(2014) 10 DEL CK 0121

In the Delhi High Court

Case No : Writ Petition (Civil) 1286/2011

Reserve Bank of India APPELLANT

Vs

B.S. Rawat RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Citation : (2014) 10 DEL CK 0121

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : Suhail Dutt, Sr. Advocate, H.S. Parihar and K.S. Parihar, Advocate for the Appellant; Harish Sharma, Advocate for the Respondent

Judgement

Suresh Kait, J.—Vide the present petition, the petitioner has assailed the award dated 28.09.2010 passed by the learned tribunal in I.D. No.21/2004.

2. The brief facts of the case are that respondent B.S. Rawat who was employed as a typist with the petitioner bank had failed to discharge his loan liabilities. The Societies wrote to the petitioner bank. Accordingly, recoveries as instalments towards loans were effected from his salary.

3. However, on 14.06.2001 and 01.08.2001, letters were issued by which the respondent was called upon to submit a statement in respect of his debt liability. Accordingly, he submitted reply on 17.08.2001 whereby he admitted his total liability towards loans taken from various societies to the tune of Rs.3,14,921/-. The petitioner bank was of the view that the respondent was indebted and unable to liquidate his debt liabilities within a reasonable time.

4. Accordingly, charge sheets dated 31.10.2001 and 23.01.2002 were served upon him. He replied to those charge sheets. The petitioner found that the reply of the respondent is unsatisfactory. Accordingly, enquiry was held under Regulation 45 of Reserve Bank of India Staff Regulations, 1948 and the respondent was dismissed from service.

5. Being aggrieved, the respondent raised industrial disputes. He approached to the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government referred the dispute vide order dated 08.03.2004 to the Tribunal for adjudication on following terms:-

" Whether the action of the management of Reserve Bank of India, New Delhi in dismissing Sh. B.S. Rawat vide order dated 24.10.2002 is just, fair and legal? If not, what relief the workman is entitled to and from what date?"

6. Based upon the pleadings of the parties, the learned Tribunal framed issues as under:-

"1. Whether Regulation No.45 of the RBI Staff Regulation is applicable to the workman in the present case?''

2. As in terms of the reference."

7. Sh. Arvind Kumar, Assistant General Manager appeared as MW-1 before the Tribunal who stated that the respondent was posted in RBI Secretariat, New Delhi after his promotion. Service conditions of the employees of RBI are governed by Regulations Ex.MW1/2. The respondent/workman was supposed to submit his statement in respect of his indebtedness on 30th June as well as on 31st December, every year which statements were not filed by him. Letters were received from Jawala Cooperative Urban Thrift and Credit Society, State Bank of India, South Extension, New Delhi, Nationalised Bank Cooperative Credit and Thrift Society, Delhi Nagrik Sehkari Bank Ltd., Bank of Maharashtra and others, asking the bank to deduct installments of loans from the account of respondent and make payments to the aforesaid societies and banks, since respondent/ workman had failed to make payment of the loans availed by him. The aforesaid witness further stated that in the liability statement that the respondent/ workman admitted his liabilities towards various banks and societies. However, he has concealed his liability towards Bank of Maharashtra, who served a legal notice on the bank, copy of which is Ex.MW1/7.

8. On 01.10.2002, a letter was issued to the respondent/workman calling upon him to explain his liability towards Bank of Maharashtra. Though he was commanded to submit his liability statement, but he opted not to furnish the same. Accordingly, show cause notice Ex. MW1/9 was issued to the respondent which was replied by him on 18.02.2001. Copy of the reply is Ex.MW1/10.

9. On 27.08.2001, National Bank Employees Cooperative N.A. Thrift and Credit Society, Green Road Rohtak, wrote a letter disclosing that the respondent/ workman had taken a loan of Rs.1 lac from the said society and instalment of which were not paid by him.

10. The respondent filed his affidavit Ex.WW1/B and submitted that the authorities were having bias against him. In the said affidavit, he does not dispute his liabilities, which were highlighted by Sh. Arvind Kumar in his testimony.

11. During the course of his cross-examination, he conceded Ex. MW1/7 which is a detailed statement of his liabilities. He further admitted Ex.MW1/40, which projects his carry home salary in respective months. His carry home salary was meagre since the bank used to deduct instalments towards loan availed by him. His carry home salary was negligible, therefore, for the said period his wife used to maintain his family. He concedes that on 24.09.2002 his wife took a loan of Rs.1,25,000/- from Jawala Cooperative Credit and Thrift Society for which loan he stood surety. He further conceded that on 10.10.2002 a sum of Rs.3,79,000/- was outstanding against him. He feigned ignorance as to from what source he would have repaid the loans in September, 2002, when his income was absolutely nil.

