(2015) 07 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No. 19572 of 2015 (S-R)

G. Ramakrishnan APPELLANT

Vs

The Executive Director and Reviewing Authority, Mumbai and Others RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2015) 4 AKR 485

Hon'ble Judges : R.S. Chauhan, J.

Bench : Single Bench

Advocate : G. Ramakrishan, for the Appellant; G.K.V. Murthy and Sourabh R.K., for the Respondent

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—Pitteed against the might of his employer, the Bank of India, hoping for justice to be done, the petitioner has approached this court for the third time. Aggrieved by the order dated 22.01.2015 passed by the Executive Director and Reviewing Authority of the Bank, whereby the Reviewing Authority has upheld the punishment order, imposing punishment of compulsory retirement, the petitioner has challenged the same before this court. This case has a rather checkered history: in 1981, the petitioner was appointed as a Clerk in the bank. Subsequently, he was promoted as officer in the Scale-I. After having worked for the bank for twenty-seven years, on 05.07.2007, the petitioner was served with a charge-sheet.

Two charges were framed against him: firstly, he was absent from his duties unauthorisedly from 18.09.2006 to 05.03. 2007. Secondly, that he had issued certain cheques for his S.B. Account on the Bank''s Mysore Branch without maintaining sufficient funds in the said account.

2. The petitioner denied the charges and submitted his reply. After completing

the enquiry, the Enquiry Officer did not give any finding on the individual charges, and submit the enquiry report. Since the Disciplinary Authority did not agree with the enquiry report, he observed that "the Enquiry Officer had to reconsider the matter in accordance with the Rules of the Bank." Therefore, the departmental enquiry was remanded back to the enquiry officer. However, without issuing a further notice to the petitioner, behind his back, the enquiry officer found the petitioner guilty of charges. Subsequently, the Disciplinary Authority, by order dated 06.06.2008, imposed the punishment of compulsory retirement upon the petitioner. Since the petitioner was aggrieved by the said order, he filed an appeal before the Appellate Authority. However, by order dated 06.10.2008, the Appellate Authority dismissed the appeal.

3. Aggrieved by the order dated 06.10.2008 and order dated 06.06.2008, the petitioner filed a writ petition in this Court, namely W.P. No. 2192/2009. However, by order dated 08.09.2011, a learned Single Judge of this court dismissed the petitioner''s petition.

4. Aggrieved by the order dated 08.09.2011, the petitioner filed a writ appeal, namely W.A. No. 17996/2011, before a learned Division Bench of this court. By judgment dated 03.07.2012, the learned Division Bench set aside not only the order of learned Single Judge, but also set aside the punishment order dated 06.06.2008, and the order dated 06.10.2008. However, this court gave liberty to the bank to proceed with the inquiry from the stage it was interrupted in accordance with bank rules.

Consequently, the petitioner was reinstated by order dated 17.09.2012. Subsequently, by the enquiry report dated 25.03.2013, the enquiry officer again concluded that the charges against petitioner were proved. The Disciplinary Authority, after issuing second show-cause notice, again imposed the punishment of compulsory retirement by order dated 06.06.2013.

5. Since the petitioner was again aggrieved by the order of compulsory retirement, he challenged the same before this court by filing a writ petition, namely W.P. No. 25854/2013. However, this court disposed of the said writ petition by directing the petitioner to file a departmental appeal before the General Manager, HRD. Therefore, the petitioner approached the Appellate Authority. However, by order dated 18.09.2013, the General Manager (HR) upheld the punishment order, and dismissed the appeal filed by the petitioner.

6. Aggrieved by the order dated 18.09.2013, the petitioner filed yet another writ petition, namely W.P. No. 44159/2013 before this court. By order dated 19.12.2014, this court observed as under:

"The petitioner might be right when he submits that the Disciplinary Authority has not exercised the discretion when it comes to imposing penalty, which should be commensurate to the gravity of the charges. It is for the respondents to consider the same. If such a representation is made by the petitioner within two weeks from the date of receipt of this order, the respondents are directed to consider the same and dispose of the same as expeditiously as possible but not later than three weeks from the date of receipt of the representation."

7. Subsequently, on 25.12.2014, the petitioner filed a review petition before the Executive Director. But, by impugned order dated 22.01.2015, the said review petition has been dismissed by the respondent No. 1. Hence, this petition before this court.

8. Mr. G. Ramakrishnan, the petitioner-in-person, has raised two pleas before this Court: firstly, by order dated 19.12.2014, this Court had directed the respondent to consider the quantum of punishment being imposed upon the petitioner as the court was of the opinion that the petitioner may be right in pleading that quantum of punishment is disproportionate to the alleged misconduct. However, instead of carrying out the directions of this court, in the impugned order, respondent No. 1 has again discussed the charges, evidence lead against the petitioner, and has confirmed the order of punishment. The first respondent has not discussed the quantum of punishment except to hold that "looking to the nature of irregularities and gravity of the lapses which have been proved in the departmental inquiry" the respondent does not find any justifiable reason to interfere with the penalty of ''compulsory retirement'' imposed upon the petitioner. According to the petitioner, this is hardly a discussion about the quantum of punishment. Therefore, the respondent has failed to adhere to the direction issued by this court.

