

(2014) 08 GUJ CK 0073

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1799 of 2005 in Special Civil Application No. 341 of 2004

Ajab Singh

APPELLANT

Vs

National Seeds Corporation Limited

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Citation : (2015) 144 FLR 39 : (2014) LabIC 4001 : (2014) 3 LLN 700

Hon'ble Judges : V.M. Sahai, J;Abdullah Gulamahmed Uraizee, J

Bench : Division Bench

Advocate : M.J. Mehta, Advocate for the Appellant; Kirtidev R. Dave, Advocate for the Respondent

Judgement

@

Abdullah Gulamahmed Uraizee, J.—We have heard learned Senior Counsel Mr. Y.N. Oza assisted by learned Advocate Mr. M.J. Mehta and learned Advocate Mr. Kirti Dave for the respondents No. 1 and 2.

2. This Appeal under Clause 15 of the Letters Patent is directed against the oral order dated 01.02.2005 passed by the learned Single Judge in Special Civil Application No. 341/2004 whereby the Writ Petition preferred by the appellant is dismissed.

3. The necessary facts for disposal of this Appeal in brief are that the appellant challenged the order dated 24.05.2001 passed by the disciplinary authority allowing punishment of reduction to lower stage in time scale of pay by five stages for period of five years which came to be imposed on the appellant. The disciplinary authority also provided that during the aforesaid period, the appellant would not be entitled to earn increments and after expiration of the period of five years, it will have the effect of postponing the future increments of the appellant. The appellant challenged this order before the appellate authority and the reviewing authority without success. The appellant, therefore, filed a

Special Civil Application No. 341/2004 with the following prayers:-

"(A) Your Lordships may be pleased to admit this petition.

(B) Your Lordships to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, quashing and setting aside the impugned orders at Annexure-D, F and I passed by respondent No. 3, 4 and 5 respectively and be further pleased to direct the respondents to pay the salary as per the pay scale attached to the post on which the Petitioner is serving and such as is paid to other employees on the same post as the petitioner and having the same standing as the petitioner.

(C) Your Lordships to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, directing the respondents to make payment of the arrears of Rs. 1000/- per month from 1-5-2001 onwards till realization, being the amount deducted from the basic pay of the petitioner by way of penalty and be further pleased to grant increment to the petitioner as are granted to other employees on the same post as the petitioner with all consequential and incidental benefits.

(D) Pending admission, hearing and final disposal of the Petition, Your Lordships may be pleased to stay the operation, implementation and execution of the impugned orders at Annexure-D, F and I passed by respondent No. 3, 4 and 5 respectively and be further pleased to direct the Respondents to pay the salary as per the pay scale attached to the post on which the Petitioner is serving and such as is paid to other employees on the same post as the petitioner.

(E) Your Lordships may be pleased to pass any other and further reliefs as may be deemed fit and proper in the interest of justice."

4. The learned Single Judge by the impugned order dated 01.02.2005 was pleased to dismiss the petition of the appellant, therefore, this appeal.

5. It transpires from the impugned order that though the appellant had challenged the orders of the disciplinary authority, appellate authority and the reviewing authority in the writ petition, in toto, at the time of issuance of notice in the Special Civil Application, the challenge was restricted to the quantum of punishment only and not on the legality of the departmental proceedings and findings arrived at. This is evident from Paragraph 2 of the impugned order which is extracted below:-

"2. At the time of issuance of notice, learned Counsel for the petitioner has made a statement that the petitioner restricts the challenge to the quantum of punishment only and not on the legality of departmental proceedings and findings arrived at. The legality of the departmental enquiry and the conclusions on facts of the disciplinary authority therefore are not under challenge. In response to the notice issued by this Court, the respondents have appeared and file affidavit-in-reply and have also opposed any reduction in punishment."

6. Learned Senior Counsel Mr. Y.N. Oza has submitted that the punishment inflicted on the appellant is grossly disproportionate to the misconduct committed by the appellant. He has further submitted that as such, no financial loss is caused to the respondent. It was his further contention that the Paddy Pusa Basmati Seed to Delhi was despatched in great rush and a lot of customers/farmers were waiting at the Delhi Office as deposed by Shri Brahmasingh, Assistant Manager, who was the then Area Manager, NSC, Hathras during the departmental enquiry. He has therefore, urged that the punishment inflicted by the authorities may be quashed and set aside and replaced by punishment of withholding of one increment without future.

