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W.A.No.602 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2024

PRONOUNCED ON : 09.07.2024

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

W.A.No.602 of 2021

G.S.Subbaraman

... Appellant

Vs.

1. Indian Bank
Rep. by its Executive Director/
Appellate Authority,
Corporate Office,
254-260, Avvai Shanmugam Salai,
Royapettah, Chennai-600 014.
2. General Manager/Disciplinary Authority,
Indian Bank,
Corporate Office,
Vigilance Department,
254-260, Avvai Shanmugam Salai,
Royapettah, Chennai-600 014.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 22.10.2019 in WP.No.2607 of 2013 and consequently, direct the respondent Bank to pay all the arrears of salary from the date of



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dismissal till the date when the appellant attained the age of superannuation, pay all the terminal benefits such as Gratuity, Leave Salary, arrears of pension from the date of superannuation till the date of death, award costs.

For Appellant : Mr.Balan Haridas

For Respondents : Mr.V.Kalyanaraman
for M/s.Aiyar & Dolia for R1 & R2

J U D G M E N T

[Judgment of the Court was made by **C.KUMARAPPAN, J.**]

The writ petitioner and the respondents before the Writ Court are arrayed as the appellant and the respondents herein.

2. The brief facts which give rise to the instant writ appeal is that, the petitioner was Chief Manager in Indian Bank, Mylapore Branch. While he was in service as a Chief Manager, he has caused a monetary loss to the Bank to the tune of Rs.30,30,303/- [Rupees Thirty Lakhs Thirty Thousand Three Hundred and Three only]. Such financial loss has occurred to the Bank due to the deliberate and questionable conduct of the petitioner. Thus, he was charged on the ground that he failed to take all possible steps to



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ensure and protect the interest of the Bank, and also on the ground that he failed to discharge his duties with utmost devotion and diligence. The above conduct comes within the ambit of misconduct under the “Indian Bank Officer Employees (Discipline & Appeal) (Amendment) Regulations, 1985” [hereinafter shall be referred to as “said Regulations” for the sake of convenience].

3. Therefore, the respondents-Bank initiated enquiry. In the enquiry, all the charges have been proved against the writ petitioner, and it was found that the petitioner was guilty of all charges. Thereafter, the Disciplinary Authority after going through the Enquiry Report and also from the fact that during enquiry, the petitioner has pleaded guilty against the charges, have imposed a capital punishment of dismissal against the petitioner under Section 4(h) of the said Regulations. Against which, the petitioner preferred an appeal before the Appellate Authority. The Appellate Authority, on considering the appeal made by the petitioner vide order dated 27.05.1996 confirmed the order of dismissal imposed by the Dicipinary Authority. It appears that, not satisfying with the order of the Appellate Authority, the petitioner has preferred a Review Application, and such Review Application was also came to be rejected on 14.10.2000.



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4. While so, the petitioner in his first round of litigation in WP.No.38378 of 2002 *inter alia* contended that the Appellate Authority, as well as the Review Authority has not considered the Regulations of the Bank. Thus, in the first round of litigation, the writ Court in WP.No.38378 of 2002 vide order dated 28.02.2012 has remitted back the matter to the Appellate Authority, with a liberty to the petitioner to put forth his additional grounds before the Appellate Authority. The Appellate Authority once again considered the appeal, and vide order dated 04.08.2012 again dismissed the appeal by confirming the capital punishment of dismissal imposed against this petitioner. Against which, the impugned writ petition has been filed.

5. The Writ Court after having considered the submission of either side, has arrived at a conclusion that the Appellate Authority has exercised his power with due diligence, and has also held that, while exercising the power of judicial review, it is imperative upon the Writ Court to maintain restraint, and also found that there are no perversity in the order of the Appellate Authority and thereby, confirmed the order of dismissal from service against the petitioner.

6. Aggrieved with the said order passed in the writ petition, the petitioner has preferred the instant Writ Appeal.



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7. The learned counsel for the appellant in his usual dexterity would vehemently contend that the petitioner, being the Chief Manager, and having 40 years of unblemished service in the Bank had no occasion to commit any misconduct. Whatever had happened is only an error of judgment. It is also the contention of the learned counsel that the misconduct alleged is not the individual act of the petitioner, and it was result of the collective decision. Therefore, for the collective decision of the several officials, which had resulted in the financial loss to the Bank, the petitioner alone cannot be solely mulcted. It was also the contention of the learned counsel for the petitioner that the other persons, those who involved in this transaction had been let off freely, and this petitioner alone has been singled out and has been imposed with the capital punishment of dismissal. It is the further contention of the learned counsel for the petitioner that, the punishment of dismissal is shockingly disproportionate. Hence, prayed to interfere with the order of dismissal. In support of his contention, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in ***Man Singh Vs. State of Haryana and others*** reported in ***(2008) 12 SCC 331***.

