

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 40501 of 2016

Between:

Jayant V Selmokar

... Petitioner

And

State Bank of India and others

... Respondents

JUDGMENT PRONOUNCED ON: 09.02.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

- 1. Whether Reporters of Local newspapers may be allowed to see the Judgment? : yes**
- 2. Whether the copies of judgment may be marked to Law Reporters/Journals? : yes**
- 3. Whether Their Lordships wish to see the fair copy of the Judgment? : yes**

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 40501 of 2016****% 09.02.2023****Between:****# Jayant V Selmokar****... Petitioner****and****\$ State Bank of India and others****.....Respondents****< Gist:****> Head Note:****! Counsel for the Petitioner : Sri V.Satyam Reddy****^Counsel for Respondents: Alluri Krishnam Raju
Standing counsel for respondents****? Cases Referred:**

1. (1995) 6 SCC 749
2. 2009 (5) ALD 1

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 40501 of 2016

ORDER:

Heard the learned Counsel for the Petitioner and the learned Standing Counsel appearing on behalf of the Respondents.

2. The Petitioner filed this petition seeking Writ of Mandamus with prayer as follows :

“declaring the findings of 5th respondent the Inquiry Authority dated 07.06.2007 Disciplinary Proceedings of the 4th Respondent bearing NO. DPD/770 dated 12.09.2007 and consequential Order of the 3rd respondent Appellate Authority dated 15.02.2011 communicated through letter dated 12.09.2016 as being illegal, arbitrary, capricious, mala fide not only Violative of Principles of Natural Justice but also Violative of Articles 16 and 21 of Constitution of India Contrary to State Bank of Hyderabad Officers Services Regulations 1979 misuse of powers abuse of process of Law consequentially direct the Respondent No.s 2 to 4 Authorities to reinstate the petitioner into service with all consequential benefits uninterrupted Seniority due promotions”.

3. The case of the Petitioner, in brief, is as follows:

a) The Petitioner had been appointed as Clerk-cum-cashier at Kavadiguda branch, Hyderabad on 12.12.1992 and was promoted as J.M.G.S.I and posted to State Bank of Hyderabad, Subhas Nagar Branch, Nizamabad and was later posted to extension center at Collectorate, Nizamabad as a sole in charge officer.

b) Later the extension center on 05.03.2005 was converted into full fledged branch and the petitioner was posted as 1st incumbent officer who is responsible for all the affairs of the branch.

c) Petitioner vide his letter dated 01.06.2006, brought to the notice of the Assistant General Manager, Region-I Nizamabad certain irregularities of the branch employees and the petitioner was instructed to settle the matter.

d) As per the directions of the Assistant General Manager, Region I Nizamabad, the petitioner tried to settle as per the banking procedure the issue but the employees of the branch evaded the settlement and hence the petitioner had lodged a complaint on 09.06.2006 to the General Manager, State Bank

of Hyderabad (i.e., 4th respondent herein) but reasons best known to the respondents, no action had been initiated.

e) The petitioner had been appointed by the General Manager, State Bank of Hyderabad (i.e., 4th respondent herein) as 1st Incumbent Officer at S.B.H Collectorate Branch, Nizamabad vide circular GB 2004/05/105 dated 05.03.2005.

f) The Petitioner as per H.O. Circular instructions DEP/6 OF 1984 dated 19.05.1984, the petitioner is authorized to open accounts only at Collectorate Complex Branch, Nizamabad and vide the H.O. Circular OPD 2002.03-3 dated 09.12.2002 unlimited signing and passing powers are approved by the Bank Board of Directors. Vide H.O. Circular GB 93-94/30 dated 26.08.2003, I.B.I.T Transaction are permitted when there is delay in transfer of funds from one branch to another branch of S.B.H.

g) The petitioner had been suspended from the service vide suspension orders dated 17.07.2006 were issued to the petitioner without conducting any preliminary enquiry or any complaint from the Bank Authorities or employees as required under Banking Service Regulations.

h) A charge sheet dated 21.02.2007 had been issued to the petitioner on 06.03.2007 levelling 7 imputations/charges. Disciplinary Proceedings had been initiated dated 16.04.2007 granting 15 days time for submission of explanation. The petitioner had asked for certain documents for finishing the reply but the same had been denied.

