**(2016) 02 JH CK 0007**

**In the Jharkhand High Court**

**Case No :** W.P. (S) No. 2112 of 2006

A. Mahapati Devi and Others APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

**Date of Decision :** 01-02-2016

**Acts Referred:**

Constitution of India, 1950 — Article 226, Article 311 (2), Article 311(2)(a)
Penal Code, 1860 (IPC) — Section 409, Section 420, Section 477 (A)

**Citation :** (2016) 3 AIRJharR 64 : (2016) 2 JBCJ 426 : (2016) 3 JCR 568 : (2016) 2 JLJR 143

**Hon'ble Judges :** Pramath Patnaik, J.

**Bench :** Single Bench

**Advocate :** Vaibhav Kumar, Advocate, for the Appellant; Ashish Verma, J.C. to G.A. No. 4, for the Respondent

**Final Decision :** Dismissed

## Judgement

Pramath Patnaik, J.—1. In the accompanied writ application, the petitioner has, inter-alia, prayed for quashing the order dated 18.10.2005 passed by the Director of the Singhbhum District Central Co-Operative Bank Limited, Chaibasa, and order dated 08.03.2006 passed by the Appellate Authority confirming the order of dismissal passed by the Disciplinary Authority and for direction to respondents to allow the petitioner to continue in service with all consequential benefits.

2. In the writ application Sri Indradeo Prasad was the petitioner but subsequently in the year 2009 vide I.A. No. 531 of 2013 the present petitioners have been substituted as legal heirs after death of late Indradeo Prasad.

3. The facts as disclosed in the writ application, in a nutshell, is that by virtue of conviction in criminal case, the petitioner has been dismissed from services vide order dated 18.10.2005 which was confirmed by the appellate authority vide order dated 08.03.2006.

 

4. The petitioner being aggrieved by the impugned order dated 18.10.2005 passed by the disciplinary authority as well as vide order dated 08.03.2006 by the appellate authority, left with no other efficacious, alternative and speedy remedy has invoked the extraordinary jurisdiction of the Court under article 226 of the Constitution of India.

5. Learned counsel for the petitioner Mr. Vaibhav Kumar fairly submitted that the case of the petitioner lies in a very narrow compass. The Rule 23 V (iii) of "The Central Co-operative Bank Service Rules", which reads as under:

"(iii) The requirement of this clause shall not apply where it is proposed to impose on an employee any of the penalties mentioned in clause (I) of rule 23 on the basis of facts which led to his conviction in a Criminal Court, but he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration before the order imposing the penalty is passed."

Learned counsel for the petitioner further submits that the same has not been followed and the impugned order passed is not sustainable. Learned counsel for the petitioner in support of his petition referred a case of Shankar Dass V. Union of India and Another reported in , AIR 1985 SC 772 wherein the Hon''ble Apex Court held in para 7 is here under:

"It is to be lamented that despite these observations of the learned Magistrate the Government chose to dismiss the appellant in a huff without applying its mind to the penalty which could appropriately be imposed upon him in so far as his service career was concerned. Clause (a) of the second proviso on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But that power like every other has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a Government servant who is convicted for parking his scooter in a no-parking area would be dismissed from service. He may perhaps not be entitled to be heard on the question of penalty since Cl. (a) of the second proviso to Art. 311 (2) makes the provisions of that article inapplicable when a penalty is to be imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of this case, there can be no two opinions that the penalty of dismissal form service imposed upon the appellant is whimsical."

By referring the above case, learned counsel for the petitioner further submits that in the instant case the impugned order has been passed in violation of article 311 (2) of the Constitution of India.

6. Learned counsel for the respondents has filed counter-affidavit controverting the averments made in the writ application although it is settled law that benchmark of discipline and integrity in so far as the banking employee is concerned stands to be maintained in highest degree and therefore the charges

 

as such with respect to the banking employees are not required to be proved in equality to other civil employees and loss of confidence by the employer is held to be enough for removal/termination/dismissal yet in the instant case, the employers bank has granted more than ample indulgence to the husband of the petitioner to prove the innocence.

It has further been submitted that cutting across the nitty-gritty of the departmental proceeding and fairness thereof, it is submitted that in view of the settled law as envisaged under Article 311(2)(a) of the Constitution of India and the undisputed facts to the effect that the original writ petitioner has been held to be guilty/convicted for the synonymous charges by the court of law for the offences under section 420, 409 and 477 (A) of the IPC, the instant writ petition deserves to be dismissed as such.

Learned counsel Mr. Krishna Murari appears for the respondents assiduously submitted that in view of the conviction and criminal case the instant writ petition does not warrant any interference by this Court.

7. After hearing the learned counsel for the respective parties and on perusal of relevant documents and records, I am of the considered view that the petitioners have not been able to make out the case for interference by this Court due to following facts, reasons and judicial pronouncements:--

"I. Admittedly, in the instant case, the petitioner was convicted in a criminal case u/s. 420, 409, and 477 (A) of the IPC which leads petitioner''s dismissal from the services, and the order of disciplinary authority has been confirmed by the appellate authority.

II. In view of the categorical submissions made on behalf of the respondents, the petitioner was involved in financial defalcation which has resulted into loss of confidence of the bank. In view of the impugned order of punishment being confirmed by the appellate authority do not have any merit for consideration by this Court.

III. The Hon''ble Apex Court in the case of Divisional Controller, Karnataka State Road Transport Corporation v. M.G. Vittal Rao reported in , (2012) 1 SCC 442 in paragraph No. 25 held that:

"25 : Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of lass of confidence, reinstatement cannot be directed. [Vide Air India Corpn. v. V.A. Rebellow Francis Klein & Co. (P) Ltd. v. Chandrasekhar Reddy]."

Further the Hon''ble Apex Court in the case of Suresh Pathrella v. Oriental Bank of Commerce, report in , (2007) 1 SCC (Cri) 612 has been pleased to hold in paragraph Nos. 21 & 22 which reads as under:

"21 : In Chairman and MD. United Commercial Bank v. P.C. Kakkar, this Court said in para 14 at SCC P P. 376-77 as under:

14. A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/ employee of the bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik. It is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of any organisation more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one''s authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the high Court.

22. In the present case the appellant acted beyond his authority in breach of the Bank''s regulation. Regulation 3(1) of the Bank''s Regulations required that every officer of the Bank at all times takes all possible steps to protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which will be unbecoming of a bank officer. It is a case of loss of confidence in the officer by the Bank. In such a situation, it would be a futile exercise of judicial review to embark upon the decision of the disciplinary authority removing the officer from service, preceded by an enquiry, and to direct the bank to take back the officer in whom the bank has lost confidence, unless the decision to remove the officer is tainted with mala fides, or in violation of principles of natural justice and prejudice to the officer is made out. No such case is made out in the present case."

8. As a logical sequitur to the factual and legal aspects the impugned order of punishment dated 18.10.2005 vide Annexure 6 and the order of appellate authority dated 08.03.2006 vide Annexure-7 do not warrant any interference by this court.

9. Accordingly, the writ petition is dismissed.

 