(2016) 04 GUJ CK 0119

In the Gujarat High Court

Case No : Special Civil Application No. 5336 of 1992

Bharatkumar Harilal Trivedi — APPELLANT

Vs

General Manager(Operation) State Bank of India — RESPONDENT

Date of Decision : 27-04-2016

Acts Referred:

State Bank of India (Subsidiary Banks) Act, 1959 — Section 63
State Bank of Saurashtra (Officers) Service Regulations, 1979 — Regulation 19(2), Regulation 20

Citation : (2016) 3 GCD 2110 : (2016) LIC 3506

Hon'ble Judges : Mr. J.B. Pardiwala, J.

Bench : Single Bench

Advocate : Mr. Pradeep Patel, Advocate, for the Petitioner No. 1; Ms. Dharmishta Raval, Advocate, for the Respondent Nos. 1 - 2

Final Decision : Disposed Off

Judgement

J.B. Pardiwala, J.(Oral)—By this writ application under Article 226 of the Constitution of India, the petitioner, a dismissed employee of the respondent - Bank, has prayed for the following reliefs:

"12 (a) Be pleased to admit this petition;

(b) Be pleased to issue a writ of mandamus or any other appropriate writ, order or directions by quashing and setting aside the order of dismissal of the petitioner dated 3-9-1991 and the order of the appellate authority confirming the same and further be pleased to direct the respondents to pay to the petitioner all his legitimate retirement and terminal benefits as per rules and regulations as the petitioner has retired without any penalty and order of dismissal was never passed, with 18% interest p.a. right from the date of his retirement and further be pleased to direct the respondents to give to the petitioner a fit-man/clearance certificate in respect of scales with effect from 1-11-1987 and 1-11-1988 and its consequential economical effect with retrospective deed date;

(c) Pending admission, hearing and final disposal of this petition, be pleased to direct the respondents to pay to the petitioner bank''s contribution of Provident Fund & Gratuity immediately with 18% interest per annum;

(d) to pass such other and further orders as may be deemed fit in the interest of justice."

2. The petitioner was serving as a Branch Manager, Scale-II Officer with the respondent Bank at Halvad from 1984 to 1987. While he was a Branch Manager at Halvad, by an order dated 1st June, 1985, the Regional Manager-II asked the petitioner that he shall confirm having noted the instructions given to him during his visit (petitioner''s visit) to the Regional Office on 30th and 31st May, 1985, for immediate compliance. The letter reproduces as many as five paragraphs incorporating various instructions. For our purpose, instructions contained in paragraph(iv) are material, which read thus,

"The Branch Manager should under no circumstances consider proposals for advances except those sponsored under Govt. agencies but consolidate the advances proposals. All such proposals must be referred to the Regional Office only and no discretionary powers must be exercised by you which are suspended by us forthwith until further instructions."

(emphasis supplied)

2.1 Despite this letter dated 1st June, 1985, the petitioner continued to act according to his own whims and fancies and, therefore, he was issued a departmental charge-sheet on 20th November, 1989. The charge-sheet reads thus,

"It is reported that you have committed certain acts of misconduct during your tenure as Branch Manager of Bank''s Halvad Branch in the year 1984, 1985 & 1986 for which I, K. Thanu Pillai, Chief General Manager, State Bank Of Saurasthra, Head Office, Bhavnagar, do hereby charge you as under:

(1). Withdrawal of discretionary powers:

You have disobeyed the instructions conveyed to you vide the Controlling Authority''s letter No. RMII/AUD/SL/91 dated 1st June, 1985, withdrawing your discretionary powers to sanction the advances.

Defying the above instructions, you continued to sanction, renew with enhancement and release advances to fresh and existing borrowers. ... ..."

2.2 The Charge-sheet then sets out the details of the ten borrowers to whom the total amount to the tune of Rs. 69,654.15 was advanced. The was blocked, as there was a likelihood of the Bank suffering financial loss to the extent of the sum advanced and the interest accrued thereon.

