(2016) 09 MP CK 0058

In the Madhya Pradesh High Court

Case No : W.P. No.21439 of 2015

State Bank of India APPELLANT

Vs

Deputy General Secretary RESPONDENT

Date of Decision : 21-09-2016

Acts Referred:
Industrial Disputes Act, 1947 — Section 11A

Citation : (2017) 2 MPLJ 162

Hon'ble Judges : Sanjay Yadav, J.

Bench : Single Bench

Advocate : Shri Ashish Shroti, Learned Counsel, for the Petitioner; Shri Siddharth Gulatee, Learned Counsel, for the Respondent

Final Decision : Partly Allowed

Judgement

Sanjay Yadav, J.—With consent of learned counsel for the parties matter is finally heard.

2. Petitioner, vide present writ petition under Article 227 of the Constitution of India takes exception to the Award dated 05.12.2014, passed by the Central Government Industrial Tribunal cum Labour Court, Jabalpur; whereby, in answer to the Reference of Industrial dispute as to "whether the action of the management of State Bank of India, Bhopal, in dismissing the services of Shri Hukum Singh Bagga, son of Shri Harbans Singh Bagga, Ex-cashier cum Clerk with effect from 23.09.1995 is legal and justified ? If not, to what relief the workman concern is entitled to ?" The tribunal while upholding the validity of departmental enquiry interfered with the punishment of dismissal and modified the same to that of compulsory retirement.

3. Respondent workman employed as Cashier cum Clerk with the petitioner Bank was subjected to Charge Sheet on 15.05.1993. The charges levelled against him were that on 16.04.1991, two accounts in the name of Sumit Construction and M/s Suprit Construction Company were opened in the Pithampur Branch. That

without obtaining identification of Account holders cheque books were issued in the name of Suprit construction: 941926-950 and in the name of Sumit construction: 94195-975. The ink was spilled over the entries in the register and it could not be known to whom the cheque books were issued. The second charge related to transfer of accounts of Dewas Branch of Suprit construction wherein some persons deposited cheque of Rs.45,000/- the payment of cheque amount was shown on 25.04.1991. Amount of Rs.44,000/- was fraudulently withdrawn on 26.04.1991 by one Dilip Singh. Third charge was that on 26.04.1991 cheque of Rs.1,71,000/- was issued by Suprit Construction in favour of Sumit Construction as the account was transferred the cheque was sent to Dewas Branch. Whereon presentation of cheque on 17.05.1991 the payment was stopped as the Branch Manager found signatures were not tallying.

4. In the Departmental Enquiry which was initiated on the denial of charges it was proved that the action of the respondent in removing the cheque for Rs. 1,70,000/- from the Accountant''s drawer and delivering it to the bearer of the cheque was not merely an act of returning an instrument not being passed for payment, but tampering with the Bank''s record in an effort to prevent effective investigation into the attempt by the Account holders to obtain money from the Bank by fraudulent means. It was also proved that the respondent was responsible for creating a fraudulent entry of Rs.45,000/- in Schedule No.4 to afford credit of Rs.45,000/- in the account of Sumit Construction Company. This led to termination of service by order dated 23.09.1995. An appeal preferred by respondent workman was on 29.01.1996.

5. The Tribunal vide order dated 11.04.2014 upheld the validity of departmental enquiry. The respondent workman has chosen not to question the said finding by the Tribunal.

6. Since it stands established that the respondent workman is guilty of the charges levelled against him, the question which arises for consideration is whether the Tribunal in the given facts of present case is justified in interfering with the punishment.

7. Section 11 A of Industrial Disputes Act, 1947, envisages that where an Industrial Dispute relating to the discharge or dismissal of a workman has been referred to a labour Court for adjudication and, in the course of the adjudication proceedings, the Labour Court is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct re-instatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

8. Thus, a vide discretion is conferred in the Labour Court to interfere with punishment and award proper punishment. The exercise of such, wide discretion however have inherent parameters to be taken note of as has been noticed in

The East India Hotels v. Their Workman and others: AIR 1974 SC 696- wherein their Lordships were pleased to observe-

"5 ....In the undoubted exercise of the right of the employer to take disciplinary action, and to decide upon the quantum of punishment, both of which are part of the managerial functions, what has to be seen is whether the employer before imposing the punishment had conducted a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. When a proper enquiry has been held by an employer and the finding of misconduct has support from the evidence adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified when the enquiry is unfair or the findings arrived at in the enquiry are perverse or have no basis in evidence or the management is guilty of victimisation, unfair labour practise or mala fide or the punishment is harsh and oppressive. The Tribunal cannot, therefore, reappraise the evidence and arrive at a conclusion different from that arrived at by the domestic Tribunal. ....."

