

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.

903 CIVIL APPLICATION NO.1281 OF 2019
IN
RAST/34342/2018
IN
WP/3769/2015

THE ASSISTANT SUPERINTENDENT OF POST
OFFICES, SHRIRAMPUR DIVISION & ORS.
VERSUS
DATTATRAYA GOVIND JADHAV

.....
Mr. S.B.Deshpande, Advocate for applicants.

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CORAM : S. V. GANGAPURWALA &
SUNIL K.KOTWAL, JJ.

DATE : 25/01/2019

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ORAL ORDER:

. Mr. Deshpande, learned ASG submits that this Court partly allowed the Writ Petition. The non applicant was guilty of mis-appropriation. When the non applicant was guilty of mis-appropriation, the punishment imposed upon him by disciplinary authority was proper. In cases of mis-appropriation, this Court ought not to have interfered with the quantum of punishment.

2. While considering the case put-forth by the parties, we have observed thus,

“ 15. Recently, in the case of “Chief Executive Officer, Krishna District Cooperative Central Bank Ltd. and another vs K. Hanumantha Rao and another”, reported in [2017 (4) Mh.LJ. 484], the

Supreme Court observed that :

“ It is trite that Courts, while exercising their power of judicial review over such matters, do not sit as the appellate authority. Decision qua the nature and quantum is the prerogative of the disciplinary authority. It is not the function of the High Court to decide the same. It is only in exceptional circumstances, where it is found that the punishment/penalty awarded by the disciplinary authority/employer is wholly disproportionate, that too to an extent that it shakes the conscience of the Court, that the Court steps in and interferes.

16. In view of above settled position of law, if the circumstances of present case are examined, it emerges that the misappropriation committed by the petitioner was of amount of Rs. 9,645/-. The said amount is subsequently deposited by the petitioner on 15.6.2005. Thus, as pointed out by learned counsel for the petitioner, it was a temporary misappropriation and neither the Government nor any depositor is put to any loss. No previous misconduct is established against the petitioner during his long service tenure since 1.7.1983.

17. Thus, considering these peculiar circumstances and unblemish service rendered by petitioner since 1.7.1983 till 2005, applying the doctrine of

proportionality, we are fully satisfied that the punishment of dismissal from service is shockingly disproportionate, which struck to the conscience of the Court.

18. In view of above discussion, definitely lesser punishment like compulsory retirement from service should have been imposed by respondent no.2 disciplinary authority.

19. Now question arises whether High Court can reduce the punishment and impose lesser appropriate punishment to the petitioner?. In the case of “Chief Executive Officer, Krishna District Cooperative Central Bank Ltd.” (cited supra), the Apex Court observed that :

“ It is not the function of the High Court to impose a particular punishment even in those cases where it was found that penalty awarded by the employer is shockingly disproportionate. In such a case, the matter could, at the best, be remanded to the disciplinary authority for imposition of lesser punishment leaving it to such authority to consider as to which lesser penalty needs to be inflicted upon the delinquent employee. No doubt, the administrative authority has to exercise its powers reasonably. However, the doctrine that powers must be exercised reasonably has to be reconciled with the doctrine that the Court must not usurp the

discretion of the public authority. The Court must strive to apply an objective standard which leaves to the deciding authority the full range of choice. “

20. In view of above referred trite law, this Court cannot reduce the punishment imposed by disciplinary authority, but for the same the matter needs to be remitted to respondent no.2 disciplinary authority for reconsidering the imposition of other appropriate lesser punishment than dismissal or removal of service against the petitioner, such as compulsory retirement or otherwise. It follows that this petition deserves to be partly allowed.

21. In the result, we pass following order.

(i) The Writ Petition is partly allowed.

(ii) The impugned orders, passed by respondent nos. 2, 3 and 4, as well as the order passed by the Central Administrative Tribunal, Bench at Bombay, in Original Application No. 191 of 2010 are quashed and set aside.

(iii) The matter is remanded to respondent no.2 disciplinary authority for reconsideration of quantum of punishment imposed against the petitioner, by taking into consideration the above observations of this Court, within a period of

three months from the date of this order.

(iv) Rule is made absolute in above terms.

(v) Parties shall bear their own costs. ”

3. We had considered that it was a temporary misappropriation and neither the Govt. nor any depositor is put to any loss. No previous misconduct is established against the petitioner during his long service tenure since 01/07/1983. Considering the peculiar circumstances and unblemish service rendered by the petitioner since 01/07/1983 till 2005 and applying the doctrine of proportionality, we were dis-satisfied with the punishment of dismissal from service and in view of that we had remitted the matter to the disciplinary authority to impose lesser punishment than dismissal.

4. We do not find any error apparent on the face of record.

5. Civil Application for delay is allowed and stands disposed of.

6. Review application is dismissed.

[SUNIL K.KOTWAL]
JUDGE

[S.V.GANGAPURWALA]
JUDGE

KNP.