8. Per contra, the learned counsel appearing for the respondents-Bank would contend that, the very charge has been admitted by the petitioner, and



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through the misconduct of the petitioner, the Bank suffered a huge loss of more than Rs.30.00 lakhs. It is also the contention of the learned counsel for the respondents that, the petitioner in spite of knowing the deceitful conduct of the customer has again volunteered to purchase the cheque with ulterior motive and has also involved in fabrication of loan document. Apart from that, the learned counsel would further contend that the loss committed by the petitioner to the Bank is still affecting the Bank's resources, and still they are not in a position to recover the amount. Therefore, would contend that the punishment imposed against the petitioner is proportionate to the gravity of the charges and contended that the order of the Writ Court need not be interfered with. Hence prayed to dismiss the Writ Appeal.

9. We have given our anxious consideration to either side submissions.

10. Before we go into the merits of the matter, it is appropriate to delve into the authority of the constitutional Court, as to what extent the power of judicial review can be exercised. It is pertinent to mention here that, the function disclosed by the Constitutional Court with a power of judicial review is a most potent weapon and integral part of our Constitutional



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system. However, what extent such judicial review could be exercised in the Administrative and disciplinary matters to be seen. In this regard, it is relevant to refer the following judgments of the Hon'ble Supreme Court in (i) ***B.C.Chaturvedi Vs. Union of India*** reported in (1995) 6 SCC 749, (ii) ***Deputy General Manager (Appellate Authority) Vs. Ajai Kumar Srivastava*** reported in (2021) 2 SCC 612; (iii) ***The Indian Oil Corporation & Ors., Vs. Ajit Kumar Singh & Anr.***, reported in 2023 LiveLaw (SC) 478.

Through the above judgments, the following principles are emerging:-

(i) Power of Judicial review is not like an appeal. But such power is meant to ensure that the individual receives fair treatment and to ensure the compliance of natural justice.

(ii) The power of judicial review is not like a appellate remedy to substitute its own finding, unless the findings of the Disciplinary Authority and Appellate Authority is perverse and without evidence.

(iii) The High Court had no jurisdiction to review the penalty, unless it is shockingly disproportionate.

(iv) Since because there is a possibility to arrive at yet another finding, cannot be a reason to substitute the finding of the disciplinary Authority.

(v) The judicial review is meant only to ensure fairness in treatment and not to ensure fairness of conclusion.



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(vi) While exercising the power of judicial review, so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

11. With the above principle, let us consider the factual position of the case in hand. Here, it is not the case of the petitioner about violation of principles of natural justice, and conduct of proceeding deviating from the procedure established under the said Regulations. It is pertinent to mention here that, when it was earlier noticed, at the first round of litigation, the petitioner was provided with an opportunity to re-agitate the appeal by putting forth all the grounds once again before the Appellate Authority. Further, the Appellate Authority in pursuance of the earlier order of the Writ Court has once again considered and has given elaborate finding and concurred with the findings recorded by the Disciplinary Authority.

12. It is pertinent to mention here that the Appellate Authority has also considered the unconditional admission of guilt by the delinquent employee/petitioner before the Enquiry Authority. Such admission was tendered by way of a written explanation. While considering the proportionality of punishment, here, the loss caused to the Bank was



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Rs.30,30,303/-. Therefore, this Court could not find any shocking disproportionality in imposing the punishment.

13. However, the learned counsel for the petitioner would rely upon the judgment of Hon'ble Supreme Court in **Man Singh's** case (cited supra), and would contend that the loss caused to the Bank not upon the independent decision of the petitioner, but it was based upon the collective decision of the many officials. Whereas, without prosecuting other officials, this petitioner has been singled out, and has been victimized. Therefore, contended that the concept of equality enshrined in the Constitution under Article 14 is compromised. For ready reference, the relevant portion of the **Man Singh's** case (cited supra) is extracted herein below:-

“20. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the



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doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of “fair play” and reasonableness.”

14. On the face of it, the fact of the above precedent is not applicable to the facts of the instant case. In the above reported judgment, the person who has actually committed misconduct was let off, and the person, who merely supervised was charged. Only in that context, against the Supervisory person, the doctrine of equality was applied and the imposition of punishment was set aside. Whereas, in the case on hand, curiously the petitioner did not implicate any other person, and in his written explanation in categorical term unequivocally has admitted his guilt. Only in that context, the Disciplinary Authority and the Appellate Authority have fixed the responsibility upon this petitioner and imposed the punishment.

15. It is also pertinent to mention here that, the writ Court has gone into the factual and legal aspects elaborately and has also rightly held that mere acquittal in the criminal proceedings cannot be the reason to seek for any discharge in the domestic enquiry proceedings. In the order, the Writ Court held as follows:-



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“20. This Court does not found any infirmity in the decision making process. In view of the above, this Court has not inclined to interfere with the findings of guilt. Since this court is not inclined to interfere with the findings of guilt, the further question would be as to whether the punishment is shockingly disproportionate to the misconduct. The present case is one of loss of confidence. The petitioner was holding the very responsible post, it is well settled that once there is loss of confidence, the employer cannot be asked to continue the petitioner in service. The petitioner has attained superannuation. This Court is therefore not inclined to interfere with the punishment also. Writ Petition is dismissed. No Costs.”

16. The above finding is well merited and we are in full agreement with the same. Thus, this Writ Appeal is devoid of merits and liable to be dismissed.

17. In the result, this Writ Appeal stands dismissed. No costs.

[S.M.S., J.] [C.K., J.]
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Index : Yes

Speaking order : Yes

Neutral Citation : Yes



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