

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11951 of 2017

=====

Birendra Kumar Mahto, son of Late Babuji Mahto, Resident of Village and P.O.- Khirhar Bazar, P.S.- Khirhar, District- Madhubani, at present resident of Road No.1, Sarvoday Nagar, Baily Gola Road, P.O.- Danapur, P.S.- Rupaspur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Labour Resources Department, Government of Bihar, Patna.
4. The Labour Commissioner, Labour Resources Department, Government of Bihar, Patna.
5. The Joint Secretary, Labour Resources Department, Government of Bihar, Patna.
6. Secretary, Bihar Public Service Commission, Bailey Road, Patna.
7. Additional Secretary, Labour Resources Department, Government of Bihar, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Adv. Mr. Rajesh Kumar, Adv.
For the State	:	Smt. Anuradha Singh – SC21 Mr. Rakesh Prabhat, AC to SC21
For the BPSC	:	Mr. Sanjay Pandey, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
CAV JUDGMENT

Date : 30-10-2018

Heard learned counsel for the parties.

In this case, the petitioner is challenging the order vide Memo No.1035 dated 27.4.2017 by which the petitioner has been dismissed from service.

This is the second round of litigation. The petitioner had moved earlier before this Court in C.W.J.C. No. 3053 of 2014 in which the order under challenge was Memo No. 3892 dated 15.10.2013 passed by the State of Bihar in the Labour



Employment and Services. By that order also, the petitioner was dismissed from service and the Court remanded back the matter on the limited ground that the order impugned does not disclose the reason as the reason is the part of the natural justice connecting the mind of the decision maker and the decision, placed reliance on several judgments of the Hon'ble Apex Court specially in the case of Kranti Associates (P) Ltd. Vs. Masood Ahmed Khan reported in (2010) 9 SCC 496 and in the case of Orys Fisheries Pvt. Ltd. Vs. Union of India & Ors. reported in (2010) 13 SCC 427, extenso quoted paragraph no.47 of the judgment of Kranti Associates (P) Ltd., the Court has said that assigning the reason is not an empty formality but, is a serious business accompanied with the discharge of duty as well as showing the transparency in the decision making process.

The fundamental fact of this case is that the petitioner was holding the post of Labour Superintendent in the Department of Labour, Employment and Training, Government of Bihar, was departmentally proceeded for abusing the power of Labour Superintendent in extending registration to one Baba Satya Sai Enterprises having its office at 405, Annapurna Vihar, Ved Nagar, Rukunpura, Bailey Road, Patna which is facing vigilance case along with petitioner on account of scam unearthed related to



distribution of material to the flood affected person. From the record, it appears that an application was filed for registration of Baba Satya Sai Enterprises under the Bihar Shops and Establishment Act. As per petitioner, the said application was submitted in his office on 13.4.2004, after scrutiny on the same day, it was found that the said application was suffering from certain defects on that account, the application was not entertained but, the said application was returned, then again after removal of the defect, the said application was re-filed on 24.4.2004 after removal of the defect pointed out by the office, the said application was formally registered and registration certificate was issued on 26.4.2004 with effect from 13.4.2004 is the reason, the petitioner having facing the heat of criminal case as well as the departmental proceeding. The scam, which is called “Badh Ghotala” was unearthed led to institution of Vigilance P.S. Case No. 8 of 2005 under different sections of the I.P.C. as well as the Prevention of Corruption Act pending before the Special Judge, Vigilance-I, Patna in which the petitioner has been shown to be one of the conspirator of the scam. The petitioner was put behind bar, later on, released from the jail custody, was put under suspension, later on, the suspension order was revoked. He was served with the Memo of Charge No. 453 dated 9.2.2007, from time to time,



according to the situation, the Presenting Officer as well as the Enquiry Officer was changed and finally the Enquiry Officer submitted the report dated 29.4.2008 whereby it was found that the charges were not proved against him. The ultimate action in pursuance to the enquiry report was not taken but, it was decided to conduct a fresh enquiry. Thereafter, a fresh Enquiry Officer was appointed, namely, Upendra Kumar Rai, Labour Commissioner and Chandra Shekhar was appointed as Presenting Officer but on retirement of Upendra Kumar Rai, one Sri Garib Sahu, Additional Secretary cum Conducting Officer was appointed as Enquiry Officer and he, after conducting the enquiry, submitted the enquiry report dated 20.10.2011 finding all the charges proved against the petitioner. He was given second show-cause vide letter no. 280 dated 1.12.2012 and directed to file second show-cause with the enquiry report dated 20.10.2011. The second show-cause, the petitioner replied vide reply dated 5.3.2012, refuting all the charges and prayed for rejection of the enquiry report submitted against him but, ultimately, the order of dismissal by way of punishment was passed and the same was challenged in the writ application C.W.J.C. No. 3053 of 2014 and this Court vide order dated 17.11.2016 remanded back the matter for fresh consideration, whereafter, the Disciplinary Authority has



