

(2016) 02 OHC CK 0013
In the Orissa High Court
Case No : O.J.C. No. 5642 of 2000

Duryodhan Behera

APPELLANT

Vs

The Orissa State Handloom Weaver's Cooperative Society
Ltd. and Others

RESPONDENT

Date of Decision : 17-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227

Citation : (2016) LIC 2466

Hon'ble Judges : S.N. Prasad, J.

Bench : Single Bench

Advocate : Bijay Kumar Dash, B.D. Sahu and A.B. Mishra, Learned Advocates, for the Appellant; Banshidhar Baug, N.N. Mohapatra, B. Das and P.K. Sahoo, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Prasad, J.—1. This writ petition is against the order of dismissal dtd. 26.3.1999 passed by the Managing Director as contained in Annexure-7 and for direction to reinstate the petitioner with all consequential benefits.

2. The brief facts of the case of the petitioner is that he initially was appointed as Grade-I Sales Attendance on daily wage basis in the year 1987 under the Orissa State Handloom Weavers Cooperative Society Ltd. He was again appointed on ad hoc basis for a period of 89 days with effect from 30th December 1989 in which he was ultimately been regularized in service and was appointed against the sanctioned post on 27.4.1991 and started discharging his duty.

While he was posted in the Karanjia Sales Depot on the ground of certain irregularities alleged to have committed by him a disciplinary proceeding was initiated and he was directed to participate in the enquiry in which he was participated and on conclusion of the same the disciplinary authority has passed order of dismissal vide order dtd. 26.3.1999 which is under challenge in this writ petition on the ground that the petitioner has been victimized for no fault of his

own and the enquiry officer has found the charges proved without appreciation of the evidence.

3. In course of argument learned counsel appearing for the petitioner has submitted that the punishment imposed upon the petitioner is not proportionate to the gravity of the offence.

4. The opposite parties have appeared and filed counter affidavit inter alia stating therein that the petitioner has been found to be involved in serious irregularities in discharging of his official business and therefore a disciplinary proceeding was initiated in which the petitioner had participated and also availed all opportunities of being heard and thereafter the enquiry officer having found the two charges proved out of the three charges, the disciplinary authority accepting the report has imposed the punishment of dismissal from service hence there is no infirmity in the same.

Moreover the petitioner has filed an appeal before the appellate authority which has been rejected and as such there is concurrent finding which cannot be interfered by this court sitting under Art.226 of the Constitution of India and also the petitioner has got alternative remedy to raise his dispute U/s.67-B of the Cooperative Societies Act.

5. Heard the learned counsels for the parties and perused the documents available on record.

The order of punishment is under challenge in this case. The ground taken by the petitioner is of twofold, i.e. (i) the enquiry officer has not appreciated all the evidence in proper manner while proving the charges and the disciplinary authority also without appreciating this aspect of the matter has inflicted major punishment of dismissal from service and (ii) out of three charges one charge which relates to misappropriation of Government money has not been proved by the enquiry officer and two other charges which relates to unauthorized absence and threatening the officials has been found to be proved, hence in this situation the punishment of dismissal is not commensurate with the gravity of the offences proved.

6. So far as the first ground is concerned, in order to appreciate this it is relevant to appreciate the facts of the case of the petitioner and the relevant would be the imputation of charges which is being quoted herein below:--

"CHARGE NO.1:-- You were transferred to Karanjia Sale Depot from Udala Sale Depot vide this office order No. 7205 dtd. 2.9.1993. You were called on to explain for your unauthorized absence from 8.10.1993 to 5.11.1993 and a reminder was issued but you did not respond and tendered your resignation on dtd. 30.9.1994. Your resignation was accepted and you were intimated vide office letter No. 5878 dtd. 27.10.1994. On fresh consideration of your prayer you were appointed a fresh vide order No. 1281 dtd. 8.6.1995 and posted at Karanjia Sale Depot.

CHARGE NO.2:-- Apart from the above you are alleged to have committed criminal offences by way of threatening the Branch incharges of Chatagaon Sale Depot and Karanjia Sala Depot. It is also reported that you are signing in the Attendance Register forcibly maintained at the depot level, for the period of your unauthorized absence. You have remained absent unauthorisedly since 10th October, 1997 till 19.4.1998 and forcibly signed the Attendance from 10th October, 1997 to 24th November, 1997.

