IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 30-03-2021

Judgment Delivered on : 30-04-2021

Coram

The Honourable Mr. Justice R. Subbiah
and
The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

Writ Appeal No.3975 of 2019
and
C.M.P. No. 24898 of 2019

V. Narayanan ... Appellant/Writ Petitioner

Versus

1. Chief Manager
Bank of India
Staff Training College Chennai & Inquiring Authority
Balaji Nagar 2nd Street
Royapettah, Chennai - 600 014.

2. Assistant General Manager
Chennai Zonal Office & Disciplinary Authority
Bank of India
"Star House"
II Floor, No.30 (Old No.17)
Errabalu Street
Chennai - 600 001.

3. Zonal Manager, Chennai Zone and Appellate Authority
Bank of India
"Star House"
II Floor, No.30 (Old No.17)
Errabalu Street
Chennai - 600 001.

4. General Manager (HR) & Reviewing Authority
Bank of India, Head Office
Star House, Plot C-5
"G" Block, Bandra-Kurla Complex
Bandra (E)
Mumbai – 51. ... Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the Order dated 09.08.2019 passed by the learned Single Judge in W.P. No. 4473 of 2015 on the file of this Court.

Prayer in W.P.No.4473 of 2015:

To call for the records pertaining to the imposition of Penalty to the Petitioner by the order passed by the Assistant General Manager Chennai Zone and Disciplinary Authority the 2nd Respondent herein vide Penalty Order Ref.No. ZO:IR:VK: G-133:470 dated 23.10.2013 and confirmed by the Zonal Manager Chennai Zone and Appellate Authority vide his order in Ref.No.ZO:IR:VK: G-133:820 dated 07.03.2014 for the acts of misconduct as contained in Articles of Charge Ref.No. ZO:IR:VK: G-133:359 dated 23.11.2012 and confirmed by the General Manager (HR) and Reviewing Authority the 4th Respondent herein vide his order in Ref.No.: CS:RA:98 dated 30.10.2014 and quash the said orders of the Respondents Authorities of the Bank of India and direct the reinstatement of the Petitioner, with all back benefits and with held/denied Promotion.

For Appellant : Dr. A.E. Chelliah, Senior Counsel for Ms.R.Rathna Thara

For Respondents : Mr. Rajnish Pathiyil

JUDGMENT

R. SUBBIAH, J

The appellant has filed this appeal aggrieved by the order of dismissal dated 09.08.2019 passed by the learned Single Judge in W.P.No.4473 of 2015 filed by him.

2. The appellant has filed the aforesaid W.P.No.4473 of 2015 praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the imposition of penalty to the petitioner by the order passed by the Assistant General Manager, Chennai Zone and Disciplinary Authority/the second respondent herein, vide penalty order dated 23.10.2013, confirmed by the Zonal Manager, Chennai Zone and Appellate Authority, vide his order dated 07.03.2014 and further confirmed by the General Manager (HR) and Reviewing Authority, the fourth respondent herein, vide his order dated 30.10.2014 and quash the aforesaid orders of the respondents and consequently direct the reinstatement of the appellant with all consequential service and monetary benefits, including promotion.

3. The appellant was an employee of the respondents/Bank. He worked as a Branch Manager in Bank of India, Kadavasal in Nagapattinam District. During the course of such service, he was placed under suspension on 26.04.2012 pending contemplation of enquiry into grave charges proposed against him. Subsequently,

a Memorandum calling for explanation dated 20.06.2012 was sent to the appellant enlisting the allegations levelled agiainst him. Thereafter, a charge memo dated 23.11.2012 was issued to him containing 7 charges.

4. The first article of charge is that the appellant accommodated one S. Selvakumar by sanctioning various loans to him and his relatives/associates in gross violation of the Bank's lending norms and procedures. The first article of charge also refers to 18 more bogus/fictitious crop loan sanctioned and credited in the name of Ms. Rajeswari, mother of Selvakumar.

5. The second article of charge pertains to misuse of official position in sanctioning and disbursing five bogus crop loans to the tune of Rs.2,49,000/- through a Mediator Mr.Gunasekaran, the funds of which were credited in the SB Account No.2348 of Mr.R.Srinivasan on 13.10.2009 and were utilised by Staff - CTO Shri.R.Viswanathan. Further, on 24.12.2010, amount of 24 more bogus crop loans were mobilised through the same mediator Gunasekaran amounting to Rs.14,69,158/- credited to the account of Srinivasan. These 24 borrowers also included five borrowers, who were sanctioned loan earlier on 13.10.2009. All these borrowers were mostly non-agriculturists and actually not availed the loan. As such, the loan amount of 29 bogus crop loans were allowed to be mis-utilised by the appellant.