2.3 The petitioner filed his reply to the said Charge-sheet, which was not found acceptable and, therefore, a departmental inquiry was ordered and the Inquiry

Officer, in his well reasoned, long drawn, inquiry report, found that:

(i) Charge No. 1 : Partly proved;

(ii) Charge Nos. 2, 3 and 4 : Not proved;

(iii) Sub.Charge 1 of Charge No. 5 : Partly proved;

(iv) Sub.Charge 2 of Charge No. 5 : Partly proved;

(v) Sub.Charge 3 of Charge No. 5 : Not proved;

(vi) Sub.Charge 4 of Charge No. 5 : Not proved;

(vii) Sub.Charge 5 of Charge No. 5 : Partly proved;

(viii) Sub.Charge 6 of Charge No. 5 : Proved;

(ix) Charge No. 6 : Partly proved;

(x) Charge No. 7 : Not proved;

(xi) Charge No. 8 : Proved;

(xii) Charge No. 9 : Partly proved;

(xiii) Charge No. 10 : Proved;

(xiv) Charge No. 11: Not proved.

2.4 The matter was considered by the Disciplinary Authority. The Disciplinary Authority passed an order of dismissal dated 30th August, 1991, which was communicated to the petitioner by letter dated 3rd September, 1991 of the General Manager (Operations).

2.5 The petitioner preferred an appeal against the said order of dismissal, which came to be dismissed by the Appellate Authority by order dated 29th February, 1992, which was communicated to the petitioner by communication dated 4th March, 1992.

At this juncture, the relevant extracts from the order of disciplinary authority are required to be reproduced:

"... ... ...I am satisfied that before arriving at conclusion, the Enquiry Officer has properly evaluated the evidences and that his findings are well reasoned. I, therefore, do not see any reason to disagree with his findings. Shri Trivedi''s defence and representation against the Findings of the Enquiry Officer is not convincing to me looking to the facts which are clearly revealed from the oral as well as documentary evidences laid at the enquiry that in spite of withdrawal of Shri Trivedi''s discretionary powers for advances except for advances recommended by Govt. Agencies, he sanctioned/released loans, in utter defiance of his Controlling Authority''s instructions, that too when he was on the verge of retirement. The circumstances of the case leads me to believe that he deliberately disobeyed his Controlling Authority''s instructions. He cannot escape punishment for such serious misconduct by subsequently sending control returns in some accounts for releasing advances for which he was not at all authorised. There is no evidence to show that the Controlling Authority had confirmed the alleged unauthorised advances made by Shri Trivedi. Moreover, I also found that in several accounts, apart from committing "grave" irregularities, Shri Trivedi did not initiate proper steps for followup and recovery, which may cause the Bank financial loss of lacs of rupees. I, therefore, decide to accept the findings of the Enquiry Officer.

2. After careful consideration of the whole matter and circumstances of the case as well as serious nature of gross misconduct committed by Shri Trivedi, I am of the opinion that if severe punishment is not imposed on such Officers, the confidence of the public in the Bank will be shaken and some other staff of the Bank may become tempted to indulge in committing serious irregularities during last few years of service. ... ... ?"

(emphasis supplied)

Similarly, the relevant extracts from the order of the Appellate Authority are also reproduced for ready reference :

"3. I have gone into the entire records and proceedings of the case afresh and on independent examination thereof, I concur with the findings of the Disciplinary Authority. I have carefully considered the appeal dated 14.10.91 submitted by Shri Trivedi and do not find any merit in points raised therein. Also, there has been no violation of State Bank of Saurashtra (Officers'') Service Regulations 1979, as alleged by Shri Trivedi.

4. Considering all this and looking to the gravity and seriousness of the charges proved in the enquiry, such as utter defiance of the Controlling Authority''s instructions and granting unauthorised advances etc. I find no reason to interfere with the decision of Disciplinary Authority. Accordingly, I hereby dismiss Shri Trivedi''s appeal and confirm the punishment of "Dismissal from the Bank''s service" imposed on Shri Trivedi by the Disciplinary Authority."

(emphasis supplied)

2.6 Hence, this petition.

3. It deserves to be noted that this writ application was taken up for hearing by a learned Single Judge, and by judgment and order dated 11th February 2004, the same was ordered to be rejected.

4. Being dissatisfied with the judgment and order passed by the learned Single Judge, the petitioner preferred a Letters Patent Appeal No. 1400 of 2004. The Letters Patent Appeal came to be allowed in part. The operative part of the order dated 11th June 2014 passed by a Division Bench, while allowing the appeal in part, reads as under:

"5. Considering the fact that only the point regarding proportionality of punishment was raised before the learned single Judge and that no other submissions were raised, we deem it appropriate to remand the matter to the learned single Judge for deciding the issue afresh after hearing both the sides.

