(2020) 01 GUJ CK 0145

In the Gujarat High Court

Case No : R/Special Civil Application No. 21141 Of 2006

Bipinchandra B Naik APPELLANT

Vs

Bank Of Baroda RESPONDENT

Date of Decision : 16-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 01 GUJ CK 0145

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : AK Clerk, Darshan M Parikh

Final Decision : Dismissed

Judgement

A.S. Supehia, J

1. Learned advocate Mr.A.K.Clerk has supplied Memorandum of Article of charges dated 03.01.2000 in the case of Mr.A.J.Chitre, who was serving as a Senior Branch Manager at the relevant point of time and Memorandum of Article of charges issued to Mr.K.Shivprasad dated 23.04.2003, who was serving as a Manager (Credit) in S.S.I. Branch. The same are ordered to be taken on record.

2. In the present writ petition, the petitioner has passed away and, therefore, the petition is represented by his legal heirs.

3. The present writ petition has been filed seeking quashing and setting aside the order dated 23.05.2006 passed by the Appellate Authority and the order dated 12.09.2003 passed by the Disciplinary Authority.

4. The brief facts of the case are as under:

4.1 The petitioner joined the service of the respondent Bank in clerical cadre on 14.03.1973. The petitioner was assigned the work of A.L.P.M. operator in March, 1997 and since then, he was working on the same post.

4.2 The explanation of the petitioner was called for by the letter dated 02.06.1998. He tendered his explanation on 20.06.1998. By the letter dated 12.11.1998, the petitioner was placed under suspension and a charge-sheet dated 13.05.1999 was also issued. The C.B.I. Inquiry was also simultaneously going on. The petitioner was also examined as a Management witness in the departmental inquiry against Mr.A.J.Chitre, Senior Branch Manager of S.S.I. Branch, Sachin, where the petitioner was working at the relevant time. The petitioner submitted his written brief through its defence representative on 16.04.2002. On 19.06.2002, the petitioner received the inquiry report dated 05.06.2002. Thereafter, the petitioner received a notice dated 11.09.2003 for proposed punishment. The petitioner submitted his reply to the said notice on the same day i.e. 11.09.2003.

4.3 Thereafter, on 12.09.2003, the Disciplinary Authority passed an order imposing punishment of censured in respect of Charge Nos.1 and 4 and the punishment of dismissal in respect of Charge Nos.2, 3, 5, 6 and 7. The petitioner thereafter, preferred an appeal to the appellate authority on 30.10.2003 and by the order dated 23.05.2006, the appellate authority dismissed the appeal filed by the petitioner.

5. Learned advocate Mr.A.K.Clerk for the petitioner has premised his contentions with regard to setting aside the impugned order only on two grounds. First, parity with punishment imposed upon the aforenoted employees being Mr.A.J.Chitre, who was serving as a Senior Branch Manager and Mr.K.Shivprasad, who was serving as a Manager (Credit) in S.S.I. Branch and while referring the statement produced at Annexure-K, learned advocate Mr.Clerk has submitted that in other branches as referred to therein, the senior personnel being Branch Manager are dismissed from the service, whereas in the present case, where the petitioner was serving, the Senior Branch Manager Mr.A.J.Chitre and the officer Mr.K.Shivprasad are imposed a penalty of stoppage of increment, whereas the petitioner, who was working as A.L.P.M. operator has been dismissed.

5.2 The second ground raised by the learned advocate Mr.Clerk that the disciplinary proceedings are required to be set aside since the petitioner is called upon by the inquiry officer to explain the documents and burden of proving the documents has been cast upon him. Except these two contentions, no other contentions are raised by the learned advocate Mr.Clerk.

6. Per contra, learned advocate Mr.Darshan Parikh for the respondent authority has submitted that the charges levelled against the petitioner were very serious in nature. He has submitted that the petitioner was issued the Memorandum of Article of charges, wherein the charges pertaining to forging of FDR's and Certificates. He has also submitted that the petitioner has willfully misguided the bank by stating incorrect and false facts, which resulted to the disbursement of loan as well as fixation of FDR's. He has submitted that the charges levelled against the petitioner are different to that of the co-delinquents Mr.A.J.Chitre as well as Mr.K.Shivprasad and hence, the contentions raised by the learned

advocate Mr.Clerk with regard to the parity of the punishment is required to be ignored.