12. Smt. Maheshwari Devi, wife of respondent/workman in her affidavit Ex. WW2/B stated that she is a permanent employee of MTNL and her emoluments were Rs.30,000/- per month at that time. When she came to know about indebtedness of her husband, she offered her help for clearance of loans. She tried to meet and explain those facts to the Competent Authority but the said Authority refused to meet her. In her cross- examination, she concedes that in Ex.WW2/B she had concealed the factum of obtaining a loan of Rs.1,25,000/- from Jawala Cooperative Credit and Thrift Society on 24.09.2002. She further admits that from the date of her writing letter Ex.WW1/33 till dismissal of her husband she had not paid any money to the bank. She also admits that Jawala Cooperative wrote a letter to the bank for recovery of loan instalment from the surety i.e. her husband.

13. Mr. Suhail Dutt, learned senior counsel appearing on behalf of the petitioner submits that due to the misdemeanour committed by respondent/workman, the petitioner had taken action against the respondent/workman under the Regulation 45 of Reserve Bank of India Staff Regulations, 1948, as under:-

"45. An employee who is in debt shall furnish to the Competent Authority a signed statement of his/her position half- yearly as on the 30th June and 31st December, and shall indicate in the statement the steps he/she is taking to rectify his/her position. An employee who makes a false statement under this regulation or who fails to submit the prescribed statement or appears unable to liquidate, his/her debts within a reasonable time or applies for the protection of a insolvency court shall be liable to dismissal.

Explanation: 1. For the purpose of this regulation an employee shall be deemed to be in debt if his/her total liabilities exclusive of those which are fully secured exceed his/her substantive pay for twelve months.

Explanation: 2. An employee shall be deemed to be unable to liquidate his/her debts within a reasonable time if it appears having regard to his/her personal resources and unavoidable current expenses that the/she will not cease to be in debt within a period of two years. "

14. Learned senior counsel further submits that the provisions of Regulation 45

are based on the proposition that an employee should not incur unreasonable indebtedness, which liability he is unable to liquidate within a reasonable time. It is implicit that an employee should provide a standard to the family with food, shelter, clothing, medical care and education of children appropriate to his status in life and for that purpose he should have means in his hands.

15. In case of unreasonable indebtedness of an employee, which liability he cannot liquidate and continuous for an unreasonable period then that situation would result in reduction of work efficiency and thereby diminish the productivity of the institution. To deal with such type of person, the Regulation 45 is proper and there is no discretion left with the petitioner under the said Regulations but to dismiss from the service.

16. Learned senior counsel further submits that the respondent/workman raised loans from the various banks and societies as narrated in para 20 of the impugned award.

17. Sh. Arvind Kumar further deposed before the Enquiry Officer that the respondent/workman had taken loan from various banks and societies and the liability which exceeded his substantive pay for 12 months. He was not in a position to liquidate his liability, since he could not receive salary for almost 29 months. Therefore, it is evident that for a period of two years the claimant was unable to liquidate his liability and, thus, he was deemed to be in debt. Thus, his case is fully governed under Regulation 45 of the Reserve Bank of India Staff Regulation.

18. Learned senior counsel further submits that the learned Tribunal though held both the issues against the respondent, however, reduced the punishment of the respondent/workman from dismissal to discharge simpliciter, which is contrary to the settled law.

19. Learned senior counsel submits that once the charges are proved, the learned Tribunal had no power to reduce the punishment. To strengthen his argument, learned senior counsel has relied upon the case of Life Insurance Corporation of India Vs. R. Dhandapani, , wherein held as under:-

" 7. It is not necessary to go into in detail regarding the power exercisable under Section 11-A of the Act. The power under said Section 11-A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words ''disproportionate'' or ''grossly disproportionate'' by itself will not be sufficient.

8. In recent times, there is an increasing evidence of this, perhaps well-meant

but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. [See: Kerala Solvent Extractions Ltd. v. A. Unnikrishnan.]

9. Though under Section 11-A, the Tribunal has the power to reduce the quantum of punishment it has to be done within the parameters of law. Possession of power is itself not sufficient; it has to be exercised in accordance with law."

20. Learned counsel further relied upon the case of L and T Komatsu Ltd. Vs. N. Udayakumar, , wherein the case of R. Dhandapani (supra) has been relied upon in addition to other judgments. In case of N. Udaykumar (supra) , the Apex Court has held that if the misdemeanour of the workman is established and proved and justified the punishment of dismissal, then the Tribunal or the Court should not show the leniency or sympathy towards the said misdemeanour.

