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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 6863 of 2016

Reserved on 10.01.2019

Delivered on 31.01.2019

M. Raju S/o Late M. Musalayya, Aged About 61 Years, Ex. Assistant Manager, State Bank Of India, Branch Bande, Jagdalpur, Chhattisgarh, R/o C/o Shri Romio Jacab, House No. 274, Janta Colony, Tilak Nagar, Ward No. 10, Gudiyari, Raipur, District Raipur Chhattisgarh

---- Petitioner

Versus

1. Chief General Manager, State Bank Of India, Local Head Office, Hoshangabad Road, Bhopal, Madhya Pradesh
2. General Manager (D & PB), State Bank Of India, Local Head Office, Hoshangabad Road, Bhopal, Madhya Pradesh
3. Deputy General Manager (B & O), State Bank Of India, Zonal Office, Bairan Bazar, Raipur, Chhattisgarh

---- Respondents

For petitioner	:	Shri M. Raju, petitioner in person.
For Respondents	:	Shri P. R. Patankar, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

1. The challenge in the present writ petition is to the order of punishment imposed upon the petitioner Annexure P-1 dated 06.10.2003 and also the order dated 19.03.2004 which is an order passed by the appellate authority rejecting the appeal and also the rejection of the representation of the petitioner vide order dated 28.05.2012.

2. The petitioner, on the earlier occasion, had filed a writ petition challenging the order of punishment and the rejection of appeal vide WP No. 243/2005. The said writ petition got disposed of on 15.11.2011 whereby this Court had asked the petitioner to move a fresh representation and the competent authority in turn was directed to decide the same and which finally stood decided on 28.05.2012 which is also one of the impugned orders referred to above.

3. The brief facts relevant for adjudication of the present writ petition are that the petitioner was served with a charge sheet on 30.09.2002 (Annexure P-5). The petitioner, at the relevant time, was working as an Assistant Manger, State Bank of India, Bande Branch, District Kanker (CG). The allegation against the petitioner in the said charge sheet was that the petitioner on 26.03.2002 is said to have left the said branch at 12.30 p.m. without any sanction from the higher authorities taking along with him the cash keys of the branch. Earlier on the said day, the petitioner is said to have applied for leave on account of ill health of his mother who according to the petitioner was on her death bed. When the leave was refused by the authorities, the petitioner is said to have unauthorizedly left the branch without any intimation taking with him the cash keys. When he did not return till evening, the staff of the branch contacted his wife at his house who informed the authorities that the petitioner's mother was not unwell and she was hale and hearty on 26.03.2002. Since till evening the petitioner did not return, the officers had to be sent to his house for collecting the cash keys and the petitioner around 9.30 pm was brought along with the branch Manager to the branch for keeping the cash in the safe. It is said that the petitioner all through the day was in an inebriated condition under strong influence of alcohol. There were certain other allegations in respect of the irregularities that he had committed on different dates while discharging the duties in the branch particularly in respect of the maintaining of records of the branch. The petitioner thereafter gave a reply to the charge sheet wherein he had categorically denied the major misconducts that were alleged against him and in respect of few of the charges he had admitted of having done so. Not satisfied with the reply that the petitioner had submitted, the respondents took a decision to conduct a departmental enquiry in respect of the alleged charges which were levelled against him. The Enquiry Officer vide Annexure P-6 submitted a report and based on the enquiry report, the Disciplinary Authority vide his order dated 06.10.2003 imposed a punishment of compulsory retirement to the petitioner against which the petitioner preferred an appeal to the Chief General Manager and the appeal stood rejected vide order dated 19.03.2004. The petitioner thereafter preferred a writ petition i.e. WP No. 243/2005 which stood disposed of on 15.11.2011 with a direction to the petitioner for making a suitable representation to the higher authorities who in turn would decide the same. The said representation which the petitioner subsequently preferred stood rejected vide order dated 28.05.2012. Thus, the present writ petition has been filed again challenging the order of compulsory retirement and the rejection of appeal along with the rejection of representation pursuant to the first writ petition being disposed of.

4. Primarily two grounds have been raised by the counsel for the petitioner while challenging the disciplinary action initiated against the petitioner. According to the petitioner, imposition of punishment of compulsory retirement is not sustainable for the reason that it is contrary to the circular/instruction of the Bank particularly instruction dated 15.04.1987 wherein it has been clearly stipulated that compulsory retirement should not be resorted where the concerned officer has not completed pensionable service in as much as the order of compulsory retirement should not be inflicted unless an officer has completed 25 years of service or 20 years of pensionable service with attainment of age of 50 years. According to the petitioner, on the date of punishment, though he had put in more than 20 years of service, he had not attained the age of 50 years and was only aged 48 years 5 months and 6 days, at the same time he had not completed 25 years of service and therefore, the petitioner could not have been imposed with the order of compulsory retirement. The whole punishment and rejection of the appeal and his subsequent rejection of representation are all thus bad in law on this ground alone and the same deserves to be set aside/quashed.

