
(2015) 03 KL CK 0145
In the High Court Of Kerala
Case No : W.A. No. 399 of 2014

David T.K.

APPELLANT

Vs

Kuruppumpady Service Co-operative Bank and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 2 KHC 301

Hon'ble Judges : T.B. Radhakrishnan, J;K. Harilal, J

Bench : Division Bench

Advocate : P.P. Jacob, for the Appellant; Anitha Ravindran, Senior Government Pleader and P.K. Vijayamohanan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K. Harilal, J.—The appellant in this intra-Court appeal is the petitioner in WP (C) No. 25797 of 2011 and review petitioner in RP No. 816 of 2013 filed therein. He joined the service of the 1st respondent, a Service Co-operative Bank, as its Secretary. While working so, he was placed under suspension on 18/11/2002, pending disciplinary proceedings proposed against him alleging misconduct. Eventually, the 1st respondent/Bank dismissed him from service on 20/3/2003, on the basis of the domestic enquiry report. The appellant challenged the dismissal order before the Arbitration Court as ACR No. 27 of 2006, pursuant to the direction of this Court in WP (C) No. 9764 of 2009. The Arbitration Court set aside the domestic enquiry report and conducted a fresh enquiry on the charges. Out of 16 charges contained in two charge memos dated 04/01/2003 and 11/01/2013, Charges Nos. 1, 3, 4, 8 and a part of Charge No. 7 were found to have been proved. Consequently, the dismissal was modified to reduction to a lower rank with service benefits including back wages. The 1st respondent challenged the arbitration award before the Co-operative Tribunal as AP No. 21 of 2008 and the appellant challenged the same as AP No. 81 of 2010. After re-appreciating the evidence on record and the findings of the Arbitration Court

thereon, the Tribunal confirmed the verdict of misconduct by a common judgment; but set aside the punishment imposed by the Arbitration Court and converted the same to compulsory retirement as on the date of dismissal with terminal benefits, subject to liabilities. The appellant challenged the said common judgment in WP (C) No. 25797 of 2011, invoking the jurisdiction under Article 226 of the Constitution of India. After considering the legality of the findings whereby the Tribunal affirmed the verdict of misconduct, and proportionality of the punishment, the learned Single Judge dismissed the writ petition by the judgment under challenge in this appeal. The legality and correctness of the findings whereby the learned Single Judge dismissed the writ petition are under challenge in this writ appeal, after an unsuccessful application for review. The learned counsel for the appellant, challenging the concurrent findings of the Arbitration Court and the Tribunal, argued that Charges Nos. 1, 3, 4, 8 and part of Charge No. 7 are found to have not been proved. According to him, the learned Single Judge also failed to consider the legality and correctness of the findings whereby the Tribunal confirmed the findings of the Arbitration Court. The learned counsel submitted that even if the facts constituting the charges are true and correct, the said alleged commissions and omissions do not constitute any kind of misconduct under the bye-laws of the Bank or the Kerala Co-operative Societies Act, 1969, for short, "the Act" and the Kerala Co-operative Societies Rules, 1969, "the Rules", for short. According to the learned counsel, the explanation given by the appellant as regards each charge is sufficient to absolve him from the allegation of misconduct. It is argued that even if the commissions and omissions are true, the same are justifiable under the bye-laws and rules which govern the functioning of the Bank and service conduct of the appellant. The learned counsel drew our attention to Charge No. 4 and argued that the formation of another society at the initiative of the appellant and his continuance as Secretary of that society cannot be reckoned as an act done in contravention to the bye-laws of the Society or Service Rules. Similarly, as regards Charge No. 8 and part of Charge No. 7, it is argued that the contract works were awarded to the contractors after obtaining signed blank papers with an intention to incorporate required clauses for the benefit of the Society, if any dispute arises in future. The Tribunal failed to consider the bona fides of the appellant in its correct perspective and erroneously depicted the same as a dereliction of duty and dishonest act amounting to misconduct, it is argued. The learned counsel persuasively pleaded for re-appreciation of the evidence on record and findings thereon concurrently made by the statutory forums under the Act and endorsed by the learned Single Judge in the impugned judgment.