Learned Senior Counsel Mr. Y.N. Oza has relied upon the following judgments in support of his arguments:-

? Bhagat Ram Vs. State of Himachal Pradesh and Others, ;

? Dev Singh Vs. Punjab Tourism Development Corporation Ltd. and Another, and;

? Sarkhej Okaf Nagarpalika v. Somabhai Bhaishabhai Thakore (Judgment dated 07.12.2000 of this Court delivered in Letters Patent Appeal No. 1418/1999).

7. Learned Advocate Mr. Kirtidev R. Dave for the respondent has opposed this Appeal and has submitted that the punishment inflicted by the authorities is not disproportionate to the misconduct committed by the appellant. He has further submitted that the judicial review by the Courts in case of quantum of punishment on proven misconduct by a Government Servant is very limited and when the appellant has himself not pressed the challenge to the legality of the departmental proceedings and the findings arrived at by the disciplinary authority, it is not within the domain of this Court to interfere with the quantum of punishment.

Learned Advocate Mr. Kirtidev R. Dave has relied on the judgment of the Apex Court in the case of Sarv U.P. Gramin Bank Vs. Manoj Kumar Sinha, , wherein the above principle has been reiterated.

8. The appellant who was working as a Seed Officer in the respondent No. 1-Corporation was served with a statement of articles of chargesheet dated 12.10.1998 and a departmental enquiry was initiated against him for the following charges:-

"Charge No. 1.: Out of production programme organised by Hathras sub-unit during Kharif 1997, a quantity of 87.90 qtls. Of Paddy Pusa Basmati-I pertaining to lot No. Nov. 97-24-50-03 allotted by UPSSCA was failed in State Seed Testing Laboratory vide Seed Analysis Report No. T-12/37 dated 15.4.1998. The UPSSCA had issued advance tags against lot No. Nov-97-24-50-03 subject to meeting the certification standard failing which the tags issued were required to be returned to the certification Agency. Shri Ajab Singh in contravention of laid down procedure did not remove the tags from the failed seed bags after receipt of aforesaid Analysis report dated 15.4.98 and did not return tags to UPSSCA

immediately after receipt of results.

Charge No. 2: On the other hand, in contravention of laid down procedure, Shri Ajab Singh despatched 117.60 qtls. Paddy Pusa Basmati-I vide Lorry Receipt No. 35116 dated 15.5.98 from NSC, Hathras to Area Manager, CS & SD, New Delhi without issuing Certificate of Physical Inspection which is a basic requirement for despatch of seeds.

Charge No. 3: Shri Ajab Singh despatched 21 bags (630 kgs) of failed lot No. Nov-97-24-50-03 while despatching 117.60 qtls. Paddy Pusa Basmati-I vide LR No. 35116 dated 15.5.1998. As certification tags were intact, out of these 21 bags, 17 bags (510 kgs.) of Paddy Pusa Basmati seed were sold by Delhi Sales Counter on 16/18th May, 1998. On receipt of complaint from the buyers, supply of Paddy PB-1 of poor quality was detected. The above lapse on the part of Shri Ajab Singh in the despatch of Paddy PB-1 has not only caused financial loss to the Corporation but it has also damaged the reputation of the Corporation in the public."

9. After conclusion of the enquiry, the Enquiry Officer submitted a Enquiry Report which was served upon the appellant with a letter dated 03.01.2001. The Enquiry Officer in his Report came to the conclusion that the charge Article 1 stood fully proved and established while charges No. 2 and 3 were partially proved and established. The disciplinary authority by an order dated 24.05.2001 after considering the representation of the appellant against the report of the Enquiry Officer came to the conclusion as under:-

"that the petitioner did not comply with the instructions of Area Manager to get the tags of failed lot No. Nov-97-24-50-03 removed from the bags, violated laid down procedure by not preparing CPI which is a basic requirement for despatch of seed and despatched 21 bags of failed lot seed along with good quality seed which on sale invited complaints. The above lapses on the part of the charged officer has not only caused huge loss to the Corporation but it has also damaged the reputation of the Corporation in public eyes."

