THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.7086 of 2009

Order:

This Writ Petition is filed seeking to quash the order passed by the second respondent dated 04.08.2008, as confirmed by the third respondent vide order dated 27.12.2008 in an appeal and consequently to direct the respondents to pay all consequential benefits to the petitioner.

The case of the petitioner is that while he was working as a Branch Manager at Borivanka Branch, AP Grameena Vikas Bank, a suspension order dated 29.03.2006 was served on him and revoked on 02.08.2006; charge sheet dated 05.06.2007 with five charges was served on him; the gist of the charges is that the petitioner was irregular to the duties, he had not used utmost endeavour to promote the interest of the Bank and failed to show courtesy towards the customers, he was discourteous with the constituents of the bank and failed to obey the instructions; the petitioner submitted his explanation to the charge sheet on 23.08.2007 and not satisfied with the said explanation, the second respondent has ordered for departmental enquiry against the petitioner and in the enquiry most of the documents relied upon by the Presenting Officer were not supplied to the petitioner; though there were alleged complaints against the petitioner, none of the complainants were examined in the enquiry and basing on the written complaint, the Enquiry Officer held that the charges were proved without any oral evidence; to the enquiry report dated 06.06.2008, the petitioner filed his objections on 01.07.2008 and without considering his objections/explanation, the second respondent passed orders on 04.08.2008 reducing the time scale of the petitioner to a lower scale i.e., placing the petitioner in starting basic of officers scale-I

and before passing the said order, notice of proposed punishment was not issued to the petitioner and no opportunity was given to him to submit his explanation to the proposed punishment and the same is hit by the judgment of the Hon'ble Supreme Court reported in B. Karunakar v. Managing Director, ECIL (1993 (4) SCC 727); challenging the said order dated 04.08.2008 passed by the second respondent, the petitioner filed an appeal before the third respondent and the third respondent has confirmed the said order, vide proceedings dated 27.12.2008; even though the charges pertain to the month of July 2005, charge sheet was issued in June 2007 i.e., after lapse of almost two years; many of the complaints and alleged charges were taken as proved, though no witnesses were examined with regard to alleged complaints and charges; the documents relied upon by the Enquiry Officer were not supplied to the petitioner and assuming for a moment that the charges are proved, the punishment imposed is disproportionate to the charges proved, hence the Writ Petition.

Counter affidavit has been filed by the first respondent stating, *inter alia*, that the petitioner was suspended on 29.03.2006 for certain irregularities committed by him during his tenure as Branch Manager of Borivanka branch; during enquiry, petitioner was given reasonable opportunity of hearing and all the required documents were produced to him; based on the enquiry report, the Chairman and Disciplinary Authority has imposed the penalty of "reduction to a lower scale in time scale i.e., placing the petitioner in the starting basic of an Officer Scale-I"; against the said punishment, petitioner preferred an appeal and the appellate authority has confirmed the said punishment which is neither disproportionate nor arbitrary.

Heard the learned counsel for the petitioner and learned counsel for the respondents. Even though various contentions have been raised in the Writ Petition, the main contention of the learned counsel for the petitioner is that the explanation of the petitioner is not properly appreciated and that the punishment is disproportionate to the gravity of the allegation.

Learned counsel for the petitioner has reiterated the contents raised in the writ affidavit and he relied upon the judgments reported in **B.C. Chaturvedi v. Union of India[1], Ranjit Thakur v. Union of India[2], Krushnakant B. Parmar v. Union of India[3], State of Punjab v. Dr. P.L. Singla[4], Chairman, All India Railway Recruitment Board v. K. Shyam Kumar[5]** and **Jagdish Singh v. Punjab Engineering College[6]**.

As seen from the record, charge 1(a) reads as follows.

"On 21.09.2005, Sri B. Rama Rao, Branch Manager, M.S. Pally came to your branch at 9.45 AM for verification/rectification of irregularities under prior intimation to you over phone. He waited up to 5.00 PM. You did not attend the branch on that day. The Branch Manager had to leave the branch without attending to the proposed official work."

The explanation of the petitioner to the said charge is that he was not well on 21.09.2005 and that he sent a telegram to the Area Manager seeking sanction of leave on 21.09.2005 and he also produced evidence in support of the said submission. He also stated that there was no prior intimation to him with regard to visit of the Branch Manager and owing to

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[1] (1995) 6 SCC 749
[2] (1987) 4 SCC 611
[3] (2012) 3 SCC 178
[4] (2008) 8 SCC 469
[5] (2010) 6 SCC 614
[6] (2009) 7 SCC 301

some illness he sent a telegram to the Area Manager in the afternoon at about 1.15 PM for sanction of one day Casual Leave and the said Casual Leave was sanctioned by the Area Manager.

Charge 1(c) is that, the Area Manager had come to the Branch at about 4.00 PM on 26.10.2005 along with others to meet the Area Manager as per his instructions, but the petitioner was not present there. The explanation of the petitioner to this charge is that he went to State Bank of India, Sompeta on that day to pay income tax and service tax and thereafter to Srikakulam to meet the Area Manager. He also asked them to verify the income tax and service tax challan receipts as well as movement and TA bill copies and if the petitioner had known about the proposed visit of the Area Manager, he would have met him at the branch itself instead of going to Srikakulam to meet him on 26.10.2005. He further stated that his TA bill was also sanctioned in October 2005 for the above mentioned camp.

