition of the extreme punishment of termination from service when there were other options also available. He would further submit that since the disciplinary authority has not dealt with this issue, the order passed by the Single Judge is bad in law and deserves to be set aside.
6. Per contra, Shri Abhishek Sinha, Counsel appearing for the Respondents-Bank stressed upon the fact that the order passed by the Single Bench is well reasoned order dealing with all the aspects which has been raised and contended by the appellant/petitioner before the Single Bench. He emphasized on the fact that all the submissions and contentions which have been put forth by the appellant/petitioner before the Writ Court has all been considered and discussed and has dealt with in the impugned order and after due deliberation and consideration the Single Bench did not find any substance on the submissions made by the appellant/petitioner thereby dismissing the petition. According to learned counsel for the Respondents since the impugned order is dealt with all the issues raised by the petitioner, nothing further survives to be adjudicated upon.
7. So far as the contention of the Appellant referring to the provisions of Shastri Award is concerned, counsel for the Respondents submitted that the said ground has been raised for the first time in this Writ Appeal by the appellant/petitioner and therefore, the same is not required to be

entertained or considered. According to Respondents counsel, this ground was neither raised by the appellant in his pleadings firstly before the Appellate Authority and secondly in the Writ Court, and thus, the appellant/petitioner shall be precluded from raising such a new grounds in the Appeal. According to counsel for the Respondents, entertaining such a ground amounts to testing the judgment of Single Bench on the tested one of a ground which was neither pleaded nor agitated before the Writ Court and thus, requested for rejection of Appeal. Respondents Counsel during the course of argument submitted that the provisions of Shastri Award would not have an overriding effect over the provisions of Act, 1949, and therefore, since the disciplinary authority has invoked the provisions of the Act, 1949, the same cannot be faulted with. As regards the question whether the act on the part of appellant/petitioner or the charge which was leveled against the petitioner would amount to act moral turpitude or not, counsel for the Respondents submitted that this issue has been fully dealt with by the Single Bench referring to catena of decisions of Supreme Court in this regard, and prayed for rejection of all the grounds raised by the appellant/petitioner and also prays for dismissal of appeal holding it to be devoid of substance.

8. Considering the rival contentions put forth by the counsel appearing on either side, three broad issues are carved out for consideration in the instant appeal which are :
 - Whether the act on the part of appellant in the given facts and circumstances of the case would amount to moral turpitude or not.
 - Whether the provisions of Shastri Award would be applicable

so far as service of appellant/petitioner is concerned.

- Whether the disciplinary authority in the course of passing the order of termination dated 29.04.2005 was justified without giving any reasons, explanations, or justification for imposition of capital punishment of termination from service upon the appellant/petitioner, and in the process has not properly appreciated the provisions of the Disciplinary Action and Procedure envisaged under the provisions of Shastri Award.

9. So far as the issue, whether the act on the part of appellant would fall within the ambit of moral turpitude or not is concerned, it is now well settled proposition of law that an offence involving moral turpitude depends upon the facts of each case and the Supreme Court in case of Pawan Kumar Vs. State of Haryana & Another (reported in 1996 (4) SCC-17) in a very categorical terms has held that, the following tests should ordinarily be applied in judging whether a certain offence involves moral turpitude or not,

1. "Whether the act leading to a conviction was such as could shock the moral conscience or society in general.
2. Whether the motive which led to the act was a base one.
3. Whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society."

10. Keeping in mind the above-said notions, if we compare the act which has been committed by the appellant/petitioner, it can be safely held that the act of appellant using filthy language against the complainant- Security

Guard during office hours and subsequently immediately after duty hours assaulting the same Security Guard just in front of the Bank premises coupled with the fact that assault and attack was made in order to pressurize the Security Guard to write something in favour of a person namely Vinod Jain, who had accompanied the appellant on the date of incident, would squarely fall within the principles laid down by the Supreme Court in case of Pawan Kumar (Supra).

11. There is no law or ruling which lays down the absolute standard for deciding whether an act is to be considered one involving moral turpitude. It is only in this context that the Supreme Court in case of Pawan Kumar (Supra) had laid down general tests which enable us to arrive at a correct conclusion. Broadly the expression moral turpitude means an act done contrary to justice, honesty, modesty or good morals. In the instant case, the act done on the part of appellant/petitioner right throughout the day on the date of incident would show the mentality of the person and it also shows that the incident had not occurred in a spur of moment or on account of sudden instigation. Even otherwise, the appellant/petitioner was holding the responsible post of Clerk-Cum-Cashier in the Bank and in the capacity of responsible officer of Bank, unruly conduct of the appellant/petitioner particularly with the Guard of same Bank during the duty hours and subsequently immediately after duty hours just in front of the Bank premises, conducting in a manner unbecoming of a Bank officer, definitely would fall within the purview of the expression moral turpitude and thus, the issue No.1 put forth for consideration before us is answered in the affirmative holding that the act on the part of appellant/petitioner does amount to an act of moral turpitude.