considered the show-cause filed by the petitioner and finally the impugned order has been passed against him.

So far the point that was taken by the petitioner is the second enquiry proceeding has been replied, dealt with in the earlier proceeding and the Court has held that the petitioner himself subjected to the fresh enquiry proceeding (second enquiry), now he cannot be allowed to challenge the 2nd enquiry proceeding but, the writ court refused to grant any relief in the matter of second enquiry, on the score that the petitioner had never objected the participation in the second enquiry. On a very limited ground, the Court has interfered, having not assigned the reason which is a fundamental in the matter of decision making process and, in absence of the same, the order was held to be not sustainable. So this Court is not required to reopen the entire story in view of the limited remand made by the Court and it has to be decided whether this time the order of punishment suffers from any illegality on account of bereft of reasons, though learned counsel for the petitioner tried his best to show that this time also, the manner, the order has been passed, cannot be said to be a reasoned order and suffers from illegality. At the same time, it has further been argued that on merit, the fact alleged as such does not constitute the misconduct but, it was a mere negligence and, for



the negligence, he could not have been punished in such a high degree of punishment. Dismissal from service is nothing but is deprivation of the livelihood. Further submitted that the order of punishment is outrageous to the defiance of logic and against the conscience, such a high degree of punishment should not be inflicted upon the petitioner. He has further submitted that the notings in the record itself shows the authorities were pre-determined to punish the petitioner on account of pendency of criminal case. If the petitioner would be let off, that would become a ground of acquittal for other accused persons and would weaken the strength of the criminal case and, that is the reason, the petitioner has been visited with the extreme punishment of dismissal, which cannot be said to be fair and proper exercise of power and this Court, under the judicial review, should interfere with the order of punishment as the same is completely disproportionate. Learned counsel for the petitioner on the principle of proportionality has placed reliance on the judgment in the case of reported in Ex-Naik Sardar Singh Vs. Union of India & Ors. reported in (1991) 3 SCC 213, H.L. Gulati Vs. Union of India & Ors. reported in 2015 (12) SCC 408.

Per contra, learned counsel for the State has submitted that the writ court should maintain the judicial restraint in the



matter of interference with the order of punishment, this Court cannot act as an appellate court but, can only examine the decision making process and not the decision but would examine as to whether the facts which are necessary for consideration were not taken into consideration or the fact which was not required to be taken into consideration has been taken into consideration, the findings are so perverse that no reasonable person can arrive to such a finding and also it is against the weight of the evidence. Further said that the theory of proportionality will not be applicable as the Hon'ble Apex Court time without number has only given the test that if the punishment is so excessive hitting the conscience of a reasonable person, as it is defiance of logic, the manner the quantum of punishment has been awarded, the court may interfere with the punishment. Further submitted that the registration was made with retrospective effect as substantial amount was standing in the said account. So it itself shows the nexus between the petitioner as well as the main actor, that aspect has been looked into by the Disciplinary Authority as well as emphatically denied that the action was pre-determined rather it is based on the materials which have been brought during enquiry, showing the materials are connected and circumstantial evidence shows the charges leveled against the petitioner has been proved



very much serious and in support of his submission has placed reliance on the judgment in the case of Union of India & Ors. Vs. P. Gunasekaran reported in (2015) 2 SCC 610.

Having considered the rival contentions of the parties, this Court has to examine as to whether the charge has been proved against the petitioner based on material evidence brought during enquiry as well as the punishment is shockingly disproportionate to the conscience of the reasonable person. This Court, while exercising the power under judicial review, will not act as an appellate court but, the enquiry is a limited scope as set out in the different judgment of Hon'ble Apex Court specially in the case of the Apex Court in the case of P. Gunasekaran (supra) in which the area and scope of judicial scrutiny of facts exercising the power of juridical review has been delineated.