i) The Inquiry was conducted in a hasty and malafide manner from 24.04.2007 to 27.04.2007 by the presenting officer and the Inquiry officer concealing the actual records submitted the findings of the Disciplinary Authority on 07.06.2006 stating that all the imputations are established.

j) The Disciplinary Authority on 09.08.2007 issued a show cause notice calling for explanation with reference to earlier show cause notice dated 05.07.2007 which had not been communicated to the petitioner at any point of time. The petitioner had submitted his explanation on 17.08.2007 and vide his letter dated 20.08.2007 requested to drop further action.

k) The Disciplinary Authority by proceedings dated 12.09.2007 , without going into the merits of the case or

considering the explanation of the petitioner had imposed the penalty of 'compulsory retirement' and further held that the petitioner is not eligible for payment of allowances as per service conditions 2002.

l) The petitioner aggrieved by the order of the Disciplinary Authority had preferred an appeal before the Appellate Authority (i.e.,The Chief General Manager, State Bank of Hyderabad) the 3rd respondent herein. The Appellate Authority, (i.e., 3rd respondent herein) without giving an opportunity for personal hearing had disposed of the Appeal, confirming the order of the Disciplinary Authority by order dated 05.12.2007.

m) Aggrieved by the order of the Appellate Authority, the petitioner have filed a Writ Petition No. 3270 of 2008 and the said Writ Petition had been disposed of by setting aside the order of the Appellate Authority through its order dated 25.10,2007 and remitted the matter to the Appellate Authority for fresh consideration in accordance with regulation 70(2) of Regulations of 1979.

n) Petitioner made several representations in pursuance of the orders of this court but no steps had been taken as directed by the Court and petitioner had issued a Contempt notice dated 31.08.2016 on the Appellate Authority. The Appellate Authority communicated the impugned order on receipt of the contempt notice, vide letter dated 15.02.2011 through a cover letter dated 21.09.2016.

O) The Appellate Authority on 14.09.2016 had replied to the contempt notice stating, that the 'impugned proceedings/order' has already been communicated to the petitioner, which in reality had not been communicated to the petitioner at any point of time.

p) Before initiating the Disciplinary Proceedings, a criminal case had already been registered as Crime no. 228 of 2006 against the petitioner, on the file of 1 Town Police Station, Nizamabad under section 403, 209, and 420 of IPC.

q) The same had been taken up by the First-Class Magistrate cum Special Mobile Court Nizamabad as C.C. No. 145 of 2009 and after due process of trial, the petitioner was acquitted, finding not guilty of alleged offences by judgment dated 09.01.2015.

r) After the acquittal in the case, before the First-Class Magistrate cum Special Mobile Court Nizamabad, the petitioner had been approaching the respondent bank, requesting to reinstate the petitioner with all consequential benefits as per SBH Officers Service Regulations 69(iv), 7/1 and 8 (a) but to no avail.

s) The Enquiry Officer and the Disciplinary Authority had not followed the procedure as contemplated under S.B.H Officers Service Regulations 1979 and as per section 67 and 68, the whole proceedings will be vitiated as reported by the Division Bench of this court in 2009 (5) ALD.

t) The penalty of 'Compulsory Retirement' is not in consonance with the evidence, imputations and the Disciplinary Authority had not applied their individual mind but confirmed the order of the Inquiry Officer which was even further confirmed by the Appellate Authority and the same is contrary to the SBH Officers Service Regulations 1979. Hence, the said Writ Petition.

4. Counter Affidavit filed by the Respondents, in particular, Para No.5 clause (c), (d), and (f), read as under:

"c) The Enquiring Authority held the preliminary hearing on 09.04.2007 and conducted regular hearings from 24.04.2007 to 27.04.2007. The petitioner was represented by Mr Muhammed Ameruddin, Chief Manager as his defence representative during those hearings the Management was represented by Mr V.Vivekanand, Officer of the Bank as Presenting Officer. The management examined 2 witnesses and marked Ex.ME-1 to ME-33 and defence representative cross-examined the Management witnesses and marked 3 documents DE-1 to DE-3. The Enquiring Authority submitted report dated 07.06.2007, holding that all the charges are established.

d) The Enquiring, Authority elaborately discussed the oral and documentary evidence brought on record and assigned the reasons for the conclusions arrived in regard to each imputation and gave his findings which are supported by the evidence brought on record.

f) The Appellate Authority vide order dt.05-12-2007, dismissed the Appeal preferred by the Petitioner. The said order was questioned by the Petitioner in W.P. No. 3270 of 2008 and the Hon'ble Court set aside the Order dt.05-12-2007 and remitted the Appeal to the Appellate Authority for fresh consideration in accordance with

Regulation 70(2) and the writ petition was disposed of. In due compliance of the order passed in the said W.P the Appellate Authority passed order afresh in the Appeal preferred by the Petitioner which is impugned in the present writ petition.