12. Now coming to next issue whether the provisions of the Shastri Award would be applicable or whether it would be the Act, 1949, which would have an overriding effect. The Counsel for the Appellant/Petitioner during the course of argument produced a copy of Circular dated 13.07.2002 whereby the management of State Bank of India had circulated the Memorandum of Settlement on Disciplinary Action Procedure for Workmen, whereby it has been resolved by the management of State Bank of India for adopting the Shastri award as modified from time to time by way of settlements to govern the procedure for taking disciplinary action against the employees of Bank. The relevant portion of Circular dated 13.07.2002 reads as under :

“.....The procedure for taking disciplinary action against workmen is laid down in Shastry Award, Desai Award and subsequent industry-level and bank-level Bipartite Settlements. Indian Banks Association has since signed a fresh Bipartite Settlement with workmen unions, including National Confederation of Bank Employees to which all India SBI Staff Federation is affiliated, on the 10th April 2002 (copy enclosed. The specific changes brought about regarding Disciplinary Action Procedure for workmen in the existing provisions are detailed in Annexure-I and extract from the appropriate modification to apply to our Bank, is enclosed as Annexure-II. This settlement is in supersession of all the earlier provisions relating to Disciplinary Action Procedure for workmen in banks and its provisions shall take effect from the date of Settlement. The terms of the Settlement shall extend to and cover all the workmen employees of member-banks.....”

A plain reading of the contents of the said circular itself shows that the State Bank of India had agreed and resolved to apply the provisions of Shastri award so far as the procedure for taking disciplinary action against the employee of Bank is concerned.

13. So far as the provisions of Act, 1949 is concerned, the same is an act which provides a broad outline in respect of regulating the Banking industry in India and it also provides for broad guidelines so far as the conditions of service are concerned, like prohibition of employment and restriction on certain forms of employment. Whereas Shastri award is an award passed by the National Industrial Tribunal and the said Tribunal specifically dealt with the reforms pertaining to general disputes in the Banking industry particularly in the backdrop of the fact that the Banks had their branches all over the country and in order to have uniformity with the service conditions all over the country, the Tribunal passed an award which was later known as Shastri award and which has also been accepted uniformly by all banking industry in India. A bare perusal of Circular dated 13.07.2002 itself would reveal that management of State Bank of India also has entered into settlement with its recognized Union and has accepted the provisions of Shastri award so far as disciplinary action procedure for workmen/employees is concerned and such settlement is a settlement as defined under the provisions of the Industrial Disputes Act, and therefore, also has a force of law. Further, since it is a settlement having force of law, it becomes binding upon the Bank. Circular dated 13.07.2002 also reveals that Shastri award is in force in

the Bank since quite sometime and the latest circular was issued in the year 2002 in super-session of all earlier provisions relating to disciplinary action procedure for workmen in Banks.

14. Further, a bare perusal of show cause notice issued by the State Bank of India prior to passing of dismissal order would also reveal that said show cause notice was issued invoking the provisions of Shastri award which stood modified from time to time. The relevant portion of said show cause notice is reproduced as under :

“.....The Offence in question is an offence involving moral turpitude. In terms of Section 10(1) (b) (I) of Banking Regulations Act, 1947 read with Para 521 (2) (b) of Sastry Award as retained by subsequent Awards and Bipartite Settlement dated 10.04.2002, it is proposed to discharge you from Bank's service with immediate effect. Please, therefore, show cause as to why you should not be discharged from service of the Bank for the aforesaid reason. Your defence, if any, may be submitted within 7 days of the receipt of this letter.....”

The above portion of show cause notice establishes that it is the provisions of Shastri award which governs the provisions relating to disciplinary action procedure for workmen in the Bank.

15. Thus, the second issue for consideration before this court is also answered in the affirmative holding that the provisions of Shastri award is applicable so far as determining the procedure for initiating disciplinary action against workmen in Bank is concerned.
16. Coming to last issue for consideration before this court is whether the disciplinary authority was justified in issuing the order of termination dated 29.04.2005 without giving any reasons as to on what basis he has

reached to a conclusion that it is the order of termination from service alone which befits the offence/misconduct on the part of Appellant/Petitioner/delinquent employee particularly when Clause-6 of Shastri award under chapter Disciplinary Action And Procedure clearly lays down nine options of different punishment which could be awarded in the case if an employee is found to be guilty of gross misconduct. Further, in Clause-5 of said Shastri award under the same heading defines the expression gross misconduct wherein conviction is one of the gross misconduct.

