(2015) 08 KAR CK 0019

In the Karnataka High Court

Case No : Writ Petition No. 63053 of 2009 (S-DIS)

V. Ambarish Rao APPELLANT

Vs

The Deputy General Manager, P and A and Disciplinary Authority and Others RESPONDENT

Date of Decision : 07-08-2015

Acts Referred:

Citation : (2015) 6 KarLJ 62

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Ravi Hegde, Advocate, for the Appellant; M.G. Malawade, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the petitioner and the learned Counsel for the respondents. The present petition is filed in the following background.--

The petitioner is said to have joined the services of respondent-Bank in the year 1969 as a Clerk. He was promoted from time to time and his services were appreciated throughout the decades. He had served the respondent-Bank at several places within and outside the State of Karnataka. He was, however, placed under suspension by an order dated 8-4-2006 on certain allegation, which according the petitioner are false. There was no warrant to keep the petitioner under suspension. However, a charge-sheet was said to have been issued on 1-6-1967 alleging that he had failed to follow various guidelines while providing certain discounts and that in giving discounts to cheques he had exceeded his powers; that while granting loans he has exceeded his powers and had permitted persons to open accounts without proper identification and that they were identified by members of the staff of the Bank. It was also alleged that he had failed to follow norms while sanctioning loans in respect of purchase of tractors. The main allegation was that he had allowed certain loan accounts to become non-performing accounts. These allegations, accordingly to the petitioner, were misconceived, incorrect and baseless.

2. It was the petitioner''s belief that the charge-sheet was issued at the instance of one Vijayaprabhu, who was an officer in the Regional Office with whom the petitioner was not on good terms and the charges were apparently concocted. Since the charges were varied and intended to ensure that the petitioner is implicated on one or the other charges. That the petitioner having rendered 39 years of unblemished service, as on the date of issuance of charge-sheet, could not have been implicated on such frivolous issues, which he was not shown to have committed throughout his long career of 39 years.

3. The petitioner, therefore, had issued a befitting reply to the charge-sheet denying the allegations and he had also explained that he could not be held responsible for any account being termed as a non-performing account and further that the account holders therein still had time to repay the loan amounts and it could not be prematurely termed as a non-performing account. Financial transactions as well as the target of recovery, fixed for the petitioner, had been exceeded repeatedly and the amount of profit accruing to his employer was increased during his tenure as was apparent on the face of it, and hence, the allegations were merely to victimize the petitioner for acts, which could not be termed as misconduct and in the face of the petitioner having been repeatedly congratulated for his meritorious service by the management.

4. Inspite of the reply, the management had proceeded to appoint one Mr. M. Venkatesh Mehendale as an Inquiry Officer, who had commenced an enquiry on 29-8-2008 at the Yediyur Branch premises at Bangalore. The Manager I.R., one Mr. S. Sridhar Rao, acted as a Presenting Officer and the Management denied the opportunity of seeking outside assistance, but permitted the management of services of one P.K. Bhat by the petitioner. Thereafter, the Management had examined for witnesses and had exhibited 167 documents. The petitioner, in turn, had examined himself and had got marked 17 documents in support of his case. The Inquiry Officer returned his report holding that the petitioner was guilty of the charges. The copy of the report was sent to the petitioner calling for his Explanation. He had replied to the same pointing out that it was bad in law and could not be accepted. Thereafter, the Disciplinary Authority was pleased to pass an order of dismissal, and against which an appeal had been preferred before the Appellate Authority and the Appellate Authority had merely concurred with the Disciplinary Authority without assigning any valid reasons in negating the grounds raised in appeal. It is this, which is sought to be questioned in the present petition.

5. It is, however, now stated that the petitioner has attained the age of superannuation, as prescribed by the Bank, and therefore, the question of the petitioner being reinstated into service, as prayed for in the petition, is redundant. He would, however, seek compensation for the illegal termination, which he seeks to demonstrate by reference to the Court record. In this regard,

the petitioner has now filed an application seeking to produce additional documents which would completely absolve the petitioner of any wrong doing, which had caused prejudice to the Bank in question.

6. It is further pointed that the Regulations, namely, the Syndicate Bank Officer Employees'' (Conduct) Regulations, 1976 (hereinafter referred to as ''1976 Regulations'', for brevity) does prescribe the several acts of misconduct for which action could be initiated.