6. The third article of charge is in relation to the sanctioning and disbursement of two bogus crop loans in the name of Usha Rani, a temporary Sepoy at the Branch and in the name of Ms.Subamathi, a student and daughter of Ms.Usha Rani. Both were forced to sign loan application forms, documents and withdrawal slips, when they do not have any agricultural land or do not engage in cultivation. The loan amount was utilised by one Mrs.Sudharsana, one of the customers of the branch and as such the appellant allowed mis-utilisation of loan amount into two crop loan accounts.

7. The fourth article of charge is that the appellant, in utter disregard to Bank's lending norms, sanctioned 10 loans, details of which were mentioned thereunder, to self-Help groups.

8. The fifth article of charge pertains to sanction and disbursement of around 655 educational loans in utter disregard to the norms of the Bank and in violation of terms of sanction stipulated by the Zonal Office.

9. The sixth article of charge against the appellant is that, he indiscriminately and in gross violation of Bank's

lending norms, sanctioned loans in the names of various persons in their own names and also in the names of their family members, as detailed thereunder.

10. The last and seventh article of charge against the appellant is that he, in gross violation of Bank's extant guidelines, sanctioned and paid an amount of Rs.2,76,740/- to Mr.Mohd.Asik, a borrower of the branch and taxi operator to the debit of Branch P & L Account, during the period 14.01.2011 to 07.06.2011 towards taxi fare for journeys said to have been undertaken for Bank's work as detailed thereunder.

11. For the charge memo dated 23.11.2012, the appellant had submitted his written statement of defence on 06.12.2012 denying the charges levelled against him. Thereafter, an Inquiry Officer was appointed to conduct a departmental enquiry. The departmental enquiry commenced on 24.01.2013 and it was concluded on 15.05.2013. The appellant participated in the departmental enquiry and he was assisted by a defence assistant. After conclusion of inquiry, the Inquiry Officer submitted his report dated 31.07.2013 wherein he has concluded that all the charges levelled against the appellant are proved. When the report of the Inquiry Officer was sent to the appellant, he submitted his written representation on 17.08.2013. The disciplinary authority, after considering the report of the Inquiry Officer and the defence put-forth by the appellant, imposed the punishment of dismissal from service on 23.10.2013. The appeal preferred by the appellant there-against before the Appellate Authority on 05.12.2013 was rejected on 07.03.2014. The appellant therefore preferred a Review Petition on 11.07.2014 by contending that he had put in 31 years of unblemished service. He had also contended before the Reviewing Authority that charges levelled against him were blown out of proportion and he was vindictively dealt with by imposing the major punishment of dismissal from service. The Reviewing Authority, on a consideration of the materials on record, rejected the Review Application on 30.10.2014. Assailing the aforesaid orders passed by the respondents, the appellant has filed the writ petition before the learned Single Judge.

12. Before the Writ Court, a counter affidavit was filed by third respondent, who had sworn to the affidavit on behalf of the other respondents also. In the counter affidavit, the third respondent has referred to the conduct of a Risk Based Internal Audit of the Bank branch relating to the transactions that had taken place from 19.08.2011 to 11.09.2011, where the appellant was working as Branch Manager from 15.11.2008. According to the third respondent, the audit was conducted covering all the borrowal accounts, branch accounts and other areas of the branch. It was stated that, the auditors, after verifying the