2. In view of the submissions fervently made by the learned counsel for the appellant persuading us to re-appreciate the evidence on record, we are constrained to remind ourselves the scope and extent of interference, legally permissible in writ jurisdiction, and more particularly in an intra-Court appeal challenging the findings of the learned Single Judge rendered affirming the verdict of the Arbitration Court, as regards the misconducts of the appellant, as

confirmed by the Tribunal in appeal. The law is well settled by catena of judicial precedents. In Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, AIR 1958 SC 398 : (1958) 1 SCR 1240 , the parameters for the exercise of jurisdiction, calling upon the issuance of writ of certiorari were set out by the Constitution Bench, thus:

"The common law writ, now called the order of certiorari, which has also been adopted by our Constitution, is not meant to take the place of an appeal where the Statute does not confer a right of appeal. Its purpose is only to determine, on an examination of the record, whether the inferior Tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of the law which it was meant to administer. Mere formal or technical error, even though of law, will not be sufficient to attract this extraordinary jurisdiction. Where the errors cannot be said to be errors of law apparent on the face of the record, but they are merely errors in appreciation of documentary evidence or affidavits, errors in drawing inferences or omission to draw inference or in other words errors which a Court sitting as a Court of appeal only, could have examined and, if necessary, corrected and the Appellate Authority under a Statute in question has unlimited jurisdiction to examine and appreciate the evidence in the exercise of its appellate or revisional jurisdiction and it has not been shown that in exercising its powers the Appellate Authority disregarded any mandatory provisions of the law but what can be said at the most was that it had disregarded certain executive instructions not having the force of law, there is not case for the exercise of the jurisdiction under Article 226."

The law laid as above, by the Constitution Bench, was followed in plethora of decisions rendered thereafter and was again reiterated in Shama Prashant Raje Vs. Ganpatrao and Others, AIR 2000 SC 3094 : (2000) 6 SCALE 531 : (2000) 7 SCC 522 : (2000) 3 SCR 448 Supp : (2001) 2 UJ 1241 : (2000) AIRSCW 3493 : (2000) 6 Supreme 444 , in this way:

"Undoubtedly, in a proceeding under Article 226 and 227 of the Constitution, the High Court cannot sit in appeal over the findings recorded by a competent Tribunal. The jurisdiction of the High Court, therefore, is supervisory and not appellate. Consequently Article 226 is not intended to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or order to be made. But notwithstanding the same, on a mere perusal of the order of an inferior Tribunal if the High Court comes to a conclusion that such Tribunal has committed manifest error by misconstruing certain documents, or the High Court comes to the conclusion that on the materials it is not possible for a reasonable man to come to a conclusion arrived at by the inferior Tribunal or the inferior Tribunal has ignored to take into consideration certain relevant materials or has taken into consideration certain materials which are not admissible, then the High Court will be fully justified in interfering with the findings of the inferior Tribunal."

3. The proposition that can be deduced from the law laid and settled by the Apex Court is that the scope and extent of interference with the factual findings of the Tribunal are exceptionally limited. The jurisdiction of the High Court in a writ petition filed under Articles 226 and 227 of the Constitution of India challenging the findings of a Tribunal is supervisory and not appellate. Unless the High Court finds that there are manifest errors or that the findings are patently unreasonable or tainted with perversity, the writ jurisdiction would not be invoked to unsettle such factual findings. Where the Tribunal exercises a discretion giving valid reason, no interference is called for. Even if another view is possible, interference under the writ jurisdiction is not justified, unless the decision impugned is palpably perverse or patently unreasonable, as wholly unavailable on record, or in direct conflict with settled principle of law. If the High Court comes to a conclusion that the Tribunal has committed manifest error by misconstruing certain documents or the materials on record to such an extent to which a reasonably prudent person could not have come to the conclusions reached by the Tribunal or that the Tribunal has ignored the relevant materials or had taken into consideration any inadmissible material, the High Court would be justified in interfering with the findings of the Tribunal.