7. It is pointed out by the learned Counsel for the petitioner that under the 1976 Regulations several acts of misconduct have been specified, namely, Regulation 4 indicates the requirements of observance of Secrecy, Regulation 5 pertains to employment of members of Family of Bank Officers in firms enjoying the Bank''s Clientage and grant of facilities to such concerns, Regulation 6 pertains to taking up of outside employment, Regulation 7 pertains to contribution to Newspapers, Radio etc., Regulation 8 pertains to Demonstrations, Regulation 9 pertains to Joining of Associations prejudicial to interests of the country, Regulation 10 pertains to giving evidence, Regulation 11 pertains to public demonstration in Honour of Bank Officers, Regulation 12 pertains to seeking to influence, Regulation 13 pertains to Absence from duty, Regulation 14 pertains to Acceptance of Gifts, Regulation 15 pertains to Lending and borrowings, Regulation 16 pertains to Advance Drawal of Salary, Regulation 17 pertains to subscriptions, Regulation 18 pertains to Speculation in Stocks and Shares and Investments, Regulation 19 pertains to indebtedness, Regulation 20 pertains to movable, Immovable and valuable property, Regulation 21 pertains to Vindication of Acts and Character of an Officer Employee, Regulation 22 pertains to Restrictions regarding marriage, Regulation 23 pertains to Consumption of Intoxicating Drinks and Drugs, Regulation 24 pertains to Acts of Misconduct, Regulation 24-A pertains to Prohibition of sexual harassment of working woman, Regulation 25 pertains to Interpretation and Regulation 26 pertains to Repeal and Saving. Therefore, the allegations made against the petitioner do not fall under any of the above heads of misconduct. Hence, the exercise of discretion by the Disciplinary Authority in characterizing the alleged acts of misconduct and inviting a major penalty is not forthcoming.

8. Even insofar as the Syndicate Bank Officer Employees'' (Discipline and Appeal) Regulations, 1976 (hereinafter referred to as ''Appeal Regulations 1976'' for brevity), are concerned the same do not indicate as to the manner in which the penalties prescribed, namely, minor penalties and major penalties, under Regulation 4 therein and the manner in which the discretion could be exercised insofar as applying the said penalties, except prescribing the procedure for imposing major penalties under Regulation 6, there is no indication of how the Disciplinary Authority has proceeded to hold that the alleged acts of misconduct, alleged against the petitioner, were in the nature of serious misconduct, which attracted the major penalty or the extreme penalty of dismissal from service, and therefore, the learned Counsel would contend that even if the charges had been

proved, the imposition of a major penalty or the extreme punishment of dismissal in respect of an employee, who had rendered unblemished service for over a period of 39 years, suffers from the vice of dis-proportionality and was far in excess of punishment that could be imposed.

9. It is further sought to be pointed out that, on the other hand, it is now evident from the additional documents produced, insofar as the several transactions that were said to be irregular it is found that they have been regularized and the Bank has not suffered any prejudice, and hence, would seek that the petitioner at least should be recomposed by way of terminal benefits that he would have been entitled to and the pensionary benefits for which he would also be entitled, be granted to him as the Bank was not justified in its actions of instituting such proceedings for the alleged acts of misconduct, which are ultimately proved to be misconceived and had not caused any prejudice to the Bank.

10. While the learned Counsel for respondents seeks to justify the action of the respondents and, in support of the statement of objections filed, would seek to contend that the proceedings have been initiated against the petitioner in accordance with the Regulations. It is contended that it was not the petitioner''s case that the initiation of the domestic enquiry was without jurisdiction or that the principles of natural justice had not been followed in conducting the enquiry and since the petitioner has been given full opportunity of contesting the enquiry proceedings and it is only after a full-fledged enquiry that the enquiry report has been returned with categorical findings with reference to the material on record. Thereafter, the petitioner also having filed an appeal, the Appellate Authority, in its discretion, has negated the same. There can be no fault found with the proceedings that were initiated.

11. Insofar as the contention that the punishment imposed is disproportionate to the acts of misconduct is not for the petitioner to claim. The authority was vested with the discretion to impose such a penalty. It is not the case of the petitioner that the authority is not provided with the power to impose major penalties. The exercise of such discretion was well-within the scope of the power and the same having been exercised in the facts and circumstances of the case of serious irregularities in the several transactions, which were highlighted at the enquiry cannot be said to be bad in law and notwithstanding the long service rendered by the petitioner. The petitioner was yet responsible to account for his actions and since there were not one or two, but several major irregularities in the transactions involved, the Management was justified in initiating the action and punishing the petitioner and seeks to justify the order of dismissal and would seek the dismissal of the present petition as being misconceived.

