



W.A.No.1224 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

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and

M.P.No.1 of 2014

1. The Deputy General Manager,
Disciplinary Authority,
Indian Overseas Bank,
763, Anna Salai,
Chennai.- 600 002.

2. The General Manager,
Appellate Authority,
Indian Overseas Bank,
763, Anna Salai, Chennai-600 002.

... Appellants

Vs.

M. Selvaraj.

... Respondent

Prayer :- Writ Appeal filed under Clause 15 of Letters Patent, praying to allow the writ appeal and set aside the order dated 04.02.2014 in W.P.No.4053 of 1998.

For Appellants : Mr.K.Srinivasa Muthy

For Respondent : Mr.S.Ilamvaludhi



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JUDGEMENT

WEB COPY (*Judgement of the Court was delivered by S.M.Subramaniam J.*)

The present writ appeal has been instituted challenging the order dated 04.02.2014 passed in W.P.No.4053 of 1998.

2. The respondent Indian Overseas Bank in the writ petition is the appellant before us. The respondent in the present writ appeal instituted the writ proceedings challenging the order of punishment of reduction in the basic pay by five stages, in the time scale as on the date of the order of punishment, with cumulative effect, in terms of regulation 4(e) of Indian Overseas Bank Officer Employees (Discipline & Appeal) Regulations, 1976.

3. The writ petitioner was holding the post of Manager of Vembakottai Branch of the Indian Overseas Bank. Charge sheet has been issued in proceeding dated 12.03.1992. On 02.06.1992 an inquiry was conducted. It is not in dispute that the inquiry proceedings are conducted by following the rules of natural justice. On receipt of the charge sheet, the delinquent official/ respondent herein submitted his defence statement. Not satisfied with the defence statement an Inquiry Officer was appointed. The



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Inquiry Officer conducted an inquiry by affording opportunity to the delinquent official. The Inquiry Officer submitted his final inquiry report holding that the charges are proved against the delinquent official. The proved charges are accepted by the Disciplinary Authority, who in turn afforded further opportunity to the delinquent official to submit his objections on the findings of the Inquiry Officer. On receipt of the objections of the delinquent official / respondent herein, final order of punishment was passed, imposing the penalty of reduction in the basic pay by five stages, in the time scale as on the date of the order of punishment, with cumulative effect. The respondent preferred an appeal before the appellate authority and the appellant authority considered the grounds raised and rejected the same. Thus, the respondent was constrained to file the writ petition.

4. The learned counsel, Mr.K.Srinivasa Muthy, appearing on behalf of the appellant Indian Overseas Bank, would contend that the procedures as contemplated were followed and sufficient opportunities were afforded to the delinquent official to defend his case. There is no violation of rules of natural justice and considering the gravity of the allegations which all are proved, the punishment of reduction in the basic pay by five stages with cumulative effect was imposed on the delinquent official. The appellate authority also



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confirmed the punishment.

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5. The writ Court set aside the order of punishment mainly on the ground that certain witnesses on the side of the delinquent official were not examined and therefore, the punishment imposed was considered as infirm. Mr.K.Srinivasa Muthy would state that some of the customers / borrowers were examined and it is not the case of the respondent that none of the witnesses are examined. In fact some of the customers / borrowers, who have cooperated had been examined and their depositions are recorded by the Inquiry Officer. Thus, the charges are held proved based on the deposition of the witnesses and the documents. The writ Court has interfered with the order of punishment by erroneously re-appreciating the evidences and witnesses which is impermissible under law. Thus, the order passed in the writ petition is liable to be set aside.

6. Mr.S.Ilamvaludhi, learned counsel appearing on behalf of the respondent would oppose the said contention by stating that certain vital witnesses / customers / borrowers, relating to the charges were not examined. The writ Court further considered that the punishment of reduction in the basic pay by five stages with cumulative effect is excessive and not in



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commensuration with the gravity of the proved charges. Beyond that, the respondent was transferred from the state of Tamil Nadu to the State of Kerala, which was considered as an excessive imposition of punishment by the writ Court and therefore, the order passed by the writ court deserves to be confirmed.