accounts, pointed out 45 major irregularities and issued a Special Letter citing several Grave Irregularities involving Vigilance/Criminal angle as well. This has led to the initiation of departmental proceedings against the appellant and eventually the charge memo was issued to him. Further, during the course of enquiry conducted against the appellant, he was given adequate and sufficient opportunity to put forth his defence. According to the third respondent, even though the appellant had extracted the evidence led before the disciplinary authority in support of his defence, he had deliberately not referred to those charges, which were proved against him. In other words, before the disciplinary authority, the appellant could not dispute the charges levelled and proved against him. The third respondent, in the counter affidavit, specifically referred to about the fictitious crop loan of Rs.45,000/- sanctioned by the appellant in the name of one Mr.Prabhu, but was remitted to the account of one Rajeswari and she withdrew the amount. According to the third respondent, though the loan was sanctioned in the name of Mr.Prabhu, in the loan application, the photograph of another person, instead of the said Prabhu, was affixed and the signature of Prabhu was forged. According to the third respondent, the appellant did not offer any explanation to this charge, which amounts to an admission. Even before the enquiry officer, the photograph of Tr. Prabhu, who has also availed loan with the Bank Branch, was exhibited. Further, the witness examined on behalf of the Bank referred to the impersonation of another person as Prabhu and the forgery of his signature. While so, for the reasons best known, the appellant did not cross examine the said witness of the Bank. Thus, it is evident that the appellant/writ petitioner has only cited the charges which were allegedly not proved against him in the departmental enquiry, but he has cautiously omitted to refer certain charges which are proved against him. The third respondent also, in the counter affidavit, dealt with each and every one of the charges framed against the appellant, the explanation offered by the appellant thereof, the conduct of departmental inquiry and the witnesses examined during the course of inquiry. In effect, it was submitted in the counter affidavit that the appellant was employed in a Public Sector Bank and as a custodian of public funds, he failed to follow the guidelines, circulars and instructions given by the superior Officers from time to time. In the counter affidavit, reference was also made to the complaint given against one R.Viswanathan, the ex-staff of the Bank who was also charged along with the appellant and who was also dismissed by the Bank on 07.11.2013. The third respondent therefore contended that the penalty imposed on the appellant is befitting to the nature of delinquency committed by the appellant and which was proved in the departmental inquiry. The respondents have passed the order of punishment based on documentary evidence made available during the inquiry against the appellant and therefore, the third respondent prayed for dismissal of the writ petition.

13. The learned Single Judge passed an elaborate order dealing with each and every one of the submissions put-forth before him by the learned counsel for both sides and ultimately, by order dated 09.08.2019, dismissed the writ petition filed by the appellant. The relevant portion of the order dated 09.08.2019 passed by the learned Single Judge can usefully be referred to hereunder:-

> "51. A perusal of the report of the enquiry officer running into 27 pages holds that the petitioner did not follow the guidelines of the bank and failed to protect the interests of the bank while processing/sanctioning many loan applications and that the petitioner unauthorisedly used the customers accounts for remitting funds to the account of his daughter and relative by NEFT. One another finding of the enquiry officer given against the petitioner shows that without obtaining prior approval from controlling authority, the petitioner had paid an amount of Rs.2.76 lakhs by debiting branch P/L travelling expenses and they are all proved with substantial evidence. That shows that he had failed to protect the interest of the bank and consequently the bank was exposed to huge financial loss on account of gross negligence, based on which the disciplinary authority also imposed the major penalty of dismissal which shall ordinarily be a disqualification for future employment in terms of Regulation 4(j) of Bank of India Officer Employees (Discipline & Appeal) Regulations, 1976. On further appeal, the appellate authority also has confirmed the same and so is the case before the reviewing authority. When the petitioner faced with seven articles of charge, all were proved. However, during a lengthy hearing before me, I was unable to agree with all the findings of the enquiry officer, for the reasons mentioned above. However, the question as to non proving of any charge would pave the way for interference, has been answered by the Apex Court in the case of State of U.P. and others Vs. Nand Kishore Shukla and another, AIR 1996 SC 1561 ruling that it is a settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the Court cannot interfere. The relevant portion of the judgment is given as under;
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> > "7...The only question is: whether the disciplinary authority would have passed such an

order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the Court would be loath to interfere with that part of the order. The order of removal does not cast stigma on the respondent to disable him to seek any appointment elsewhere. Under these circumstances, we think that the High Court was wholly wrong in setting aside the order."

52. Again the Apex Court in the case of State Bank of India v. Samaredra Kishore Endow, CDJ 1994 SC 992, dealing with the power of the High Court under Article 226 of the Constitution of India while dealing with the departmental enquiry initiated against a public servant, has held that the High Court is not a Court of appeal over the decision of the authorities holding a departmental enquiry. The duty of the Court is to see that the rules of natural justice are followed or not. The relevant paragraph 12 of the said judgment reads as follows;

"12......The learned Judge also quoted with approval the observations of Mathew,J., in Union of India Vs. Sardar Bahadur to the following effect: (SCC p.624, para 19)

Now it is settled by the decision of this Court in State of Orissa v. Bidyabhushan Mohapatra, that if the order of a punishing authority can be supported on any finding as to substantial misdemeanour for which the punishment can be imposed, it is not for the Court to consider whether the charge proved alone, would have weighed with the authority in imposing the punishment. The Court is not concerned to decide whether the punishment imposed, provided it is justified by the rules, is appropriate having regard to the misdemeanour established."

