

(2004) 01 MAD CK 0075

In the Madras High Court

Case No : Writ Petition No. 142 of 2003 and W.M.P. No. 13166 of 2003

S. Shenbagaraj

APPELLANT

Vs

Additional Commissioner of Industries and Commerce and
Others

RESPONDENT

Date of Decision : 23-01-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 CTC 505 : (2004) 3 LLJ 624

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : C. Ravichandran, for the Appellant; Krishna Swamy, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—The petitioner seeks to challenge the order of the first respondent dated 26.7.2000 in file No. 85169/ICS/98 confirming the order of dismissal dated 27.6.1998 passed by the third respondent.

2. The petitioner who joined as an Assistant in the second respondent bank on 15.6.1981 was subsequently promoted as Sub Accountant and Inspector and later as Branch Manager of the second respondent bank at Coimbatore in the year 1991. He was transferred to Trichy as Senior Branch Manager and worked as such till May 1996. He was issued with a charge memo dated 12.3.1997 in which, as many as 28 charges were levelled against him. The petitioner submitted his explanation dated 7.4.1997 denying all the charges. Pending disciplinary action, the petitioner was also kept under suspension with effect from 2.12.1996. As the explanation submitted by the petitioner was not convincing, the disciplinary authority appointed an Enquiry Officer to enquire into the charges. The said enquiry commenced on 29.7.1997. The petitioner participated in the enquiry. The enquiry proceedings concluded on 5.11.1997. The Enquiry Officer submitted his report on 24.2.1998. The Enquiry Officer held

that while Charge No. 8 was not pursued by the Management and Charge No. 16 was not issued against him which was a mistake, Charge Nos. 25 and 26 were not proved against the petitioner. The Enquiry Officer has also held in respect of Charge No. 27 that only a part of it was proved while all other charges were held proved. It is relevant to state that in the enquiry, while Exs.B1 to B124 were marked on the side of the Management, Exs.C1 to C34 were marked on behalf of the petitioner. The copy of the findings of the Enquiry Officer was furnished to the petitioner. Thereafter, he submitted a further statement on 26.3.1998 as statement of defence on his side. Thereafter, the third respondent passed the order of dismissal dated 27.6.1998. The petitioner preferred a further revision before the first respondent invoking Section 153 of Tamil Nadu Co-operative Societies Act, in which, the impugned order came to be passed on 26.7.2000.

3. Mr. Ravichandran learned counsel appearing for the petitioner, while assailing the order impugned in the Writ Petition, contended that principles of natural justice were violated in the matter of holding the enquiry against the petitioner; that certain witnesses whom the petitioner wanted to examine were not examined by the Enquiry Officer; that the copies of the documents were furnished only after the conclusion of the enquiry; that the enquiry itself was held by a third person other than the disciplinary authority; that the charges do not fall within the enumerated misconduct of the By-Laws; that no second show cause notice was issued to the petitioner before the issuance of the order of punishment; that the findings of the Enquiry Officer were perverse and that the appellate authority failed to consider various grounds of appeal, in which, a serious attack was made to the Enquiry Officer's Report and the order of dismissal. In support of his submissions, the learned counsel relied upon *Glaxo Laboratories (I) Limited v. Labour Court, Meerut Court, Meerut and Ors.*, 1984(1) LLJ 16; *A.L. Kalra v. Project & Equipment Corporation of India Limited*, 1984 (2) LLJ 186; *Kuldeep Singh Vs. The Commissioner of Police and Others*, ; *Om Kumar and Ors. v. Union of India*, 2001 (2) SCC 386 and *Syed Khader Mokiuddin v. The Chairman, Tamil Nadu Public Service Commission and Anr.*, 1997 (2) LLJ 111.

4. Mr. Krishna Swami, learned Senior counsel appearing for the respondents contended that the service conditions of the petitioner were governed by the Special By-Laws of the Tamil Nadu Industrial Co-operative Society Bank Limited; that under By-Law 14, the procedure has been prescribed as to how the disciplinary action can be initiated and concluded; that it also provides for authorities who could impose the various punishments to different category of employees. The learned Senior counsel would therefore, contend that by virtue of Special By-Law 14(c), the charges framed against the petitioner were valid and inasmuch as the second respondent society was under the control of the third respondent during the relevant point of time, he was fully empowered to initiate the disciplinary proceedings and the first respondent was the competent authority to dispose of the appeal preferred by the petitioner. The learned Senior counsel further contended that the charge sheet issued to the petitioner contained every minute detail of the allegations leveled against the petitioner