5. The second substantial ground raised by the petitioner is that the charges which have been levelled against him have not been proved in any manner by the Management in the departmental enquiry. According to the petitioner, it is a case where no witness was examined before the Inquiry Officer and therefore it cannot be said that the charges levelled against the petitioner have been substantially proved before the Enquiry Officer. In the absence of recording of any evidence by the Management before the Enquiry

Officer it is difficult to hold that a particular charge has been proved before the Enquiry Officer by the Management. According to the petitioner, though there were certain documents which were produced before the Enquiry Officer and which have also been marked but marking of these documents in the absence of either the author of the documents or the person in whose possession these documents were at the time of enquiry having not been examined, it cannot be said that these documents have been properly proved.

6. Moreover, the charges levelled against the petitioner particularly the grave charges of the petitioner coming to the branch in an inebriated condition and leaving the branch abruptly without any authority and that even when he was contacted in the evening, he was found in a drunken condition, all are matter of facts which could be proved by the witnesses who were available in the Bank and the witnesses who had gone to the house of the petitioner in the evening. In the absence of any of these witnesses examined before the Enquiry Officer, the charges stood disproved. Thus, for the aforesaid two grounds, counsel for the petitioner sought for setting aside/quashing of the impugned order of punishment and the rejection of the appeal.

7. Per contra, counsel appearing for the Bank opposing the petition submits that so far as the retirement of the petitioner before attaining the age of 50 years is concerned, the circular/instruction dated 15.04.1987 would not be applicable upon the petitioner in the year 2003 as by that time SBI Officers Service Rules had already come into effect on 01.01.1992. The said rule had a overriding effect to all instructions, guidelines and circulars pertaining to the service conditions of an Officer of the State Bank.

8. So far as the second contention of the petitioner of there being no evidence led by the Management before the Enquiry Officer is concerned, the contention of the respondents is that the Bank had produced the entire documentary proofs which were available against the petitioner and the charges also were one which could be established from these documents. Hence, non-examination of the witnesses would not be fatal in respect of proving the charges. According to the respondents, it is the doctrine of preponderance of probability which is applied for determining whether the charges levelled against the petitioner have been proved or not. According to the respondents, the evidence need not be led and proved strictly in accordance with the provisions of the Evidence Act in a departmental enquiry which is otherwise required only in a criminal case or a proceeding drawn before a judicial authority. Since the Enquiry Officer is a quasi judicial authority, strict applicability of the Evidence Act would not be required. It was further contended by the counsel for the Bank that from the reply adduced by the petitioner and the deposition that the petitioner had made before the Enquiry Officer it is evident that he had to a great extent admitted the charges that were levelled against him which further supports the action of the Bank. Thus, prayed for rejection of the writ petition.

9. Having heard the contentions put forth on either side and on perusal of the record, this Court is of the opinion that it would be more appropriate to deal with the first objection raised by the petitioner as to whether the punishment of compulsory retirement could have been imposed against the petitioner or not.

10. It would be relevant at this juncture to refer to the judgment of the Delhi High Court passed in WPC No.6579 of 2014. The Delhi High Court while disposing of the said writ petition on 19th September, 2016, in paragraph-14 of its judgment had taken note of the fact that on the date of service of punishment upon the petitioner he had put in 24 years 9 months & 11 days of service and on the said date, he was 48 years 5 months 6 days of age i.e. he had not completed 50 years of age. At the same time, he did not have 25 years of clear pensionable service. This aspect has not been disputed by the respondents bank except for the fact that the said rule provision is applicable only for the purpose of voluntary retirement and not for compulsory retirement. The instructions and guidelines prior to the coming into force of the SBI Officers Service Rules 1992 w.e.f. 01.01.1992 would not be applicable as all earlier instructions and guidelines stood superseded.

11. The petitioner under the Right to Information Act had sought information from the respondents as to the guidelines and conditions required for inflicting an employee with a punishment of compulsory retirement. The respondents vide Annexure P-12 dated 12.11.2012 has informed the petitioner that the condition required for imposition of punishment of compulsory retirement is that an Officer should have 25 years of clear pensionable service or he should have 20 years of pensionable service and should have crossed 50 years of age. The authorities of the Bank have also clarified that there has been no change of the said instruction/guideline subsequent to

June, 2002 which by itself means that the instruction dated 15.04.1987 earlier referred to was in force during the said period.

12. In view of the said stand of the respondents themselves provided to the petitioner, all that now that has to be seen is whether the petitioner could have been inflicted with the punishment of compulsory retirement or not. It is not disputed by the respondent Bank that the petitioner had not completed 25 years of service. It is also not disputed by the Bank that the petitioner had not attained the age of 50 years.