Upon the above conclusion, the disciplinary authority was pleased to observe that inspite of the penalty inflicted on the appellant for his proven misconduct, the learned Single Judge observed in Paragraph 8 that:-

"8. The question therefore that is required to be decided is whether the disciplinary authority imposed a punishment on the petitioner which is so excessive as to call for interference by this court. The law on the power of the Court to interfere with the quantum of punishment imposed by the employer on the basis of proved misconduct is by now well settled. In the decision of R.C. Chaturvedi Vs. Union of India, reported in AIR 1986 SC 484, the Hon"ble Supreme Court observed that the High Court or the Tribunal, while exercising the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. It is further observed that if the punishment imposed by the disciplinary authority or the appellate authority shocks the

conscience of the Court, it would appropriately mould the relief, either by directing the disciplinary authority to reconsider the penalty imposed, or to shorten the litigation, it may by itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

10. The appellant by filing a Special Civil Application No. 341/2005 challenged the decision of the disciplinary authority which was dismissed by the learned Single Judge.

11. As noted in the foregoing before the learned Single Judge, the appellant restricted his challenge to the impugned decision of the disciplinary authority qua the quantum of punishment only. The judicial review of the punishment on a delinquent by the disciplinary authority is very much limited and circumscribed as held by the Honourable Supreme Court and this Court in catena of decisions. The High Court on judicial side does not sit in appeal over the decision of the disciplinary authority. It is well settled by a catena of judgments of the Honourable Supreme Court that it is not within the competence of the High Court to substitute or interfere with the punishment imposed by the disciplinary authority merely on the ground that the High Court feels that it is on higher side. The scope of judicial review in matters involving challenge to the disciplinary action taken by the employer is very limited. The Courts are primarily concerned with the question whether the enquiry has been held by the competent authority in accordance with the prescribed procedure and whether the rules of natural justice have been followed. The Court can also consider whether there was some tangible evidence for proving the charge against the delinquent and such evidence reasonably supports the conclusions recorded by the competent authority. If the Court comes to the conclusion that the enquiry was held in consonance with the prescribed procedure and the rules of natural justice and the conclusion recorded by the disciplinary authority is supported by some tangible evidence, then there is no scope for interference with the discretion exercised by the disciplinary authority to impose the particular punishment except when the same is found to be wholly disproportionate to the misconduct found proved or shocks the conscience of the Court.

12. The appellant was working as a Seed Officer in the respondent-Corporation and it was his part of duty to ensure to remove the tags from the failed seed bags after receipt of the Analysis Report and wrong tags to UPSSCA immediately after receipt of result and in contravention of laid down procedure, despatched 17.60 Paddy Pusa Basmati Seed-1 and complaint of poor quality from the buyers was received due to which financial loss was caused to the respondent-Corporation and its reputation was also dented. Since the appellant has accepted the finding of the enquiry report and restricted the challenge to the quantum of punishment only, we will have to satisfy ourselves that the punishment inflicted on the appellant is disproportionate to the misconduct conducted by him and it shocks the conscience of the Court, as submitted by learned Senior Counsel Mr. Y.N. Oza for the appellant.

13. The learned Single Judge has in paragraph 8 dealt with the argument of the disproportionateness of the punishment and recorded the findings in Paragraphs 8, 9 and 10 of the order which is reproduced as below:-

8. The question therefore that is required to be decided is whether the disciplinary authority imposed a punishment on the petitioner which is so excessive as to call for interference by this Court. The law on the power of the Court to interfere with the quantum of punishment imposed by the employer on the basis of proved misconduct is by now well settled. In the decision of *B.C. Chaturvedi Vs. Union of India*, reported in AIR 1986 SC 484, the Hon'ble Supreme Court observed that the High Court or the Tribunal, while exercising the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. It further observed that if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court, it would appropriately mould the relief, either by directing the disciplinary authority to reconsider the penalty imposed, or to shorten the litigation, it may by itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

In paragraph 18 of the decision, following observations have been made:

"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 consider 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."