21. Mr. Suhail Dutt, further submits that Regulation 45 is not only applicable if the debt has not been paid in time, however, also applicable if the employee has not disclosed all the details and give the false information to the bank.

22. He submits that the respondent did indiscriminate borrowing and submitted fabricated documents to the Society to get loan. He forged the signature of Sh. S.K. Kakhar, and officer of the petitioner Bank. Thus, every forgery is a very serious offence which the respondent has been committed and the opinion made by learned Tribunal has not been challenged by the respondent/workman. Despite, the learned Tribunal has reduced the punishment from dismissal to discharge simpliciter.

23. On the other hand, Mr. Harish Sharma learned counsel appearing on behalf of the respondent/workman submits that the respondent/workman had taken loans from the various banks and societies due to his financial conditions. He had to look after the children their education and other liabilities. His wife was also working in MTNL and was getting a salary of Rs.30,000/-. Whatever the loan taken from the various banks and authorities, all the debts have been repaid by the respondent/workman. There is no loss caused to the bank.

24. Learned counsel further states that the respondent/workman had put in 29 years of service when the show cause notice was issued. Sh. S. K. Kakkar whose signatures were allegedly forged did not appear before the Tribunal nor the

handwriting expert has proved the forgery against the respondent/workman. Moreover, the petitioner/bank has chosen the respondent/workman to dismiss from the service whereas the same misdemeanour has been committed by the other employees, however, the petitioner/bank shown the leniency and punished them with lesser punishments.

25. In para 5 of the affidavit filed by the respondent, it is stated that the respondent/workman, before the learned Industrial Tribunal, produced uncontroverted evidence to show that there were number of other employees similarly placed who were also charged with the same misconduct as of the respondent, but most of them barring one were let off with the opportunity given for option of voluntary retirement or with lesser punishments of reduction in pay scale etc., but none of them was dismissed from the service.

26. In reply to para 5 of the counter affidavit, the petitioner rebutted in rejoinder that no discrimination was done to the respondent as alleged or otherwise. There were total 23 employees including the respondent/workman were issued charge-sheets for availing loan between Rs.60,000/- to Rs.1,00,000/- from the Nationalized Bank Employees (SE) Co-operative N.A. Thrift & Credit Society Ltd., Green Road, Rohtak and being indebted. The penalty was imposed in each case on the merit of individual case. Sh. Sadhan Kumar Acharya, Clerk/CNE Gr.II was also dismissed by the Competent Authority. Besides, the respondent/workman and Naresh Gairola, both typists were issued show-cause notice for dismissal from the Bank''s service. However, the Competent Authority observed that respondent/workman had made a beginning to reduce his liability after receipt of the show-cause notice and had repaid his loans towards the Banks and Societies and he had brought down his liabilities within the limit prescribed under the Reserve Bank of India Staff Regulations, 1948. The Competent Authority was inclined to take a lenient view in case of Sh. D.S. Rawat and reduced his substantive pay by 02 stages for 03 years.

27. Learned counsel for the respondent/workman submits that Regulation 45 is not applicable to the respondent/workman. He submits that the said Regulation is applicable only to the employee who fails to liquidate his debts within reasonable time or applies for the permission of the insolvency Court, not otherwise.

28. I have heard learned counsel for the parties.

29. Fact remains that, in the present case, the respondent has paid the loan for all the Societies and Banks during the enquiry from taking the help of his wife. The Regulation 45 is applicable upon the respondent as held by learned Tribunal and opinion of the Tribunal has not challenged by the respondent. However, the respondent had joined the service as a peon on 01.02.1973 and promoted as a typist with effect from 04.04.1977. The alleged mis-conduct was committed in 1999 onwards and all the debts have been paid by the respondent/workman and no loss has been caused to the bank. Moreover, almost more than 23 years, i.e.

till the year 1999, there was no adverse record against the respondent/workman. The respondent did not submit his details of liabilities in time. This misdemeanour cannot be considered for dismissal from service. The punishment imposed by the petitioner was harsh and disproportionate to the misdemeanour committed.

30. Therefore, keeping in view all these facts, the learned Tribunal has reduced his penalty from dismissal to discharge simpliciter.

31. Keeping in view the facts as recorded above and the law discussed above, this Court find no discrepancy in the impugned award passed by the learned Industrial Tribunal.

32. Finding no merit in the present petition, the petition is dismissed with no order as to costs.