6. For the foregoing reasons, the appeal is allowed in part. The impugned judgment and order passed by the learned single Judge is quashed and set aside and the matter is remanded to the learned single Judge for consideration afresh on merits. Both the parties shall be at liberty to raise all contentions before the learned single Judge. The writ petition is of the year 1992 and therefore, we request the learned single Judge to dispose of the same expeditiously, preferably on day today basis subject to the support of learned counsel for both sides, since it is brought to our notice that the appellant is an old-man aged more than 85 years."

5. Thus, pursuant to the order passed in the Letters Patent Appeal referred to above, this writ application is taken up for hearing a fresh.

6. Mr. Pradeep Patel, the learned counsel appearing for the petitioner submitted that the departmental inquiry against his client was unwarranted as the alleged acts of misconduct were way back of the year 1984. The charge-sheet was issued in the year 1989 i.e. almost after a period of five years. According to Mr. Patel, the impugned order of dismissal deserves to be quashed on this count alone.

7. Mr. Patel submitted that there are no allegations of embezzlement of funds or demand of any illegal gratification from the farmers for the purpose of sanctioning the loans.

8. Mr. Patel submitted that the charges against his client are that of disobedience of the instructions issued by the superior authority.

9. Mr. Patel submitted that at no point of time, his client was conveyed by the superior authority that his powers to sanction the loans had been withdrawn. He submitted that all the cases, wherein his client had sanctioned the loans, were first forwarded to the higher authority for its approval. He submitted that proper and adequate security was also taken from the farmers at the time of sanctioning of the loans.

10. Mr. Patel lastly submitted that even if everything as alleged against his client is believed to be true and accepted, still the disciplinary authority could not have passed an order of dismissal from service, as by that time, the petitioner had already attained superannuation. To put it in other words, his submission is that the disciplinary authority had no power to pass an order of dismissal with retrospective effect. An order of dismissal by way of penalty can be imposed only while an employee is in service. According to him, none of the major penalties, as prescribed in the Regulation 67 can be imposed, after the employee has crossed the age of superannuation.

11. Mr. Patel submitted that if an employee crosses the age of superannuation, the employer can only pass a penal order withholding his past retiral benefits, such as pension, which would include gratuity or the employee''s contribution to the provident fund, as the case may be. He submitted that such withholding of pension can either be partial or complete and for a limited period or permanently. He submitted that in no case, the petitioner could have been dismissed from service having crossed the age of superannuation, even if the departmental inquiry was initiated while he was in service.

12. Mr. Patel, in support of his submissions, has placed reliance on the following decisions:

(1) High Court of Punjab and Haryana v. Amrik Singh [1995 (1) SCC (supp) 321]

(2) Jaswant Singh Gill v. Bharat Coking Coal Limited and others [(2007)1 SCC 663]

(3) Chaturbhuj A. Sahu v. State of Gujarat and others [(2006) 3 GLR 2007]

13. On the other hand, this writ application has been vehemently opposed by Ms. Raval, the learned counsel appearing for the petitioner. Ms. Raval submitted that no error, not to speak of any error of law could be said to have been committed by the disciplinary authority as well as the appellate authority in passing the impugned orders.

14. Ms. Raval submitted that after due consideration of the report of the inquiry, the disciplinary authority thought fit to order dismissal of the petitioner from service. She submitted that the petitioner, in his capacity as the Bank Officer, was required to exercise higher standard of honesty and integrity. The petitioner was obliged to take all the possible steps to protect the interest of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence. His acts of misconduct could be said to be unbecoming of a Bank Officer.

15. Ms. Raval submitted that the defence of the petitioner that no loss resulted to the Bank is not tenable in law. Ms. Raval submitted that this Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India, may not interfere with the impugned orders, as the same cannot be termed as illogical or suffering from any procedural impropriety or is shocking to the conscience of the Court.

