

CASE NO.:
Appeal (civil) 5072 of 2002

PETITIONER:
THE REGIONAL MANAGER & DISCIPLINARY AUTHORITY,

Vs.

RESPONDENT:
VS.

DATE OF JUDGMENT: 16/08/2002

BENCH:
Doraismamy Raju & Shivaraj V. Patil.

JUDGMENT:

D. RAJU, J.

Special leave granted.

The respondent herein has joined the service of the State Bank of India in the year 1967 as a Clerk. When he was serving as such in Kurnool Bazar Branch, Kurnool, disciplinary proceedings were initiated against him and he was placed under suspension on 11.7.1975 followed by a charge-sheet issued on 23.10.1975 framing four charges. Since in respect of some of the charges, namely 1, 3 and 4, criminal proceedings were also launched and as a sequel to the acquittal of the respondent by the Criminal Court, which was affirmed by the Appellate Court also, no further inquiry was held in respect of those charges framed in the departmental proceedings. Thereafter, another charge-sheet dated 19.10.1985 was issued against the respondent containing two charges, one of which related to the earlier departmental proceedings. The respondent was placed again under suspension w.e.f. 26.10.1985. When the criminal proceedings, noticed above, relating to the earlier set of charges were pending, the respondent came to be appointed as Head Clerk on 5.4.1983, which subsequently came to be also regularized w.e.f. 25.10.1983. It may be pointed out at this stage that such appointment as Head Clerk came to be made in the light of certain orders passed by the High Court in a writ proceedings and it was so done subject to the condition that the promotion of the respondent would be subject to the result of the domestic inquiry and also the appeal against the acquittal, which was at that time pending before the Court.

While matters stood thus, the departmental inquiry was held into the two charges, which read as follows:-

"1. It is alleged that you have surreptitiously taken into your possession the draft bearing No.BB.255680 dated 19.2.1973 for Rs.500/- issued by Kurnool Bazar Branch on Hyderabad in favour of Syed Abdul Quayyum Hussain Sahib and encashed the same on 2.3.1973 by forging the payee's signature.

2. It is further alleged that during March 1981, when you were working as a Clerk in the establishment section, you prepared the establishment register and included unauthorisedly three increments for yourself pertaining to the years 1976 to 1978, the period during which you were under suspension and drawn

the increments although you are not entitled for the same as per the reinstatement order served on you on 6th October, 1978".

The Inquiry Officer held both the charges to have been proved. Thereupon, the Disciplinary Authority, though proposed to inflict the punishment of discharge from the Bank service as provided in Paragraph 521(5)(e) of the Sastry Award read with Paragraph 18.28 of the Desai Award by his Notice dated 17.6.1987, on a consideration of the explanation and taking a lenient view, modified the proposed punishment of discharge from the Bank service into one of Withdrawal of Special Allowance (Head Clerk Allowance) as provided in Paragraph 521(5)(f) of the Sastry Award read with Paragraph 10.28 of Desai Award and passed final orders accordingly on 31.3.1988. The appeal filed by the respondent against the same did not meet with success. Thereupon, Writ Petition No.13011 of 1988 came to be filed to quash the same.

A learned Single Judge of the Andhra Pradesh High Court by his judgment dated 3.12.1992 dismissed the Writ Petition on the view that not only Charge No.2 of the Charges have been held proved, but the same constituted a gross misconduct of serious nature and consequently there was no scope for interference. When the matter was pursued in appeal (Writ Appeal No.256 of 1993), the Division Bench by an order dated 9.10.1996 declined to interfere on the view that the challenge to the quantum of punishment on the ground urged cannot be gone into in the said appeal. The respondent pursued the matter on further appeal before this Court in Civil Appeal No.3842 of 1999 and by an Order dated 16.7.1999 this Court, while allowing the appeal and setting aside the order of the Division Bench, directed restoration of the writ appeal (Writ Appeal No.256 of 1993) to the file of the High Court, to be disposed of afresh on merits. Thereupon, a Division Bench of the High Court by an order dated 8.8.2001, challenged in this appeal, set aside the punishment imposed and directed the Disciplinary Authority to consider the matter afresh for imposing only a minor punishment. The Division Bench though rejected the contention on behalf of the respondent that the act complained of, which was the subject-matter of the second charge held proved, is only a mistake not amounting to misconduct, recording a categorical finding that such an unilateral act of drawal of increments in his own favour, to which he was not entitled to and that too while he was serving as the concerned Head Clerk without any sanction or approval from the competent authority would amount to 'misconduct', concluded at the same time that it did not constitute such a gross misconduct within the meaning of sub-paragraph 4(1) of Para 521 of the Sastry Award and, therefore, the punishment imposed must be held to be not sustainable. It is on such view taken and on the premise that inasmuch as the punishment imposed was as a result of cumulative effect of the findings recorded on both charges that they stood proved, a fresh consideration of the quantum of punishment became necessary.

