

A STATE BANK OF MYSORE AND ORS. ETC.

v.

M.C. KRISHNAPPA

(Civil Appeal Nos.5055-5056 of 2011)

B JULY 6, 2011

[AFTAB ALAM AND R.M. LODHA, JJ.]

Service law: Dismissal from service – Employee in officer grade found guilty of misappropriation of funds – Order of removal from service – Reviewing authority modified the punishment and reduced it to demotion to cadre of clerk with a further bar against promotion for a period of seven years – Accepting same, employee rejoined but after expiry of seven years filed writ petition challenging the punishment awarded to him – High Court rejected the contention that the employee could not be put down in the clerks' cadre and his demotion could only be confined to a lower rank in the officer grade itself, however, found that the bar against the promotion for the period of seven years was harsh and set it aside – On appeal, held: It is well settled that punishment is primarily a function of the Management and the courts rarely interfere with the quantum of punishment – In the instant case, the proven charge against the employee was of financial irregularities and of making fraudulent withdrawals deriving pecuniary gain for himself – In a bank an offence of this kind is one of the most serious offences and punishment of removal from service could not be said to be unreasonable or unduly harsh – Reviewing Authority modified the order of punishment and gave him a lighter punishment which was accepted by employee without ado – In those facts, there was no scope for interference with the punishment on a purely subjective view taken by the High Court – Order of the High Court set aside and writ petition by employee dismissed – Judicial review.

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The respondent was employee of the appellant-Bank. He was originally inducted in the service of the appellant-Bank in the clerical cadre but at the material time, by virtue of promotions, he was in the Junior Management Grade Scale-I. He was served with a charge sheet on the ground that he conducted misappropriation of funds of the appellant-Bank. The charges were duly established in a departmental enquiry and the disciplinary authority passed the order of his removal from service. The appellate authority upheld the order of the disciplinary authority. The reviewing authority, however, modified the punishment and reduced it from removal from service to demotion from the cadre of Junior Management Grade Scale-I to the cadre of clerk with a further bar against promotion for a period of seven years.

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The respondent rejoined the service accepting the punishment given to him in terms of the review order. But after the expiry of the period of seven years, he filed a writ petition before the High Court challenging the punishment awarded to him. The Single Judge of the High Court rejected the contention that the respondent could not be put down in the clerks' cadre and his demotion could only be confined to a lower rank in the officer grade itself. However, the Single Judge found that the bar against the promotion for the period of seven years was harsh and set it aside subject to the qualification that the order would not affect the promotion of other employees and their seniority. The appellant-Bank and the respondent filed intra court appeals. The Division Bench of the High Court dismissed both. The instant appeal was filed challenging the order of the High Court.

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Disposing of the appeals, the Court

HELD: It is well settled that punishment is primarily

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A a function of the Management and the courts rarely interfere with the quantum of punishment. In the instant case the proven charge against the respondent was of financial irregularities and of making fraudulent withdrawals deriving pecuniary gain for himself. In a bank
 B an offence of this kind is one of the most serious offences and the disciplinary authority had passed an order of removal against the respondent. In the facts of the case even that punishment could not be said to be unreasonable or unduly harsh. The Reviewing Authority
 C modified the order of punishment and gave him a lighter punishment instead. At that time the respondent accepted it without ado. In those facts there was no scope for interference with the punishment on a purely subjective view taken by the High Court. Therefore, the
 D judgments and orders of the High Court are set aside and the writ petition filed by the respondent is dismissed. The period of seven years during which the bar against the respondent's promotion was operating is long over. In case, after the expiry of the period of the bar the respondent is found fit for promotion in terms of the relevant rules he would undoubtedly be entitled to get it
 E in accordance with law. [Paras 8, 11] [193-G-H; 194-A-D]

Administrator, UT of Dadra & Nagar Haveli v. Gulabhia M. Lad (2010) 5 SCC 775 – relied on.

F Case Law Reference:

(2010) 5 SCC 775 relied on Para 8

G CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5055-5056 of 2011, etc.

From the Judgment & Order dated 19.7.2007 of the High Court of Karnataka at Bangalore in Writ Appeal No. 915 of 2006 (S.RES) and Writ Appeal No. 989 of 2006 (S-RES).

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WITH

Civil Appeal No. 5057 of 2011.

R. Sundaravardhan, Ramesh N. Keshwani, Ram Lal Roy,
S. Nanda Kumar, Satish Kumar, Anjali Chauhan, V.N.
Raghupthay for the appearing parties.

The Judgment of the Court was delivered by

AFTAB ALAM, J.

SLP (CIVIL) NOS.20719-20720 OF 2008

1. Leave granted.

2. The respondent - M.C. Krishnappa is an employee of the appellant - State Bank of Mysore. He was originally inducted in the service of the bank in the clerical cadre but at the material time, by virtue of promotions, he was in the Junior Management Grade Scale-I. He was served with a charge sheet on September 25, 1990. The charges, in brief, were as under:-

“(a) Prepared and passed a withdrawal slip for Rs.10,000/- on 29.05.1989 in the Savings Bank account No.4738 of Smt. Lalithamma despite being aware that there was no sufficient balance in the said account and derived pecuniary gain for himself.