6.1 As regards the second contention raised by the learned advocate Mr.Clerk, learned advocate Mr.Parikh has submitted that the inquiry officer has taken into consideration various documents as well as deposition of the co-delinquents and witnesses. He has submitted that the allegation levelled against the petitioner about presumption as well as shifting the burden of proving the documents on the delinquent is misconceived since the petitioner has accepted in his evidence that he had altered the date in the FDR Ledger. He has invited attention of this court to the assessment of the evidence recorded by the inquiry officer and has submitted that the impugned punishment order may not be disturbed.

7. I have heard the learned advocates and perused the documents as pointed out by the learned advocates for the respective parties. Findings of the inquiry officer are also noted.

8. As referred hereinabove, two contentions are raised by the learned advocate Mr.Clerk for the petitioner for setting aside the impugned order of punishment. First is the parity sought with co- delinquents Mr.A.J.Chitre, who was serving as a Senior Branch Manager and Mr.K.Shivprasad, who was serving as Manager (Credit) in the S.S.I. Branch, Sachin.

9. It is submitted that though the charges levelled against the aforesaid co-delinquents of the petitioner are similar to that of the petitioner, the Disciplinary Authority has imposed penalty of stoppage of increment upon them, whereas the petitioner has been dismissed.

10. This court has perused the respective Memorandum of Article of charges of the co-delinquents of the petitioner as well as charges levelled against the petitioner. Mere glance of the aforesaid Memorandum of Article of charges would reveal that the charges of petitioner and his co-delinquents are absolutely different. The petitioner has been charged with very serious allegation. There are at least 22 main allegations and sub-allegations levelled against the petitioner. The gist of the allegations is reproduced herein as under:

"He is therefore, charged as under:-

[1] That he breached the rules of business of Bank.

[2] That he had forged the Certificate.

[3] That he did acts prejudicial in the interest of the Bank.

[4] That he was negligent in performing Bank;s duties.

[5] That he knowingly and willfully committed acts of causing loss to the Bank and its customers.

[6] That he knowingly and willfully misrepresented to the Bank causing loss to the Bank.

[7] That he did acts unbecoming of a Bank employee.

The allegations upon which the aforesaid charges were based are dealt with in PART-III of this report."

11. Thus, there are serious allegations of forgery of Certificates against the petitioner, whereas the same are missing in the charges of his co- delinquents, who were serving as a Senior Branch Manager and Manager (Credit). It is also proved in the inquiry that due to the various misleading/misrepresentation made by the petitioner, the Bank was defrauded.

12. It is not the case of the petitioner that he has not been afforded an opportunity of hearing to defend himself. It is also not alleged that the concerned regulations, under which the present inquiry is held, is also violated.

13. At this stage, it would be apposite to refer to the decision of the Apex Court in the case of Damoh Panna Sagar Rural Regional Bank Versus Munna Lal Jain, 2005 (10) SCC 84. After survey of decision on the issue of interference in the orders of punishment imposed on the employees and examining the Wednesbury's Principle, the Supreme Court has held thus:

"14 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) 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."

14. In view of the aforenoted observations made by the Apex Court, the findings of the inquiry officer cannot be disturbed. As a sequel, the impugned order of punishment does not require any interference. It is also revealed from the inquiry that the inquiry officer has prepared comprehensive report dealing with all the allegations. The same also do not anywhere reveal that the burden is cast upon the petitioner to prove the documents.

15. The inquiry officer, by threadbare examination of the various documents as well as witnesses, has proved the charges. As recorded hereinabove, the charges are very serious in nature and hence, while exercising the power under Article 226 of the Constitution of India, this court cannot act as an appellate authority and disturb the findings of the inquiry officer, which are recorded after following necessary regulations as well as affording full opportunity of hearing to the delinquent. As held by the Apex Court, the scope of judicial review is limited to the deficiency in decision making process and not the decision.

16. The writ petition fails. Rule is discharged. There shall be no order as to costs.