and that in the Enquiry, he was given every opportunity to defend himself. The learned Senior counsel pointed out that while in the enquiry, he had every opportunity to peruse the documents in the course of examination of witnesses, as well as, in the course of cross-examination, ultimately "after the conclusion of the enquiry, he was also furnished with the copies of those documents as could be seen from the acknowledgment made by the petitioner on 6.11.1997 in proof of having received the documents. According to the learned Senior counsel, the petitioner was admittedly a Senior Branch Manager and that he was aware of various circulars issued between 1994 and 1995 including the Circulars dated 27.2.1995 and 12.12.1994 in which various stipulations have been provided directing the Branch Managers to strictly follow certain procedures in the matter of disbursement of loans in order to ensure that the loans are disbursed to proper persons, viz., the persons who really belonged to Backward Class in the society for whom such loans are to be disbursed for the purpose, of setting up or developing their industrial sectors or business ventures. The learned Senior counsel, therefore, contended that such procedures were not properly followed in the matter of disbursement of loans to the value of hundred crores disbursed to different parties. According to the learned Senior counsel, as strict rules of evidence were not applicable in the matter of holding of domestic enquiry, the various contentions raised on behalf of the petitioner cannot be countenanced and that preponderance of probability was sufficient to find the petitioner guilty of the charges leveled against him. The learned Senior counsel therefore contended that the order of dismissal as confirmed by the first respondent does not call for any interference.

5. Having heard the learned counsel for the parties and on a perusal of the material papers, I am of the view that the contentions of the learned Senior counsel made on behalf of the respondents merit acceptance. In the first place, while dealing with the contentions of the petitioner, viz., that the charges were beyond the provisions contained in the By-Laws, the relevant Special By-Law 14(c) requires extraction, which reads as follows:

"14(c). No kind of punishment except censure or fine not exceeding Rs. 10 shall be awarded to an employee unless he has been informed in writing of the grounds of which it is proposed to take action against him and he has been afforded an opportunity and all facilities, including personal hearing to defend himself. Every order awarding a punishment communicated to the employee concerned in writing stating the grounds on which the punishment has been awarded."

A perusal of the above said Special By-Law would show that in respect of a case where the punishment is other than imposition of censure or fine not exceeding Rs. 10, the concerned delinquent should be informed in writing of the grounds on which it is proposed to take action against him and that he should also be given an opportunity and all facilities including a personal hearing to defend himself. Ultimately, the order of punishment should be communicated to the delinquent in

writing stating the grounds on which the punishment is imposed. Therefore, unlike the standing orders framed in an industrial establishment who were governed by the provisions of the Industrial Establishment Standing Orders Act, in the case of the second respondent, which is a Co-operative Society, where the service conditions are admittedly governed by the Special By-Laws, the disciplinary aspect is controlled by Special By-Law 14. While Special By-Law 14(a) and (b) deals with the authority concerned who could initiate disciplinary action and impose the punishment, Clause (c) prescribes the manner in which such disciplinary action should be initiated and conducted against a delinquent employee. Clause 14(c) therefore empowers the disciplinary authority functioning under Special By-Law 14(a) to inform the delinquent concerned of the grounds of allegations levelled against him and also give him a personal hearing before passing the ultimate order of punishment which should be in writing and communicated to him.

6. In such circumstances, when the procedure followed in the case on hand is analyzed, it is not in dispute that the petitioner was issued with a charge memo dated 12.3.1997 running to 65 pages in which as many as 28 instances of lapses committed by the petitioner were set out with minute details. It is not in dispute that the third respondent who was functioning as Special Officer at the relevant point of time was the competent Authority under Special By-Law 14(a) to issue the said charge sheet. Therefore, the various contentions raised on behalf of the petitioner on that score do not merit any consideration. Having regard to the nature of the power conferred on the third respondent under the Special By-Law 14(a) and the manner of procedure contemplated under Special By-Law 14(c), the reliance placed upon by the petitioner on the judgments reported in *Glaxo Laboratories (I) Limited v. Labour Court, Meerut Court, Meerut and Ors.*, 1984(1) LLJ 16; as well as *A.L. Kalra v. Project & Equipment Corporation of India Limited*, 1984 (2) LLJ 186 have no application to the facts of the case.

7. As far as the other contentions raised on behalf of the petitioner as to the procedure followed in the enquiry, it will have to be held that admittedly, the petitioner fully participated in the enquiry and cross-examined the witnesses examined in support of the charges. According to the petitioner, he wanted to examine the concerned authorities who conducted a preliminary enquiry and submitted their reports, pursuant to which, the charge sheet came to be issued and that the concerned officers were not examined which caused prejudice to the petitioner. Apart from raising the said plea before the Enquiry Officer, the petitioner appeared to have not taken any steps to summon those Officers to be examined on his side. It is not the case of the petitioner that he called upon the concerned individuals to appear before the Enquiry Officer and that his efforts were not fulfilled. On the other hand, when the petitioner wanted to examine those Officers, it was for him to take necessary steps to summon those officers to be examined on his side. Even if the preliminary investigation held by those officers led to the issuance of the charge sheet, it need not necessarily be taken that in all such cases, it is the invariable rule that the concerned officers should

