IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-12866-2020
Date of decision: 12.01.2021

Ravi Bajaj **......Petitioner.**

vs.

State of Punjab and others **......Respondents.**

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: - Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Raghav Gulati, Advocate, for the petitioner.

Ms. Anju Arora, Additional Advocate General, Punjab.

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Sanjay Kumar, J. (ORAL)

The petitioner, a Clerk in the Government Senior Secondary School, Chand Bhan (Faridkot), Punjab, was dismissed from service, *vide* order dated 16.10.2019 passed by the Director, Education Department (SE), Punjab. The same was confirmed in appeal by the Secretary, School Education Department, Government of Punjab, *vide* order dated 17.02.2020. Hence, this writ petition.

The petitioner entered the service of the Punjab Education Department as a Clerk on 20.11.1992. He was subjected to disciplinary proceedings in the year 2016 on the complaint made by the Principal of the Government Senior Secondary School, Chand Bhan, (Faridkot), that the petitioner had forged his signature on an undertaking given to a Bank while applying for a personal loan of ₹ 4.00 lakh. A preliminary inquiry was conducted and on the strength of the findings thereof, charge sheet dated 02.03.2017 was issued to the petitioner proposing to impose a major penalty upon him under Rule 5 (v to ix) read with Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (in short, 'the Rules of 1970').

By letters dated 29.08.2017 and 12.10.2017, the petitioner sought copies of certain documents to enable him to submit his reply on merits. By the later letter dated 12.10.2017, he also submitted his interim reply to the charge sheet claiming that the allegations against him were baseless and prayed that the charge sheet be withdrawn.

The petitioner was placed under suspension on 01.10.2018 and an Inquiry Officer was appointed. The disciplinary inquiry, which was held on just three days effectively, *viz*., 21.12.2018, 13.05.2019 and 21.05.2019, culminated in the Inquiry Report dated 10.06.2019. Thereby, the Inquiry Officer held the charge against the petitioner duly proved. Memo dated 24.07.2019 was issued to the petitioner by the Director, Education Department (SE), Punjab, and he was afforded an opportunity of personal hearing on 04.09.2019. The Director thereupon passed the order dated 16.10.2019 dismissing the petitioner from service under Rule 5 (ix) of the Rules of 1970.

Aggrieved thereby, the petitioner preferred a statutory appeal before the Secretary, School Education Department, Punjab. Therein, he complained of procedural irregularities in the conduct of the disciplinary proceedings, *viz*., failure to supply him copies of necessary documents and denial of an opportunity to cross-examine witnesses. However, the Appellate Authority dismissed the petitioner's appeal, *vide* order dated 17.02.2020, leading to the filing of this case.

The District Education Officer (SE), Faridkot, filed a reply on behalf of the respondents. Therein, he claimed that the due procedure prescribed in the Rules of 1970 had been adhered to scrupulously and asserted that no grounds were made out for interference with the disciplinary action taken against the petitioner. He prayed for dismissal of the writ petition.

Perusal of the material placed on record reflects that, in the inquiry proceedings held on 21.12.2018, the petitioner complained that he had not been provided the documents and sought an adjournment as he had asked for permission to avail assistance of a legal expert. The inquiry proceedings were accordingly adjourned. On 13.05.2019, the petitioner informed the Inquiry Officer that he did not accept the charge levelled against him. He, however, sought time to file a reply. On 21.05.2019, the petitioner informed the Inquiry Officer that he had taken a personal loan of ₹ 4.00 lakh from the Cooperative Bank at Bathinda in June, 2016, and had repaid it in full. The Principal of the School made a statement that the petitioner had availed the loan by furnishing an undertaking wherein he had himself appended the signature of the Principal. The Inquiry Officer noted that the petitioner had not submitted his reply to the charge sheet but he had produced the *'No Dues Certificate'* dated 13.02.2019 from the Bank in proof of repayment of the loan in toto. The Inquiry Officer asked the petitioner as to whether he wished to say anything and the petitioner stated that he had availed the loan of ₹ 4.00 lakh for domestic needs but had not committed any cheating as he had repaid the entire loan. He categorically stated that apart from that he did not want to say anything else. The Inquiry Officer thereupon recorded that the signature upon the undertaking furnished to the Bank had been appended by the petitioner on his own and, therefore, the charge leveled against him stood proved.

