* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Contempt Case No.1769 of 2015
and
W.V.M.P.No.2811 of 2015
in
W.P.No.18608 of 2015

% 06-01-2016

Mohamed Muneer Basha
… Petitioner/Respondent
Vs.

$ Atul Agarwal, Executive Director (Reviewing Authority),
The IOB, Chennai; and 2 others
… Respondents/Petitioners

! Counsel for the Petitioner: Sri J.Sudheer

Counsel for the Respondents: Sri A.Krishnam Raju,
Standing Counsel.

< Gist:

> Head Note:

? Case referred:

1. (2013) 12 SCC 372
2. (1998) 2 SCC 407
3. 1995 Supp (3) SCC 590
4. (2007) 15 SCC 192
5. (2010) 12 SCC 514

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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Contempt Case No.1769 of 2015
and
W.V.M.P.No.2811 of 2015
in
W.P.No.18608 of 2015

Between

Mohamed Muneer Basha

… Petitioner/Respondent

and

Atul Agarwal, Executive Director (Reviewing Authority),
The IOB, Chennai; and 2 others

… Respondents/Petitioners

DATE OF JUDGMENT PRONOUNCED: 06-01-2016

1	Whether Reporters of Local newspapers may be allowed to see the Judgment?	Yes/No
2	Whether the copies of judgment may be marked to Law Reports/Journals	Yes/No
3	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes/No

HON'BLE SRI JUSTICE R.KANTHA RAO

Contempt Case No.1769 of 2015
and
W.V.M.P.No.2811 of 2015
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Judgment:

The petitioner filed the writ petition with a prayer to set aside the proceedings dated 23-12-2013 issued by the 3rd respondent-Disciplinary Authority and the consequential order dated 28-4-2014 issued by the 2nd respondent-Appellate Authority and also the proceedings dated 05-02-2015 issued by the 1st respondent-Reviewing Authority whereby and whereunder the petitioner was compulsorily retired from service by the Disciplinary Authority pursuant to the conclusion of the departmental enquiry. An interim application (W.P.M.P.No.24057 of 2015) was made to suspend the impugned proceedings. This Court, after hearing the learned counsel appearing for the petitioner, passed an interim order dated 09-7-2015 suspending the proceedings dated 23-12-2013 and 28-4-2014 and the impugned order dated 05-02-2015.

2. The petitioner filed the present contempt case alleging that after passing of the interim order, the respondents-Bank are obliged to reinstate him into service but they have not done so. They willfully and intentionally violated the interim order passed by this Court and therefore, they are liable for punishment under the Contempt of Courts Act.

3. The respondents 1 to 3-Bank filed counters contending, *inter alia*, as follows:

(a) The order of compulsory retirement was passed against the petitioner after full-fledged enquiry and following the procedure prescribed in relation to the disciplinary proceedings against the petitioner. The interim order was passed by the

Court recording non-appearance of the respondents and the order does not indicate any other reason for granting interim suspension. The respondents-Bank filed counters along with the stay vacate petition on 06-6-2015 and W.V.M.P.No.2811 of 2015 is pending adjudication before this Court. The contempt case is filed by the petitioner to exert pressure on the authorities of the respondents-Bank, knowing fully well that none of the officers have violated the orders passed by this Court. The petitioner was paid all terminal benefits i.e. Provident Fund contribution of Rs.8,25,411/-, Gratuity amount of Rs.10,00,000/- and he has been drawing a pension of Rs.28,892/- with effect from 24-12-2013.

(b) W.P.No.18608 of 2015 was listed before this Court on 24-6-2015 and this Court initially issued Notice before admission and directed the Registry to post the writ petition on 15-7-2015. The respondents-Bank filed the vacate petition along with the counter on 06-8-2015. In the meanwhile, the matter was called on 09-7-2015 and the interim order was passed on the representation made by the petitioner's counsel that the respondents though served with notice did not appear. Therefore, there is no lapse on the part of the respondents-Bank in not appearing before the Court on 09-7-2015, the date on which the interim order was passed by this Court.

(c) The substance of the charges levelled against the petitioner is that the Bank noticed in the course of investigation that 15 persons got their accounts opened by producing fabricated Voter Identity Cards and Ration

Cards as proof of their identity for opening the accounts.