16. Ms. Raval placed reliance on the Regulation 19(2) of the State Bank of Saurashtra Officers'' Service Regulations, 1979, as amended upto 31st December 2002. Relying on the Regulation 19(2), Ms. Raval submitted that although the inquiry was initiated when the petitioner was in service, yet he could be said to have been continued in service or deemed to be in service only for the purpose of the continuance and conclusion of such proceedings. Ms. Raval submitted that if the petitioner was deemed to be in service, although he had attained superannuation for the purpose of the continuance and conclusion of the departmental inquiry, then it was within the power of the disciplinary authority to

pass an order of dismissal from service.

17. Ms. Raval, in support of her submissions, placed reliance on the following decisions of the Supreme Court:

(1) State Bank of India and others v. Bidyut Kumar Mitra and others [AIR 2011 SC (Supp) 798]

(2) Ganesh Santa Ram Sirur v. State Bank of India and another [AIR 2005 SC 314]

(3) State Bank of India and others v. Narendra Kumar Pandey [(2013) 2 SCC 740]

(4) State Bank of India and another v. Bela Bagchi and others [AIR 2005 SC 3272]

(5) Chairman and Managing Director, United Commercial Bank and others v. P.C. Kakkar [AIR 2003 SC 1571]

18. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the disciplinary authority as well as the appellate authority committed any error in passing the impugned orders.

19. It is now well settled by a plethora of judgments of the Supreme Court that in exercise of its powers under Articles 226 and 227 of the Constitution of India should not venture into the re-appreciation of evidence or interfere with the conclusion arrived at by the disciplinary authority in the inquiry proceedings, if the same are conducted in accordance with law or go into the reliability/ adequacy of evidence, or interfere, if there is some legal evidence on which the findings are based, or correct error of fact however grave it may be, or go into the proportionality of punishment unless it shocks the conscience.

20. It is equally well settled that the High Courts in exercise of its powers under Articles 226 and 227 can only consider whether the inquiry held by the competent authority was in accordance with the procedure established by law, and the principles of natural justice, whether irrelevant or extraneous consideration and/or exclusion of admissible or material evidence or admission of inadmissible evidence being influenced the decision rendering it vulnerable.

21. This Court may interfere if the finding is wholly arbitrary and capricious based on no evidence which no reasonable person could have ever arrived at.

22. The inquiring authority vide its report concluded that some of the charges were held to be established reflecting upon his devotion and diligence towards work. The disciplinary authority later considered the relevant records of the case including the findings of the inquiring authority and the submissions made by the petitioner and thought fit to pass the order of dismissal from service.

23. The appellate authority also looked into the matter and thought fit to affirm

the order of dismissal from service considering the materials on record.

24. I take notice of the fact that the inquiring authority has examined each and every charge levelled against the petitioner including the documents produced by the Presenting Officer and came to the conclusion that most of the charges were fully proved and few partially proved. In a departmental inquiry, the disciplinary authority is expected to prove the charges on preponderance of proportionality and not on proof beyond the reasonable doubt.

25. The documents produced by the petitioner, which are as such not controverted by the petitioner, support all the allegations and the charges levelled against him.

26. In Narendra Kumar Pandey (supra), the Supreme Court, in paras 25 and 26, observed as under:

"25. The High Court, in our view, under Article 226 of the Constitution of India was not justified in interfering with the order of dismissal passed by the appointing authority after a full fledged inquiry, especially when the Service Rules provide for an alternative remedy of appeal. It is a well acceptable principle of law that the High Court while exercising powers under Article 226 of the Constitution does not act as an appellate authority. Of course, its jurisdiction is circumscribed and confined to correct an error of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of the principles of natural justice. In State Bank of India and others v. Ramesh Dinkar Punde (2006) 7 SCC 212 : (2006 AIR SCW 5457), this Court held that the High Court cannot re-appreciate the evidence acting as a court of Appeal. We have, on facts, found that no procedural irregularity has been committed either by the Bank, presenting officer or the Inquiring Authority. Disciplinary proceedings were conducted strictly in accordance with the Service Rules.

26. This court in State of Andhra Pradesh v. Sree Rama Rao, AIR 1963 SC 1723 held:

"7...Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence especially when the charged officer had not participated in the inquiry and had not raised the grounds urged by him before the High Court by the Inquiring Authority."