4. Bearing in mind, the above parameters, we have scrutinized the impugned judgment and the Tribunal's decision and have considered the question whether there is any illegality or jurisdictional error in the impugned judgment whereby the learned Single Judge affirmed the verdict of the Arbitration Court as confirmed by the Tribunal in appeal, as to the misconduct and the punishment.

5. Going by the impugned judgment and order, it is seen that the commissions and omissions that gave rise to the charge of misconduct which are found to have been proved are, curiously, neither denied nor even disputed by the appellant. According to him, even if those commissions and omissions are admitted as such, in view of the explanation given by him to each charge, relying on relevant provisions of bye-laws and Service Rules governing his service conduct, no disciplinary proceedings could have been initiated against him, as they are justifiable in view of the explanation given by him in the disciplinary proceedings. Therefore, if the alleged commissions and omissions are not justifiable under the explanation offered by the delinquent, it must follow that the Tribunal was justified in affirming the finding of the Arbitration Court as regards the alleged misconduct.

6. The first charge is that the appellant obstructed the sub-committee constituted for an enquiry relating to malpractices in the Perumbavoor Branch, by instructing the Branch Manager not to furnish the relevant records and thereby ridiculed the status and power of the sub-committee. The appellant has not disputed the factum of obstruction made by him by instructing the Branch Manager. His explanation is that the President and the appellant as Secretary were not made members in that sub-committee, and, that being against Circular No. 11/1972 of the Registrar and decision No. 168 dated 23/06/2000 of the

Bank, he convened a Board meeting to review the constitution of the sub-committee and the said meeting was scheduled to be held on a near date. His further explanation is that when the sub-committee was constituted, he could not point out the said anomaly, as the same was not included in the agenda. As rightly held by the Tribunal, if the constitution of the committee was itself an illegal one, the appellant could have informed the sub-committee members about the same in advance, without creating a situation which ridiculed the power and authority of the sub-committee in public. The Tribunal after re-appreciating the evidence of MW 9, the Branch Manager and Exts. M5 and M6 letters given by the Branch Manager to the subcommittee members, held that the appellant had willfully suppressed the anomaly in the constitution of the sub-committee and instructed the Branch Manager not to produce relevant records before the sub-committee, instead of informing the subcommittee as regards the meeting of the Board of Directors, which was scheduled to be held by him to correct the anomaly in the constitution of the sub-committee. According to the Tribunal, it is apparent that the said act was in prosecution of a mala fide intention to ridicule the sub-committee wherein the appellant was not made a member and the explanation given by him is not a justifiable one. That is a finding of fact by an authority with jurisdiction to hold so. We see no infirmity in the learned Single Judge having affirmed it.

7. Charge No. 3 which is found to have been proved is that the appellant failed to properly maintain the service books of other employees, ignoring earlier directions of the Board. Here also, he admitted that alleged fact. But his explanation is that since the establishment section was not formed, he was burdened with over load of work. Service book of an establishment, is an authenticated record governing the conduct of the servant and its proper maintenance is necessary for keeping control and superintendence over that employee by the management. More importantly, the appellant, as the Chief Executive of the 1st respondent/Bank, failed to maintain service registers of the staff as mandated under Rule 197 of the Rules and special condition No. 11 of the bye-laws. The failure to maintain the service book can, in no way, be justified on account of the workload of a Chief Executive. In this view of the matter, the Tribunal was justified in confirming the finding as to misconduct entered by Arbitration Court under this charge.

