

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

**WRIT PETITION NOs.32889, 32890, 32895, 32904, 32964 &
33161 OF 2017**

COMMON ORDER:

All these writ petitions are being disposed of by way of this common order as the issue raised in all these writ petitions is one and the same.

Heard Sri Mohd. Islamuddin Ansari, counsel for the petitioners, and Sri Venkat Raghu Ramulu, Standing Counsel appearing for the respondents.

For the sake of convenience, the facts in W.P.No.32889 of 2017 are hereunder discussed:

It has been contended by the petitioner that she was appointed as Safai Karamchari-cum-Sub Staff on daily wage basis with the respondent Bank during 2007. While she was discharging her duties to the best satisfaction of her superiors and every one concerned, the respondents have invited applications by issuing an advertisement on 07.11.2012 to fill up the regular post of Safai Karmachari and the qualifications prescribed for the said post was that the candidate should have passed Class VIII. Since the petitioner was already working on daily wage basis as Safai Karmachari, she has responded to the said advertisement by submitting her application on 14.11.2012 along with xerox copies of her certificates of qualifications and proof of date of birth. Thereafter, the petitioner was called for interview on 07.02.2013 and she has attended the said interview. After undergoing

selection process, the petitioner was appointed as Safai Karmachari-cum-Sub Staff vide orders dated 22.03.2013 and she has reported to duty on 01.04.2013. The petitioner further submitted that while she was discharging her duties as Safai Karmachari-cum-Sub Staff, the respondents issued suspension order dated 19.03.2014 alleging that she has submitted fake transfer certificate and bona fide certificate to the effect that she had studied only upto Class VIII. Subsequently, the respondents issued memo on 20.03.2014 calling upon the petitioner to explain as to why the disciplinary action should not be initiated against her. In response thereto, the petitioner submitted her explanation. However, having not satisfied with the explanation submitted by the petitioner, the respondents conducted departmental enquiry. On 02.04.2014, a charge memo was issued alleging that the petitioner has submitted fake School Certificates with malafide intention to secure employment and the same tantamounts to gross misconduct. In the departmental enquiry, the Enquiry Officer held that the charge framed against the petitioner is proved and a copy of the enquiry report was furnished to the petitioner. Thereafter, the respondents have issued show cause memo dated 31.07.2014 directing the petitioner to explain as to why she should not be dismissed from service. Later on, the petitioner has submitted an application requesting the respondents to take a lenient view. The petitioner has passed Class X at the time of joining to duty as Safai Karmachari on daily wage basis with the respondents, but, since the respondents have issued an advertisement for filling up the post of Safai Karmachari

with the candidate who passed Class VIII only, the petitioner had submitted fake school certificates to the effect that she has studied upto Class VIII. Thinking that if the petitioner discloses that she has already passed Class X and studied upto Intermediate, her case may not be considered, the petitioner under the bona fide impression had to submit fake certificates that she has passed Class VIII only and, therefore, requested the respondents to take a lenient view. But, the respondents, without notice, had dismissed the petitioner vide orders dated 04.08.2014.

In W.P.Nos.32890 and 33161 of 2017, the petitioners have even preferred appeals against the orders of dismissal and the same were rejected by the appellate authorities.

Counsel for the petitioners submitted that since the notification prescribed the qualification of Class VIII only and the petitioners, who were already working as Safai Karmachari on daily wage basis with the respondents since 2002, were over qualified, the petitioners unintentionally committed the mistake of submitting fake certificates. Therefore, the petitioners requested the respondents to take lenient view, but the respondents have imposed major punishment of dismissal, which is shockingly disproportionate to the charges leveled against the petitioners. Counsel for the petitioners has relied upon the judgment rendered by the Hon'ble Supreme Court in **B.C. Chaturvedi v. Union of India**¹, wherein it was held as under:

¹ (1995) 6 SCC 749

“What has been stated above may be buttressed by putting the matter a little differently. The same is that in a case of a dismissal, Article 21 gets attracted, and, in view of the interdependence of fundamental rights, which concept was first accepted in the case commonly known as *Bank Nationalisation case*², which thinking was extended to cases attracting Article 21 in *Menaka Gandhi v. Union of India*³ the punishment/penalty awarded has to be reasonable; and if it be unreasonable, Article 14 would be violated. That Article 14 gets attracted in a case of disproportionate punishment was the view of this Court in *Bhagat Ram v. State of H.P.*⁴ also. Now if Article 14 were to be violated, it cannot be doubted that a High Court can take care of the same by substituting, in appropriate cases, a punishment deemed reasonable by it.”

Learned counsel for the petitioners has further relied upon the judgment of the Hon’ble Supreme Court in *State of Gujarat v. Anand Acharya*⁵, wherein it was held as under:

“The well-settled proposition of law that a court sitting in judicial review against the quantum of punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty is not in dispute. However, if the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof (see *Bhagat Ram v. State of H.P.* (4 *supra*), *Ranjit Thakur v. Union of India*⁶ and *U.P. SRTC v. Mahesh Kumar Mishra*⁷).”