Aggrieved, the Bank has come on appeal to this Court.

The learned Solicitor General appearing for the appellant-Bank contended that the quantum of punishment cannot be so lightly interfered while exercising jurisdiction under Article 226 of the Constitution of India, the Court having held that the action of the respondent constituted misconduct, as though in exercise of an appellate jurisdiction. It was also contended that the misconduct committed by the respondent would fall within the meaning of the expression 'gross misconduct' as envisaged in Paragraph 521(4) and that the words 'gross misconduct' should be understood or perceived in the context the various acts and omissions on the part of an employee as enumerated therein in contrast with Paragraph 521(6), which defined the expression 'minor misconduct' and consequently there was no justification for the Division Bench to have interfered with the quantum, which itself, according to the learned counsel, was on the linen side.

Per contra, the learned counsel for the respondent, with great vehemence, while inviting at length our attention to the orders of the courts below, the earlier order passed by this Court in the appeal filed by the respondent and the relevant

paragraphs of the Sastry Award and Desai Award, contended that the view taken by the Division Bench is unexceptionable and, therefore, does not call for any interference. It was also urged that the respondent having opted for voluntary retirement under the State Bank of India Voluntary Retirement Scheme and has since retired from the service w.e.f. 31.3.2001 there is hardly any justification to interfere with the order of the Division Bench.

We have carefully considered the submissions of the learned counsel appearing on either side. As rightly urged by the learned counsel for the appellant-Bank, the factum of voluntary retirement will have no impact on the proceedings which would involve and directly affect, having regard to the nature of punishment, pecuniary claims and rights of the parties and keeping in view that the respondent could assert a claim for the recovery of the amounts denied by way of withdrawal of special allowance (Head Clerk allowance), the issue cannot be avoided from being decided.

On the facts specifically found in this case that the respondent while working in the Establishment Section and preparing the Establishment Register got included unauthorisedly three increments for himself pertaining to the years 1976-78, to which he was not legitimately entitled to, without any approval or sanction of the competent authority and on the view arrived at further even by the Division Bench that it is not a mere mistake but really constituted misconduct, it is beyond comprehension as to how the Court could have further proceeded to hold that it is not a gross misconduct. The expression 'gross misconduct' is not to be or could have been viewed or considered in the abstract or as it appeared or appealed to the perception of the Court, at any rate, so far as the case on hand is concerned. Indisputably, the service conditions in this regard are governed by the conduct rules under the Sastry Award and Desai Award and Paragraph 521(4) in particular and in unmistakable terms has laid down as to what the expression 'gross misconduct' shall be meant, by enumerating various instances of commission and omission on the part of an employee. Likewise, Paragraph 521(6) of the Sastry Award also stipulated as to what the expression 'minor misconduct' shall be meant by equally enumerating instances of commission and omission on the part of an employee. In view of such peculiar position governing the rights of parties, the Court was obliged to construe the expression 'gross misconduct' in the context of the definition with particular reference to the various enumerated acts and omissions on the part of an employee. In doing so, it would be useful to advert to at least two of the enumerated aspects, which read as follows:-

"(j) doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss;

(m)/(n) knowingly making a false statement in any document pertaining to or in connection with his employment in the bank."

In contrast, the instances enumerated to define the expression 'minor misconduct' would indicate that they are routine lapses or lapses or acts with no direct adverse financial implications or loss to the assets or pecuniary interests of the Bank claiming and availing of increments to which the respondent was held to be not entitled to and that too without the sanction or approval of the competent authority when he was the dealing person in the Section, cannot be simply glossed over to be viewed not as a gross misconduct without doing violence to the meaning ascribed to the said expression under the Sastry Award, having regard to, at any rate, the enumerated instances such as '(j)' and '(m)/(n)', noticed above. In our view, particularly in the context in which the words 'gross misconduct' has to be construed for this case, the charge held proved would definitely constitute 'gross misconduct' and consequently the discretion vested with the Disciplinary Authority to impose the punishment of its choice to suitably meet the requirements of the case could not be either denied to it or curtailed and interfered with in exercise of jurisdiction under Article 226 of the Constitution of India.

The High Court seems to have overlooked the settled position that in departmental proceedings, insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or Appellate Authority is either impermissible or such that it shocks the conscience of the High Court, it should not normally interfere with the same or substitute its own opinion and either impose some other punishment or penalty or direct the authority to impose a particular nature or category of punishment of its choice. It is for this reason we cannot accord our approval to the view taken by the High Court in disregard of this settled principle. Consequently, the appeal is allowed, the judgment of the Division Bench is set aside and that of the learned Single Judge shall stand restored. No costs.

JUDIS