Charge 2(a) reads as follows.

"The organizers and sub-organizers of Sri Rama Lingeswara, SHG, Borivanka, Pedda Devatha SSS, Manikyapuram, Manikyeswari SSS, Manikyapuram and Sri Santhoshi SSS, Manikyapuram – complain that whenever they attended the branch to do their banking transaction, you were discourteous to them and used abusive language as well as unparliamentary words against them."

To the said charge, the explanation of the petitioner is that only two organizers of one group called Ramalingeswara SHG have attended the enquiry and other three groups mentioned in the charge did not attend the enquiry. Two organizers of the attended group also did not say anything which can be called as objectionable and discourteous behavior towards the customers.

Charge 2(b) reads as follows.

"(1) Gayathri Mahila Sangam, Talatampara, (2) Jai Guru SSS, Talatampara, (3) Jai Jagannadha Mahila SSS, Korraiputtuga, (4) Alekha Mahila SSS, Koraiputtuga, (5) Sri Mahila Lakshjmi SSS Siddthi Puttuga, (8) Sri Santhoshimatha SSS Siddhiputtuga, (9) Sri Brundavathi Swayam Sakthi Mahila Sangham, Siddhiputtuga, (10) Santhoshimatha SSS, Kalinga Puttuga, (11) Sri Santhoshimatha Rythumitra Sangham, A. Puttuga, (12) Tirumala SHG, Talatampara, (13) Singhupatram SHG Talatampara, (14) Sri Brundsavathi SHG, Landaputtuga, (15) Sri Om Santhi SSS, Landaputtuga, (16) Sri Alekha SSS Landaputtuga, (17) Jami Yellamma SHG, (18) Thrinadha, SHG, (19) Sri Venkateswara SHG, Villedaputtuga and (20) Sri Chaitanya Rytu Mitra Sangham S. Puttuga have complained that when they attended the branch for depositing or withdrawing cash from their accounts, you had misbehaved with them and used unparliamentary language against them."

To the said charge, the explanation of the petitioner is that it is his policy to implement the rules and regulations of the bank and that some of the persons do not follow the rules and regulations and that is the reason for clash between him and them and the Presenting Officer could produce only three groups to give evidence against him.

Charge 2(c) is as follows.

"M/s. Bhagavathi Bisoi and G. Manikumari, community facilitators when attended the branch in connection with extending linkage to eligible SHGs, you had abused them, used unparliamentary language and questioned their integrity."

The petitioner denied the said charge and stated that the village facilitators i.e., Manikumari (Duganapadu) and Bhagavathi (Manikyapuram) have demanded him to sanction loans to the persons to

whom they recommend and also to double the amount of loan and when he refused, they warned that they will give a complaint against him.

Charge 4(a) reads as follows.

"When the P.D. DRDA visited Borivanka branch the PD made certain remarks vide Lr.No.RC No.SPL01/05 CC dated 31.10.2005. They are:-

1) The CSO you used to attend between 11 am and 12 noon and leave by 3 pm.
2) You had commuted from Srikakulam and were not available to public during the office hours.
3) The deposits had gone down by 25%.
4) You had linked only 6 groups against 35 eligible groups.
5) You had used unparliamentary words against women members, when they attended banking activities.
6) The women issued a notice to conduct Dhrana against your atrocities.
7) The women members planned to launch a police complaint against you under women atrocities act and it was dropped at his request."

The explanation of the petitioner to the said charge is that the PO did not produce the PD, DRDA during two days of enquiry and hence the allegations of the PD, DRDA were not at all proved. He further stated that on 30.09.2005, Sri Hussain, APO, DRDA came to Borivanka branch and misbehaved with the petitioner and immediately he gave a complaint to the Chairman as well as to the PD, DRDA and the said Hussain, APO and the staff of Velugu Organization instigated the public and made three organizations to file a false complaint against him on 27.10.2005 and also made 17 organizations to file a false complaint against him on 30.10.2005 and hence the complaint of PD, DRDA is only a reaction to the complaint

of the petitioner and the allegations are not proved as PD, DRDA himself was absent on two days of enquiry.

Charge 4(b) reads as follows.

"The Area Manager, along with DGM, NABARD visited Borivanka on 08.11.2005 and made the following observations.

(i) The CSO has not sanctioned schemes under 'Gruhuni', even though subsidy was released on the flimsy grounds that you cannot perform the duties of a BM and FS.

(ii) Kumari Bhagyavathi Bisoi and Smt. G. Manikumari, community facilitators of Manikyapuram and Bejjiputtuga villages complained them that you have not been extending linkages to the eligible SHGS and accused them in foul language.

(iii) One Sri B. Jagadeesh of Varaka village when enquired about the fate of the cheque which was given byhim for collection one month before, you have neither clarified nor given a proper reply to him.