“(b) Caused fraudulent withdrawal of Rs.6,000/- on 02.03.1989 in the Savings Bank account No.941 of Shri N. Narayanappa, without posting the voucher in the said account and to conceal his acts, he had checked the ledgers on the day the voucher was passed.”

3. The charges were duly established in a departmental enquiry following which the disciplinary authority passed the order of his removal from service on February 8, 1993. The respondent made an appeal against the order passed by the disciplinary authority but it was rejected by the appellate

A authority by order dated July 28, 1993. The respondent took the matter before the Reviewing Authority where he was able to partial relief. The Reviewing Authority, by order dated April 2, 1994, modified the respondent's punishment and reduced it from removal from service to demotion from the cadre of Junior Management Grade Scale-I to the cadre of clerk with a further bar against promotion for a period of seven years.

C 4. The respondent rejoined the service, accepting the punishment given to him in terms of the review order. But after the expiry of the period of seven years, he moved the Karnataka High Court, challenging the punishment awarded to him, in Writ Petition No.40666 of 2001 (S-RES) which was partly allowed by judgment and order dated April 21, 2006 passed by a learned single judge of the High Court.

D 5. It was contended on behalf of the respondent that regulation 67(e) of the State Bank of Mysore Officer's Service Regulations, 1979 permitted reduction of rank of an Officer to a lower rank in the Officer Grade itself and the respondent, therefore, could not have been demoted to the cadre of clerks.

E A grievance was also made in regard to the bar against promotion for the period of seven years. The learned single judge noted that the only grievance of the Writ Petitioner (the respondent in this appeal) was in relation to the levy of penalty. He rejected the contention that the Writ Petitioner could not be put down in the clerk's cadre and his demotion could only be confined to a lower rank in the Officer Grade itself. The learned judge, however, felt that the bar against promotion for the period of seven years was quite harsh and in that connection observed as follows:-

G "There is some force in the contention of the learned counsel for the petitioner that total punishment levied on the petitioner is too harsh and disproportionate to the charge levelled against the petitioner.

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Having regard to the nature of charges, I am of the view that the total penalty levied on the petitioner is little more harsh and shocks my conscience. The petitioner having been demoted from the Officer cadre to the cadre of Clerk, must be given an opportunity to improve himself and if he improves, he should be promoted to further higher cadre if he is so entitled. The total bar on any promotion for a period of 7 long years is too harsh and requires to be modified. If the petitioner improves his performance, his integrity and his devotion to work in the cadre of Clerk, he should not be denied further promotion from that cadre.”

6. Having taken the view as appearing from the above, the single judge set aside the bar of promotion against the respondent for the period of seven years subject to the qualification, however, that the order will not affect the promotion of other employees and their seniority.

7. Against the judgment and order passed by the single judge both, the appellant (the bank) and the respondent, preferred intra-court appeals. A Division Bench of the High Court, however, dismissed both, Writ Appeal No.915 of 2006(S-RES) (filed by the respondent – Writ Petitioner) and Writ Appeal No.989 of 2006(S-RES) (filed by the appellants) by judgment and order dated July 19, 2007. The Division Bench did not find any illegality in the order passed by the single judge and rather agreed with the view taken by him that the punishment barring promotion for seven years was too harsh and that it required to be set aside.

8. We are unable to agree with the view taken by the High Court. It is well settled that punishment is primarily a function of the Management and the courts rarely interfere with the quantum of punishment. (See: *Administrator, UT of Dadra & Nagar Haveli v. Gulabhia M. Lad* (2010) 5 SCC 775; paragraphs 9 and 14).

9. In this case the proven charge against the respondent

- A was of financial irregularities and of making fraudulent withdrawals deriving pecuniary gain for himself. In a bank an offence of this kind is one of the most serious offences and the disciplinary authority had passed an order of removal against the respondent. In the facts of the case even that punishment
- B could not be said to be unreasonable or unduly harsh. The Reviewing Authority modified the order of punishment and gave him a lighter punishment instead. At that time the respondent accepted it without ado. In those facts we fail to see any scope for interference with the punishment on a purely subjective view
- C taken by the High Court.

10. We are, therefore, constrained to interfere in the matter. The judgments and orders of the High Court are set aside and the Writ Petition filed by the respondent is dismissed. The appeals arising out of SLP (Civil) Nos. 20719-20720 of
- D 2008 are, accordingly, allowed.

11. It is made clear that the period of seven years during which the bar against the respondent's promotion was operating is long over. In case, after the expiry of the period of the bar
- E the respondent is found fit for promotion in terms of the relevant rules he would undoubtedly be entitled to get it in accordance with law.

SLP (CIVIL) NO.15378 OF 2009

- F 12. Delay condoned.

13. Leave granted.

14. In view of the order passed in civil appeals arising out of SLP(C) Nos.20719-20720 of 2008, this appeal stands
- G dismissed.

D.G.

Appeals disposed of.