This view has been reiterated in number of decisions by the Hon'ble Supreme Court and it would not be necessary to repeat and reproduce all of them in this order. However, one may take note of the decision in the case of *Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar*, wherein, in paragraphs 11 and 12 following observations have been made.

"11. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court. In the sense that it was in defiance of logic or moral standards. In view of what has been stated in the *Wednesbury's* case (*supra*), that the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The

scope of judicial review is limited to the deficiency in decision making process and not the decision."

"12. To put difference unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to certain litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed."

9. From the above decisions of the Hon"ble Supreme Court, it can be seen that this Court would have power to interfere with the choice of punishment imposed by the employer, only if the punishment is found to be so illogical so as to shock the conscience of the Court in the sense that it was in defiance of logic or moral standards. The Court would not ordinarily go into the correctness of the choice made by the administrator and the Court should not substitute its decision to that of the administrator. Even when the Court finds the penalty imposed excessive, it should ordinarily direct the disciplinary/appellate authority to reconsider the punishment, however to shorten the litigation, in exceptional and rare cases the Court itself may substitute the penalty imposed by the employer.

10. Reverting back to the facts of the present case, one finds that on the basis of proved misconduct, which finding the petitioner has not challenged before this Court, the petitioner was found guilty of such negligence which resulted into circulation in the market certain seeds which were not certified to be of the required quality by the Corporation. These seeds reached the market and thereafter in the hands of individual farmers. The sub-standard quality of seeds did not yield the desired result and there were number of complaints received from the farmers. Quite apart from the monetary loss suffered by the Corporation on account of this mishap in order to compensate the aggrieved farmers, the entire episode also resulted into loss of confidence and loss of prestige on the part of the Corporation. The resultant effect of the negligence of the petitioner cannot be under-estimated. When the respondent is a State owned Corporation and is involved in preparing, developing and certifying seeds for the consumption of the farmers, if the Corporation itself is found to be allowing sub-standard seeds to enter the market which has occasioned on account of negligence on the part of the petitioner, the petitioner cannot be heard to say it was a mere minor lapse in discharge of his duty or that the negligence did not result into any substantial loss. The misconduct proved against the petitioner warranted punishment, the choice of which primarily lie with the employer. As noted earlier, unless the imposition of the penalty considering the charges levelled against the petitioner shocks the conscience of the Court, it would not be possible for this Court to interfere with the choice of punishment adopted by the employer. In the facts of the present case, as narrated earlier, the misconduct of the petitioner cannot be termed as minor, nor can it be stated that the penalty

imposed is so outrageous as to shock the conscience of the Court, which would permit this Court to interfere with the quantum of punishment.

14. The contention of learned Senior Counsel Mr. Y.N. Oza that no financial loss was caused to the respondent No. 1-Corporation and that the punishment is disproportionate to the misconduct committed by the appellant is devoid of substance. For the sake of repetition, it is reiterated that the appellant gave up the challenge to the legality of the departmental proceedings. The disciplinary authority has in his enquiry report (after examining the record of the case, report submitted by the enquiry authority and submissions made by the appellant on the enquiry report) recorded a specific finding that the lapse on part of the appellant had not only caused huge loss to the Corporation but it has also damaged the reputation of the Corporation in the public eye. The authorities relied upon by learned Senior Counsel Mr. Y.N. Oza in support of his submissions that the reduction of punishment also restate the principle that the High Court can substitute the punishment only if it is shockingly disproportionate to the misconduct committed by the delinquent. The appellant was holding a very responsible post of Seed Officer. It is explicitly clear from the Report of the Enquiry Officer that the appellant has shown gross dereliction in his duty which has caused undue hardships to the farmers. The misconduct committed by the appellant has resulted into huge loss to the respondent Corporation coupled with the fact that it has dented the reputation of the Corporation as well.

15. We, therefore, do not find that the punishment inflicted on the appellant is disproportionate to the misconduct committed by him and it shocks the conscience of the Court. No interference is warranted in the judgment of the learned Single Judge.

16. We are, therefore, in complete agreement with the impugned judgment of the learned Single Judge, which does not warrant any interference in this Appeal. The Appeal fails and is hereby dismissed. No costs.