
(2014) 07 AP CK 0154
In the Andhra Pradesh High Court
Case No : Writ Petition No. 4860 of 2003

Dasari Srinivas

APPELLANT

Vs

Deputy General Manager

RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2015) 6 ALD 117

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : Islamuddin Ansari, Advocate for the Appellant; C. Sunil Kumar Reddy, Advocate for the Respondent

Judgement

R. Kantha Rao, J.—This writ petition is filed seeking issuance of writ of certiorari or any other order or direction quashing the proceedings dated 24.01.2001 passed by the second respondent confirming the order of compulsory retirement passed by the first respondent by order dated 30.01.2000 and for consequential direction to the respondents to reinstate the petitioner into service with all consequential benefits.

2. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

3. The petitioner joined as clerk in the Syndicate Bank in the year 1978. On the date of initiating disciplinary proceedings against him, he had put in 22 years of service. In August, 1999 for medical treatment of his parents and for the educational expenses of his children, he borrowed some amounts from the creditors. Subsequently, towards the satisfaction of the said debts, he issued six cheques which were subsequently dishonoured when presented for collection. The version of the petitioner is that when the factum of dishonour of cheques was brought to his notice by the creditors, he repaid the amounts and the creditors did not initiate any criminal proceedings against him under Section 138 of the Negotiable Instruments Act nor did they complain to the Syndicate Bank in

which he was working. The creditors also did not file any suits against him for recovery of the amount as he paid the amounts as soon as the dishonour of cheques came to his notice. According to him, he was maintaining two accounts; one is the staff account and the other is his private joint account in his name and that of his wife. The cheques were issued against the private joint account and the transactions relating to the impugned cheques are purely private transactions which had nothing to do with his job or day-to-day affairs of the bank.

4. However, the dishonour of cheques issued by the petitioner came to the notice of the bank and the bank issued a show cause notice, dated 18.12.1999 to him asking him to explain as to why disciplinary action should not be taken against him. In his explanation he submitted the circumstances under which he borrowed the amounts and also the circumstances leading to dishonour of cheques and sought mercy of the department stating that the accounts with the borrowers have already been settled. The department did not accept his explanation and initiated disciplinary proceedings against him by framing the following charges:

? Incurring debts to an extent considered by the management as excessive and gross misconduct of "doing acts prejudicial to the interest of the bank" vide Cl. 19.5(j) of the Bipartite settlement,

? Issuing 6 cheques without maintaining sufficient balance in his account on which the same were drawn, which resulted in dishonour of the said cheques on their presentation with the reason "insufficient funds" and thus he violated various provisions of manuals and circulars issued by HO and other controlling officers from time to time as more elaborately stated therein.

5. Since borrowing the amounts and the dishonour of the cheques have been admitted by the petitioner, there was no elaborate enquiry in the departmental proceedings, but the enquiry officer found the petitioner guilty of the charges and submitted his proceedings to the disciplinary authority. The disciplinary authority having concurred with the findings of the enquiry officer, awarded punishment of "warning" for committing minor misconduct of incurring debts to an extent considered by the management as excessive vide Clause 19.7(i) of the Bi-partite agreement and compulsory retirement from the services of the bank with superannuation benefits as would be due otherwise at that stage and without disqualification from future employment for gross misconduct under Clause 19.5(j) of the Bi-partite Agreement.

6. Aggrieved by the order passed by the disciplinary authority, the petitioner filed an appeal before the General Manager Syndicate Bank. Before the Appellate Authority, he submitted that he raised little borrowings to meet the medical and educational expenses of his family members expecting some funds from the relatives, subsequently he was shifted to Sirvel on transfer and accordingly he could not maintain/operate the SB account at Golkonda branch, the payees promised to inform him before presenting the cheques, but in view of his non-availability at Hyderabad, payees might have failed in contacting him and

accordingly cheques were presented and bounced. He also submitted that the payees never complained to the bank nor did they file any cases before the Court and also that their claims were settled later on and the image of the bank has not been damaged due to dishonour of cheques. The said pleas urged by him in the appeal were not accepted and the appellate authority confirmed the order passed by the disciplinary authority. The Appellate authority was of the view that the petitioner was indulging in indiscipline financial dealings with the public, on earlier two occasions he was warned for the similar misconduct and therefore, his submission that he will not give any scope for such dealings in future is not acceptable. Thus, holding that there are no extraneous factors warranting reconsideration of the decision of the disciplinary authority in the matter, the appellate authority confirmed the order passed by the disciplinary authority in all respects including that of the punishment awarded.

