

HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.14085 OF 2006

ORDER:

1. This writ petition is filed seeking to call for records relating to and connected with Ref.1267/A/0947/STF/2002, dated 3.9.2002 issued by the 2nd respondent dismissing the petitioner from service and the consequential proceedings in Ref.2/STF/B/094/06, dated 4.2.2006 issued by the 1st respondent herein confirming the orders of the 2nd respondent herein; to set aside the same by holding them as illegal and arbitrary; and consequently, to direct the respondents to reinstate the petitioner into service with all consequential and attendant benefits including arrears of salary, seniority and promotion.

2. Heard Sri J. Sudheer, Counsel for the petitioner; Smt. V. Uma Devi and Sri K. Srinivasa Murthy for the respondents.

3. The case of the petitioner is as follows:

(i) The petitioner was appointed as Manager in the respondent-Bank in the year 1986. On 3.5.2000, while he was working as such at Kotha, Nellore Branch, Kadapa District, inspection was conducted and thereafter, through memo dated 9.5.2000 certain allegations were made against the petitioner, for which he submitted his explanation on 8.6.2000. Thereafter, he was transferred to Kadapa Branch. On 4.12.2001

respondent No.2 issued charge sheet to the petitioner, for which he submitted his explanation. Being not satisfied with the same, the 2nd respondent appointed enquiry officer. When the enquiry officer required his appearance, the petitioner expressed his inability due to fracture to his leg. In spite of the same, the enquiry officer completed the enquiry and submitted his report on 5.6.2002. Basing on the said report, a show cause notice was issued to the petitioner as to why punishment of dismissal should not be imposed, for which he submitted his explanation. The 2nd respondent imposed punishment of dismissal vide proceedings dated 3.9.2002. Aggrieved by the same, the petitioner filed W.P.No.17878 of 2002 and this Court disposed of the said writ petition enabling the petitioner to approach the appellate authority. Thereafter, the petitioner approached the appellate authority-1st respondent. The 1st respondent informed that a resolution was passed to conduct fresh enquiry.

(ii) From September, 2002 to January, 2004, the petitioner was out of service. The petitioner was not paid either subsistence allowance or salary. Prior to his dismissal, he was not suspended and in those circumstances, he filed W.P.No.23257 of 2004. The said writ petition was disposed of on 3.1.2006 directing the appellate authority to reconsider the matter afresh without being influenced by its earlier order. Thereafter, the appellate authority upheld the order dated

3.9.2002 of the disciplinary authority and rejected the appeal of the petitioner vide proceedings dated 4.2.2006. Aggrieved by the same, the present writ petition is filed.

4. Learned Counsel for the petitioner contended that the enquiry officer had not given sufficient opportunity to the petitioner. He further contended that the appellate authority on the earlier occasion found that the matter requires re-enquiry, but subsequent to the orders of this Court in W.P. No. 23257 of 2004 the appellate authority passed orders confirming the order of the disciplinary authority and that the appellate authority without considering the matter on merits and without application of mind, passed the order impugned.

5. Learned Counsel appearing for the respondents contended that the disciplinary authority had carefully gone through the enquiry proceedings, and come to the conclusion that the charges leveled against the petitioner were proved and that the appellate authority never found fault with the order passed by the disciplinary authority and that the appellate authority passed detail order without being influenced by its earlier order and that there is no illegality or irregularity in the order passed by the appellate authority.

6. This Court has considered the rival submissions made by the parties and the material available on record. On perusal of

the enquiry officer's report, this Court is of the view that the findings recorded therein are perverse. The enquiry officer recorded the proceedings in the following manner:

“Though several opportunities were provided to the CSOE to attend the enquiry and defend his case, he had not attended the enquiry on the dates informed to him in advance and utilized the opportunities provided o him. In view of the same, I have to construe that the CSOE is not having any interest to attend the enquiry and defend the case rather studiously avoiding the enquiry without giving any information.”

While recording so, the enquiry officer held that the charge against the petitioner was proved. Just because the petitioner had not attended the enquiry, the enquiry officer should have dealt with the charge based on the material available in the enquiry. But the enquiry officer cannot hold that the charge is proved because of the non-participation of the petitioner in the said enquiry. The Disciplinary authority has also not passed any speaking order so as to know the points which were taken into consideration for dismissing the petitioner. The appellate authority has also not passed any speaking order while confirming the punishment of dismissal.

7. Further, it is obvious that the disciplinary authority imposed the punishment, which is not commensurate to the charge proved in the enquiry. The disciplinary authority should have atleast applied the proportionality theory under

Wednesbury principle, or atleast it should have indicated the points weighed for imposing punishment of dismissal on the petitioner. The disciplinary authority and the appellate authority have not passed any speaking orders. At one point of time, the appellate authority vide proceedings dated 23.1.2004 had taken a decision to conduct fresh enquiry by giving opportunity to the petitioner. But when this Court allowed W.P.No.23257 of 2004, on 3.1.2006 by imposing costs of Rs.25,000/-, the appellate authority rejected the appeal vide order dated 4.2.2006 without considering any of the contentions raised by the petitioner.

8. Further, it is pertinent to note that the Hon'ble Supreme Court in a judgment rendered in ***Allahabad Bank and others Vs. Krishna Narayan Tewari***¹ held as follows:

“The High Court has taken note of the fact that the respondent had been placed under suspension in the year 2004 and dismissed in the year 2005. The dismissal order was challenged in the High Court in the year 2006 but the writ petition remained pending in the High Court for nearly seven years till 2013. During the intervening period, the respondent superannuated on 30th November, 2011. Not only that he had suffered a heart attack and a stroke that has rendered him physically disabled and confined to bed. The respondent may by now have turned 65 years of age. Any remand either to the Enquiry Officer for a fresh enquiry or to the Disciplinary Authority for a fresh order or even to the Appellate Authority would thus be very harsh and would practically deny to the respondent any relief whatsoever. Superadded to all this is the fact that the High Court has found, that there was no allegation nor any evidence to show the extent of loss, if any, suffered by the bank on account of the alleged misconduct of the respondent. The

¹ (2017) 2 SCC 308

discretion vested in the High Court in not remanding the matter back was, therefore, properly exercised.”

In another case in ***Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and others***², the Hon’ble Supreme Court held as follows:

“The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of *S.N. Mukherjee Vs. Union of India* reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.”

9. Perusal of the enquiry report would disclose that the findings recorded therein are perverse. The disciplinary authority has not passed any speaking order and the appellate authority has not considered any of the contentions raised by the petitioner. The impugned orders suffer from illegality. At this length of time, it is not appropriate to remand the matter. Therefore, the impugned orders are liable to be set aside, and accordingly, they are set aside.

10. For the above said discussion, the impugned orders in Ref.1267/A/0947/STF/2002, dated 3.9.2002 issued by the 2nd respondent dismissing the petitioner from service and the

² (2009) 4 SCC 240

consequential proceedings in Ref.2/STF/B/094/06, dated 4.2.2006 issued by the 1st respondent herein confirming the orders of the 2nd respondent herein are set aside.

11. Accordingly, the Writ Petition is allowed with all consequential benefits. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 23rd November, 2018.
Nn.



HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

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23/11/2018

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