8. The learned counsel for the appellant mainly focused his arguments attacking the findings on Charges Nos. 4, 8 and part of Charge No. 7. Charge No. 4 is one relating to the formation of a society in the name and style of "Jacobite Christian Service Society" (in short, "Jacobite Society"), at the initiative of the appellant and his further functioning as Secretary of that Society, while working as the Secretary of the 1st respondent/Bank. It is established in the enquiry that the appellant took active part in the formation of another society and continued as Secretary of the said Society and thereby caused considerable reduction in the business and corresponding profit of the 1st respondent/Bank; caused factional feud among the members of the Society, and thereby violated the service

conditions. The learned counsel for the appellant contended that charity is the sole aim and object of the Jacobite Society and that the appellant as an employee, is not precluded from engaging in such charity works. It is also argued that the aims and objects of both societies are different and distinct. In the absence of conflicting interest, no kind of misconduct can be attributed to the appellant under the said charge, the learned counsel submitted. The prime question to be considered is, whether the acquisition of membership and further functioning as Secretary of the appellant in the Jacobite Society contravene the relevant provisions in the bye-laws or rules regulating his service conditions. Admittedly, the appellant is a paid employee governed by the bye-laws and the rules regulating the service conditions. Clause 6 of Ext. P16 bye-laws of the Society is the relevant provision governing the matter in issue. The learned Single Judge meticulously analyzed the restriction imposed on the employees as against holding of membership in any association, under Clause 6 of Ext. P16 bye-laws. The said Clause 6(1) mandates that no paid employee shall be a member of any association representing or purporting to represent non-official co-operative employees, unless such association satisfies the conditions in sub-clauses (a) to (d) of that Clause. The appellant has no case that he has satisfied the said conditions. His explanation is that he has only participated in the functioning of a charitable society where the object of that society is similar to that of his employer Bank and there is no violation of Clause 6(1) of the bye-laws, by doing charity work. Further, according to the appellant, such charitable activities of the Jacobite Society will not affect the interest of the 1st respondent/Bank in any manner and therefore, there is no basis for such allegation. As rightly held by the learned Single Judge, when the bye-laws of the Bank clearly lay down that an employee shall not be a member of an association, unless he satisfies the conditions enumerated under the bye-laws, his membership in any such society without satisfying the said conditions and, further, the continuous functioning as Secretary would be an act, which will amount to misconduct under the said provision of the bye-laws. The object of the association is irrelevant, while construing the restriction imposed under Clause 6(1). The restriction under the bye-laws operates irrespective of the object of the association, whatever it may be. Going by Ext. P15 Memorandum of Association of the Jacobite Society, it could be seen that the appellant was the Chief Promoter, who took initiative for the formation of that society and functioned as its Secretary, while holding the Office of the Secretary of the 1st respondent/Bank, it is evident from Ext. P15 Memorandum of Association that the Jacobite Society was conducting business such as collection of deposits, issue of loans, conduct of chitty, financial assistance for establishment of small and medium scale industrial units and cottage industries, which are major business of the 1st respondent/Bank. Exts. R1(a) and R1(b) and Ext. P15 Memorandum of Association of the Jacobite Society show that it is a society registered with the aim and object of the welfare of the members of a particular community and the said society is engaged in rendering financial assistance by way of loans, which is the main object of the Co-operative Bank and Clause (t) in Ext. P15 shows that the working fund is being

mobilized by way of saving deposits, mutual funds, benefit funds and chitty transactions etc. The Tribunal observed that the funds required for the same are intended to be secured by doing the very same activities with which the 1st respondent/Bank is engaged. Such finding is justifiable in view of the nature of activities and sources of funds stated in Ext. P15. After analyzing the aims and objects of both societies as revealed from Ext. P11 bye-laws and Ext. P15 Memorandum of Association, the Tribunal arrived at the finding that the appellant had taken initiative for the formation of Jacobite Society constituted with the aim and object of engaging the very same business activities in which the 1st respondent/Bank is engaged and confining its benefits to a particular section of a particular religion. Thereafter, he had functioned as Secretary of the Jacobite Society in violation of the service conditions contemplated under Clause 6 of Ext. P16 bye-laws. The Tribunal observed that when the appellant is the Chief Executive of a co-operative society whose membership is opened to general public, irrespective of caste, creed, community or religion, he should not have taken initiative for the formation of another society wherein membership was confined to a particular community only, with the object of engaging very same business activities as that of the 1st respondent/Bank, in a way adversely affecting the interest of the 1st respondent/Bank. More seriously, after the formation of the said society at his initiative, he continued there as Secretary. In our view, the said observation is also fully justified in the light of the gravity and nature of misconduct which is found to have been proved. We do not see any reason to unsettle the above findings.