The respondents-Bank sanctioned 15 loans each Rs.10,00,000/- to the 15 individuals and their Savings Bank Accounts were opened. All the loans were sanctioned for purchase of agricultural land under a scheme by name Bhoomi Lakshmi. In the process of sanctioning the loans, the petitioner had committed various irregularities in collusion with Mr. K.Subba Rao and sanctioned the loans based on fabricated documents. 9 out of 15 borrowers had given their office address as that of Mr. K.Subba Rao, who is said to be the mediator. All the loans were guaranteed by Mr. Subba Rao. Subsequently, after conducting detailed investigation into the irregularities, fraud was reported to the Reserve Bank of India on 31-12-2012. A report was also lodged with the Police on 01-3-2013. Departmental action was initiated against the petitioner and other delinquent employee as per the service regulations of the respondents-Bank.

(d) In view of the seriousness of the irregularities, the petitioner was placed under suspension vide order dated 26-02-2013 and a Memorandum of Allegations and Articles of Charge was issued to the petitioner on 24-5-2013 pointing out various lapses committed by him. The petitioner submitted his detailed reply to the charge-sheet on 21-6-2013.

An enquiry was held against the petitioner on 26-9-2013 and 27-9-2013. The petitioner was duly represented in the enquiry proceedings by one Mr. Vijayasenan P, Vice President, Indian Overseas Bank Officers' Association. After careful consideration of the entire material available on record and duly

considering the explanation offered by the petitioner, the Disciplinary Authority passed speaking order imposing
a penalty of compulsory retirement in terms of Regulation 4(h) of the Indian Overseas Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 (the 1976 Regulations, for short). The petitioner preferred an appeal against the order of the Disciplinary Authority vide appeal dated 05-02-2014.
The Appellate Authority, after giving personal hearing to the petitioner on 20-3-2014 and after going through the entire record, dismissed the appeal on merits by orders dated
28-4-2014. Thereafter, the petitioner preferred a review against the order of the Appellate Authority on 23-6-2014. The Reviewing Authority, considering the fact that there is no merit in the petition, dismissed the same on merits.

(e) Thus, according to the respondents-Bank, there is no violation of the principles of natural justice and as the order has been passed duly complying with the procedure prescribed for disciplinary proceedings as per the Regulations of the Bank, it needs no interference by this Court. It is further contended that since the prayer in the main writ petition as well as in the miscellaneous petition are one and the same, the interim relief sought to suspend the impugned proceedings should not have been granted by this Court.

(f) It is further contended that there are no procedural irregularities in conducting the departmental enquiry by the Enquiry Officer and it was conducted as provided under the 1976 Regulations. A copy of the report was furnished by the 3rd respondent-Disciplinary Authority to the petitioner seeking his objections, if any. The objections dated 20-11-2013 were received and a speaking order imposing punishment of compulsory retirement was passed against the petitioner.

(g) Nextly, it is submitted that the findings in the enquiry report obviously indicate that the petitioner resorted to several omissions and commissions, which were unearthed by the inspection of the central office. Mr. Subba Rao, mediator, was accommodated by the petitioner by granting 15 loans under the scheme Bhoomi Lakshmi by flouting lending norms and violating the Bank's guidelines and instructions, to close the loans in order to avoid further legal prosecution and further, the un-debited interest portion amount of Rs.25,67,000/- in respect of those loans are not going to be realized since no enforceable security is available and there is loss to that extent to the Bank.

(h) Contending as above, the respondents-Bank sought to vacate the interim order dated 09-7-2015 in W.P.M.P. No.24057 of 2015 in W.P.No.18608 of 2015 granted by this Court.

4. I have heard Sri J.Sudheer, learned counsel appearing for the petitioner and Sri A.Krishnam Raju, learned Standing Counsel for the respondents-Bank.

5. From the contentions put-forth in the counter,
it cannot be said that the proceedings impugned and the consequential order were passed without affording any opportunity to the petitioner. However, a specific finding has to be recorded on the said issue only after going through the detailed submissions at the hearing of the main writ petition. The contention put-forth by the learned counsel appearing for

the petitioner is that along with the petitioner, one Mr. P.V. Ramana Reddy, who was an Assistant Manager, had similar role in the opening of Savings Bank Accounts of 15 persons and sanctioning of loans to them. He was also issued with a similar charge-sheet but he was given a lesser punishment of imposing fine. The learned counsel appearing for the petitioner submits that since there is a disparity of punishment between the co-delinquent and the petitioner, passing of the interim order suspending the punishment of compulsory retirement is proper in the present case and therefore, it has to be made absolute.

6. On the other hand, it is contended by the learned Standing Counsel for the respondents-Bank that Mr. P.V. Ramana Reddy, who is subordinate to the petitioner, acted at the behest of the petitioner and his role cannot be equated to that of the petitioner who was mainly responsible for issuance of loans. According to the learned Standing Counsel, when the petitioner was the loan sanctioning authority without his sanction, the loans could not have been granted.

7. The learned counsel appearing for the petitioner in support of his contention relied on the following judgments:

(1) **LUCKNOW KSHETRIYA GRAMIN BANK v. RAJENDRA SINGH**[1], wherein the Supreme Court held that the award of lesser punishment to co-delinquent would be violative of Article 14 of the Constitution of India, if the delinquent and the co-delinquent are similarly placed in respect of the charges as well as their conduct subsequent to service of charge-sheets. It is further held that the conduct of co-delinquent of accepting his guilt and tendering unconditional apology may justify lesser punishment than the delinquent who throughout denied the charges.

(2) **DIRECTOR GENERAL OF POLICE v. G.DASAYAN**[2]. In this case also, the Supreme Court held that the order passed by the Disciplinary Authority exonerating the two other Constables but imposing the punishment of dismissal from service on the respondent and that of compulsory retirement on the Head Constable is not proper. Having regard to the said circumstances, in order to meet the ends of justice, the Supreme Court substituted the order of compulsory retirement in place of the order of the respondent's dismissal from service.

8. The Supreme Court in the above cases was dealing with the punishment imposed. The decisions above-referred rendered by the Supreme Court are in relation to the main writ petitions but not in relation to the orders at the interlocutory stage. In the instant case, we have to find out as to whether as an interim measure, having regard to the facts and circumstances of the present case, the order suspending the punishment of compulsory retirement against the petitioner can be passed.

9. As to this, the contention of the learned Standing Counsel for the respondents-Bank is that the interim prayer and the prayer in the main writ petition are one and the same and therefore, the Court ought not to have granted the interim relief as prayed for in the absence of the version of the respondents-Bank. In support of his contention, the learned Sanding

Counsel relied on the judgments in **STATE OF U.P. v. VISHESHWAR**[3], **DAYANAND VEDIC VIDYALAYA SANCHALAK SAMITI v. EDUCATION INSPECTOR, GREATER BOMBAY**[4] and **INDOOR DEVELOPMENT AUTHORITY v. MANGAL AMUSEMENT PRIVATE LIMITED**[5]. In all these cases, the Supreme Court held that the interim order in the nature of granting the main relief itself normally shall not be granted. According to the Supreme Court, such interim order virtually amounts to allowing the writ petition at the stage of interim order and it will also cause complications if the writ petition is rejected ultimately. The Supreme Court expressed the view that the more appropriate course would be to hear the main matter itself expeditiously.

10. Since at present the interim order passed by this Court has been dealt with, with a view to take a decision as to whether the interim order should be confirmed or should be vacated basing on the contentions urged in the counter affidavit, this Court is of the view that it could not be appropriate to express any opinion on merits about the case. Therefore, no final decision can be rendered on the question as to whether there is any disparity in the punishment between the co-delinquents.

11. The sole question which requires determination at this stage is as to whether even if the Court considers that there is disparity in the punishment, the interim order suspending the compulsory retirement having regard to the proved misconduct

in the disciplinary proceedings against the petitioner would be appropriate or not.

12. The substance of the charges against the petitioner is that he granted loans to 15 individuals without following the procedure and at the behest of one Mr. Subba Rao, who is a mediator. According to the respondents-Bank, the real beneficiary is Mr. Subba Rao but not the persons in whose names the loans were sanctioned. The petitioner is the loan sanctioning authority.

13. Having regard to the nature of the allegations, which have been referred to herein before, this Court is of the view that the charges against the petitioner are very serious in nature and according to the respondents-Bank, they have been proved in the course of departmental enquiry. The main writ petition is filed challenging the order of compulsory retirement which was passed by the Disciplinary Authority in the departmental enquiry. The said order was confirmed in the appeal as well as in the review. This Court passed interim order considering the submission that the prescribed procedure has not been followed while inflicting the punishment and also taking into consideration the fact of disparity in the punishment between the petitioner and the co-delinquent.

14. Having gone through the contentions urged in the counter and the judgments relied on by the learned Standing Counsel for the respondents-Bank, this Court is of the considered view that this case is not of exceptional in nature to grant the main relief by way of an interim order. Such an order

could have been granted by this Court only if by not granting the said order, the main relief sought in the writ petition would itself become infructuous. In the instant case, if the petitioner succeeds in the writ petition, he will get all the benefits.

15. In view of what all stated hereinabove, the interim order dated 09-7-2015 in W.P.M.P.No.24057 of 2015 in W.P.No.18608 of 2015 passed by this Court is vacated.

The contempt case is, therefore, closed. The writ petition be posted before the regular Bench.

R.KANTHA RAO, J.

06th January, 2016.
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Note:-
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