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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : February 20, 2015

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LPA 86/2015

RESERVE BANK OF INDIA

..... Appellant

Represented by: Mr.Suhail Dutt, Sr.Advocate
instructed by Mr.H.S.Parihar,
Mr.Kuldeep S.Parihar and
Mr.Sankalp, Advocates

versus

B S RAWAT

..... Respondent

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

CM No.2871-72/2015

Allowed.

CM No.2870/2015

For the reasons states in the application, delay in filing the appeal is condoned.

Application is allowed.

LPA 86/2015

1. The respondent, Sh.B.S.Rawat, was employed as a typist with the Reserve Bank of India when he was dismissed from service, meaning thereby he was not having any public dealings and had limited access to the record of the office of the Reserve Bank of India where he used to sit on the typewriter and type out such scripts as were given to him for typing. The

limited record he would maintain was the rough and the final drafts as also fair typescripts of what he used to type, and that too for a limited duration till he handed over the same to the record clerk.

2. He became heavily indebted in the year 1999. Without informing the competent authority he took loans from all and sundry such as Jwala Co-operative Urban Thrift and Credit Society, Nationalized Bank Employees (SC) Co-operative Thrift and Credit Society, Nationalized Bank Co-operative Credit and Thrift Society, Nagrik Sehkari Bank Ltd., Bank of Maharashtra and State Bank of India. He even forged the signatures of the competent authority on certificates and submitted the same when he took loans, and relevant would it be to note that the certificates certified that Sh.B.S.Rawat had sufficient means to repay the loan. It is apparent that it became B.S.Rawat's compulsion to forge the certificates because had he taken permission before availing the loan or gave intimation of having obtained the loan, he could not have obtained the loans from more than ten bodies (which he did) inasmuch as his income would not have been sufficient for him to repay the loans. The regulations framed by Reserve Bank of India required B.S.Rawat to inform the department as and when he took the loan and the obvious purpose was that he should not indebt himself to such an extent that he could not meet his and his family daily needs, because if he reached such a financial strangulation he would obviously indulge in malpractices.

3. The bubble had to burst one day. Indeed it did when B.S.Rawat started defaulting in repayment of the loans and the principal(s) wrote to RBI that from his salary monthly instalments payable to the principal(s) be deducted and paid over to the principal(s).

4. Two charge-sheets were served upon B.S.Rawat alleging the charge

of violation of Regulation 45 of the RBI (Staff) Regulations, 1948 which mandated that an employee who has obtained a loan shall furnish to the competent authority a half yearly statement regarding the debt under pain of penal action. He was also charged for fabricating certificates which he submitted to the principal(s) after forging thereon the signatures of the competent authority.

5. Evidence was led before the Inquiry Officer. The charges were proved. But relevant would it be to note that Sh.B.S.Rawat proved that his wife was gainfully employed with MTNL and that he repaid all the debts incurred by him. Regarding excessive loans obtained by him, Sh.B.S.Rawat pleaded family compulsion to educate his children.

6. The competent authority levied the penalty of dismissal from service.

7. Sh.B.S.Rawat sought reference of a dispute to the Central Government Industrial Tribunal and on March 08, 2004 the appropriate Government made a reference to the Central Government Industrial Tribunal No.1 : *‘Whether the action of the management of Reserve Bank of India New Delhi in dismissing Sh.B.S.Rawat vide order dated 24.10.2002 is just, fair and legal? If not, what relief the workman is entitled to and from what date?’*

8. Vide award dated September 28, 2010 the Industrial Tribunal found that the misdemeanours committed by Sh.B.S.Rawat were proved, but on the question of punishment took note of the fact that Sh.B.S.Rawat was appointed as a peon in RBI on February 01, 1973 and was promoted as a typist on April 04, 1977. Till the year 1999 he never raised any loan and hence incurred no indebtedness. Meaning thereby, for 26 years of his service he raised no loans. He raised huge loans in the year 1999 but repaid the same till the year 2002. Taking note of the fact that apart from indebting

himself without informing the department Sh.B.S.Rawat additionally forged and fabricated certificates to obtain the loans, the Tribunal focused on the quantum of punishment and held that a discharge simplicitor would be adequate punishment. Though not stated in the award, it is apparent that the penalty of discharge would entitle Sh.B.S.Rawat to pension and other benefits commensurate to the number of years he served RBI.