9. In Administrator Union Territory of Dadar and Nagar Haveli v. Gulabhia M. Lad (2010) 5 SCC 775 it is held

"14-....The exercise of discretion in imposition of punishment by the Disciplinary Authority or Appellate Authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the Court or a Tribunal would not substitute its opinion on reappraisal of facts. ......"

10. In the case at hand, the labour Court has observated in paragraph 16 of the Award that-

"16- ....The evidence clearly shows that workman has not received any amount in the transaction as a wrongful way. He has handed over the cheque of Rs.1,70,000/-, to the concerned person receiving back token. It is certainly serious misconduct when attempt was made for fraudulent withdrawal of Rs.1,70,000/- matter ought to have been investigated and culprit should have been subjected to penal action. Because of workman return back cheque receiving the token, further inspection in the matter were frustrated. As stated above, personally workman has not done forgery but he was taking interest at most of the stages of transactions. His complexities are there. The punishment of dismissal from service appears exorbitant and excessive. In my considered view, the facts and evidence on record, workman did not receive any wrongly gain, directly he has not committed forgery but he was taking interest at all stages, the punishment deserves to be modified. Considering length of service of workman instead of punishment of dismissal, punishment of compulsory retirement would be appropriate. ..."

11. Evidently, even the labour Court is convinced that there was serious misconduct on the part of the workman in not reporting the attempt of fraud being committed as the cheque was returned by receiving the token. That "he was taking interest at most of the stages of transaction. His complexities are there."

12. It has been held in Ganesh Santa Ram Sirur v. State Bank of India and another: (2005) 1 SCC 13-

"34-The Bank Manager/Officer and employees and any Bank nationalised/or non-nationalised are expected to act and discharge their functions in accordance with the rules and regulations of the Bank. Acting beyond one''s authority is by itself a breach of discipline and Trust and a misconduct. In the instant case Charge No. 5 framed against the appellant is very serious and grave in nature. We have already extracted the relevant rule which prohibits the Bank Manager to sanction a loan to his wife or his relative or to any partner. While sanctioning the loan the appellant do not appear to have kept this aspect in mind and acted illegally and sanctioned the loan. He realised the mistake later and tried to salvage the same by not encashing the draft issued in the maiden name of his wife though the draft was issued but not encashed. The decision to sanction a loan is not an honest decisions. The Rule 34(3)(1) is a rule of integrity and therefore as rightly pointed out by Mr. Salve, the respondent Bank cannot afford to have the appellant as Bank Manager. The punishment of removal awarded by the Appellate Authority is just and proper in the facts and circumstances of the case. Before concluding, we may usefully rely on the judgment Regional Manager, U.P. SRTC. Etawah & Ors. v. Hoti Lal & Anr.. wherein this Court has held as under: (SCC p.614, para 10)

"If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal."

13. Since the labour Court recorded specific finding that the respondent workman committed grave misconduct, it , in the considered opinion of this Court is beyond its jurisdiction to have interfered with the punishment on the finding in the domestic enquiry indicating the involvement in the nature of activities which was unbecoming of an employee of the Bank.

14. It is held in Union of India and others v. P. Gunasekaran: (2015) 2 SCC 610-

"20- Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values."

15. Present being not a case where it can be said that charges levelled and proved against the respondent workman were trivial in nature. Rather, as evident from the findings on record that, the respondent had displayed serious misconduct and loss of trust reposed in him.

16. Decision by a Co-ordinate Bench of this Court in Ujjain Municipal Corporation v. Shrawan Singh: Writ Petition No.3222/2014 reported in 2015 SCC online MP 2961 is not of much assistance to respondent workman for the reason that the retrenchment therein was found to be in violation of provisions contained under Section 25 F of 1947 Act and was not a case of termination of service after a departmental enquiry.

17. In view whereof, and in the given facts of present case the Award of holding the punishment as disproportionate and substituting the same by compulsory retirement cannot be upheld. Therefore, set aside. The punishment of dismissal/ termination inflicted by the disciplinary authority is upheld.

18. Petition is allowed to the extent above. No costs.