17. It is pertinent to mention that in the instant case, the Bank authorities have not initiated any disciplinary action for the alleged misconduct committed by the Appellant/Petitioner/delinquent employee and the order of termination from service has been passed only on account of his conviction. Clause-5 under chapter Disciplinary Action and Procedure also envisages the fact that conviction by a criminal Court of law for an offence involving moral turpitude falls within the ambit of gross misconduct and when the delinquent employee is being inflicted with a punishment only for his conviction for a criminal act, firstly the disciplinary authority has to determine whether the act would fall within the ambit of expression moral turpitude, and secondly, among the nine options of punishment under Clause-6 for gross misconduct, which would be the proper punishment for a delinquent employee. While deciding the nature of punishment, the disciplinary authority would definitely have to assign the reasons as to what compels him to impose the punishment that has been awarded. It is now well settled principles of law that giving reasons is a indispensable component of decision making process and the same

equally applies upon Quasi Judicial authority and even upon the administrative bodies. The Supreme Court always has opined that the order passed by Quasi Judicial authority or even the administrative authority affecting rights of the parties must be a speaking order. The question regarding recording of reasons, its importance and necessity came up for consideration before the Supreme Court in case of *Kranti Associates Private Limited & Another Vs. Masood Ahmed Khan & Others* (reported in 2010 (9) SCC 496) wherein the Supreme Court has extensively and elaborately dealt with the issue of need of giving reasons.

18. Similarly in case of *East Coast Railway and Another Vs. Mahadev Appa Rao and Others* with *K. Surekha Vs. Mahadeo Appa Rao and Others* (reported in 2010(7)SCC 678), the Supreme Court in a very categorical terms has held that Arbitrariness in making of an order by an authority can manifest itself in different forms. Every order passed by a public authority must disclose due and proper application of mind by the persons making the order. Application of mind is best demonstrated by disclosure of mind by the authority making the order and disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable. In the absence of reasons in support of the order it is difficult to assume that the authority had properly applied its mind before passing of the order.
19. Likewise, again in case of *Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla and Brothers* (reported in 2010(4)SCC 785), the Supreme Court has held that

“recording of reasons is an essential feature of dispensation of justice. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice. A judgment without reasons causes prejudice to the person against whom it is pronounced, as that litigant is unable to know the ground which weighted with the authority in rejecting him claim and also causes impediments in his taking adequate and appropriate grounds before the higher court in the event of challenge to that order”.

20. In the instant case, when the order of termination is taken in to account, only because the appellant/petitioner has been convicted for the offence under Section 323/34 IPC, he has been inflicted with the punishment of termination, however, the impugned termination order does not reflect as to on what basis and what are the reasons on account of which the disciplinary authority thought it fit that it is termination alone which is the most appropriate punishment under Clause-6 of Shastri award which could be inflicted upon the delinquent employee i.e. Appellant/Petitioner. In the absence of any reasons awarded while passing the impugned order, the same would be contrary to the law laid down by the Supreme Court in above referred judgments and would also amount to denial of petitioner knowing the reasons as to why from among nine options available with the disciplinary authority, the punishment of termination from service was chosen.
21. Thus, in the opinion of this court, the order of termination issued by the disciplinary authority needs reconsideration and accordingly the impugned order of termination dated 29.04.2005 is set aside and the

matter is remitted back to the disciplinary authority to reconsider the case of the Appellant/Petitioner for imposing punishment afresh taking into consideration the nine options available with the disciplinary authority as per Clause-6 of chapter Disciplinary Action and Procedure.

22. Needless to mention that this court has not expressed any opinion on the nature of punishment to be imposed upon the Appellant/Petitioner. It is for the disciplinary authority to pass fresh order taking into consideration the entire facts and circumstances of the case and also considering the options available with him for imposing punishment. However, it is expected that the disciplinary authority while passing the order afresh shall give plausible reasons for reaching to his conclusion.
23. With the aforesaid observations, the Writ Appeal is allowed and the matter is remitted back to the disciplinary authority for taking appropriate final decision. No order as to costs.

Sd/-

(Navin Sinha)
Chief Justice

Sd/-

(P. Sam Koshy)
Judge