The exercise of power of judicial review is not at par with the power of appeal. While exercising power of appeal, the appellate authority or the Court would examine the factual evidences recorded during enquiry as well as law involved in consideration but, such exercise cannot be undertaken while exercising the power of judicial review. It can only be interfered with the order of disciplinary or appellate authority in a situation when the finding is based on no evidence or the findings recorded



is perverse against the weight of any evidence. Further the Court can interfere when the material fact which were required to be examined has been left out and the facts which are not connected is the basis for arriving to a finding. In those circumstances, the superior court in exercise of judicial review will interfere with the order but, while exercising the power, the court will not substitute the findings recorded by the disciplinary authority or appellate authority by his own finding. In such circumstances, the court will interfere with the order and remand back the matter for fresh consideration. The judicial review is not the forum of appeal but is a review of the manner in which the decision has been taken. The power of judicial review only ensures that the individual be treated fairly and not to ensure that the conclusion to which the authority reaches is correct in the eye of court. Where the enquiry is conducted on the charge of misconduct, the court would determine whether the enquiry was conducted by a competent officer, whether the rule of natural justice has been followed and the findings or the conclusion are based on “some evidence”. The authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof beyond reasonable doubt does



apply to disciplinary proceeding. When the authority accepts evidence and conclusion receives support from the evidence recorded during enquiry proceeding, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court may interfere with the conclusion or the finding when it is based on no evidence or findings are perverse or in violation of natural justice or statutory provision, further held that the employer has a right to impose penalty when the charges have been found proved but the quantum of punishment would be based on the gravity of the misconduct proved. In normal circumstances, the penalty is not open for the judicial review, if the court arrives to a finding that the findings are based on some evidence, the disciplinary authority or the appellate authority has acted in terms of law, as both are fact



finding body having exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The superior court in exercise of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty, can interfere when the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court in a sense that it is outrageous defiance of the logic. It is relevant to quote paragraph nos. 12, 17 & 18 of the judgment passed in the case of B.C. Chaturvedi (supra) which reads as follows:-

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined



therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

17. The next question is whether the Tribunal was justified in interfering with the punishment imposed by the disciplinary authority. A Constitution Bench of this Court in State of Orissa Ors. v. Bidyabhushan Mohapatra [AIR 1963 SC 779] held that having regard to the gravity of the established misconduct, the punishing authority had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. If the High Court reached a finding that there was some evidence to reach the conclusion, it became unassessable. The order of the Governor who had jurisdiction and unrestricted power to determine the appropriate punishment was final. The High Court had no jurisdiction to direct the Governor to review the penalty. It was further held that if the order was supported on any finding as to substantial



misconduct for which punishment "can lawfully be imposed", it was not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The court had no jurisdiction, if the findings prima facie made out a case of misconduct, to direct the Governor to reconsider the order of penalty. This view was reiterated in Union of India v. Sardar Bahadur [(1972) 2 SCR 218]. It is true that in Bhagat Ram v. State of Himachal Pradesh & Ors. [AIR 1983 SC 454], a Bench of two Judges of this Court, while holding that the High Court did not function as a court of appeal, concluded that when the finding was utterly perverse, the High Court could always interfere with the same. -----

18. *A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."*

The aforesaid view has recently been reiterated in the case of Union of India & Ors. Vs. P. Gunasekaran reported in



(2015) 2 SCC 610 where the Court has held in what manner the high court, while exercising the power of judicial review should scrutiny to facts and law, noted down what to be done and what not to be done. It is appropriate to quote paragraph nos. 12, 13, 14, 15, 16 & 20 which reads as follows:-

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*



(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience.

14. In one of the earliest decisions in *State of Andhra Pradesh and others v. S. Sree Rama Rao*[AIR 1963 SC 1723], many of the above principles have been discussed and it has been concluded thus:

"7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to



hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

15. *In State of Andhra Pradesh and others v. Chitra Venkata Rao[(1975) 2 SCC 557], the principles have been further discussed at paragraph-21 to 24, which read as follows:*

"21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that[pic]an offence is not established unless proved by evidence beyond reasonable



doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.



22. Again, this Court in *Railway Board, representing the Union of India, New Delhi v. Niranjana Singh* said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In *Niranjana Singh* case this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shut-down of an air compressor at about 8.15 a.m. on May 31, 1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.[pic]

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a



finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan.

