

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 138 of 2016**

1. State Of Chhattisgarh Through The Secretary, Department Of Home Affairs, Mahanadi Bhawan, Mantralaya, Raipur, (Chhattisgarh)
2. The Director General Of Jail, Govt. Of Chhattisgarh, Raipur, (Chhattisgarh)
3. The Superintendent, Central Jail, Raipur, (Chhattisgarh)
4. The Investigation Officer/ Sub Jailer, Central Jail, Raipur, (Chhattisgarh)

---- Appellants

Versus

Agamdas Manikpuri S/o Ghuramani Das Kabir, R/o Idgah Bhatha Gali No.8, Behind Vivekanand Ashram, Raipur, Distt. Raipur, (Chhattisgarh)

-----Respondent

For Appellants/State:	Shri Raj Kumar Gupta, Deputy Advocate General.
For Respondent:	Shri Raj Kamal Singh, Advocate.

Hon'ble The Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Order on Board****Per Navin Sinha, Chief Justice****11/04/2016**

1. The present appeal arises from order dated 1.9.2015 allowing Writ Petition (S) No.4354/2010, except to the extent that charge No.4 regarding wrong utilization of part final loan taken from the GPF account was held to be established, but holding that the punishment of dismissal in the facts of the case was grossly disproportionate leaving it open for the Appellants to impose a minor penalty for the singular charge proved.

2. Learned Deputy Advocate General submitted that the Learned Single Judge erred in re-appreciating evidence to hold that charge No.5 did not stand proved. Likewise, the Learned Single Judge erred in re-appreciating evidence to hold that charge No.8 had also not been proved. Judicial review of an order passed in a departmental proceeding warranted interference only on grounds of procedural irregularity. The Learned Single Judge could not have re-appreciated evidence to arrive at a different finding.

3. No other submission was made before us.

4. Learned Counsel for the Respondent submitted that Form No.16 issued by the Appellants with regard to tax deducted at source itself reflects full awareness of the loan taken by the Respondent from the Bank. In any event, there was no provision in the Chhattisgarh Civil Services (conduct) Rules, 1965 (hereinafter referred to as 'the Rules') to warrant it as a misconduct if prior permission before taking loan from the Bank had not been procured. With regard to charge No.8, it was submitted that it cannot constitute a misconduct under Section 16(2)(e) of the Rules.

5. We have considered the submissions on behalf of the parties.

6. Charge No.5 alleged that Respondent took a loan from the State Bank of India, Raipur Branch which was not disclosed to the authorities. The Enquiry Officer arrived at the conclusion that there was no disclosure of the loan having been taken by the Respondent and therefore matters appeared suspicious. A bare perusal of Form No.16 produced as evidence by the Appellants reveals that the Government incorporated a disclaimer that the liability for repayment of the loan taken from the Bank was of the Respondent alone. No provision of the Rules has been pointed out which required prior approval to be taken by the Respondent before availing the loan. The

Enquiry Officer opined that matters appeared suspicious. Suspicion can never be a substitute for establishing of a charge in absence of a specific finding.

7. Charge No.8 alleged that the Respondent was posted as the prescribed Officer of the Pink City, Co-operative House construction Society Limited, Raipur of which no information was given to the Government.

8. Rule-16 deals with private business or employment and prohibits a Government servant from engaging in such activity without prior approval of the Government subject to provisions of sub-Rule-2. The latter carves out an exception where prior permission was not required. Sub-clause (e) provides that if a Government servant takes part in the registration, promotion or management of any Co-operative Societies registered under the Chhattisgarh Co-operative Societies Act, 1960 for the benefit of Government servants, provided he did not hold an elected post. There is no dispute that the Co-operative Society of which the Respondent was appointed the prescribed Officer was not an elected post and that it was a Co-operative Society registered under the Act consisting of Government servants.

9. We therefore find no reason to interfere with the conclusions of the Learned Single Judge.

10. Dismissal is an extreme punishment. Normally, the quantum of punishment is the prerogative of the employer. But it does not debar the Court from examining the same in appropriate cases, if the punishment is so grossly disproportionate so as to shock the conscience of the Court. The Learned Single Judge has exercised his discretionary jurisdiction in the facts and circumstances of the case to hold that the punishment of dismissal in the facts was grossly disproportionate and shocking to the conscience of the

Court and directed it to be substituted by minor penalty to the satisfaction of the Appellants in view of the solitary charge No.4 having been proved.

11. We find no reason to interfere.

12. IA No.1/2016 to condone delay of 119 days in filing the appeal is allowed.

13. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE