

*** THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

+ WRIT PETITION No.7616 of 2008

% Date : 20.07.2017

Between:

M. Samba Moorthy

...Petitioner

And

\$ Bank of Baroda
Rep by its Chairman & Managing Director,
Bank of Baroda, Baroda Corporate Centre,
Bandra-Kurla Complex,
Bandra East,
Mumbai – 4000051 and others.

.... Respondents

! Counsel for the petitioner : V.R Avula

^ Counsel for respondents : Smt. V. Uma Devi

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>HEAD NOTE :

? Cases referred: :

1. AIR 1973 Supreme Court 2701
2. 2006 (9) Supreme Court Cases 458
3. 2006 (3) Supreme Court Cases 276

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ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges an order of punishment inflicted by the third respondent, vide proceedings under SGZ:ZVD. 15/0-1372, dated 23-08-2001, as confirmed by the second respondent, vide order dated 25-01-2002, as confirmed further by the first respondent, vide proceedings No.AGM.AP.INSF. AUDIT.3744, dated 01-01-2003.

2. Heard Sri V.R. Avula, learned counsel for the petitioner and Smt. V. Uma Devi, learned Standing counsel for respondents, apart from perusing the material available before the Court.

3. In response to the show cause notices dated 22-03-1999 & 08-02-2000, petitioner submitted his explanations. Thereafter, a statement of imputation of lapses, vide proceedings No.SGZ:ZVD.14/1722, dated 26-12-2000 was served on the petitioner on the same day. In response to the same, petitioner herein submitted his written statement of defence on 29-12-2000. Thereafter, an enquiry officer was appointed, who submitted a report on 28-03-2001. Subsequently, the third respondent issued an order on 23-08-2001, inflicting on the petitioner minor penalty of reduction in pay by one stage in the time scale for a period of three years without cumulative effect and not adversely affecting the pension. Against the said order of punishment, on 18-10-2001, petitioner preferred departmental appeal before the second respondent. The second respondent-appellate authority vide

proceedings dated 25-01-2002, while dismissing the said appeal, confirmed the order of punishment imposed by the disciplinary authority. Thereafter, the petitioner herein approached the reviewing authority i.e., the first respondent on 11-09-2002, by way of filing a review, and the first respondent vide proceedings AGM.AP.INSP.AUDIT.3744, dated 01-01-2003, rejected the same.

4. It is contended by the learned counsel for the petitioner that the very process of enquiry undertaken by the respondents, which culminated in passing the order of punishment, is highly illegal, arbitrary, unreasonable and it is vitiated by bias. It is further submitted by the learned counsel that the enquiry officer, who conducted the enquiry, is junior to the petitioner herein and he also participated in the process of promotion to the next higher category along with the writ petitioner. It is further submitted by the learned counsel that the respondent-authority, knowing fully well about the status of the enquiry officer in the seniority list, appointed the said junior as enquiry officer and the same is fatal to the very enquiry undertaken. In support of his submissions and contentions, learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Apex Court in case of ***S. PARTHASARATHI v. STATE OF A.P.***¹.

5. On the contrary, it is strenuously contended by the learned Standing Counsel for the respondents that the respondents undertook the enquiry strictly in accordance with the Bank of Baroda Officer Employees' (Discipline and Appeal) Regulations, 1976, wherein there is no prohibition for appointment of the junior

¹ AIR 1973 Supreme Court 2701

as enquiry officer. It is further contended by the learned standing counsel that the writ petition is also liable to be rejected on the ground of non impleadment of enquiry officer and that bias cannot be presumed and no foundation is laid by the petitioner herein to support the said contention.

6. To bolster her submissions, learned standing counsel for the respondents placed reliance on the judgments of the Hon'ble Apex Court in **PURUSHOTTAM KUMAR JHA vs. STATE OF JHARKHAND AND OHTERS²**, **STATE OF U.P vs. SHEO SHANKAR LAL SRIVASTAVA AND OTHERS³** and the order of the Hon'ble Supreme Court in *S.L.P (C) No.11349/1997, dated 07-05-1997*.

8. In the above background, now the issues that arise for consideration of this Court are:-

- (i) Whether the impugned proceedings are liable to be set aside on the ground of bias; and
- (ii) Whether the petitioner herein is entitled for any relief from this Court under Article 226 of the Constitution of India.

9. There is absolutely no controversy on the reality that the enquiry officer, who undertook the process of enquiry, is junior to the petitioner herein in Scale-II. In the seniority list of Scale-II Officers, which is placed on record along with the writ petition as material papers, the petitioner herein stands at Serial No.3116, whereas the enquiry officer is assigned as Sl.No.3558. The same

² 2006 (9) Supreme Court Cases 458

³ 2006 (3) Supreme Court Cases 276

clearly discloses that the enquiry officer is junior to the petitioner by so many stages. There is also no controversy on the reality that both the petitioner as well as the enquiry officer appeared for interview to the promotion to the category of Scale-III simultaneously also. The employees' of the respondent-bank are governed by the Regulations of Bank of Baroda Officer Employees' (Discipline and Appeal) Regulations, 1976. Regulation 6 of the said regulations deals with the procedure for imposing major penalties. Learned Standing Counsel for the respondent-organisation seeks to justify the action of the respondents in appointing junior as an enquiry officer under Regulation 6 (2) of the said regulations, which reads as under:-