CHARGE NO.3:-- As per the report of Sri Kailash Chandra Sahoo, Sales Attendor, incharge of Karanjia Sale Depot dt.31.3.1998, you have received cloth stock from the "BAYANIKA" sale Depot of Karanjia for your sister's marriage during 1996-97 & 1997-98 amounting to Rs. 6,506/- (Six thousand five hundred & six) only out of which you have refunded only Rs. 1,981/- leaving a balance of Rs. 4,525/-. During 1998-99 you have also received goods worth of Rs. 2,322/-. Hence you are liable to pay Rs. 4,525/-+ Rs. 2,322/- = Rs. 6,847/- (Six thousand eight hundred forty seven) only and you are therefore charged for misappropriating the above sum of this society.

On the basis of the above facts you are charged for:

- (i) Unauthorised absence from duties from dt.10.10.1997 to 19.4.1998.
- (ii) Tampering of office records,
- (iii) Misappropriation of Apex Society's fund to the tune of Rs. 6,847/-,
- (iv) Committing criminal offences by way of threatening the Branch Managers of Karanjia Sale Depot and Chatagaon Sale Depot.
- (v) Misconduct."

Thus there are three charges one relates to unauthorized absence and the second charge relates t forcibly putting signature in the attendance register by threatening the officials and third relates to misappropriation of Government money. The petitioner was allowed to give written statement of defence.

7. From perusal of the enquiry report it is evident that the petitioner had fully participated. In course of enquiry witnesses have been examined, documents have been produced. The enquiry officer on the basis of the deposition of witnesses, relying upon the attendance register and the other documents has found the charge Nos. 1 & 2 proved but the charge No. 3 with regards to misappropriation of Government money has found not to be proved and thereafter the enquiry report has been forwarded before the disciplinary authority for passing appropriate order of punishment upon the petitioner.

8. From perusal of the enquiry report it transpires that the enquiry officer has gone through the attendance register which was marked as Ext. 1 which reveals that the absence mark was noted from 10.0.1997 to 19.4.1998 but however the signature was put at the attendance register subsequently after the absent marks given by the branch in charge.

It further transpires that the petitioner has threatened the authorities when he was not allowed to put his signature. However, the petitioner has taken ground that he was not allowed to put his signature by the Manager in charge but he has admitted the fact that he has not made any complaint before any higher authority of the Department rather he has made a representation before the minister, Textile and Handlooms but according to the enquiry officer he is not the immediate authority of delinquent and as such that was not taken into consideration.

In the light of this charge No. (i) and (ii) have been found to be proved. But so far as charge No. (iii) is concerned the enquiry officer has given a specific finding that there is no evidence to prove the charge of misappropriation of money to the tune of Rs. 6,847/-.

In the light of this the disciplinary authority has passed an order of punishment imposing two punishments, (i) the period of absence from 10.10.1997 to 19.4.1998 will be treated as leave without pay and (ii) be dismissed from service with immediate effect.

9. Against the order of dismissal the petitioner has filed an appeal before the President of the Society on 28.5.1999. However, this fact has not been stated in the writ petition rather the same has been brought on record by opposite parties by making statement in the counter affidavit, the said appeal was dismissed.

In the light of this it is to be seen regarding the jurisdiction of this court to interfere with the order of punishment and in this connection reference needs to be made to the judgment rendered by Hon''ble Apex Court in case of State of U.P and Others Vrs. Raj Kishore Yadav and Another, , 2006 5 SCC 673 wherein their Lordships have been pleased to hold that (it is settled law that the High Court has limited scope of interference in the administrative action of the State in exercise of extraordinary jurisdiction under Art.226 of the Constitution of India and, therefore, the findings recorded by the enquiry officer and the consequent order of punishment of dismissal from service should not be disturbed.)