Having given an opportunity of personal hearing to the petitioner, the disciplinary authority, *viz.*, the Director, Education Department (SE), Punjab, accepted the finding of the Inquiry Officer. He noted that though the petitioner had repaid the loan, he could not produce proof of the charge against him being false. In consequence, he dismissed the petitioner from service under Rule 5 (ix) of the Rules of 1970. Confirming his dismissal, *vide* order dated 17.02.2020, the Appellate Authority opined that it was a most serious matter connected to a fraudulent money transaction and, therefore, the petitioner was not entitled to any lenience. He accordingly dismissed the appeal.

This being the factual milieu, it may be noted that, though the petitioner initially complained that the procedure prescribed under Rule 8 of the Rules of 1970, in relation to imposition of major penalties, had not been complied with, he gave up the said plea during the inquiry proceedings itself. He categorically stated before the Inquiry Officer that he had nothing else to state. Further, though he raised this issue once again in his appeal grounds, he did not choose to pursue it before the Appellate Authority. In effect, the petitioner is deemed to have waived this ground, even if it was available to him at the initial stage. In any event, it is well settled that violation of the principles of natural justice or due procedure may not inevitably vitiate the end result and it has to be seen whether real prejudice was caused by such violation. In the case on hand, it is not the claim of the petitioner that he had anything further to say with regard to the charge levelled against him or that he had any other material to prove his innocence.

Perhaps that is the reason why Dr. Anmol Rattan Sidhu, learned senior counsel for the petitioner, would only urge that even if the charge proved against the petitioner is taken into account, the punishment imposed upon him is shockingly disproportionate and requires interference.

This plea merits consideration in the opinion of this Court.

In **Associated Provincial Picture Houses Ltd. vs. Wednesbury Corporation [(1948) 1 KB 223]**, it was held that when a statute gives discretion to an administrator to take a decision, the scope of judicial review would remain limited and interference would be permissible only if the order is contrary to law; or relevant factors were not considered; or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. These are known as the *Wednesbury principles*.

Significantly, in **Om Kumar and others vs. Union of India [(2001) 2 SCC 386]**, the Supreme Court observed that where an administrative decision relating to punishment in disciplinary cases is questioned as arbitrary, the Court's scrutiny would be confined to *Wednesbury principles* as a secondary reviewing authority. It was further observed that while reviewing such punishment, if the Court is satisfied that the *Wednesbury principles* were violated, the matter should normally be remitted to the administrator for a fresh decision as to the quantum of the punishment. The principle of proportionality, *per* the Supreme Court, requires the Court to see that the administrative authority maintains a proper balance between the adverse effects that the administrative order has on the rights, liberty or interest of the person concerned, keeping in mind the purpose which it was intended to serve, and within this ambit, the administrative authority would have an area of discretion and a range of choices, but the decision as to whether such a choice infringes the rights, liberty or interest excessively or not is to be made by the Court. This edict was reiterated in **Dev Singh vs. Punjab Tourism Development Corporation Limited and another [(2003) 8 SCC 9]** and **Lucknow Kshetriya Gramin Bank and another vs. Rajendra Singh [(2013) 12 SCC 372]**.

In **Coimbatore District Central Cooperative Bank vs. Coimbatore District Central Cooperative Bank Employees Association [(2007) 4 SCC 669]**, the Supreme Court observed that the Indian legal system has accepted the doctrine of proportionality and if an action taken by any authority is irrational or otherwise unreasonable, the Court of law can interfere with such action by exercising power of judicial review and one such mode of exercising power, known to law, is the doctrine of proportionality. It was further pointed out that proportionality is a principle where the Court is concerned with the process, method or manner in which the decision maker has ordered his priorities, reached a conclusion or arrived at a decision. It was observed that the constitutional requirement for judging the question of reasonableness and fairness on the part of the authority must be considered having regard to the factual matrix in each case and it could not be put in a straitjacket formula.

Again, in ***Collector Singh vs. LML Limited, Kanpur'*** **[(2015) 2 SCC 410]**, the Supreme Court affirmed that it is well settled that a Court would normally not interfere with the discretion of the disciplinary authority in imposing a penalty and substitute its own conclusion or penalty but the punishment should be commensurate with the proven misconduct. If the penalty imposed is disproportionate with the misconduct committed and proved, then the Court would appropriately mould the relief either by directing the disciplinary authority to reconsider the penalty imposed or to shorten the litigation, it may, in exceptional cases, even impose appropriate punishment with cogent reasons in support thereof.