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do."

16. These principles have been succinctly summed-up by the living legend and centenarian Justice V. R. Krishna Iyer in State of Haryana and another v. Rattan Singh[(1977) 2 SCC 491]. To quote the unparalled and inimitable expressions:

"4. in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are



permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. ..."

20. *Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts*



sterling character with firm adherence to a code of moral values."

While deciding the quantum of punishment, the two theories comes under consideration, the principle of proportionality as well as doctrine balancing test and necessity test. The quantum of punishment is within the domain and discretion of the employer to impose penalty looking to the gravity of charge, it should not be vindictive or unduly harsh. It should not be so disproportionate to the charge which shocks the conscience and should not be indicative of proof of biasness. The doctrine of proportionality is part of concept of judicial review where the court is concerned with process of decision making, observing fairness in process, awarding punishment lies within the exclusive province of the employer, if the decision of authority in he matter of imposing penalty is an outrageous defence of logic, then the punishment is not immune from correction. The court will not permit to use a 'sledge- hammer to crack a nut'. As has been said many a time; "Where paring knife suffices, battle axe is precluded". It is an observation has been given in the case of Council of Civil Service Union (CCSU) v. Minister for Civil Service, (1984) 3 All ER 935. The doctrine of judicial review on proportionality has been dealt with elaborately in the judgment passed in the case of Management of Coimbatore District Central



Co-Operative Bank Vs. Secretary, Coimbatore District Central Co-Operative Bank Employees Association & Anr. reported in (2007) 4 SCC 669.

In the present case, two issues have to be looked into as has been argued that this Court should reappraise the evidence and examine the material facts and arrive to a finding as to whether the charge of misconduct has been proved against the petitioner and second aspect has to be examined, is the quantum of punishment inflicted upon him is outrageous to defiance of logic.

Before advertng to this aspect, learned counsel for the petitioner has not pointed out any irregularity in conducting the departmental proceeding but, has confined his submission that on fact he cannot be said to have committed the misconduct as mentioned in the charge-sheet in the Prapatra Ka and it is well known principle that the Court, under the judicial review, in the matter of departmental enquiry is required to examine the decision making process, in a case, the findings are perverse and certain facts which were required to be looked into having been left out and the facts which were not remained to be taken into consideration is the basis for arriving to a finding or the findings are against the weight of evidence.



In nutshell, the Wednesbury's principle has to be applied to examine the correctness of the decision making process, unless the aforesaid errors have crept into in the decision making process, the Court should not interfere with the decision and substitute that decision by its own decision.

In the matter of inflicting punishment, unless the punishments are shockingly disproportionate in such manner that no reasonable and normal person will impose such a penalty which is defiance to the logic and moral standard, the Court would not interfere in the matter as has been decided by the Hon'ble Apex Court in the case of Union of India & Ors. Vs. K.G. Soni reported in (2006) 6 SCC 794, paragraph nos. 14 & 15 whereof, being relevant, are quoted herein below:-

“14. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.



15. To put differently, unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed.”

Reliance can also be placed on the judgment reported in the case of Union of India & Anr. Vs. G. Ganayutham, 1997 (7) SCC 463; Usha Breco Mazdoor Sangh Vs. Management of Usha Breco Limited & Anr., 2008 (5) SCC 566; Regional Manager & Disciplinary Authority, State Bank of India, Hyderabad & Anr. Vs. S. Mohammed Gaffar, 2002 (7) SCC 168; Collector Singh Vs. L.M.L. Limited, Kanpur, 2015 (2) SCC 410; Uttar Pradesh Avas Evam Vikas Parishad Vs. Uttar Pradesh Power Corporation Limited, 2011 (10) SCC 223 and Management of State Bank of India Vs. Smita Sharad Deshmukh & Anr., 2017 (4) SCC 75.