(iv) You did not open SB A/cs with zero balance pertaining to medical and health department, in spite of repeated visits to the Branch and in this connection, you had questioned the integrity of the ANM of the department, resulting in a heated exchange of words, between you and her.

(v) Even though the area manager and Sri B. Nageswara Rao, AGM, NABARD advised you not to inconvenience Sumathi Sahu, W/o Manju Kumar of Manikyapuram village, in grounding the scheme and counselled you in this regard you did not heed to their advice."

The explanation of the petitioner to the said charge is that PO could not produce either VS Ramam, the then Area Manager or Sri Nageswara Rao, AGM, NABARD as witnesses on the two days of enquiry.

The Hon'ble Supreme Court in **Krushnakant B. Parmar's** case (supra) held as follows.

> "16. In the case of the appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behaviour was unbecoming of a Government servant. The question whether "unauthorised absence from duty" amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.
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> 17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.
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> 18. In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct."

According to the petitioner, in the present case, his absence is not willful and that he gave leave letter for the same and his absence was also condoned. These facts are not disputed by the respondents.

In **State of Panjab v. Dr. P.L. Singla's** case (supra) the Hon'ble Supreme Court held as follows.

> "11. Unauthorized absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorised absence by an employee, two courses are open to the employer. The first is to condone the unauthorised absence by accepting the explanation and sanctioning leave for the period of the unauthorised absence in which event the misconduct stood condoned. The second is to treat the unauthorised absence as a misconduct, hold an enquiry and impose a punishment for the misconduct.

> 12. An employee who remains unauthorisedly absent for some period (or who overstays the period of leave), on reporting back to duty, may apply for condonation of the absence by offering an explanation for such unauthorised absence and seek grant of leave for that period. If the employer is satisfied that there was sufficient cause or justification for the unauthorised absence (or the overstay after expiry of leave), the employer may condone the act of indiscipline and sanction leave *post facto*. If leave is so sanctioned and the unauthorised absence is condoned, it will not be open to the employer to thereafter initiate disciplinary proceedings in regard to the said misconduct unless it had, while sanctioning leave, reserved the right to take disciplinary action in regard to the act of indiscipline."

Basing on the said judgment, the contention of the learned counsel for the petitioner is that when the TA bill has been sanctioned, it is not open to the employer to initiate disciplinary proceedings and that there is no finding with regard to willful absence from duty. He also submits that for the allegation of discourtesy towards the customers, the punishment imposed is disproportionate and that there was no allegation previously with regard to his discourtesy towards customers and no memo or censure has been given to him earlier. In support of his contention that the punishment imposed is disproportionate to the charges proved, he placed reliance on **Chairman, All India Railway Recruitment Board's** case (supra), wherein the Hon'ble Supreme Court observed as follows.

> "36. Wednesbury applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Proportionality as a legal test is capable of being more precise and fastidious than a reasonableness test as well as requiring a more intrusive review of a decision made by a public authority which requires the courts to `assess the balance or equation'

> struck by the decision-maker. Proportionality test in some jurisdictions is also described as the "least injurious means" or "minimal impairment" test so as to safeguard fundamental rights of citizens and to ensure a fair balance between individual rights and public interest. Suffice it to say that there has been an overlapping of all these tests in its content and structure, it is difficult to compartmentalise or lay down a straightjacket formula and to say that Wednesbury has met with its death knell is too tall a statement. Let us, however, recognize the fact that the current trend seems to favour proportionality test but Wednesbury has not met with its judicial burial and a State burial, with full honours is surely not to happen in the near future.
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> 37. Proportionality requires the Court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision-maker has achieved more or less the correct balance or equilibrium. The Court entrusted with the task of judicial review has to examine whether decision taken by the authority is proportionate, i.e. well balanced and harmonious, to this extent the court may indulge in a merit review and if the court finds that the decision is proportionate, it seldom interferes with the decision taken and if it finds that the decision is disproportionate i.e. if the court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere."

Broadly, the allegations against the petitioner are; unauthorized absence and discourteous towards the customers. As seen from the record, the explanation of the petitioner justifies his case. Hence, in the light of the explanation submitted by the petitioner, the punishment imposed on him appears to be disproportionate to the charges proved.

In **B.C. Chaturvedi's** case (supra) the Hon'ble Supreme Court held as follows.

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases. impose appropriate punishment with cogent reasons in support thereof."

In **Ranjit Thakur's** case (supra) the Hon'ble Supreme Court held as follows.

"25. Re contention (d): 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 recognised grounds of judicial review. In Council of Civil Service Unions v. Minister for the Civil Service, (1984) 3 Weekly Law Reports 1174 (HL) Lord Deplock 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 recognised in the administrative law of several of our fellow members of the European Economic Community:....."

In view of the facts and circumstances of the case, the Writ Petition is allowed and the impugned order is set aside. The matter is remanded to the appellate authority i.e., the third respondent to reconsider the same in the light of the explanation submitted by the petitioner and pass appropriate orders in accordance with law as expeditiously as possible, preferably within a period of three (3) months from the date of receipt of a copy of this order. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

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KONGARA VIJAYA LAKSHMI, J.

Date: 31st August 2020
Nsr

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.7086 of 2009

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