13. In view of the aforesaid admitted or undisputed factual position, the petitioner could not have been inflicted with punishment of compulsory retirement. Thus, the impugned orders i.e. the order of compulsory retirement and the rejection of appeal on this ground would not be sustainable and the same deserve to be and are accordingly set aside/quashed.

14. Coming to the second issue of there being no witness examined during the course of departmental enquiry, this Court is of the opinion that there are certain charges which could be proved by way of documentary evidence which is in respect of the transactions made in the Bank and which could be established on the perusal of the records. However, there are certain other charges which would definitely require certain witnesses to be examined before the Enquiry Officer with which the charges could be said to be proved. The first major charge is that on 26.03.2002 the petitioner came to the Branch in an intoxicated and inebriated condition under the strong influence of alcohol. This aspect could have been established before the Enquiry Officer by the officers or staff of the branch which in the instant case has not been done. Likewise, it was also the charge that the petitioner had abruptly left the branch on the said date along with the keys of safe and the same had to be got after sending some officers to his house. The said officers were also not examined before the Enquiry Officer. These were the major charges which were alleged against the petitioner. So far as the other charges are concerned, many of which have been admitted by the petitioner, cannot be said to be a major misconduct and could only be a case of negligence without any malafide intention.

15. Surprisingly, even for the other charges, there has been no witness examined by the Management except for producing some of the documents by the presenting officer before the Enquiry Officer. The Enquiry Officer has relied upon the deposition of some of the witnesses examined at the preliminary stage and which was not recorded in the presence of the petitioner and even after these depositions being produced before the Enquiry Officer, these witnesses were not called for cross examination and in the absence of which such deposition losses its significance. The Authorities have also relied upon the medical document given by one Dr. D. K. Sinha who in his report has stated that the person seems to have consumed alcohol but is not in the condition of alcoholic intoxication. Surprisingly, the said doctor also was not examined before the Enquiry Officer with which the petitioner could have at least cross-examined this witness to prove his innocence or at least to prove that he had committed a misconduct as such.

16. True it is that in a departmental enquiry proceeding it is preponderance of probability which is made applicable but even in order to apply the said doctrine, there has to be certain cogent material and cogent witnesses produced before the Enquiry Officer. The standard of proof may not require the strict applicability of the provisions of the Evidence Act but the charges which have been levelled against an employee have to be proved with certain element of evidence and without which it could not be said that the Enquiry Officer has conducted himself in a fair and reasonable manner. The petitioner or the delinquent officer should get a fair opportunity of defence whereby the delinquent gets full opportunity to cross-examine the witnesses to counter the charges which are levelled against him. It cannot be presumed that the charges levelled against an employee could be established only on the basis of statements, depositions and reports which have been prepared behind the back of the delinquent and the delinquent not being given an opportunity to cross-examine any such witness. The entire departmental enquiry stands vitiated for this reason also.

17. Counsel for the respondent Bank has referred to a catena of decisions so far as the scope of interference by the High Court in a disciplinary proceeding and also on the proportionality and quantum of punishment. Some of the judgments are as under:

I) 1995 (6) SCC 749, B. C. Chaturvedi Vs. Union of India

ii) 1997 (7) SCC 463, Union of India Vs Gayanuthan

Iii) 1999 (2) SCC 10, Kuldeep Singh Vs. Commissioner of Police

iv) 2001 (2) SCC 386, Om Kumar Vs. Union of India

v) 2005 (7) SCC 338, V. Ramanna Vs. A.P.S.R.T.C.

vi) 2006 (7) SCC 212, SBI Vs. Ramesh Dinkar Kunde

vii) 2011 (11) SCC 535, Union of India Vs. Manab Kumar Guha

viii) 2014 SCW 6657, Union of India Vs. P Gunashekaran

18. The ratio of law laid down in all these judgments is that the scope of interference is limited but at the same time, the law is also well settled that the High Court is not denuded of its power in the course of exercise of writ jurisdiction or in the course of judicial review of an order of punishment under Article 226 of the Constitution of India. It is well settled by now that in the event of the finding of the Enquiry Officer being perverse or where the Enquiry Officer has given a finding without material facts on record and where the finding of the Enquiry Officer is based on materials which were either not produced during the course of enquiry or the materials which were not collected in the presence of the delinquent employee, the same cannot be said to be a fair enquiry. One should not forget at this time that the entire enquiry proceeding was conducted without recording the statement of a single witness .

19. In view of the aforesaid legal position, the judgments so cited by the respondents cannot be applied in favour of the respondents in the present factual matrix. Hence, the enquiry proceeding, the consequential order of punishment and the rejection of appeal all stand vitiated for these reasons.

20. As a consequence, the writ petition stands allowed. The impugned orders dated 06.10.2003, 19.03.2004 and 28.05.2012 stand set aside/quashed with consequences to follow.

Sd/-
(P. Sam Koshy)
JUDGE

Khatai