7. Feeling aggrieved, the petitioner filed the present writ petition.

8. In the counter-affidavit filed by the respondents, it has been contended that by the act of issuing six cheques without maintaining sufficient balance in his account, the petitioner had tarnished the image of the bank in the eyes of public and also committed an offence under Section 138 of the Negotiable Instruments Act and that he had also violated the guidelines issued by the Head Office of the bank from time to time in this regard. Further submitted that the petitioner was issued with charge sheets on two earlier occasions for similar acts and was awarded with punishments of "warning" in the first instance and "warning" and reduction in basic pay for a period of one year" in the second instance.

9. According to the respondents, the acts of the petitioner constituted minor misconduct of incurring debts considered by the management as excessive vide Clause 19.7(1) and gross misconduct of doing acts prejudicial to the interests of the bank vide Clause 19.5(j) of the Bi-partite Settlement. It is submitted by the respondents that being a bank employee, he ought to have ensured funds before issuing cheques to outsiders and the return of cheques issued by the bank employee would definitely tarnish the image of the bank in the eyes of the public. The return of cheques issued by the petitioner according to the respondents itself gives an indication that the petitioner has borrowed money in excess of his repayment capacity. It is stated that the bank has initiated action against the petitioner only based on the facts but not any hypothetical considerations and moreover, his habitual acts of having issued cheques without maintaining sufficient balance in his account shows that he had incurred liabilities beyond his capacity to manage and the bank has lost confidence in him as he had become unreliable and undependable and vulnerable to the branch environment, where huge public money is transacted.

10. Next, it is contended that the disciplinary enquiry was initiated and the punishment was awarded to the petitioner as per the service conditions applicable to him. The conditions of service of the petitioner are governed by the awards and settlements pronounced/signed under the provisions of the Industrial

Disputes Act. The above service conditions also contain the provisions and procedures to take disciplinary action and also to award punishments. If at all, the petitioner feels that the service conditions were violated by the respondent-management while awarding him the punishment or the management did not follow the required procedure while conducting enquiry against him and awarding the punishment or the management has wrongly interpreted the service conditions applicable to him, such issues would constitute an industrial dispute or unfair labour practice for which machinery is provided under the Industrial Disputes Act for settlement of such issues. Therefore, according to the respondents, the petitioner cannot approach this Court without exhausting the other statutory alternative remedies available to him under law. Contending as above, the respondents sought to dismiss the writ petition.

11. The crucial question to be determined in this writ petition is whether the charges framed against the petitioner basing on which the departmental enquiry proceeded with, which ultimately resulted in his compulsory retirement would constitute misconduct as per the regulations of the bank.

12. Learned counsel appearing for the petitioner submits that the charges levelled against the petitioner do not constitute any kind of misconduct in respect of which disciplinary proceedings can be initiated against the petitioner and therefore, the disciplinary proceedings themselves are vitiated for being initiated arbitrarily and capriciously.

13. On the other hand, according to the learned counsel appearing for the respondent-bank incurring debts considered by the management as excessive is a minor misconduct vide Clause 19.7(1) and doing acts prejudicial to the interests of the bank vide Clause 19(5)(j) of Bipartite Settlement are misconducts and therefore, disciplinary enquiry has rightly been initiated against the petitioner.

14. Incurring debts considered by the management as excessive is relatively a vague term and no limit has been prescribed under the Bipartite Agreement. The excessiveness of the debt has to be considered in relation to the funding capacity of an individual employee. The regulation does not specify any criteria to assess excessive debt of an individual employee.