Especially since the petitioner has attained the age of superannuation, admittedly, there is no relief that can be granted to the petitioner. The claim for compensation or terminal benefits is misconceived and cannot be sustained in the face of the dismissal order having been imposed by the Disciplinary Authority and having been confirmed in appeal, and hence, this Court in its writ jurisdiction cannot address findings of fact, which are not shown to be perverse or illegal and was certainly based on material on record.

12. While the learned Counsel for respondent would submit that the additional documents now sought to be produced by the petitioner would not absolve him of the several charges for there are several instances where the Bank was suffered prejudice and loss and it is not as if all the transactions in which the petitioner had indulged have been regularized or have been finally settled. There are several instances, which has resulted in loss and prejudice to the Bank, which is not adequately explained by any additional document now sought to be produced. Therefore, seeks dismissal of the petition.

13. By way of reply, the learned Counsel for petitioner would point out that insofar as the mala fides on the part of the respondent in proceedings against the petitioner is that, there were no earlier instances of any irregularities in the services of the petitioner except for the present charges that were laid against him. The charge-sheet was issued on the petitioner on 1-6-2007 and the order of suspension was issued on 8-4-2006. Therefore, there was a gap of one year and two months in issuing the charge-sheet and it was obviously to keep the petitioner in suspension and to inflict injury on the petitioner and thereafter the enquiry was conducted over a period of one year. It is thereafter that the Disciplinary Authority has proceeded to pass the order of dismissal. Further that there is no answer by the Bank to the additional documents that are now being filed except a formal objection raised by the Counsel, orally, to the effect that there were some transactions, which have resulted in a loss to the Bank. Insofar as the contention of the learned Counsel for respondent that additional document now produced would not absolve the petitioner completely, there is no material produced by the Bank except the oral statement now made by the Counsel and according to the learned Counsel for the petitioner the additional documents are indeed proof of the petitioner being absolved of any irregularity or ultimately of the Bank not having suffered any prejudice or loss. Therefore, the very initiation of the inquiry was misconceived and the imposition of penalty was certainly disproportionate to the alleged acts of misconduct. Finally, it is contended that it is now demonstrated that there was no prejudice caused to the Bank by virtue of the very transactions having been settled finally, and hence, would seek to emphasize and re-emphasize the contentions raised in the petition.

14. Given the above rival contentions, evidently the regulations of the Bank are incomplete insofar as the alleged acts of misconduct alleged against the petitioner are not even prescribed as acts of misconduct under the Regulations. There is no guidance as to which of the acts of misconduct would attract major penalties and which of the acts of misconduct would attract minor penalties. Therefore, the arbitrary exercise of power that is made available to the Disciplinary Authority to pick and choose employees against whom major or minor penalties could be imposed is evident and the present case is a classic example of such arbitrary exercise of power. There was no guidance provided

under the Regulations insofar as invocation of the Regulations to proceed against the petitioner on the allegation of acts of misconduct, which are not even prescribed under the Regulations.

15. Secondly, in the absence of any guidelines as to which of the acts of misconduct would attract major penalties, the Disciplinary Authority having taken the extreme step of imposing the maximum punishment of dismissal from service is certainly disproportionate to the said acts of misconduct and cannot be countenanced. The fact that the petitioner had rendered 39 years of unblemished service and it was only a minor irregularity in the transactions but which were ultimately found to have not caused any prejudice or loss to the Bank, as demonstrated by the additional documents now produced by the petitioner would certainly absolve the petitioner from any such acts of misconduct. Therefore, the Bank was not justified in, first of all, initiating the inquiry and treating such transactions as non-performing accounts prematurely, as contended by the petitioner and proceeding as if the petitioner has benefited from the transactions without any proof thereof and when the petitioner is now in a position to point out that no prejudice or loss is caused to the Bank. Hence, the petition is allowed.

16. However, the relief prayed for by the petitioner is no longer capable of being granted. However, the petitioner would be entitled to the consequential benefits of such illegal dismissal. Accordingly, the order of dismissal is set aside.

17. The petitioner is, however, not entitled to any back wages by virtue of this order. The Bank would certainly be obliged to provide all terminal benefits to which the petitioner was entitled and also to provide him pension on the basis that he had regularly retired from service. On that note, the petition stands allowed in terms as above.

18. The petition stood dismissal by an order of this Court as against respondent 2, the Appellate Authority for not having taken steps at the appropriate time. That order is recalled. The Counsel for respondent 1 is directed to take notice for respondent 2 and the order of dismissal as well as the order passed in appeal are also set aside, in terms as above.