PERUSED THE RECORD :

DISCUSSION & CONCLUSION :

5. A bare perusal of the specific averments made in the counter affidavit filed by the Respondents in particular para 5, sub-paras (a) to (k) and paras 8 & 9 clearly indicate that the contentions of the Petitioner that the disciplinary proceedings were not conducted as per the Officers Service Regulations 1979 is totally false and incorrect. The Respondent Bank had conducted the disciplinary proceedings as per the laid down procedure and on examining the evidential values of the documents as well as the proofs, the disciplinary authority passed the orders of compulsory retirement. The reliance of the counsel for the Petitioner in particular to para 11 of the judgment dt. 09.01.2015 passed in CC No.145/2009 in the Court of the Judicial Magistrate of First Class (Special Mobile) Nizamabad

and contending further that since the petitioner is acquitted in criminal case it is the duty of the authorities to reinstate forthwith without any further disciplinary action is not tenable. In view of the simple fact that at para 13 of the said judgment clearly observed that benefit of reasonable doubt shall be given to the accused and held the accused/petitioner as not guilty for the offences punishable U/s. 420, 403 and 409 of the Indian Penal Code and acquitted the petitioner U/s.248(1) of the Criminal Procedure Code. Moreover, it is evident on perusal of the service regulations that the same do not provide any prohibition to conduct disciplinary proceedings notwithstanding that the criminal complaint is lodged in respect of the acts which are subject matter of the charge sheet issued by the disciplinary authority. The Service Regulations are also silent and do not provide reconsideration of the penalty imposed in disciplinary proceedings in the event the Petitioner is acquitted in a criminal case subsequent to the order passed in disciplinary proceedings.

6. The Counsel for the Petitioner further places reliance on the notice dt. 14.03.2007 of the Assistant General Manager and 16.04.2007 of the Enquiring Authority and contends that in view of the fact that in both the said letters/notices it is clearly mentioned that the petitioner is not allowed to take copies, the same is in violation of principles of natural justice and providing reasonable opportunity. The said contention is however, negated by letter dt. 16.04.2007 of the enquiring authority addressed to the petitioner and a bare perusal of the same clearly indicates that the petitioner was permitted to verify the records in the presence of an officer at the branch but he was not permitted to take copies, but however, he was permitted to take note of the same.

7. The Apex Court in the judgment reported in (1995) 6 SCC 749 in B.C.Chaturvedi vs. Union of India observed at paras 12, 13, 17 and 18 as under :

12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made.

Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by

the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co- extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* [(1964) 4 SCR 781], this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

17. The next question is whether the Tribunal was justified in interfering with the punishment imposed by the disciplinary authority. A Constitution Bench of this Court in *State of Orissa Ors. v. Bidyabhushan Mohapatra* [AIR 1963 SC 779] held that having regard to the gravity of the established misconduct, the punishing authority

had the power and jurisdiction to impose punishment. The penalty was not open to review by the High Court under Article 226. If the High Court reached a finding that there was some evidence to reach the conclusion, it became unassessable. The order of the Governor who had jurisdiction and unrestricted power to determine the appropriate punishment was final. The High Court had no jurisdiction to direct the Governor to review the penalty. It was further held that if the order was supported on any finding as to substantial misconduct for which punishment "can lawfully be imposed", it was not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The court had no jurisdiction, if the findings prima facie made out a case of misconduct, to direct the Governor to reconsider the order of penalty. This view was reiterated in *Union of India v. Sardar Bahadur* [(1972) 2 SCR 218]. It is true that in *Bhagat Ram v. State of Himachal Pradesh & Ors.* [AIR 1983 SC 454], a Bench of two Judges of this Court, while holding that the High Court did not function as a court of appeal, concluded that when the finding was utterly perverse, the High Court could always can interfere with the same. In that case, the finding was that the appellant was to supervise felling of

