Chief Executive Officer, Krishna District Cooperative Central Bank Ltd. and Another - Appellants @HASH K. Hanumantha Rao and Another

Court: SUPREME COURT OF INDIA

Date of Decision: Dec. 9, 2016

Citation: (2017) 1 ApexCourtJudgments(SC) 287 : (2017) 1 CLR 531 : (2017) 152 FLR 131 : (2017) 152 FLR 757 : (2017) 1 JBCJ 179 : (2017) 1 JLJR 53 : (2016) 11 JT 548 : (2017) LabLR 116 : (2017) 1 LLN 283 : (2017) 1 PLJR 172 : (2017) 1 RecentApexJudgments(RAJ) 314 :

Hon'ble Judges: A.K. Sikri and Abhay Manohar Sapre, JJ.

Bench: Division Bench

Advocate: Venkateswara Rao Anumolu, Parnam Prabhakar, Advocates, for the Appellants; C.S.N. Mohan Rao, Franklin C. Thomas, Chand Qureshi, Guntur Prabhakar, Advocates, for the Respondents

Final Decision: Disposed Of

Judgement

A.K. Sikri, J. - Leave granted.

2. A departmental inquiry was conducted against respondent No.1 herein, an employee of appellant, viz. Krishna District Cooperative Central

Bank Ltd., into certain charges of misconduct. In the said inquiry, charges were proved and as a result the disciplinary authority inflicted the

punishment of dismissal from service upon respondent No.1. The High Court vide impugned judgment has altered the said penalty of dismissal to

that of stoppage of two increments for a period of three years.

Whether it was permissible for the High Court to do so in the facts of the present case, is the question that needs to be determined in the instant

appeal.

3. The events leading to the filing of this appeal are recapitulated in brief as under:

Respondent No. 1 was a Supervisor of five Primary Agricultural Cooperative Societies (PACS). He failed in discharging his duties properly in

supervising the same, which led to cheating by the members of the Nidamanuru Primary Agricultural Cooperative Society (PACS) resulting in

misappropriation of the society funds, for which disciplinary action was initiated against him. The precise charges against him, vide charge memo

dated 08.03.2002, were that he had derelicted his duties as Supervisor leading to misappropriation of the funds of the society. Details of fifteen

such accounts/instances were given wherein frauds had taken place and the amount of fraud involved in each such case totalling upto Rs.

46,87,950.10. Names of the persons who had misappropriated these amounts were also given. It was mentioned that respondent No.1 worked as

a Supervisor of the society and it was his duty to have close supervision over the affairs of the society and bring to the notice of the Bank the fraud

which took place and safeguard the funds of the society and the Bank. However, he failed to discharge his legitimate duties of supervision leading

to huge misappropriation that had taken place, which he could not detect and thwart. Thus, by derelicting his legitimate duties he paved way for

huge misappropriation and thereby committed grave misconduct. Inquiry was held and charge of dereliction of duty was proved as per the report

given by the Inquiry Officer.

4. There is no dispute that this inquiry was conducted in accordance with the principle of natural justice giving fair chance to respondent No.1 to

defend himself. In fact, as per the report of Inquiry Officer, respondent No.1 had even admitted dereliction of duties on his part.

5. The General Manager, Krishna District Cooperative Central Bank Ltd., after examining the report of the Inquiry Officer in detail, observed that

the charged employee committed grave misconduct and acted in a way unbecoming of an employee of the Bank and passed an order of dismissal

from service of the Bank. Feeling aggrieved by the order dated 05.10.2002, respondent No. 1 herein filed an appeal/mercy petition before the

Chairman, Person In-charge Committee of the Krishna Cooperative Central Bank Ltd., and prayed to consider the case sympathetically on

humanitarian grounds and issue reinstatement orders, which was also dismissed on 22.01.2003. Respondent No. 1 thereafter filed writ petition

bearing W.P. No.4238/2003 before the High Court of Andhra Pradesh at Hyderabad.

6. The learned single Judge of the High Court of Andhra Pradesh at Hyderabad, after considering the material available on record and after hearing

the arguments of the counsel for the parties, held that respondent No.1 was negligent in performing his duties and committed an act prejudicial to

the interest of the Bank which resulted in serious loss to the Bank. The Single Judge of the High Court further observed that because of the

negligence of respondent No.1, an amount of Rs. 46,87,950.10 had been misappropriated by the staff and members of Nidamanuru PACS. It

was held that there were no grounds to interfere with the punishment imposed by the disciplinary authority and confirmed by the appellate

authority.

7. Feeling aggrieved by the order dated 18.07.2005, respondent No.1 preferred Writ Appeal No. 1640/2005, which has been partly allowed by

the Division Bench of the High Court vide its impugned order dated 17.08.2014. The Division Bench of the High Court has, in fact, interfered with

the penalty imposed. Reason for such a course of action adopted by the High Court given in the impugned judgment is that there was no allegation

of misappropriation against respondent No.1. The accusation was lack of proper supervision which holds good against the top administration as

well.

8. After hearing the counsel for the parties, we are of the view that the impugned judgment of the Division Bench of the High Court is

unsustainable. There are more than one reason for coming to this conclusion, which are stated hereunder:

(i) The observation of the High Court that accusation of lack of proper supervision holds good against the top administration as well is without any

basis. The High Court did not appreciate that respondent No.1 was the Supervisor and it was his specific duty, in that capacity, to check the

accounts etc. and supervise the work of subordinates. Respondent No.1, in fact, admitted this fact. Also, there is an admission to the effect that his

proper supervision would have prevented the persons named from defrauding the Bank. The High Court failed to appreciate that the duties of the

Supervisor are not identical and similar to that of the top management of the Bank. No such duty by top management of the Bank is spelled out to

show that it was similar to the duty of respondent No.1.