27. In a very recent pronouncement in the case of Union of India and others v. P. Gunasekaran [2015(2) SCC 610], the Supreme Court in details has explained the position of law so far as the scope of interference in the matter relating to the disciplinary proceedings is concerned. I may quote the observations made by the Supreme Court from paras 12 to 20 as under:

"12. Despite the well-settled position, it is painfully disturbing to note that the

High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. 1 was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

(a). the enquiry is held by a competent authority;

(b). the enquiry is held according to the procedure prescribed in that behalf;

(c). there is violation of the principles of natural justice in conducting the proceedings;

(d). the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e). the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f). the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g). the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h). the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i). the finding of fact is based on no evidence.

13. Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience.

14. In one of the earliest decisions in State of Andhra Pradesh and others v. S. Sree Rama Rao, (AIR 1963 SC 1723) many of the above principles have been discussed and it has been concluded thus:

"7. .....The High Court is not constituted in a proceeding under Article 226 of the

Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

15 In State of Andhra Pradesh and others v. Chitra Venkata Rao [(1975) 2 SCC 557], the principles have been further discussed at paragraphs 21 to 24, which read as follows:

"21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao (AIR 1963 SC 1723). First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

22. Again, this Court in Railway Board, represent the Union of India, New Delhi v. Niranjan Singh (AIR 1969 SC 966) said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In Niranjan Singh case this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shutdown of an air compressor at about 8.15 a.m. on May 31, 1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the

exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan (AIR 1964 SC 477).

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do."

16 These principles have been succinctly summedup by the living legend and centenarian Justice V. R. Krishna Iyer in State of Haryana and another v. Rattan Singh [(1977) 2 SCC 491]. To quote the unparalled and inimitable expressions:

"4. ...... in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. ....."

17. In all the subsequent decisions of this Court up to the latest in Chennai Water Supply and Sewarage Board v. T. T. Murali Babu (2014) 4 SCC 108 : (AIR 2014 SC 1141), these principles have been consistently followed adding practically nothing more or altering anything.

18. On Article I, the disciplinary authority, while imposing the punishment of compulsory retirement in the impugned order dated 28.02.2000, had arrived at the following findings:

"Article-I was held as proved by the Inquiry authority after evaluating the evidence adduced in the case. Under the circumstances of the case, the evidence relied on viz., letter dated 11.12.92 written by Shri P. Gunasekaran, provides a reasonable nexus to the charge framed against him and he did not controvert the contents of the said letter dated 11.12.92 during the time of inquiry. Nor did he produce any defence witness during the inquiry to support his claims including that on 23.11.92 he left the office on permission. There is nothing to indicate that he was handicapped in producing his defence witness. ...."

19. The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re-appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India.

20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values."

28. Let me look into the judgments relied upon by Ms. Raval, the learned counsel appearing for the respondent Bank.

29. In Chairman and Managing Director, United Commercial Bank (supra), the Supreme Court in paras 14 and 15 held as under:

"14. A Bank Officer is required to exercise higher standards of honesty and integrity. He deals with 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, 1996 (9) SCC 69, 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 an 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.

15. It needs no emphasis that when a Court feels that the punishment is shockingly disproportionate, it must record reasons for coming to such a conclusion. Mere expression that the punishment is shockingly disproportionate would not meet the requirement of law. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union (1971 (1) All ER 1148) observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dedley) Ltd. v. Crabtres (1974 LCR 120), it was observed : "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi judicial performance. But as noted above, the proceedings commenced in 1981. The employee was placed under suspension from 1983 to 1988 and has superannuated in 2002. Acquittal in the criminal case is not determinative of the commission of misconduct or otherwise, and it is open to the authorities to proceed with the disciplinary proceedings, notwithstanding acquittal in criminal case. It per se would not entitle the employee to claim immunity from the proceedings. At the most the factum of acquittal may be a circumstance to be considered while awarding punishment. It would depend upon facts of each case and even that cannot have universal application."

30. In Bela Bagchi (supra), the Supreme Court observed the following in para 15:

"15. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with 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 (1996) (9) SCC 69), 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 an 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. That being so, the plea about absence of loss is also sans substance."