53. Moreover, in a recent judgment in Central Industrial Security Force and others v. Abrar Ali, AIR 2017 SC 200, the Apex Court has ruled that it is not permissible in the exercise of jurisdiction under Article 226 of the Constitution of India to re-appreciate the evidence produced before the domestic enquiry. Paragraph 8 of the said judgment reads as follows;

"The High Court should not have entered into the arena of facts which tantamounts to re-appreciation of evidence. It is settled law that re-appreciation of evidence is not permissible in the exercise of jurisdiction under Article 226 of the Constitution of India. In State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaiya, reported in (2011) 4 SCC 584, this Court held as follows:

"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic inquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide B.C.Chaturvedi v. Union of India [(1995) 6 SCC 749: 1996 SCC (L&S) 80: (1996) 32 ATC 44], Union of India v. G.Ganayutham [(1997) 7 SCC 463: 1997 SCC (L&S) 1806], Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762 : 1999 SCC (L&S) 1036] and High Court of Judicature at Bombay v. Shashikant S. Patil (AIR 2000 SC 22)?.

54. Therefore, in the light of the above, when voluminous documents were placed before the enquiry officer, which were considered by both the disciplinary and the appellate authorities as well the review authority and all of them have reiterated the major penalty of dismissal from service on the petitioner in terms of Regulation 4(j) of the Bank of India Officer Employees (Discipline & Appeal) Regulations, 1976, this Court finds it difficult to venture into re- appreciation of evidence sitting under Article 226 of the Constitution of India. Hence, for the reasons mentioned above, the writ

petition fails and it is dismissed. Consequently, M.P.No.1 of 2015 is also dismissed. No costs.

14. Dr. A.E. Chellaih, learned Senior Counsel appearing for the appellant mainly contended that the learned Single Judge, after having held that several charges framed against the appellant have not been proved by the respondents, ought to have interfered with the order of punishment. Even the learned Single Judge held that he is unable to agree with all the findings rendered by the enquiry officer, while so, the writ petition filed by the appellant ought to have been allowed, instead of dismissing it. It is his submission that the appellate authority as also the reviewing authority, instead of recording their own reasons and independently appreciating the materials on record, mechanically, without any application of mind, simply extracted the charges and ultimately rejected the appeal as well as the review. According to the learned Senior Counsel, the learned Single Judge did not exercise his powers conferred under Article 226 of the Constitution of India to take note of the glaring anomalies in the conduct of the disciplinary proceedings in utter disregard to principles of natural justice. It is his contention that this Court, under Article 226 of The Constitution of India, has got enormous powers to interfere with the order passed against the appellant dismissing him from service. In any event, it is his submission that the capital punishment of dismissal from service is unwarranted, when it is not shown that the respondents-Bank had suffered any financial loss. According to the learned Senior Counsel, the dismissal order passed against the appellant is a result of some ill-will at the behest of prejudicial officers, who intended to deliberately harass and victimise him. The learned Senior counsel for the appellant therefore prayed for allowing this appeal.

15. On the above contentions putforth by the learned Senior counsel for the appellant, we have heard Mr.Rajnish Pathiyil, learned standing counsel appearing for the respondents-Bank and perused the volumnious material evidence placed on record.

16. The appellant was subjected to departmental proceedings for 7 charges framed against him. In the departmental inquiry, the appellant participated and he was also permitted to have a defence assistant. During the course of inquiry, the management examined witnesses and they were subjected to cross-examination by the appellant. Both sides have also marked documentary evidence before the inquiry officer. After conclusion of inquiry, the appellant was imposed with major punishment of dismissal from service, which was also affirmed by the appellate authority as well as the reviewing authority by rejecting the appeal as well as review filed by the appellant. Thereafter,

the writ petition filed before the learned single Judge also resulted in dismissal of the writ petition.

17. Having heard the counsel for both sides, the question that falls for our consideration is as to whether this Court, in exercise of powers under Article 226 of The Constitution of India, can resort to a judicial review over the order of punishment imposed by the respondents.