be examined mandatorily. When the charges as leveled against the petitioner could be established based on material documents available on record in the office of the second respondent itself, the non-examination of the members of the preliminary investigating agency would not by itself vitiate the enquiry proceedings. It is relevant to state that for the various charges leveled against the petitioner as many as 124 documents were relied upon by the Management. In fact, the various instances of lapses committed by the petitioner were all based on record and therefore, I do not find any substance in the contention of the petitioner that the non-examination of members of the preliminary investigating agency would vitiate the enquiry proceedings.

8. As far as the furnishing of the copies of the documents after the conclusion of enquiry was concerned, here again, the acknowledgment endorsed by the petitioner on 6.11.1997 disclose that while he was furnished with certain documents on 6.11.1997, certain documents numbering 29 were not furnished as on that date. It is not the case of the petitioner that the marking of the documents in the enquiry on behalf of the Management was done behind the back of the petitioner. The documents were all marked in the course of enquiry, in which the participation of the petitioner was full fledged. The petitioner had the opportunity to peruse the documents then and there while cross-examining the concerned witnesses. A perusal of the enquiry proceedings disclose that a detailed cross-examination had taken place at the instance of the petitioner and wherever required, he was able to refer to the concerned documents while eliciting the answers. Therefore, furnishing the copies of the documents after the conclusion of the enquiry was wholly immaterial so long as the petitioner had an opportunity to peruse the documents in the course of examination of witnesses during the enquiry. The said contention of the petitioner also therefore, has no substance in the facts and circumstances of the case.

9. As far as the contention, namely, that the enquiry was held by a person other than the disciplinary authority was concerned, it is always the accepted procedure that the disciplinary authority who has been vested with the powers of taking disciplinary action can always entrust the task of collecting the evidence to some named individual and based on such materials collected by such an Enquiry Officer and the Report submitted by him, final order can be passed by the appropriate disciplinary authority. In the case on hand, the third respondent who is admittedly the disciplinary authority functioning under Special By-Law 14(a) has only followed the said procedure as could be seen from the record of enquiry proceedings and the final orders dated 27.6.1998 passed by him. In fact, a perusal of the order of dismissal dated 27.6.1998 disclose that whole of the charge sheet, the explanation, findings of the Enquiry Officer and the defence statement were all part of the said final order which only shows that the third respondent did not take any chance as he wanted to ensure that every aspect of the proceedings held against the petitioner were duly considered by him while passing the ultimate order of dismissal dated 27.6.1998. Therefore, holding of the enquiry and the submission of report by the Enquiry Officer with whom, the

said task was entrusted by the third respondent did not in fact cause any prejudice to the petitioner. In fact, after the enquiry Officer submitted his report on 23.12.1998, the same was furnished to the petitioner along with a memo dated 24.2.1998, The petitioner thus had the opportunity to make his say as regards the findings of the Enquiry Officer by submitting his written statement of defence dated 26.3.1998. After the receipt of the said written statement of defence only, the final order of dismissal came to be passed on 27.6.1998. In such circumstances, the said contention, namely, that holding of the enquiry was left with a different person other than the disciplinary authority did not any way affect the disciplinary proceedings initiated against the petitioner.

10. As far as the findings of the Enquiry Officer are concerned, -the learned counsel for the petitioner vehemently contended that the Enquiry Officer failed to deal with the evidence in detail in support of his conclusions and therefore such a cryptic finding should not have been relied upon by the disciplinary authority, namely, the third respondent who passed the final order of dismissal. It is true that in the findings, the Enquiry Officer has recorded his conclusions in a brief manner, The correctness of the findings of the Enquiry Officer cannot be judged from the volume of the Report, but when such findings read along with the evidence available on record does support the ultimate conclusions and when the Disciplinary Authority considered the whole material while accepting the report of the Enquiry Officer, it will have to be held that the same need not be interfered with. It has been repeatedly held by the Hon'ble Supreme Court that in the matters of holding domestic enquiries, the findings will have to be judged from the credibility of the witnesses whose statements are relied upon along with the other documentary evidence available on record.