10. In another judgment rendered by Hon''ble Apex Court in case of State Bank of Hyderabad and Another Vrs. P.Kata Rao, , 2008 15 SCC 657 wherein at para 18 and 19 it has been held as follows:--

"18. There cannot be any doubt whatsoever that the jurisdiction of superior courts in interfering with a finding of fact arrived at by the enquiry officer is limited. The High Court, it is trite, would also ordinarily not interfere with the quantum of punishment. There cannot, furthermore, be any doubt or dispute that only because the delinquent employee who was also facing a criminal charge stands acquitted, the same, by itself, would not debar the disciplinary authority in initiating a fresh departmental proceeding and/or where the departmental proceedings had already been initiated, to continue therewith.

19. We are not unmindful of different principles laid down by this Court from time

to time. The approach that the Court's jurisdiction is unlimited although had not found favour with some Benches, the applicability of the doctrine of proportionality, however, had not been deviated from."

In the judgment rendered by Hon"ble Apex Court in case of Union of India and Others Vrs. P. Gunasekaran, , AIR 2015 SC 545 the Hon"ble Apex Court has been pleased to laid down a guideline in order to make interference with the order of punishment which is being quoted herein below:--

"13. 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 Art.226/227 of the Constitution of India, shall not venture into reappreciation 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.

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 a 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."

Thus the settled legal proposition is that the scope of judicial review under Art.226 of the Constitution of India is very limited and the High Court cannot sit as an appellate court and in the recent judgment rendered in case of Union of India Vrs. P. Gunasekaran (supra) it has been held that the High Court can interfere under Art.226 but cannot interfere under Art.226 to re-appreciate the evidence, to interfere with the conclusion in the enquiry, in case the same has been conducted in accordance with law, go into the adequacy of the evidence, go into the reliability of the evidence, interfere, if there be some legal evidence on which findings can be based, correct the errors of fact however grave it may appear to be, go into the proportionality of punishment unless it shocks its conscience and the High Court can only see whether the enquiry held by competent authority or the enquiry is held according to the procedure prescribed or there is violation of principle of natural justice in conducting the proceeding, the authorities have disabled themselves from reaching a fair conclusion by some consideration extraneous to the evidence and merits of the case, the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration, 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, the disciplinary authority had erroneously failed to admit the admissible and material evidence, the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding and the finding of fact based on no evidence.

11. If the case of the petitioner will be examined in the light of this principles it would be evident that the charges leveled against the petitioner are three in numbers, the petitioner has been provided with adequate opportunity of being heard before the enquiry officer, the enquiry officer has led the evidence, relevant documents have been produced, the petitioner has been provided an opportunity of inspecting the document which has not been disputed by him and thereafter two charges i.e. charge No. (i) and (ii) have been proved but charge No. (iii) has not been proved, hence from perusal of the finding given by the enquiry officer no case is made out regarding making interference by this court as per the guideline made by the Hon"ble Supreme Court in the case of Union of India Vrs. P. Gunasekaran (supra). Moreover the appellate authority has also dismissed the appeal.

12. In view thereof I find no reason to interfere with the finding of the enquiry officer and the order passed by the disciplinary authority for the reason that the allegation as contained in Charge Nos. (i) & (ii) are serious since the petitioner was unauthorized absence during the relevant time and he has manipulated the document by putting signature in the Attendance Register and when restrained

he has also threatened the higher officials which is a gross misconduct so he is not a fit person to be retained in the job, hence considering the nature of allegation and also considering the finding having been arrived by the enquiry officer, no interference is warranted regarding the order of punishment.

13. So far as the other point regarding the punishment is not commensurate with the gravity of the charge, the principle is also laid down by Hon''ble Apex Court in the Union of India and Others Vrs. P. Gunasekaran (supra) wherein the High Court can interfere under Art.226/227 of the Constitution of India by laying down the guideline that the High Court shall not go into the proportionality of the punishment unless it shocks its conscience. But considering the serious nature of gravity of the allegation it does not shock the conscience of the Court as because the petitioner who has made himself absent unauthorizedly and in order to justify he has even manipulated the documents by putting signature after the absent mark having been given by the competent authority and when he was restrained he also threatened the authorities which shows the conduct of the petitioner and as such it is not a case of that nature which shocks the conscience of the court.

Hence in the entirety of the facts and circumstances of the case there is no reason to interfere with the order of dismissal.

Accordingly, the writ petition is dismissed being devoid of merit.