15. In the instant case, the petitioner contracted debts to the tune of few thousands on various occasions and when the dishonor of cheques issued by him was brought to his notice, he repaid the debts. For mere dishonor of cheques which can happen on account of various reasons, the employee cannot be said to be contracted debts in excessive. The petitioner in the instant case issued cheques for the following amounts borrowed, the cheques were issued in the months of March, April and May, 1999.

16. No prudent man would consider the aforesaid debts borrowed by the petitioner as excessive. But, strangely the management considered them to be excessive. Without defining as to what is a debt borrowed in excess considering

it to be misconduct and liable for initiation of departmental enquiry, in my view, as rightly contended by the learned counsel appearing for the petitioner it is arbitrary and capricious.

17. The next question that arises for consideration is whether the mere dishonor of cheques issued by the petitioner would attract any misconduct.

18. The regulations of the bank do not state that if the cheques issued by the employee of the bank are dishonoured, it would be a misconduct. It is therefore, obviously not an enumerated misconduct. However, the bank brought this under Clause 19(5)(j) of the Bipartite Settlement which says that if an employee does any act prejudicial to the interests of the bank, it amounts to misconduct. Therefore, it has to be seen whether the aforesaid act is in any way prejudicial to the interests of the bank constituting misconduct.

19. In *Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation and Another*, , the Supreme Court held as follows:

"It is well settled that unless either in the Certified Standing Order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconduct."

20. In *A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.*, , the officer of the public sector found to have committed lapse in not returning the house building advance and vehicle purchase advance. He was removed from service after initiating domestic enquiry against him by viewing the said lapse as misconduct. The Supreme Court held that failure to return advance for house building and for purchasing vehicle cannot be viewed as misconduct since the remedy for breach was provided in the relevant rules and the removal of the officer from the service is not proper.

21. The Supreme Court enunciated the legal position on the issue in the following terms:

"What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a gray area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct."

"If the rules for granting the advance themselves provided the consequence of the breach of conditions, it would be idle to go in search of any other consequence by initiating any disciplinary action in that behalf unless the 1975 Rules specifically incorporate a rule that the breach of House Building Advance Rules would by itself constitute a misconduct."

22. We have to examine the facts of the present case in the light of the aforesaid principles laid down by the Hon"ble Supreme Court as to which misconduct is actionable so as to initiate disciplinary enquiry against the employee.

23. In the instant case, the petitioner borrowed few thousands of rupees from the persons known to him and issued cheques in their favour and the said cheques were dishonoured. Soon-after the dishonor of cheques were brought to the notice of the petitioner, he repaid the entire loans to the borrowers. The borrowers did not make any complaint against the petitioner to the respondent-bank nor did they file any criminal complaint against the petitioner complaining dishonour of cheques. The offence under Section 138 of the Negotiable Instruments Act would be attracted only if the person who issued the cheque fails to repay the amount after receiving notice of dishonor and demand to repay the cheque amount. In this case, soon-after the dishonor of the cheques were brought to the notice of the petitioner by the respective borrowers, the petitioner repaid the entire loan amount. By any stretch of imagination can it be said that the petitioner is guilty of offence punishable under Section 138 of the Negotiable Instruments Act. He borrowed the amounts and issued cheques in his individual capacity and it has nothing to do with discharge of his duties as a bank employee. The petitioner had categorically submitted the circumstances leading to dishonor of cheques such as his transfer and his non-availability to his creditors etc. in his explanation submitted to the bank. Neither he indulged in contracting debts in excess nor is he guilty of an offence of dishonor of cheques. Nobody complained against him to the bank authorities. However, the bank framed the aforesaid two charges against the petitioner and subjected him to the ordeal of disciplinary enquiry and ultimately retired him compulsorily from service.

24. Learned counsel appearing for the respondent bank sought to impress upon this Court that this Court in exercise of powers of judicial review is not supposed to interfere with the findings of the fact recorded by the authorities which are based on evidence and this Court cannot substitute its own individual findings to that of the enquiry officer, disciplinary authority or the appellate authority.