9. Charge No. 8 and part of Charge No. 7 relate to the awarding of contract works to the contractors without executing proper agreement with them, in accordance with law. Admittedly, no proper agreements were executed, as rightly alleged in the charge. The works were awarded after obtaining signed blank papers from the contractors. The explanation of the appellant is that he obtained such blank signed papers from the contractors with an intention to make suitable agreements by incorporating required provisions and legal aspects in favour of the bank, if any dispute arises after the completion of the work. In short, the blank signed papers were kept with a mala fide intention to fabricate the agreement, if necessary, in accordance with requirements, as and when they arise. We affirm the findings of the Tribunal that such a dishonest and fraudulent act can never be expected from the Secretary of a Co-operative Bank, whatever be his intentions. We have no hesitation to add that such a mind set itself shows that the appellant is unfit to be seated as Chief Executive of a financial institution which deals with crores of rupees. It is to be borne in mind that such blank signed papers allegedly kept for utilizing against the signatory in future, can be utilized in favour of the signatory also. The said act is condemnable and is liable to be taken seriously as unbecoming from the part of a Chief Executive. Fortunately for him, there is no proceeding in criminal jurisdiction.

10. Coming to the question of punishment, it is seen that though the 1st respondent/Bank dismissed the appellant from service, the Arbitration Court

modified that punishment to be one of reduction to a lower rank with all back wages and service benefits. But, in appeal, the Tribunal set aside the said punishment and converted it to compulsory retirement with terminal benefits as on the date of dismissal. As rightly held by the Tribunal, in view of the decision in *Hussain Sasan Saheb Kaladgi Vs. State of Maharashtra*, AIR 1987 SC 1627 : (1987) LabIC 1304 : (1987) 2 LLJ 506 : (1988) 4 SCC 168 , an employee cannot be reverted to a lower rank than to which he was recruited. Admittedly, the appellant's entry into the 1st respondent/Bank was as Secretary. So, he could not be reverted to a post lower than Secretary. Hence, the Tribunal is justified in setting aside the punishment imposed by the Arbitration Court and converting it as noted above. In view of the decision in *J.K. Synthetics Ltd. v. K.P. Agarwal and Another* 2007 (1) SCC (L and S) 651 : 2007 (1) LLN 725 : 2007 (2) SLR 42 : 2007 (2) All LJ 770, the Tribunal was justified in setting aside the direction to pay back wages after finding that the misconduct charged against the appellant is found to have been proved. Back wages can be awarded only in cases where termination/retrenchment is found to be illegal or invalid or one amounting to victimization. In the present case, misconduct was proved and hence compulsory retirement by way of punishment as fixed by the Tribunal is fully justified. We have already found that considering the nature and gravity of the misconduct which is found to have been proved against the appellant, he is not fit to be seated as Chief Executive of a financial institution which deals with crores of rupees and the interest of the 1st respondent/Bank will not be safe at his hands. We are of the opinion that the punishment imposed by the Tribunal and affirmed by the learned Single Judge is just and proper, warranting no interference in appeal. The appellant having failed to demonstrate that there is any manifest error in the proceedings or the conclusions of the Tribunal or in the impugned judgment; or that the concurrent verdict on the issue of misconduct is patently unreasonable or tainted with perversity, we see that there is no ground for interference. Where there is neither failure on the part of the Arbitration Court or Tribunal to exercise jurisdiction; nor did it act in disregard to the principles of natural justice or procedure established by law, we are not inclined to take the view that the learned Single Judge failed to grant relief to the appellant/writ petitioner in exercise of jurisdiction under Article 226 or Article 227 of the Constitution of India. We see no merit in this appeal.

In the result, this writ appeal is dismissed in limine.