In **Life Insurance Corporation of India and others vs. S Vasanthi [(2014) 9 SCC 315]**, the Supreme Court referred to its earlier judgment in **Kendriya Vidyalaya Sangthan vs. J. Hussain [(2013) 10 SCC 106]**, in the context of quantum of punishment and judicial review thereof. Therein, it was held that when the punishment is found to be outrageously disproportionate to the charge, the principle of proportionality would come into play and such principle would be in tune with the *Wednesbury* rule of reasonableness.

Applying the above principle of proportionality to the case on hand, it may first be noted that the petitioner rendered unblemished service in the Education department since the year 1992, but for the subject errant act. Even as to this lapse on his part, it may be noted that the petitioner did not commit any act of cheating as he admittedly repaid his loan to the Bank in its entirety. The wrong committed by him was the forging of the signature of the Principal of the School on the document submitted to the Bank. A copy of the said document is placed on record. Though this document was referred to as an 'undertaking given to the Bank', it is not really so. The heading of the document is *'Salary Certificate'*. It is dated 22.06.2016 and states to the effect that the petitioner was working as a Junior Assistant. The details of his salary and other particulars were given therein. Be it noted that it is not the case of the authorities that any wrong particulars were furnished in this document. The document further stated as follows:

> *'We have no objection in case a loan is granted to the above stated employee. In case of default, on producing an undertaking duly signed by the employee, we shall deduct the default/outstanding amount from the pay/retirement*

benefits of the employee and remit the same to the Bank'.

Thereunder, above the words '*Signature of employer/ Drawing and disbursing Officer with office seal'*, the signature of the Principal was appended and it is now proved that the said signature was forged by the petitioner himself. In effect, there was no unconditional 'undertaking' furnished on behalf of the School or its Principal, as understood by the respondents. Admittedly, the details mentioned in the document were accurate and no misconduct can be attributed to the petitioner on that count. The so-called 'undertaking' part of the document merely recorded the 'no objection' of the employer to a loan being granted and further stated that in the event of non-repayment, the employer was willing to deduct the outstanding amount from the pay/ retirement benefits of the employee and remit the same to the Bank upon production of an undertaking signed by the employee. This event never materialized as the petitioner repaid the loan without any default.

In such circumstances, when the petitioner committed the sole mistake of appending the signature of the Principal in the document on his own but no actual cheating or other misdemeanor was attributable to him, the question is whether the punishment of dismissal from service was commensurate with his proven misconduct.

The fact that the petitioner did not furnish wrong details in the document bearing the Principal's forged signature speaks in his favour. That apart, he rendered service without adverse remark for nearly 2½ decades before this incident. Though the Appellate Authority was of the opinion that it was a serious matter involving a fraudulent money transaction, the fact remains that the petitioner never cheated anyone. He secured a loan on the strength of accurate particulars and repaid the same in full without any default. What compelled him to forge the signature of the Principal on the document has not come to light owing to the cursory manner in which the disciplinary inquiry was conducted but the punishment imposed upon him in relation to this single mistake on his part is clearly disproportionate to the seriousness thereof.

The petitioner is aged only 49 years and it is stated that he has two daughters of marriageable age apart from one son. Dismissal from government service at this stage, which would disqualify him from future government employment, would entail a severe and irreversible adverse effect upon him but such dire consequences are not justifiable given the nature of the wrong committed by him. The punishment imposed upon the petitioner is therefore liable to interfered with on the ground of proportionality.

The dismissal order dated 16.10.2019 and the confirming appellate order dated 17.02.2020 are accordingly set aside and the matter is remitted to the file of the disciplinary authority, *viz*., the Director, School Education, Punjab, for reconsideration and imposition of a lesser punishment commensurate with the petitioner's proven misconduct. The disciplinary authority shall keep in mind the long service rendered by the petitioner and the actual fallout of the misconduct attributed to and proved against the petitioner while deciding upon such punishment. The disciplinary authority shall also decide as to how the period that the petitioner remained out of service should be treated. This entire exercise shall be completed expeditiously and, in any event, not later than one month from the date of receipt of a copy of this order.

The writ petition is allowed to the extent indicated above.

There shall be no order as to costs.

(SANJAY KUMAR)
JUDGE

12.01.2021
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whether speaking/non speaking yes
whether reportable/non reportable no