9. Challenging the award in so far it modified the penalty the appellant filed W.P.(C) No.1286/2011 which has been dismissed by the learned Single Judge observing that there was no reason to interfere with the modification of the penalty by the Industrial Tribunal.

10. Section 11A of the ID Act, 1947 reads as under:-

“11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen –

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.”

11. Thus, as regards whether the Industrial Tribunal had the jurisdiction to modify the punishment, there can be no cavil that it has.

12. Conceding so, learned senior counsel for the appellant urges that there is no such thing as unlimited jurisdiction vested in either a judicial or a quasi judicial body and that unfettered discretion is a sworn enemy of the constitutional guarantee against discrimination. Thus, learned senior counsel would urge that the Tribunal erred in reducing the penalty for the reason unless the penalty imposed shocked the conscience of the Court, as held in the decision reported as (2006) 13 SCC 613 LIC of India Vs. R.Dandapani, the Tribunal could not have reduced the penalty. Relying upon the same decision, learned senior counsel urges that while considering proportionality, misplaced sympathy, generosity and private benevolence cannot enter the judicial mood.

13. There can be no quarrel with the proposition of law as above referred to, but where the integrity of legal reasoning and legitimacy of the conclusion emerge on principled and supportable facts, the charge that the judicial fora acted with misplaced sympathy, generosity and private benevolence would not stand.

14. Now, what does one mean with the esoteric phrase : '*Shocks the judicial conscience*'.

15. It obviously means that the Court looks at the penalty from the view point of a person with a conscience.

16. It is trite that the purpose of a penalty is two-fold. To punish the wrong doer and to set an example to others that even they would suffer the same fate if they indulge in the same wrong. Harsh penalties breed discontent for the reason viewed from the eyes of the common human being the penalty is excessive. The purpose of a penalty is therefore curative.

17. The nature of the misdemeanour and especially whether the same suffers from a moral taint and additionally causes a loss to the employer and

further, keeping in view the nature of duties performed by the wrong doer, whether there is a loss of confidence by the employer in the employee, in that there would be lurking fear that there is a possibility of a wrong being committed again, all play a part in determining the proportionality of the penalty levied.

18. As a typist Sh.B.S.Rawat had no public dealings and thus public confidence would not be lost in RBI if those who interact with RBI would learn that Sh.B.S.Rawat had not been dismissed from service, because the public would not be interacting with Sh.B.S.Rawat.

19. A pension is not a bounty. It is earned by rendering service and thus it would be a material consideration as to what is the length of service rendered by an employee, and if it is without a blemish, save and except the misdemeanour in question, said fact would also be relevant.

20. For the moral turpitude of the wrong done by Sh.B.S.Rawat, of fabricating certificates, there would be an element of loss of confidence in him justifying the secession of the employer-employee relationship, but if the same can be in a manner where Sh.B.S.Rawat is able to lead his old age indignity, the said penalty would be the appropriate penalty. More so, in view of the fact that joining service on February 01, 1973 for 26 years B.S.Rawat raised no loans. He did so in the year 1999 but repaid the same in the year 2002. As per him he took the loans for education of his children and this Court cannot overlook the harsh reality of privatization in higher education and the quantum of annual fee charged by the private institutions. There is no evidence that Sh.B.S.Rawat used to gamble or became an alcoholic or spent the loan on illegal activities. There is no reason to disbelieve his version regarding purpose of the loans, all of which were squared up by the year 2002.

21. We find no infirmity in the impugned award nor in the impugned decision and thus dismiss the appeal in limine but without any order as to costs.

CM No.2869/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

FEBRUARY 20, 2015

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