31. In Ganesh Santa Ram (supra), the Supreme Court observed in paras 32 and 33 as under:

"32. The learned senior counsel also relied on para 14 of the above judgment. Replying on the above passage, Mr. Salve submitted that the appellant, the Branch Manager of a Bank is required to exercise higher standards of honesty and integrity when he deals with the money of the depositors and the customers and, therefore, he is required to take all possible steps to protect the interest of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of the Bank Officer. According to Mr. Salve, good conduct and discipline are inseparable for the functioning of every officer, Manager or employee of the Bank, who deals with public money and there is no defence available to say that there was no loss or profit resulted in the case, when the Manager acted without authority and contrary to the rules and the scheme which is formulated to help the Educated Unemployed Youth. Mr. Salve''s above submissions is well merited acceptance and we see much force in the said submission.

33. The Bank Manager/Officer and employees and any Bank nationalised/or non-nationalised are expected to act and discharge their functions in accordance with the rules and regulations of the Bank. Acting beyond one''s authority is by itself a breach of discipline and Trust and a misconduct. In the instant case Charge No. 5 framed against the appellant is very serious and grave in nature. We have already extracted the relevant rule which prohibits the Bank Manager to sanction a loan to his wife or his relative or to any partner. While sanctioning the loan the appellant does not appear to have kept this aspect in mind and acted illegally and sanctioned the loan. He realised the mistake later and tried to salvage the same by not encashing the draft issued in the maiden name of his wife though the draft was issued but not encashed. The decision to sanction a loan is not an honest decisions. The Rule 34(3)(1) is a rule of integrity and therefore as rightly pointed out by Mr. Salve, the respondent Bank cannot afford to have the appellant as Bank Manager. The punishment of removal awarded by the Appellate Authority is just and proper in the facts and circumstances of the case. Before concluding, we may usefully rely on the judgment Regional Manager, U.P. SRTC, Etawah and Ors. v. Hoti Lal and Anr. reported in 2003(3) SCC 605. Wherein this Court has held as under :"

"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned single Judge upholding the order of dismissal.""

32. Thus, in the overall view of the matter and also considering the position of law, I am of the view that the disciplinary authority as well as the appellate authority committed no error in arriving at the conclusion that the petitioner was guilty of the acts of misconduct as alleged.

33. I am also not impressed by the submission of Mr. Patel as regards the delay of five years in initiating the departmental inquiry. The delay by itself would not vitiate the departmental inquiry. This issue of delay would depend upon the facts of each case. At times the charges may be so serious that the issue of delay would pale into insignificance, like the case in hand.

34. The above takes me to consider the last submission of Mr. Patel that the disciplinary authority committed an error in passing the impugned order of dismissal with retrospective effect.

35. Before I proceed to answer the submission referred to above, I must look into the Regulation 19 as a whole of the Regulations 1979, which is with respect to the ''age of retirement''. The same reads as under:

"19 Age Of Retirement

19 (1) An officer shall retire from the service of the bank on attaining the age of sixty years or upon the completion of thirty years'' service whichever occurs first.

Provided that the Competent Authority may, at its discretion extend the period of service of an officer who has attained the age of fifty five years or has completed thirty years service as the case may be, should such extension be deemed desirable in the interest of the Bank. This extension will be in two stages:

First Stage

Subject to usual service criteria, on completion of 30 years of service pensionable service or on attaining 55 years of age whichever occurs first, for grant of extension/continuation up to 58 years of age.

Second stage

Subject to usual service criteria, on attaining 58 years of age, for grant of extension/continuation upto 60 years of age, being the age of retirement. Provided further that an officer may, at the discretion of the Executive Committee, be retired from the Bank''s service after he has attained 50 years of age or has completed 25 years service as the case may, by giving him three months'' notice in writing or pay in the lieu thereof.

Provided further that an officer who has completed 25 years service may be permitted by the Executive Committee to retire from the Bank''s service, subject to his giving three months'' notice in wring or pay in lieu thereof unless this requirement is wholly or partly waived.

19 (2) In case disciplinary proceeding under the relevant regulations of service has been initiated against an officer before he ceases to be in the Bank''s service

by the operation of, or by virtue of any of the said regulations may at the discretion of Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for in the said regulations as if the officer continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings.

Explanation

An officer will retire on the last day of the month in which he completes the stipulated service or age of retirement."

36. Regulation 20 is with respect to the ''termination of service''. The same reads as under:

"20. Termination Of Service

20 (1) Deleted.

20 (2) An Officer shall not leave or discontinue his service in the Bank without first giving a notice in writing of his intention to leave or discontinue the service or resign. The period of notice required shall be three months and shall be submitted to the competent authority as prescribed by the Board or the Executive Committee.

