
(2013) 05 JH CK 0077

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5361 of 2001

Devendra Singh

APPELLANT

Vs

The Bihar State Financial Corporation and Others

RESPONDENT

Date of Decision : 10-05-2013

Acts Referred:

Citation : (2013) 4 AJR 325 : (2013) 3 JLJR 152

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Satish Bakshi, Tapas Kabiraj and Prabhash Kumar, for the Appellant; Anoop Kumar Mehta and A.K. Yadav, for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—Challenging the order of compulsory retirement dated 21.08.2001, the petitioner has approached this Court by filing this writ petition. The brief facts of the case are that, on 6.4.1996, a charge memo was served upon the petitioner and he was put under suspension. Several charges were framed against the petitioner. One of the charges related to transgressing his power and authorising a clerk to inspect the site and for accepting the report submitted by the clerk which was found not true and hence misleading the Corporation. The inspection was carried out for sanctioning a loan of Rs. 12,000/- for setting up a furniture shop. After the inquiry, the order of punishment was passed in which the disciplinary authority disagreeing with the inquiry report found that only charge No. 2 is proved against the petitioner and he passed an order of compulsory retirement of the petitioner from the services. Aggrieved by the order of compulsory retirement, the petitioner has approached this Court.

2. A counter affidavit has been filed stating that the order of penalty dated 21.08.2001 was passed in view of the overall circumstances and the allegations against the petitioner. The petitioner unauthorisedly permitted a clerk to inspect the site and without physically verifying the site himself submitted the report and thus neglected in discharging his duties and therefore, the said order has been

passed against him.

3. Heard learned counsel for the petitioner as well as learned counsel for the respondents.

4. Learned counsel appearing for the petitioner has raised a contention that the charge No. 2 as framed against the petitioner is apparently frivolous as the respondents have admitted that the site in question existed however, in a different village The proposal was for sanctioning a loan amount of Rs. 12,000/- and in fact Rs. 9,000/- only was disbursed and the loanee had already repaid the loan amount. Learned counsel appearing for the petitioner has further submitted that if this is the case of the respondents that the site was non-existent, then the loan would not have been sanctioned. Further, the report which was obtained by the petitioner would not absolve other officers of the Corporation of their duty to verify the site, particularly, in view of the Corporation's circular dated 1.12.1988 which has been filed as annexure 9 to the writ petition. The learned counsel under these circumstances has contended that the penalty imposed upon the petitioner is based on "no evidence" and it is also excessive and disproportionate to the charge found proved against the petitioner and therefore, it requires interference by this Court The learned counsel for the petitioner has also placed reliance on the judgment of the Hon'ble Supreme Court in Hindustan Lever Ltd. Vs. Ashok Vishnu Kate and others, .

5. Charge No. 2 as framed against the petitioner is as under:

Charge No. 2--"He, by transgressing his power ordered a D.R. W. Clerk of the Branch. Sri Muralidhar Mishra for inspection of new site, He accepted the incomplete and misleading report of Sri Mishra and recommended for sanction of composite loan of Rs. 12,000/- causing wrongful loss to the Corporation. The said inspection report of Sri Mishra did not have the details of the premises and details given for plot of land does not exist at Siwandih. The details of land mentioned in the report stands in the near by village/Moh. Haisabatu.

6. Admittedly, the proposal was for sanction of a loan of Rs. 12,000/- only, out of which only Rs. 9,000/- was disbursed and the loanee repaid the loan amount. This is also not disputed that only the name of the village in the internal report was incorrectly mentioned which in my opinion could have been verified by the other officers of the Corporation also.

7. In paragraph No. 18 (ii), the respondents have taken a stand in the counter-affidavit which is extracted below.

18(ii) "He by transgressing his power, ordered a DRW clerk of the Branch Murlidhar Mishra for inspection of the new site. He accepted Cue incomplete and misleading report of Mr. Mishra and recommend for sanction of composite loon of Rs. 12,000/- causing wrongful loss to the Corporation. The said inspection report of Mr. Mishra did not have the details of the premises and details given for plot of land does not exist at Siwandih. Instead the land mentioned in the report stands

in the nearby village Moh.-Haisabatu.