7. We have considered the rival submissions made between the parties to the lis on hand.

8. The scope of the powers of judicial review by the High Court in a departmental disciplinary proceedings are limited. Preponderance of probabilities are sufficient to punish an employee under the discipline and appeal rules. Strict proof is not required and therefore, the rules of natural justice and the statutory provisions, governing the disciplinary proceedings, are followed or not is to be examined by the High Court in a writ proceeding. The departmental disciplinary proceedings cannot be compared with the trial in a Court of law and therefore, non-examination of few witnesses in a departmental disciplinary proceedings cannot be a ground to seek exoneration from the charges, which all are otherwise held proved during inquiry.



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9. Broadly, the Court, in exercise of judicial review, must restrict its review to determine whether:

- (i) the rules of natural justice have been complied with,
- (ii) the finding of misconduct is based on some evidence,
- (iii) the statutory rules, governing the conduct of disciplinary inquiry,

have been observed,

- (iv) the findings of disciplinary authority suffer from perversity,
- (v) the penalty is disproportionate to the proven misconduct.

10. Let us now consider the procedures adopted. There is no complaint by the respondent delinquent official that rules of natural justice has been violated. It is established before the writ Court that the charge sheet has been served to the delinquent official, his explanations were received and considered, and an Inquiry Officer was appointed, who in turn conducted an inquiry by affording opportunity to the delinquent official and submitted his final report. Further opportunity was granted to the delinquent official to submit objections on the findings of the Inquiry Officer and on receipt of the same, the disciplinary authority passed final orders imposing the punishment. Thus, the rules of natural justice has been complied with in the present case.



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11. Secondly, the the findings of misconduct is based on some evidence. It is not as if the case on hand is of no evidence. Contention raised by the respondent is that the customers / borrowers were not examined to establish the guilt. Per contra the appellants would contend that customers/ borrowers were examined but all the customers / borrowers were not examined. Therefore, it is not as if none of the customer / borrower were examined during the course of inquiry. It may not be practically possible to summon all the customers / borrowers for giving evidence in an inquiry proceedings. Therefore, it would be sufficient if few of the customers / borrowers were examined to establish the misconduct in a departmental disciplinary proceeding. Once the charges are established with reference to documents and evidence, it would be sufficient to impose punishment on the delinquent official.

12. The statutory rules, governing the conduct of disciplinary inquiry, had been observed in the present case and there is no complaint in this regard by the respondent. The findings are based on documents and evidences. Even as per the respondent, few customers / borrowers were not examined. However, the witnesses who were present were examined during the course of inquiry and based on their deposition and documents available on record,



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the Inquiry Officer submitted his final report and held that the charges are proved. Thus, we do not find any infirmity in respect of the procedures followed in the departmental disciplinary proceedings.

13. Whether the penalty is disproportionate to the proven misconduct is to be considered. Mr. S.Ilamvaludhi, the learned counsel for the respondent would submit that the punishment of reduction in the basic pay by five stages with cumulative effect would drastically affect the pensionary benefits of the respondent including his pension.

14. The respondent retired from service long back. The said submission cannot be a consideration in the departmental disciplinary proceedings. Once the charges are held proved and accepted by the competent authority, then the High Court, in exercise of powers of judicial review, cannot modify the punishment imposed by the disciplinary authority as confirmed by the appellate authority. High Court cannot sit as an appellate authority and modify the punishment imposed in the departmental disciplinary proceedings.



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15. The Writ Court has gone into the evidence and made an attempt to re-appreciate the evidence produced before the departmental inquiry, which is, in our opinion, beyond the scope of the powers of judicial review conferred under Article 226 of the Constitution of India. Thus, we are inclined to interfere.

16. Accordingly, the order dated 04.02.2014 in W.P.No.4053 of 1998 is set aside and the writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S.J.,)

(C.K.J.,)

05.06.2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
(sha)

To
1. The Deputy General Manager,
Disciplinary Authority,
Indian Overseas Bank,
763, Anna Salai,
Chennai.- 600 002.

2. The General Manager,
Appellate Authority,
Indian Overseas Bank,
763, Anna Salai, Chennai-600 002.



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S.M.SUBRAMANIAM, J.

and

C.KUMARAPPAN, J.

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