Provided that a Probationary Officer who has entered the service of the Bank as such shall not be entitled to give notice or leave the service of the Bank until the expiration of the stipulated period of probation and any breach of this proviso shall entitle the Bank to proceed in accordance with the provisions of sub-regulation (3) of Regulation 14.

Provided further that the competent authority may, at its discretion, permit an officer to resign without notice or forfeiture of security deposit, or payment in lieu of notice or reduce the period of notice.

20 (3)(a) Notwithstanding anything to the contrary contained in the sub regulation (2), an Officer against whom disciplinary proceedings are pending shall not leave/discontinue or resign from his service in the Bank without the prior approval given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the Competent Authority.

20 (3)(b) Disciplinary proceedings shall be deemed to be pending against an officer for the purpose of this regulation as well as paragraph 19(2) of SBS (Officers'') Service Regulation if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings should not be instituted against him or where any charge sheet has been issued against him and will be deemed to be pending until final orders are passed by the appropriate authority.

Explanation

Every order, notice or other process made or issued under these regulations shall be served in person on the officer employee concerned or communicated to him by registered post at his last known address.

20 (3)(c) An officer under suspension on a charge of misconduct shall not be retired or permitted to retire on his reaching the date of compulsory retirement, but shall be retained in service until the enquiry into the charge is concluded and a final order is passed thereon."

37. The plain reading of Regulation 19(1) would indicate that an officer shall retire from the service of the Bank on attaining the age of 60 years or upon the completion of 30 years of service whichever occurs first. Regulation 19(2) of the Regulations 1979 makes it clear that the officer against whom the disciplinary proceedings have been initiated will cease to be in service on the date of superannuation, but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and the final order is passed. It would suggest that the officer will not receive any pay and/or allowance after superannuation. The fictional continuance of service, according to Regulation 19(2) is only to authorise completion of inquiry. For all other practical purposes, the services of the petitioner herein could be said to have come to an end on attaining the age of superannuation. There was no other act required to terminate the services of the petitioner, except the completion of inquiry. Any order terminating the services of an employee presupposes continued existence of the employee in service. The order of termination brings about cessation of service with effect from the date of termination. Even according to the Regulation 19(1), the services of the petitioner came to an end on the date the petitioner attained superannuation. The date of superannuation is not postponed until the date of completion of inquiry. All other indicia of the continued existence of service tenure such as payment of salary and/or allowance etc, that are necessary concomitance of the service could be said to have reached the terminal point on the date of superannuation.

38. Thus, I am of the view that the disciplinary authority could not have passed an order of penalty of dismissal from service. Therefore, having found the petitioner guilty of misconduct, the only course open for the authorities was to initiate action for withholding or withdrawing the benefits due to the petitioner, like pension, etc, in terms of the Regulations.

39. I have not been shown any Pension Regulations so far as the case in hand is concerned. I have come across in many other cases the Pension Regulations which state that the disciplinary inquiry initiated against an Officer before his retirement shall be deemed to be proceeded under the Pension Regulations, subject however to the condition that the departmental proceedings shall be continued and concluded by the same authority, who had initiated it, as if the petitioner continued in service. There has to be some regulations of this type even so far as the case in hand is concerned.

40. I take notice of the judgment and order passed by a learned Single Judge of this Court in the case of I.B. Desai v. Gujarat Labour Welfare Board [Special Civil Application No. 4171 of 2002 decided on 19th April 2010]. The learned Single Judge, while answering the question what order the disciplinary authority could have passed against the petitioner of that case having crossed the age of superannuation while the departmental proceedings were still pending, observed as under:

"9.1 Nothing has been pointed out by the respondents to suggest that respondent no.1 had power to pass an order with retrospective effect. In case of Delhi Development Authority and another v. Joint Action Committee, Allottee of SFS Flats and others reported in (2008) 2 Supreme Court Cases 672, the Apex Court observed that an executive officer, in absence of any provision of a statute, cannot apply his own decision with retrospective effect. Besides, Gujarat Civil Services (Discipline and Appeal) Rules, 1971 which have been adopted by the Board by virtue of Rule 19B of the Labour Welfare Fund (Gujarat) Rules 1962, prescribes various major penalties. In Rule 6, these penalties include reduction to a lower grade or post, compulsory retirement, removal from service and dismissal from service. These penalties can obviously be imposed only while a Government employee is in service. None of these penalties can be imposed after the employee has crossed the age of superannuation. If the employee crosses the age of superannuation, employer can only pass penal order withholding his post retrial benefits such as pension which would include gratuity or the employee''s contribution to provident fund as the case may be. Such withholding of pension can either be partial or complete and for a limited period or permanently. But in no case, a Government employee under the Gujarat Civil Services (Discipline and Appeal) Rules, 1971, can be dismissed from service after he crosses the age of superannuation, even if inquiry was initiated while he was still in service.