Secondly, the only two charges leveled against the petitioner were that, he had been absent from his service unauthorisedly for a period of six months, and he had issued certain cheques which had bounced. For these two minor misconducts, he has been imposed with the major penalties that, too, a major punishment which causes his economic death. Therefore, the punishment is shockingly disproportionate to the minor misconducts allegedly committed by the petitioner.

Relying on the case of Union of India (UOI) Vs. P. Gunasekaran, , the petitioner has pleaded that this court has ample power under Article 226 of the Constitution of India to interfere with the punishment as the punishment is shockingly disproportionate to the alleged misconducts committed by the delinquent officer.

9. On the other hand, the learned counsel for the respondents has pleaded that unauthorized absence of petitioner had caused inconvenience to the bank.

Secondly, in the judgment dated 19.17.2014, this court had not given any finding that the petitioner was imposed with shockingly disproportionate punishment. Therefore, there was no direction issued by this court to the respondent to reduce the punishment. In fact, this court has merely granted a liberty to the petitioner to submit a representation. After considering his review petition, the respondent was justified in confirming the punishment order.

Thirdly, relying on the case of Lucknow K. Gramin Bank (Now Allahabad, U.P.

Gramin Bank) and Another Vs. Rajendra Singh, , the learned counsel has pleaded that punishment is the essential domain of the departmental authority. Therefore, the scope of interference by this court in punishment order is extremely limited one. Even if this court were to conclude that the punishment is shockingly disproportionate, the only scope left to this court is to refer the matter to the Disciplinary Authority. Therefore, the learned counsel has supported the impugned order.

10. Heard the learned counsels for the parties, perused the impugned orders, and considered the case law cited at the Bar.

11. The contention raised by the learned counsel that this Court had not given any direction to the respondent to reduce the punishment is highly misplaced. For, when the court passes an order, the order has to be pronounced in rather polite terms without passing any stricture or comments about the functioning of a party. The direction quoted above given by this court are indicative enough that respondents were directed to reconsider the quantum of punishment, and in polite terms were suggested to reduce the same so as to commensurate with the alleged misconduct committed by the petitioner. Therefore, the contentions raised by the learned counsel is unacceptable. Even if it is taken for the sake of argument that no explicit direction was issued for reducing the punishment, but, nevertheless this court had directed the respondent to "reconsider the quantum of punishment." However, a perusal of the impugned order, dated 22.01.2015, clearly reveals that the respondent has not cared to discuss the issue regarding quantum of punishment. Instead, the review authority has again reappraised the charges leveled against the petitioner, has reconsidered the evidence, and has reconfirmed the punishment order. Even in Para 13 of the order, instead of discussing the quantum of punishment, the respondent has merely noted "looking to the nature of irregularities and gravity of the lapses which have been proved in the departmental inquiry" the respondent does not find any justifiable reason to interfere with the penalty of ''compulsory retirement'' imposed upon the petitioner.

This observation made by the respondent can hardly be termed as "reconsidering the issue of quantum of punishment." The respondent has failed to give any cogent reason for imposing the harsh penalty of Compulsory retirement. Therefore, clearly, the respondent has failed to carry out the direction issued by this court by order dated 19.12.2014.

Although the learned counsel has relied on the case of Lucknow K. Gramin Bank (Now Allahabad, U.P. Gramin Bank) and Another Vs. Rajendra Singh, but even in the said case, the Apex Court was of the opinion that this court can interfere with the punishment order, provided the punishment was shockingly disproportionate to the alleged misconduct.

Although it is true that this court ordinarily should remand the matter to the Disciplinary Authority while setting aside the punishment order and should direct the Disciplinary Authority to impose a more proportionate punishment, but, considering the fact that petitioner has been running from pillar to post, considering the fact that petitioner has already approached this court on three different occasions, thus, repeatedly, the petitioner has been sent to roller-coaster ride, trying to seek justice to his cause, more over, considering the fact that despite the direction of this court, the respondents have failed to consider the quantum of punishment and have again imposed the punishment of compulsory retirement, this court is of the opinion that the respondents have shown certain amount of bias against the petitioner which has clouded the discretion in deciding the appropriate punishment for the petitioner.

Therefore, ends of justice would be met if this court were to set aside the impugned orders and substitute the punishment with a major penalty, but one which would not cause financial death of the petitioner. Therefore, this court sets aside the impugned order dated 22.01.2015 and the punishment order dated 06.06.2008; this court substitutes the punishment with the punishment of withholding of three increments with cumulative effect. This court further directs the respondent to reinstate the petitioner, and to grant continuity of service, and directs them to pay 50% of the backwages, and to give any other consequential benefits that the petitioner would be entitled to.

The petition is hereby allowed. No order as to costs.