(ii) Even otherwise, the aforesaid reason could not be a valid reason for interfering with the punishment imposed. It is trite that Courts, while

exercising their power of judicial review over such matters, do not sit as the appellate authority. Decision qua the nature and quantum is the

prerogative of the disciplinary authority. It is not the function of the High Court to decide the same. It is only in exceptional circumstances, where it

is found that the punishment/penalty awarded by the disciplinary authority/ employer is wholly disproportionate, that too to an extent that it shakes

the conscience of the Court, that the Court steps in and interferes.

No doubt, the award of punishment, which is grossly in excess to the allegations, cannot claim immunity and remains open for interference under

limited scope for judicial review. This limited power of judicial review to interfere with the penalty is based on the doctrine of proportionality which

is a well recognised concept of judicial review in our jurisprudence. The punishment should appear to be so disproportionate that it shocks the

judicial conscience. (See State of Jharkhand & Ors. v. Kamal Prasad & Ors., (2014) 7 SCC 223). It would also be apt to extract the

following observations in this behalf from the judgment of this Court in Deputy Commissioner, Kendriya Vidyalaya Sangthan & Ors. v. J.

Hussain, (2013 10 SCC 106) :

8. The order of the appellate authority while having a relook at the case would, obviously, examine as to whether the punishment imposed by the

disciplinary authority is reasonable or not. If the appellate authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty

so imposed by the disciplinary authority. Such a power which vests with the appellate authority departmentally is ordinarily not available to the

court or a tribunal. The court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of facts.

(See UT of Dadra & Nagar Haveli v. Gulabhia M. Lad, [(2010) 5 SCC 775 : (2010) 2 SCC (L&S) 101] . In exercise of power of judicial

review, however, the court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic.

This limited scope of judicial review is permissible and interference is available only when the punishment is shockingly disproportionate, suggesting

lack of good faith. Otherwise, merely because in the opinion of the court lesser punishment would have been more appropriate, cannot be a

ground to interfere with the discretion of the departmental authorities.

9. When the punishment is found to be outrageously disproportionate to the nature of charge, principle of proportionality comes into play. It is,

however, to be borne in mind that this principle would be attracted, which is in tune with the doctrine of Wednesbury [Associated Provincial

Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] rule of reasonableness, only when in the facts

and circumstances of the case, penalty imposed is so disproportionate to the nature of charge that it shocks the conscience of the court and the

court is forced to believe that it is totally unreasonable and arbitrary. This principle of proportionality was propounded by Lord Diplock in Council

of Civil Service Unions v. Minister for the Civil Service [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] in the

following words: (AC p. 410 D-E)

...Judicial review has I think developed to a stage today when without reiterating any analysis of the steps by which the development has come

about, one can conveniently classify under three heads of the grounds upon which administrative action is subject to control by judicial review. The

first ground I would call `illegality", the second `irrationality" and the third `procedural impropriety". This is not to say that further development on a

case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of

`proportionality".

10. An imprimatur to the aforesaid principle was accorded by this Court as well in Ranjit Thakur v. Union of India [(1987) 4 SCC 611 : 1988

SCC (L&S) 1 : (1987) 5 ATC 113] . Speaking for the Court, Venkatachaliah, J. (as he then was) emphasising that ""all powers have legal limits

invoked the aforesaid doctrine in the following words: (SCC p. 620, para 25)

25...The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit

the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the

conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would

ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence

is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of

judicial review.

No such finding is arrived at by the High Court to the effect that the punishment awarded to respondent No.1 was shockingly disproportionate.

Even otherwise, we do not find it to be so having regard to the fact that respondent No.1 did not perform his duties with due diligence and his

negligence in performing the duties as a Supervisor has led to serious frauds in number of accounts by the subordinate staff. It was, therefore, for

the disciplinary authority to consider as to whether respondent No.1 was fit to continue in the post of Supervisor.

(iii) The impugned order is also faulted for the reason that it is not the function of the High Court to impose a particular punishment even in those

cases where it was found that penalty awarded by the employer is shockingly disproportionate. In such a case, the matter could, at the best, be

remanded to the disciplinary authority for imposition of lesser punishment leaving it to such authority to consider as to which lesser penalty needs to

be inflicted upon the delinquent employee. No doubt, the administrative authority has to exercise its powers reasonably. However, the doctrine that

powers must be exercised reasonably has to be reconciled with the doctrine that the Court must not usurp the discretion of the public authority.

The Court must strive to apply an objective standard which leaves to the deciding authority the full range of choice. In Lucknow Kshetriya

Gramin Bank & Anr. v. Rajendra Singh, (2013) 12 SCC 372, this principle is formulated in the following manner:

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 Apparel Export Promotion Council v. A.K. Chopra, [(1999) 1

SCC 759 : 1999 SCC (L&S) 405] this principle was explained in the following manner: (SCC p. 773, para 22)

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 of 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 State of Meghalaya v. Mecken Singh N. Marak, [(2008) 7 SCC 580 : (2008) 2 SCC (L&S) 431], this Court reiterated

the law by stating: (SCC pp. 584-85, paras 14 and 17)

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 as 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.

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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.

9. In any case, insofar as the instant matter is concerned, since we find that the punishment imposed was not shockingly disproportionate, no

question of remitting the case to the disciplinary authority arises. We, thus, allow this appeal and set aside the impugned judgment of the Division

Bench of the High Court.