9.2 For the above reason, quite apart from the fact that dismissal order has been passed with retrospective effect, I do not find that same can stand the scrutiny of law.

9.3 Had it been the order which could have been severed i.e. retrospective operation of the order could have been separated, prospective operation thereof could have been saved. In case of R. Jeevaratnam v. State of Madras reported in AIR 1966 Supreme Court 951, the Apex Court observed that :

4. The order dated October 17, 1950 directed that the appellant be dismissed from service with effect from the date of his suspension, that is to say, from May 20, 1949. In substance, this order directed that (1) the appellant be dismissed, and (2) the dismissal do operate retrospectively as from May 20, 1949. The two parts, of this composite order are separable. The first part of the order ,operates as a dismissal of the appellant as from October 17, 1950. The invalidity of the second part of the order, assuming this part to be invalid, does not affect the first part of the order. The order of dismissal as from October 17, 1950 is valid and

effective. The appellant has been lawfully dismissed, and he is not entitled to claim that he is still in service.

9.4 In the present case however, such is not the situation. On the date when respondent no.1 passed the order of dismissal, petitioner had already crossed the age of superannuation. No notice was also issued by the Board that upon proving of the misconduct, petitioner''s post retiral benefits could be withheld. The entire order must therefore go. This would however, be without prejudice to the employer considering passing any other order in accordance with law if otherwise permissible.

9. Counsel for the petitioner however, submitted that in absence of applicability of Chapter 11 of Bombay Civil Services Rules which pertains to pension and hence in absence of any powers flowing from Rules 188 and 189 thereof, it is not even open for the employer to withhold any part of the retiral benefits of the petitioner. This question however has not arisen for my consideration so far.

10.1 The petitioner appears to be covered by Provident Fund Scheme. Rules regarding such provident fund are not on record. In addition to the same, what other post retiral benefits, the petitioner would be entitled to upon normal superannuation and under which rules is not stated by either side. Question of authority of the Board to withhold any part of such benefits is therefore, premature."

40.1 The learned Single Judge disposed of the petition referred to above with the following directions:

"(i) Impugned order dated 25.8.2000/4.9.2000 is quashed. This is however, without prejudice to respondent no.1 passing fresh order in accordance with law, if otherwise permissible, after giving an opportunity of being heard to the petitioner.

(ii) If respondent no.1 desires to proceed further in above terms, it shall serve a notice to the petitioner within one month from today.

(iii) In absence of any notice within aforesaid period, it shall be presumed that the Board does not wish to proceed further against the petitioner.

(iv) If such a notice is served, petitioner shall have one month''s time from the date of receipt of notice to make a representation.

(v) Final decision shall be taken expeditiously and in any case not later than four months from today.

(vi) If no notice as permitted herein above is issued within the time specified or for any other reason proceedings are dropped finally, the petitioner shall be entitled to post retiral benefits which shall carry either statutory interest or in case statute is silent, shall carry simple interest at the rate of 9% per annum from the date of her superannuation till actual payment."

41. Therefore, while holding that the penalty of dismissal from service imposed on the officer is untenable, it has to be held that the finding of guilt, as stood established, shall stand undisturbed.

42. In the result, I pass the following order:

(i) The inquiry initiated, the procedure followed and the findings recorded by the Inquiry Officer, the disciplinary authority and the appellate authority are not disturbed, and the grievance of the petitioner to the said extent stands rejected. However, the penalty of dismissal from service imposed against the petitioner is set aside. It is open to the respondent ? Bank to initiate proceedings under the appropriate regulations and take necessary action against the petitioner on the basis of the charges established in the inquiry.

43. Rule is made absolute to the aforesaid extent. Direct service is permitted.