25. In support of his contention, he relied on the following decisions:

"i) B.C. Chaturvedi Vs. Union of India and others, , wherein it is held that judicial review is not an appeal from a decision but a review of the manner in which the decision is made, power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court.

ii) Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, , wherein the Supreme Court expressed the view that scope of judicial review in respect of test of proportionality of the punishment is very limited and restricted to exceptional cases and the Court must give reasons for holding the punishment to be not commensurate with the charges. The Supreme Court was of the view

that if the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, the matter should be dealt with iron hands and not leniently and hence, termination of the service of a bus conductor for carrying ticketless passengers in the SRTC bus is upheld.

iii) Canara Bank Vs. V.K. Awasthy, wherein the Supreme Court took the view that on facts, proved charges clearly establishing that respondent bank employee failed to discharge his duties with utmost integrity, honesty, devotion and diligence and his acts were prejudicial to the interest of the bank and hence, it was held that the punishment of dismissal was proportionate to misconducts proved and interference therewith was not warranted. This was a case before the Supreme Court wherein the respondent bank employee was not working at the branch where he was originally posted and was living at Kanpur."

26. The facts of the case relied on by the learned counsel appearing for the respondent bank are entirely different and the acts committed by the employees therein clearly constituted misconduct. One is a case where the bus conductor indulged in misappropriation of amounts while issuing tickets to the passengers and the other is the employee was living elsewhere without discharging the duties at his work place. Therefore, the said cases cannot be said to be identical to the facts of the present case.

27. This court is well aware of the limitations and its powers of judicial review. The judicial review is permitted only if the findings recorded by the quasi judicial authorities are perverse or not based on evidence or prompted by mala fides or for want of material particulars.

28. But, here the question is not as to whether the quasi judicial authorities have followed the principles of natural justice or whether the punishment imposed is outrageously disproportionate. The subject matter of challenge in the writ petition is that the acts complained of against the petitioner do not at all constitute misconduct and initiation of disciplinary proceedings itself is arbitrary illegal and capricious. It has been urged on behalf of the petitioner that the petitioner was unnecessarily made to face the enquiry and suffered the punishment of compulsory retirement without committing any misconduct. If the Court arrives at the conclusion that the very initiation of disciplinary action against the petitioner is arbitrary and bad in law, it can certainly exercise its powers of judicial review to set aside the order. Therefore, I see no substance in the contention put-forth by the learned counsel appearing for the respondent-bank that since the enquiry has been proceeded with by following the principles of natural justice and the punishment not being shockingly disproportionate, "this Court is not supposed to exercise its powers of judicial review.

29. For what all discussed hereinabove, contracting debts to a tune of few thousand rupees in a span of three months, issuing cheques in respect of the said amounts and repaying them soon-after their dishonor was brought to the notice of the petitioner, does not constitute any misconduct even in general

terms. It is not understandable as to how the act of the petitioner is prejudicial to the interests of the bank. This Court therefore is of the view that the petitioner was unnecessarily subjected to disciplinary enquiry even though he is not guilty of any kind of misconduct even in general terms and initiating enquiry against the petitioner itself is arbitrary and bad in law. The entire proceedings relating to the enquiry are therefore vitiated and basing on such proceedings, no punishment could have been imposed against the petitioner.

30. For the foregoing reasons, there is no basis for initiating enquiry against the petitioner, he is kept out of service for several years by imposing punishment of compulsory retirement. Otherwise, he would have retired from service on attaining the age of superannuation in normal course.

31. Consequently, the order of compulsory retirement passed by the first respondent by order dated 30.01.2000 as confirmed by the second respondent by order dated 24.01.2001 is set aside. The petitioner is entitled to be reinstated into service with back wages. However, long ago, the petitioner had attained the age of superannuation. The respondents are therefore directed to treat the petitioner as if he continued in service till attaining the age of superannuation and accordingly pay him the retiral benefits together with back wages, within a period of three months from the date of receipt of a copy of this order.

32. The writ petition is accordingly allowed. There shall be no order as to costs. Miscellaneous petitions, if any, filed in this writ petition shall stand closed.