In the present case, the charge has been leveled against the petitioner that the application for registration of Baba Satya Sai Enterprises was filed on 24.4.2004 but, illegally he has shown the receipt of the application on 13.4.2004, without inspection, shown the establishment running and registered the fraud on 26.4.2004,



thereby misused his authority. The plea has been taken by the petitioner that the application was filed on 13.4.2004, as there was some defects in the application having not mentioned the name of father of applicant and, as such, the same was returned. He inspected the establishment situated at fourth floor of the residential multi storeyed building as there was no reason to doubt about the existence as on 7.4.2004 substantial amount was standing in the account of the said establishment, informed them to make necessary correction in the application and, the application was again received on 24.4.2004 and, accordingly, the establishment was registered on 26.4.2014. The witnesses have been examined from both sides, in the stamp register, it has been mentioned that the application has been received on 24.4.2004 but, the explanation has been given by the concerned Clerk as well as the petitioner that it was a mistake rather 24.4.2004 is the date of receipt of stamp for registration. The Enquiry Officer and the Disciplinary Authority has examined the evidence and analyzed the same and arrived to a finding that when incomplete application was received, either he could have passed a written order for removal of the defect or could have rejected the same. He has further recorded that actually he had not inspected the premises rather it was a table work as the said alleged office was situated at



the 4th floor at Rukanpura and the plea that has been taken that he had gone to visit the house of the senior officer, in that course, he had inspected the establishment, is completely incorrect, further held that the evidences are sufficient to reflect that the application was not filed on 13.4.2004 rather it was filed on 24.4.2004, only to show that the establishment was registered within one month from the date of its establishment as it has been said that the said establishment has taken its shape on 12.4.2004 and, in order to save the establishment from violation of statutory provisions has been shown to have been registered within one month as per provision of Bihar Shop and Establishment Act, in order to provide the umbrella of protection, the ante-date was given on receipt of the application. These are the findings recorded, by the enquiry officer after examining the materials on record, interference on finding, the Hon'ble Apex Court held that when the findings are based on material fact, in such circumstances, the writ court, under the power of judicial review, will not appraise and re-appreciate the evidence and record a different finding. The findings cannot be said to be a perverse finding as it is based on analysis and weighing of the evidence recorded during enquiry proceeding. In such circumstances, the findings with regard to misconduct is not required to be interfered with.



Another aspect of the matter is the quantum of punishment. From the records, it appears that the proposal was initiated by Labour Department for inflicting the punishment of stoppage of three increments and the same was approved by the Hon'ble Minister of Labour Services and Employment. As the petitioner is a Class-2 Officer, as per rule of executive business, approval of the Hon'ble Chief Minister, was necessary, for that, the file was sent to the office of the Chief Secretary who suggested penalty of dismissal on the ground of pendency of the criminal case as well as misconduct is of criminal nature which has been approved by the Hon'ble Chief Minister.

The question in the present case is that the punishment is so illogical as well as disproportionate in such a manner that no reasonable person or normal person would expect to inflict the punishment of dismissal as in the present case, the allegation to the charge is that he has illegally registered the shop and which was, later on, found that the shop was run by Santosh Kumar Jha who was involved in the flood scam. The registration has been made in April, 2004, no material has been brought to show that on the date of registration, establishment was engaged in the fraudulent activity, merely it is a case of registration of the establishment and the allegation has been made that as the application was not



received on 13.4.2004 but, in fact, was received on 24.4.2004 which was registered on 26.4.2004 and the charge has been proved. So, this Court is of the view that the misconduct is not connected or correlate with the activity of the petitioner showing any way assisting or abating in the commission of flood scam and, no material has been brought to show that the action of the petitioner has any correlation or relationship with respect to in any manner involved in assisting the Proprietor of the said establishment in the commission of fraud and scam. It can at best be said that illegality or irregularity has been committed by the petitioner in the matter of registration of the establishment and, for that, the dismissal punishment is so excessive, appears to be illogical and hit the conscience of the Court. For this reason, the person cannot be dismissed from service as the dismissal is the highest punishment in the service life of a government employee, would deprive him the employment as well as his future reemployment including his pensionary benefit.

The authority while exercising the power of judicial review in passing the order of punishment, it was required to see that hammers has not been used for cracking the nut. The power should be exercised in such a manner that it should appear that the



authority has really applied its balancing approach in awarding the punishment and it should not be defiance of logic.

In that view of the matter, the order of punishment contained in Memo No. 1035 dated 27.04.2017 is set aside and the matter is remanded back to the authority to re-consider in the matter of punishment and take a fresh decision in accordance with law.

In the result, this writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

rishi/-

AFR/NAFR	NAFR
CAV DATE	06.09.2018
Uploading Date	01.11.2018
Transmission Date	