18. In the decision rendered by a Division Bench of this Court, in which one of us (R. Subbiah, J) was a member, in the case of Director General of Police/Inspector General of Prison, Chennai Vs. Chidambaram reported in 2020 (7) MLJ 815, the Division Bench of this Court had an occasion to consider the claim of the appellant therein who was imposed with the capital punishment of dismissal from service. The charge against the appellant therein, who was employed as Jail Warden, was that he stealthily carried with him mobile phone inside the prison purportedly to enable the prisoners to establish contact with others through the mobile phone. The appellant therein was apprehended with the mobile phone in his possession when he was about to enter the prison. He was subjected to disciplinary proceedings and ultimately he was imposed with the capital punishment of dismissal from service. When the matter was heard by the Division Bench of this Court, it was held as follows:-

> "13. As regards the quantum of punishment, we feel that the appellants, as employer, have lost the confidence in the respondent in discharge of his duties especially when he contravened the Prison Rules in attempting to supply mobile phone and other accessories to the prisoners. The respondent is working as a Warder and if he himself indulges in such an act to facilitate the prisoners to establish contact outside the prison through the cellular phone, it requires a serious outlook. Having regard to the above, the disciplinary authority, appellate authority and revisional authority, in unison, have formed an opinion that punishment of dismissal from service will be commensurate to the charges against the respondent. Such an opinion was formed not only on the basis of the material records collected during the course of the enquiry but also on the strength of the admission of guilt made by the respondent in writing. The fact that the respondent has admitted his guilt in writing was also recorded by the learned single Judge. It is well settled that an admitted fact need not be proved. In such a circumstance, we are of the opinion that the punishment imposed on the respondent is adequate and it is not shockingly disproportionate to the charges. Therefore, taking a

lenient view in the matter of imposition of punishment, in the given facts and circumstances, is not warranted. When the order of dismissal from service is preceded by a valid enquiry, this Court, in exercise of power under Article 226 of The Constitution of India, cannot interfere with such an order. In this context, we are fortified by the decision of the Honourable Supreme Court in the decision reported in State Bank of Bikaner & Jaipur versus Nemi Chand Nalwaya reported in 2011 4 Law Weekly 769 wherein it was held that in exercise of the powers conferred under Article 226 of The Constitution of India, the High Court cannot interfere with an order of dismissal preceded by a valid enquiry, unless it is noticed that such enquiry is perverse and the conclusion arrived at is contrary to the evidence available on record.

19. In the aforesaid decision, the Division Bench of this Court has specifically held that when the employer lost confidence on the employee for his proved misconduct, he cannot be favoured with any other punishment other than the capital punishment. In the present case, the appellant herein was subjected to disciplinary proceedings for misappropriation or misutilisation of the funds of the bank. Even though it was argued before us that some of the charges have not been proved against the appellant, it is well settled that even if one charge was proved as against the delinquent in the disciplinary proceedings, it is well open to the disciplinary authority to impose the punishment of dismissal from service. In such a circumstance, this Court, in exercise of power of judicial review, cannot interfere with such punishment imposed by the respondents by substituting its own view.

20. The power of judicial review under Article 226 of The Constitution of India to interfere with the order of punishment recorded by the disciplinary authority by re~appreciating the materials on record, came up for consideration of the Supreme Court in the case of High Court of Judicature at Bombay through its Registrar Vs. Udaysingh and others reported in AIR 1997 Supreme Court 2386, wherein it was held that by the Apex Court that the High Court, in exercise of power under Article 226 of The Constitution of India, has no power to entrench on the jurisdiction of the disciplinary authority and to re~appreciate the evidence. All that is permissible is to ensure that the conclusion arrived at is based on evidence supporting the finding or whether the conclusion is based on no evidence.

21. In the present case, abundant evidence were made available during the course of inquiry by the Bank against the

appellant. It is not the case of the appellant that there was no evidence at all appearing against him warranting the respondents to impose the capital punishment of dismissal from service. It is also not the case of the appellant that the evidence recorded during the course of inquiry are irrelevant for consideration of the charges levelled against him. When there were evidence made available during the course of inquiry against the appellant, the correctness or otherwise of such evidence cannot be examined by this Court in this writ appeal. When the order of punishment was preceded by a valid enquiry in which the appellant has duly participated, the order passed thereof by the disciplinary authority cannot be subjected to judicial review by substituting the decision arrived thereon with any other punishment. The aforesaid factors were rightly appreciated by the learned Single Judge while dismissing the writ petition filed by the appellant. Absolutely, we do not find any error or infirmity in the order passed by the learned single Judge, warranting our interference. The writ appeal is therefore liable to be dismissed.

22. In the result, we confirm the order dated 09.08.2019 passed in W.P. No. 4473 of 2015 by the learned single Judge. The Writ Appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Manager
   Bank of India
   Staff Training College Chennai & Inquiring Authority
   Balaji Nagar 2nd Street
   Royapettah, Chennai - 600 014.

2. The Assistant General Manager
   Chennai Zonal Office & Disciplinary Authority
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+1cc to M/s.R.Rathna Thara, Advocate Sr.26863

WA No. 3975 of 2019

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