“6. PROCEDURE FOR IMPOSING MAJOR PENALTIES

1. xxxxxx
2. *Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an officer employee, it may itself enquire into, or appoint any other person who is, or has been a public servant (hereinafter referred to as the inquiring authority) to inquire into the truth thereof.”*

10. A reading of the above said regulation clearly makes it manifest that the said regulation, by any stretch of imagination, would not authorise the respondent authorities to appoint an enquiry officer, who is a junior to the delinquent employee facing the enquiry. As rightly pointed out by the learned counsel for the petitioner, the respondent-authorities had knowledge of the status of the petitioner as well as the enquiry officer in the seniority list and also had knowledge of the fact that both the petitioner as well

as the enquiry officer were facing the interview for promotion to the next higher category.

11. In this context, it may be appropriate to refer the judgment of the Hon'ble Apex Court reported in **S. PARTHASARATHI v. STATE OF A.P¹**. The Hon'ble Apex Court at Paragraph Nos.13 to 15 held as under:-

“The letter written by the Medical Officer (Ex.B-8) would indicate that Manvi wanted to get rid of the services of the appellant on the ground of his mental imbalances and it was for that purpose that he tried to get a certificate to the effect that the appellant was mentally unsound. We are of the opinion that the cumulative effect of the circumstances stated above was sufficient to create in the mind of a reasonable man the impression that there was a real likelihood of bias in the inquiring officer. There must be a “real likelihood” of bias and that means there must be a substantial possibility of bias. The Court will have to judge of the matter as a reasonable man would judge of any matter in the conduct of his own business (see R.V. Sunderland JJ.) (1901) 2 KB 357 at p.373.

The test of likelihood of bias which has been applied in a number of cases is based on the “reasonable apprehension” of a reasonable man fully cognizant of the facts. The courts have quashed decisions on the strength of the reasonable suspicion of the party aggrieved without having made any finding that real likelihood of bias in fact existed (see R.V.Huggins (1985) 1 QB 563; R.V. Sussex JJ.. ex p. McCarthy (1924) 1 KB 256; Cottle v. Cottle (1939) 2 ALL ER 535, R.V. Abingdon JJ. Ex. P. Cousins (1964) 108 SJ 840. But in R. v. Camborne JJ. Ex. P. Pearce, (1955) 1 QB 41 at p. 51 the Court after a review of the relevant cases held that real likelihood of bias was the proper test and that a real likelihood of bias had to be made to appear not only from the materials in fact ascertained by the party comparing, but from such further facts as he might readily have ascertained and easily verified the course of his inquiries..

The question then is: whether a real likelihood of bias existed is to be determined on the probabilities to be inferred from the circumstances by court objectively, or, upon the basis of the impressions that might reasonably be left on the minds of the party aggrieved or the public at large.”

12. In the instant case also, in the light of the factual scenario, it can be concluded that there existed real likelihood of bias. This Court is also of the opinion that mere non-impleadment of enquiry officer by name would not disentitle the petitioner from getting relief from this Court in the absence of any factual controversies.

13. Coming to the judgment of the Hon'ble Apex Court cited by the learned standing counsel for the respondents i.e., **PURUSHOTTAM KUMAR JHA vs. STATE OF JHARKHAND AND OTHERS²**, wherein the Hon'ble Supreme Court refused the relief on the ground that the allegations are vague, general and casual and no sufficient particulars were placed on record. In the instant case, the factum of the enquiry officer being junior to the petitioner herein is not denied by the official respondents. Therefore, this judgment would not render any assistance to the respondents. The judgment of Hon'ble Apex Court in the case of **SHEO SHANKAR LAL SRIVASTAVA AND OTHERS³** would also not render any assistance to the petitioner, as in the said case an outsider was appointed as enquiry officer unlike in the present case. However, the judgment referred by the Hon'ble Apex Court in SLP (C) No.11349/1999, dated 07-05-1997 is helpful to the petitioner in the facts and circumstances of the present case as the petitioner herein is successful in pointing out the real likelihood of prejudice.

14. In view of the above reasons, this Court is of the definite opinion that there existed real likelihood of bias in the entire process of enquiry. Therefore, this Court has absolutely no

scintilla of hesitation nor any traces of doubt to hold that the entire impugned proceedings are vitiated. For the aforesaid reasons, the writ petition is allowed, setting aside the orders passed by the 3rd respondent vide proceedings No.SGZ:ZVD. 15/0-1372, dated 23-08-2001 as confirmed by the 2nd respondent vide order dated 25-01-2002 as confirmed by respondent No.1 vide proceedings No.AGM.AP.INSPE.AUDIT.3744, dated 01-01-2003 and the petitioner is entitled for all the consequential benefits. No order as to costs.

15. Miscellaneous petitions pending consideration, if any, in this writ petition, shall stand closed in consequence.

Date: 20-07-2017
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JUTICE A.V.SESHA SAI