8. In view of the aforesaid, I am of the view that the charge framed against the petitioner and the finding recorded in the departmental inquiry in so far as charge No. 2 is concerned, lacks evidence.

9. In *Ranjit Thakur Vs. Union of India (UOI) and Others*, , the Hon''ble Supreme Court has held,

Judicial review generally speaking, is not directed against a decision, but is directed against the "decision-making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would, ensure that even an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.

10. In " *B.C. Chaturvedi Vs. Union of India and others*, , the Hon''ble Supreme Court has held that the Court will not interfere with the order of punishment unless the punishment awarded is one which shocks the conscience of the Court. A similar view has been expressed by the Hon''ble Supreme Court in " *Madhya Pradesh Electricity Board Vs. Jagdish Chandra Sharma*, and several other cases.

11. In " *Apparel Export Promotion Council Vs. A.K. Chopra*, , the Hon''ble Supreme Court has held,

16. ...Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable.... Even insofar as imposition of penalty, or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment, or penalty.

12. In view of the stand taken in para 18 of the counter-affidavit it is clear that this is a case in which the relevant materials have not been considered by the authority and order of penalty of compulsory retirement has been imposed upon the petitioner on a factually erroneous presumption that wrongful loss was caused to the Corporation. I further find that the penalty imposed upon the petitioner was excessive This is also admitted by the counsels appearing for the parties that the punishment, which was imposed upon the clerk namely, Murlidhar Mishra who had submitted the report, was taken to the Court in

C.W.J.C. No. 872 of 2007 and the order of penalty imposed upon the clock was interfered with by the Hon''ble Patna High Court by order dated 1.12.2008 and the counsel for the respondents has confirmed that he has joined his service also. In view of the order passed in favour of the Murlidhar Mishra by the High Court in C.W.J.C. No. 872 of 2007, the impugned order dated 21.08.2001 requires interference and therefore it is quashed and the respondents are directed to reinstate the petitioner with consequential seniority and promotion.

13. However, the question of back wages to the petitioner has to be considered in the light of the statements made in the writ petition. I find that it has not been averred by the petitioner that during the interregnum i.e. after the order of dismissal, he was not gainful employed, and therefore, I am of the view that it will serve ends of justice if, 50% back wages is given to the petitioner.

14. In " General Manager, Haryana Roadways Vs. Rudhan Singh, , the Hon''ble Supreme Court has held that there is no rule of thumb that in each and every case, where a finding is recorded by a Court or tribunal that the order of termination of service was illegal, an employee is entitled to full back wages. Again, in " U.P.S.R.T.C. Vs. Mitthu Singh, , a case in which a bus driver was reinstated in service after 30 long years and he had not shown any improvement in his conduct, the Hon''ble Supreme Court has held as under,

16. "Thus, entitlement of a workman to get reinstatement does not necessarily result in payment of back wages which would be independent of reinstatement. While dealing with the prayer of back wages, factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate court/tribunal.

15. In " State of Uttar Pradesh and Others Vs. Ram Daras Yadav, , the Hon''ble Supreme Court when faced with a situation in which it was difficult to examine the veracity of the allegation as there was no definite conclusion recorded in the domestic enquiry, interfered with the punishment of dismissal and also awarded 50 % back wages to the employee.

16. In a case where the employee did not work for considerable period however, an award was made by the industrial tribunal granting full back wages and the award was affirmed by the High Court, the Hon''ble Supreme Court modified the award by granting 50% back wages to the employee. [" Bharat Coking Coal Ltd. through Management Vs. National Coal Workers Congress through Vice President,

17. In Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, , when it was found by the Hon''ble Supreme Court that award of full back wages was made on the assumption that quashment of dismissal order should be followed by reinstatement with full back wages as matter of course, instead of remanding the case which was 22 long years old, reduced the quantum of back wages to 50 %. In view of the aforesaid discussion, this writ petitioner allowed with a direction to the respondents to make payment of all the consequential monetary benefits to the petitioner, including 50 % back wages from the date of the

impugned order dated 21.08.2001.