² Rustom Cavasjee Cooper v. Union of India, (1970) 1 SCC 248 = (1970) 3 SCR 530

³ (1978) 1 SCC 248 = AIR 1978 SC 597

⁴ (1983) 2 SCC 422 = 1983 SCC (L&S) 342 = AIR 1983 SC 454

⁵ (2007) 9 SCC 310

⁶ (1987) 4 SCC 611 : 1988 SCC (L&S) 1

⁷ (2000) 3 SCC 450 : 2000 SCC (L&S) 356

Learned counsel for the petitioners has further relied upon the judgment of the Hon'ble Apex Court in **Ranjit Thakur v. Union of India** (6 *supra*), wherein it was held as under:

“Judicial review generally speaking, is not directed against a decision, but is directed against the “decision-making process”. The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review. In *Council of Civil Service Unions v. Minister for the Civil Service*⁸, Lord Diplock said:

Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call ‘illegality’, the second ‘irrationality’ and the third ‘procedural impropriety’. That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of ‘proportionality’ which is recognized in the administrative law of several of our fellow members of the European Economic Community ;...

Relying on the aforesaid judgments, learned counsel for the petitioners contended that the punishment of dismissal is shockingly

⁸ (1984) 3 WLR 1174 (HL) : (1984) 3 All ER 935, 950

disproportionate and the post which is being held by the petitioners is Safai Karmachari and that some of the petitioners in this batch of cases were already working on daily wage basis with the respondent Bank since 2002. Counsel for the petitioners further contended that it is only when the petitioners were discharging their duties with the respondents, the respondents have issued notification to fill up the vacancies of Safai Karmachari on regular basis and as the qualification prescribed for the said post is that the candidate should have passed Class VIII only, the petitioners submitted false educational qualification certificates to the effect that they have studied upto Class VIII only. Counsel for the petitioners also submitted that at the time of participating in the interview, the petitioners have submitted SCC original certificates for the purpose of age proof, which itself would disclose that the petitioners never wanted to cheat the respondents, and the respondents have seen the original SSC certificates at the time of interview and are fully aware that the petitioners have passed SSC, but later on issued the dismissal orders, therefore, the action of the respondents in dismissing the petitioners from service on the allegation that the petitioners have submitted false certificates is shockingly disproportionate. No doubt, the petitioners committed misconduct, but all misconducts may not end up with major punishment of dismissal and even any lesser punishment would meet the ends of justice. Therefore, counsel for the petitioners submitted that appropriate orders be passed in these writ petitions by setting aside the impugned orders holding that the

punishment of dismissal is shockingly disproportionate to the charges leveled against the petitioners and remand the matters to the appellate authority so as to impose any other lesser punishment than the punishment of dismissal by duly taking into account the above referred judgments of the Hon'ble Supreme Court.

Standing Counsel appearing for the respondents had contended that every opportunity was given to the petitioners to prove their innocence in the enquiry and the petitioners have admittedly furnished false certificates to the effect that they have studied only upto Class VIII, which is a misconduct, and the disciplinary authority has rightly imposed the punishment of dismissal for proven misconduct in the enquiry, therefore, there are no merits in these writ petitions and these writ petitions are liable to be dismissed.

This Court, having considered the rival submissions of learned counsel for the parties, is of the considered view that the disciplinary authority as well as the appellate authority have imposed the major punishment of dismissal on small employees i.e., Safai Karmacharis who were initially appointed with the respondents on daily wage basis. In these cases, while the petitioners were discharging their duties with the respondents on daily wage basis, the respondents have issued notification on 07.11.2012 for filling up the post of Safai Karmachari and since the respondents have fixed the qualification that the candidate should have passed Class VIII only, the petitioners have submitted false certificates claiming that they have studied only upto

Class VIII. No doubt, the act of the petitioners in submitting false certificates is a misconduct, but imposing major punishment of dismissal is shockingly disproportionate to the charges leveled against the petitioners. Further, the petitioners never disputed about their misconduct and also they have been pleading before the enquiry officer, the disciplinary authority as well as the appellate authority to take a lenient view and to impose any lesser punishment so as to meet the ends of justice. It is not that for every misconduct, necessarily the respondent Bank must impose the punishment of dismissal. There are other factors also which have to be looked into by the disciplinary authority as well as the appellate authority while imposing the major punishment of dismissal. Firstly, the disciplinary authority as well as the appellate authority ought to have looked that the petitioners were discharging their duties on daily wage basis. It is only when the notification was issued for the post of Safai Karmachari on 07.11.2012, the petitioners, after undergoing selections, were appointed as regular Safai Karmacharis. No doubt, the petitioners have committed misconduct of producing false certificates to the effect that they have studied only upto Class VIII. The disciplinary authority ought to have imposed any other lesser punishment than the punishment of dismissal, by applying the law laid down by the Hon'ble Supreme Court in **Ranjit Thakur's** case (6 supra), wherein the Hon'ble Supreme Court categorically held that the punishment should commensurate to the charges leveled and the punishment should not be vindictive or unduly harsh. By applying the principles

of proportionality, this Court is of the considered view that the punishment of dismissal is too harsh punishment for the alleged charge of submitting fake educational qualification certificates in respect of daily wage employees who got recruited through notification.

In view of the above, the orders impugned in all these writ petitions are set aside, as the punishment of dismissal is shockingly disproportionate to the charges leveled against the petitioners.

It is further directed that the matters in W.P.Nos.32890 and 33161 of 2017 are remanded to the appellate authorities, whereas the matters in W.P.Nos.32889, 32895, 32904 and 32964 of 2017 are referred to the appellate authorities concerned for consideration and imposing any other lesser punishment than the punishment of dismissal/removal/compulsory retirement by taking into account all the facts and circumstances of the cases.

Accordingly, these writ petitions are allowed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J