
(2015) 08 RAJ CK 0067
In the Rajasthan High Court
Case No : Civil Writ Petition No. 26 of 1998

Radha Raman Sharma

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 227, 32
Kerala Co-operative Societies Act, 1969 — Section 69
Rajasthan Co-operative Societies Act, 1965 — Section 75

Citation : (2015) 08 RAJ CK 0067

Hon'ble Judges : Anupinder Singh Grewal, J

Bench : Single Bench

Advocate : Anurag Agarwal, Counsel, for the Appellant

Final Decision : Dismissed

Judgement

Anupinder Singh Grewal, J—This petition is directed against the order dated 06.10.1997 (Annexure-11) passed by the respondent No. 3-Society, whereby the services of petitioner were terminated.

2. The facts of the case, briefly stated, are that the petitioner was appointed on temporary basis as Lower Division Clerk with the respondent-Society on 05.11.1973 and he was granted permanent status on 05.05.1978 on the post of Lower Division Clerk. The petitioner was posted as Lower Division Clerk-cum-Store Keeper on 02.08.1996. On 16.09.1996, the petitioner applied for Compensatory Casual Leave for 18th & 19th of September, 1996 (Annexure-1) on medical ground. The petitioner then sent a letter to the respondents stating therein that he had been admitted in Government Hospital, Kota on 19.09.1996 and he had been trying to handover the charge of Godown from 17.09.1996 to 19.09.1996. Vide order dated 20.09.1996, the petitioner was suspended on the allegation that he had proceeded on leave without handing over charge which amounted to indiscipline in service. The respondents then broke the lock of the Godown and prepared a memo of stock after verification on 21.09.1996.

Subsequently, the petitioner was served with a chargesheet under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 dated 14.11.1996 (Annexure-5) which contained the following charges:--

"(i) having committed indiscipline by not handing over keys and going on medical leave; and

(ii) stock was not verified as per the Stock Register as instead of 187 cylinders the quantity of cylinders was nil and instead of 51 defective cylinders, there were 238 defective cylinders found and there was a shortage of 173 cylinder caps."

3. The petitioner filed his medical certificate and prescription on 27.09.1996 (Annexures-6 & 7). The petitioner also filed reply to chargesheet on 04.05.1997. He is also stated to have sent a receipt dated 18.09.1996 (Annexure-8) for Rs. 300/- wherein the amount towards price of 150 cylinder caps had been deposited by him.

4. The Enquiry Officer submitted his report on 02.06.1997 which exonerated the petitioner from the charge No. 1 but the charge No. 2 was found proved. The petitioner filed a representation against the enquiry report to the disciplinary authority on 15.06.1997. The disciplinary authority vide impugned order dated 06.10.1997 dismissed the petitioner from service and disentitled him from any monetary benefit as loss had been caused to the Society.

5. Learned counsel for the petitioner has contended that both the orders passed by the enquiry officer as well as the disciplinary authority are without application of mind as there was no basis to uphold the charge against the petitioner inasmuch as the deficiency in the stock cannot be said to be attributable to the petitioner as he had taken charge of the stock only on 02.08.1996 and he himself had carried out the stock verification on 12.08.1996. He further submitted, in the alternative, that even if the charge No. 2 is held to be proved against him, the punishment of dismissal from service without any monetary benefit is grossly disproportionate to the charge of deficiency or shortage in the stock.

6. Per contra, the learned counsel for the respondent No. 3-Society has contended that because of the misconduct on the part of the petitioner, loss had been caused to the respondent-Society and the orders of the enquiry officer and the disciplinary authority are fully justifiable and as the charge of having caused loss to the Society had been proved, the punishment of dismissal from service cannot be said to be excessive or harsh.

7. Learned counsel for the respondent-Society has further submitted that the petition is not maintainable as the respondent-Society is not the "State" within the meaning of Article 12 of the Constitution of India. He has also stated that the petitioner has an alternative remedy under Section 75 of the Rajasthan Cooperative Societies Act, 1965.

8. I have heard learned counsel for the parties and with their assistance perused

the record.

9. Insofar as the submission made by counsel for the respondent that the petition is not maintainable as the respondent-Society is not "State" within the meaning of Article 12 of the Constitution of India is concerned, it is evident from the rejoinder filed by the petitioner that the State of Rajasthan has full powers under the Rajasthan Cooperative Societies Act, 1965 to regulate and supervise the activities of all the cooperative societies by way of assignment of a member in the Society who safeguards the interest of the Government and the Government funds are also provided to the instant Society. In the absence of any material to the contrary, it would be appropriate to decide the issue in controversy as it has been held by the Hon"ble Supreme Court in the case of A. Umarani Vs. Registrar, Cooperative Societies and Others, (2004) 6 JT 110 : (2004) 3 LLJ 780 : (2004) 6 SCALE 350 : (2004) 7 SCC 112 : (2004) SCC(L&S) 918 : (2004) AIRSCW 4462 : (2004) 6 Supreme 143 , that a writ would be maintainable against Cooperative Society when its action is violative of statutory provisions. It was held as under:

"60. Although we do not intend to express any opinion as to whether the cooperative society is a "State" within the meaning of Article 12 of the Constitution of India but it is beyond any cavil of doubt that the writ petition will be maintainable when the action of the cooperative society is violative of mandatory statutory provisions. In this case except the Nodal Centre functions and supervision of the cooperative society, the State has no administrative control over its day to day affairs. The State has not created any post nor they could do so on their own. The State has not borne any part of the financial burden. It was, therefore, impermissible for the State to direct regularization of the services of the employees of the cooperative societies. Such an order cannot be upheld also on the ground that the employees allegedly served the cooperative societies for a long time."

10. Although the petitioner may have an alternative remedy under Section 75 of the Rajasthan Cooperative Societies Act, 1965, it is to be noted that Section 75 only provides for a dispute which touches the business of the Society to be resolved by arbitration. The matter relating to the dismissal of employee cannot be termed to be a dispute concerning the business of the Society. I draw support from the judgment of the Hon"ble Supreme Court in the case of Manoj Narula Vs. Union of India (UOI), (2014) AIRSCW 5287 : (2014) 9 SCALE 600 : (2014) 9 SCC 77 wherein the appointments made by the Co-operative Bank had been questioned and the plea regarding alternative remedy under Section 69 of the Kerala Co-operative Societies Act for referring the matter to arbitration was negated by holding that the dispute between the petitioner and Co-operative Bank did not come within the provisions of Section 69 of the Kerala Co-operative Societies Act. It was held as under:

"10. Considering aforesaid provisions of Section 69, we do not find any force in the contention of the Appellants regarding availability of alternate remedy by

way of filing an Arbitration case Under Section 69 of the Act since in our opinion dispute between the writ Petitioners and the Bank does not come within the provisions of this Section. We are also of the view that the Bank has failed to conduct written examination and interview as per the then existing guidelines issued by the Registrar of Co-operative Societies. Indisputably, the Respondent writ Petitioners moved the High Court challenging the circulars immediately after the notification and prior to the conduct of examination."

Even assuming that the petitioner had an alternative remedy of approaching the Registrar under Section 75 of the Act, it would be unjust to oust him from approaching this court at this stage as the writ petition was preferred by him in the year 1998 which has remained pending adjudication ever since. Therefore, I proceed to examine the matter on its merits.

11. Upon perusal of the record, especially the chargesheet, enquiry report and the order of disciplinary authority, it is apparent that there was a shortage of gas or deficiency in the gas cylinders in the stock under the charge of the petitioner. The defence of the petitioner that he himself had carried out stock verification on 12.08.1996 and these deficiencies were pointed out by him, does not appear to cut much ice as the stock verification should have been done by the petitioner on 02.08.1996 itself, whereon he had taken over the charge of stock. However, the petitioner is stated to have deposited an amount of Rs. 300/- towards the shortage of 150 cylinder caps on 18.09.1996 and a receipt thereof has been placed on record in the instant petition as Annexure-8 but the enquiry officer has not referred to this receipt in the enquiry report, although it was incumbent upon him to refer and discuss the reply of the petitioner-delinquent on all the material aspects of the charge. Nevertheless, it is evident from the report of enquiry officer that the defence of the petitioner that he was not responsible for deficiency of 62 gas cylinders had been accepted as the enquiry officer has recommended a separate enquiry to be conducted into this aspect. It has, however, been proved by the enquiry officer in the enquiry that 25 gas cylinders were less in weight and 173 safety caps were missing. Even assuming that if the money for the payment of 150 safety caps which had been obtained from the customers had been deposited by the petitioner on 18.09.1996, still there would be a shortage of 23 safety caps. In any case mere deposit of the money by the petitioner later cannot absolve him of the charges.

12. It is not for this court in exercise of its writ jurisdiction to sit over the findings of the enquiry officer as a court of appeal and even if another view is possible on the same evidence, the court would not interfere with the findings of the departmental authorities. It is only when the findings are without evidence, perverse or show a total non-application of mind to the material evidence can the courts interfere with such findings.

13. The argument of the learned counsel for the petitioner that punishment of dismissal without monetary benefits is grossly disproportionate to the misconduct, does not seem to have any merit, as it is settled law that for any

negligent conduct which has caused loss to the Society, the appropriate punishment is dismissal from service. The interference by this court in the quantum of punishment would call for only if it is not only disproportionate but shockingly disproportionate to the misconduct. Reference may be made to the judgment of the Hon"ble Supreme Court of The Commandant, 22 Battalion, CRPF Srinagar, C/o 56/APO and Others Vs. Surinder Kumar, (2011) 12 JT 27 : (2011) 2 SCALE 142 : (2011) 12 SCR 1189 : (2012) 1 SLJ 203 wherein it was held as under:

"15. Moreover, it appears from the impugned order that the High Court has in exercise of power of judicial review interfered with the punishment of dismissal on the ground that it was disproportionate. In Union of India and Others Vs. R.K. Sharma, AIR 2001 SC 3053 : (2001) 91 FLR 1006 : (2001) 9 JT 76 : (2001) LabIC 4007 : (2001) 7 SCALE 70 : (2001) 9 SCC 592 : (2001) 4 SCT 828 : (2002) 1 SLJ 323 : (2001) AIRSCW 4136 : (2001) 7 Supreme 497 , this Court has taken the view that the punishment should not be merely disproportionate but should be strikingly disproportionate to warrant interference by the High Court under Article 226 of the Constitution and it was only in an extreme case, where on the face of it there is perversity or irrationality that there can be judicial review under Articles 226 or 227 or under Article 32 of the Constitution. Since this is not one of those cases where the punishment of dismissal was strikingly disproportionate or where on the face of it there was perversity or irrationality, the Division Bench of the High Court ought not to have interfered with the order of dismissal from service."

14. I also draw support from the judgment of the Supreme Court In Lucknow K. Gramin Bank (Now Allahabad, U.P. Gramin Bank) and Another Vs. Rajendra Singh, (2013) 8 AD 445 : AIR 2013 SC 3540 : (2013) 139 FLR 290 : (2013) 10 JT 500 : (2013) LabIC 3848 : (2013) 5 LLN 100 : (2013) 9 SCALE 653 : (2013) 12 SCC 372 : (2013) 4 SCT 118 : (2013) AIRSCW 4731 wherein it was held as under:

"13. Indubitably, the well ingrained principle of law is that it is the Disciplinary Authority, or the Appellate Authority in appeal, which is to decide the nature of punishment to be given to a delinquent employee keeping in view the seriousness of the misconduct committed by such an employee. Courts cannot assume and usurp the function of the Disciplinary Authority. In the matter of Apparel Export Promotion Council Vs. A.K. Chopra, AIR 1999 SC 625 : (1999) 1 CTC 316 : (1999) 81 FLR 462 : (1999) 1 JT 61 : (1999) 1 LLJ 962 : (1999) 1 SCALE 57 : (1999) 1 SCC 759 : (1999) 1 SCR 117 : (2000) 1 SLJ 65 : (1999) 1 UJ 508 : (1999) AIRSCW 274 : (1999) AIRSCW 4818 : (1999) 9 Supreme 103 : (1999) 1 Supreme 110 this principle was explained in the following manner:

"22...The High Court in our opinion fell in error in interfering with the punishment, which could be lawfully imposed by the departmental authorities on the Respondent for his proven misconduct.....The High Court should not have substituted its own discretion for that the authority. What punishment was

required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty. The impugned order of the High Court cannot be sustained on this ground alone."

14. Yet again, in the case of *State of Meghalaya and Others Vs. Mecken Singh N. Marak*, AIR 2008 SC 2862 : (2008) 3 CLT 517 : (2008) 118 FLR 372 : (2008) 11 JT 119 : (2008) 7 SCC 580 : (2008) 2 SCC(L&S) 431 : (2008) AIRSCW 4726 , this Court reiterated the law by stating:

"14. In the matter of imposition of sentence, the scope of interference is very limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment-imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

17. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The High Court in this case has not only interfered with the punishment imposed by the disciplinary authority in a routine manner but overstepped its jurisdiction by directing the appellate authority to impose any other punishment short of removal. By fettering the discretion of the appellate authority to impose appropriate punishment for serious misconducts committed by the Respondent, the High Court totally misdirected itself while exercising jurisdiction under Article 226. Judged in this background the conclusion of the Division Bench of the High Court cannot be regarded as proper at all. The High Court has interfered with the punishment imposed by the competent authority in a casual manner and, therefore, the appeal will have to be accepted."

15. As is clear from the above that the Judicial Review of the quantum of punishment is available with a very limited scope. It is only when the-penalty imposed appears to be shocking disproportionate to the nature of misconduct that the Courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/Appellate Authority to take a decision afresh and it is not for the court to substitute its decision by prescribing the quantum of punishment."

15. Learned counsel for the petitioner has cited a judgment of the coordinate Bench of this court at Principal Seat, Jodhpur in the case of L.Rs. of Narendrapal Vs. State of Rajasthan and Another, (2008) 2 RLW 1532 . This judgment is clearly distinguishable on facts and not applicable to the instant case as it pertains to the case of a Constable who was charged with taking alcohol with the accused while escorting him to court and the blood test of the delinquent had not been carried out and it was in those circumstances the court held that punishment of dismissal from service was disproportionate and the punishment of stoppage of three annual grade increments was sustained which had also been accepted by the delinquent earlier.

16. For these reasons, it cannot be said that the orders passed by the enquiry officer as well as the disciplinary authority are arbitrary or illegal warranting interference under the writ jurisdiction.

In the result, the instant writ petition being devoid of any merit stands dismissed with no order as to costs.