the trees which were not hammer marked. The Government had recovered from the contractor the loss caused to it by illicit felling of trees. Under those circumstances, this Court held that the finding of guilt was perverse and unsupported by evidence. The ratio, therefore, is not an authority to conclude that in every case the Court/Tribunal is empowered to interfere with the punishment imposed by the disciplinary authority. In Rangaswami v. State of Tamil Nadu [AIR 1989 SC 1137], a Bench of three Judges of this Court, while considering the power to interfere with the order of punishment, held that this Court, while exercising the jurisdiction under Article 136 of the Constitutions, is empowered to alter or interfere with the penalty; and the Tribunal had no power to substitute its own discretion for that of the authority. It would be seen that this Court did not appear to have intended to lay down that in no case, the High Court/Tribunal has the power to alter the penalty imposed by the disciplinary or the appellate authority. The controversy was again canvassed in State Bank of India's case (supra), where the court elaborately reviewed the case law on the scope of judicial review and powers of the Tribunal in disciplinary matters and nature of punishment. On the facts in that case, since the appellate authority had not adverted to

the relevant facts, it was remitted to the appellate authority to impose appropriate punishment.

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.**

8. The Counsel for the petitioner placed reliance on judgement reported in 2009 (5) ALD Volume I in K. Balarama Raju v High Court of Andhra Pradesh, Hyderabad and another, in particular, paras 27 and 28:

"27. Now, the point that arises for consideration is as to whether the order of punishment of compulsory retirement imposed on the petitioner requires any interference by this exercising power of judicial review under Article 226 of the Constitution of India?

28. It is noteworthy to state here that normally the High Court under Article 226 would not interfere with the findings recorded at the departmental enquiry by the Disciplinary Authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of an Appellate Authority. Judicial review is limited to the validity of the making process and not the decision. However, this does not mean that in no circumstance can the Court interfere.

As held by the Apex Court in the decisions referred supra, the power of judicial review takes in its stride the domestic enquiry as well, and it can interfere with the conclusions only if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or that the findings were perverse, and that the charges cannot be sustained on mere conjectures in the absence of evidence."

9. **The Counsel for the Respondents placed reliance on the judgments given hereunder :**

1. State Bank of Bikaner & Jaipur v Nemi Chand Nalawaya (2011) 4 SCC 584.
2. Management of BHEL v M.Mani (2018) 1 SCC 285
3. Karnataka Poer Transmission Corportion Ltd. V C.Nagaraju and another (2019) 10 SCC 367.
4. Noida Entrepreneurs Associaton v Noida and others (2007) 10 SCC 385.
5. Avatar Singh v Union of India and others (2016) 8 SCC 471.
6. Lalit Popli v Canara Bank and others (2003) 9 SCC 471.
7. Pravin Kumar v Union of India and others (2020) 9 SCC 471.
8. SBI v Narender Kumar Pandey (2013) 2 SCC 740.
9. SBI v Tarun Kumar Banerjee and others (2000) 8 SCC 12.
10. Suresh Pathrella v Oriental Bank of Commerce (2006) 10 SCC 572.
11. Divisional Controller Karnataka State RTC v M.G.Vittal Rao (2012) 1 SCC 443
12. Divisional Controller Karnataka State v A.T.Mane (2005) 3 SCC 254.
13. Disciplinary Authority cum Regional Manager and others v Nikunj Bihari Patnaik (1996) 9 SCC 69.
14. Lucknow Kshetriya Gramin Bank v Rajendra Singh (2013) 12 SCC 372.

10. This Court opines that the judgement relied upon by the Counsel for the Petitioner has no relevance to

the facts of the present case and the judgments relied upon by the Counsel for the Respondents squarely apply to the present case.

11. Taking into consideration the specific averments made in the counter affidavit filed by the Respondents and in particular para 5 and also the law laid down by the Apex Court in the judgment of the Apex Court in B.C. Chaturvedi vs. Union of India reported in 1995 (6) SCC page 749 the Writ Petition is dismissed since the same is devoid of merits. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand dismissed.

SUREPALLI NANDA, J

Date: 09.02.2023

Note: L.R. copy to be marked

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