11. In the case on hand, the contention of the petitioner was that he was guided by the Circular dated 12.12.1994. In fact, the petitioner took the stand that he was not aware of yet another circular dated 27.2.1995. It has been established before the Enquiry Officer that the said Circular dated 27.2.1995 was received by the petitioner while he was functioning as Branch Manager of Trichy Branch as the same contained his initials. The petitioner wanted to disprove the said fact by stating that what was produced before the Enquiry Officer was only a Xerox copy of the Circular dated 27.2.1995 and that the original was not produced. According to the respondents, the petitioner himself deliberately removed the original in order to escape from the charges. In such circumstances, when the initial found in the Circular dated 27.2.1995 was accepted by the petitioner as his, in the light of the stand taken by the respondents, the marking of the Xerox copy of the said Circular cannot be found fault with. Therefore, the reliance placed by the Enquiry Officer on the said Circular dated 27.2.1995 as well as the other Circular dated 12.12.1994 along with the earlier Circulars of the year 1994, it will have to be held that that by itself established the guilty conduct of the petitioner in regard to the various charges found proved against him. Therefore, when the petitioner was only contending that he had no responsibility in the matter of disbursement of the loans and that he was obliged to issue the

cheques in respect of the loan applications which were cleared off by the District Backward Classes and Minorities Welfare Officers and such a stand of the petitioner was found to be not in consonance with the Circulars dated 27.2.1995 and 12.12.1994, the findings of the Enquiry Officer which were in tune with the above said Circulars cannot be held to be perverse.

12. In this context, it would be useful to refer to the Judgment of the Hon''ble Supreme Court reported in State of Haryana and Anr. v. Rattan Singh, 1982 (1) LLJ 46 wherein, the Hon''ble Supreme Court has stated the legal position as under in para 4:

"4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and creditability. It is true that departmental authorities and administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic Tribunal, cannot be held good. However, the Courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the Tribunal before the valid finding could be recorded. The "residium" rule to which counsel for the respondent referred, based upon certain passages from the American Jurisprudence does not go to that extent nor does the passage from the Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence- not in the sense of the technical rules governing regular Court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic Tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the Court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge leveled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."

13. Therefore, the said contention of the petitioner also falls to the ground. In this context, the reliance placed upon by the learned Senior counsel on the judgments of the Hon''ble Supreme Court can also be usefully referred to, namely, U.P. S.R.T.C. and Others Vs. Har Narain Singh and Others, and Lalit Popli Vs. Canara Bank and Others, . The Hon''ble Supreme Court has categorically held

that the scope of judicial review under Article 226 is not like an appellate authority and its jurisdiction is circumscribed by the limits of judicial review to correct only the errors of law or procedural errors leading to manifest injustice or violation of natural justice. The Hon'ble Supreme Court has held that such a judicial review is not akin to appreciation of the case on merits as an appellate authority. In para 16 and 17 of the judgment reported in Lalit Popli Vs. Canara Bank and Others, can be usefully referred to which reads as under:

"16. It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. (See State of Rajasthan Vs. B.K. Meena and others, . In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.

"17. While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority."

14. As far as the contention that the petitioner was not issued with a second show cause notice, it is a matter of record that no such second show cause notice was issued to the petitioner, but the question is whether on that score, the orders impugned in this Writ Petition are to be set aside. In the first place, in the Special By-Laws, there is no provision for issuance of such a second show cause notice. In the next place, it is on record that the petitioner was furnished with the copy of the report of the Enquiry Officer and he also submitted his statement of defence on 26.3.1998 only thereafter, the punishment order came to be issued on 27.6.1998. In such circumstances, when the petitioner had every opportunity to state his case as regards the findings of the Enquiry Officer, it will have to be held that the non issuance of the second show cause notice by itself did not cause any serious prejudice to the petitioner in order to hold that on that ground, the order of punishment which is otherwise valid in all respects should be interfered with. It will have to be noted that the petitioner was the Senior Branch Manager of the second respondent Society, it was he who was entrusted with the power of issuing the cheques to various borrowers who belong to Backward Classes for whom, the special category of loans were advanced. Therefore, when the petitioner was placed in such a pivotal position, he cannot be heard to say that he could violate all norms in the matter of disbursement of loans by stating

that he had no role to play except to issue the cheques when once such loan applications were earlier cleared off by the District Level Backward Class Authority. Such a stand of the petitioner does not behooove well to the status held by the petitioner in the second respondent society and therefore, the retention of the petitioner in the services of the second respondent society when found to be highly detrimental to the interest of the second respondent society, the order of punishment of dismissal issued against the petitioner cannot be found fault with.

15. As regards the order of the appellate authority, though the petitioner contended that the appellate authority did not apply its mind to the various grounds raised by him in the grounds of appeal, on a perusal of the order of the appellate authority, I find that the appellate authority after referring to the various grounds raised by the petitioner in seriatim has given his findings in a cogent manner before passing the final orders in his proceedings dated 26.7.2000. In such circumstances, none of the grounds raised by the petitioner merit acceptance.

For the foregoing reasons, the Writ Petition fails and the same is dismissed. No costs. Consequently, W.P.M.P. is closed.