

A DEPUTY COMMISSIONER, KVS & ORS.

v.

J. HUSSAIN

(Civil Appeal No. 8948 of 2013)

B OCTOBER 4, 2013

[SUDHANSU JYOTI MUKHOPADHAYA AND
A.K.SIKRI, JJ.]

C SERVICE LAW:

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Misconduct - Dismissal from service - Appellant, in drunken state, forcibly entering into office of Principal - High Court substituting the order of dismissal by withholding of two increments without cumulative effect - Held: When the charge is proved, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed - If appellate authority is of the opinion that the case warrants lesser penalty, it can reduce the penalty imposed by Disciplinary Authority - However, such a power is ordinarily not available to court/ tribunal - Where it is found that punishment is disproportionate to the nature of charge, court can only refer matter back to disciplinary authority to take appropriate view by imposing lesser punishment, rather than directing itself the exact nature of penalty -- Judgment of High Court is set aside and that of Tribunal restored, upholding the punishment of removal of respondent from service.

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Punishment - Judicial review - Held: Court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of facts - In exercise of power of judicial review, court can interfere with the punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic - Entering the school premises in working hours in an inebriated condition and thereafter forcibly entering into Principal's room would

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constitute a serious misconduct - Penalty of removal for such a misconduct cannot be treated as disproportionate - Constitution of India, 1950 - Art.14. A

Dismissal of the appellant, an UDC, in a Kendriya Vidyalaya, was upheld by the Central Administrative Tribunal, as his misconduct in forcibly entering into the office of the Principal in drunken state in duty hours was found proved. However, the High Court, in writ petition, substituted the punishment by withholding two increments without cumulative effect. B

In the instant appeal filed by the School, the question for consideration before the High Court was: whether the penalty of removal from service inflicted upon the respondent by the appellant-school was "disproportionate to the gravity of the misconduct to the extent that it shocks the conscience of the Court and is to be treated so arbitrary as to term it as violative of Art. 14 of the Constitution". C D

Allowing the appeal, the Court E

HELD: 1.1 When the charge is proved, as happened in the instant case, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. Of course, this discretion has to be examined objectively keeping in mind the nature and gravity of charge. The disciplinary authority is to decide a particular penalty specified in the relevant Rules. Several factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties and responsibilities assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist. The order of the appellate authority while having a re-look H

A of 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
 B 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. In exercise of power of
 C judicial review 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 punishment is shockingly disproportionate,
 suggesting lack of good faith. Otherwise, merely because
 D 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. [Para
 6] [905-C-H; 906-A-B]

E 1.2 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 *Wednesbury Rule* of reasonableness, only
 F 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. [Para 7] [906-C-D]

G *Ranjit Thakur vs. Union of India* 1988 (1) SCR 512 =
 (1987) 4 SCC 611 - referred to

H 1.3 In the instant case, the High Court has committed
 an error while holding that the punishment was shocking

and arbitrary. Moreover, while interfering therewith, the High Court has itself prescribed the punishment which, according to it, "would meet the ends of justice", little realizing that the court cannot act as a disciplinary authority and impose a particular penalty. Even in those cases where it is found that the punishment is disproportionate to the nature of charge, the court can only refer the matter back to the disciplinary authority to take appropriate view by imposing lesser punishment, rather than directing itself the exact nature of penalty in a given case. [Para 9] [907-E-G]

1.4 The High Court has totally downplayed the seriousness of misconduct. It was a case where the respondent had gone to the place of work in a fully drunken state, which would itself be a serious act of misconduct. What compounds the gravity of delinquency is that the place of work is not any commercial establishment but a school where even a singular act of this nature would have serious implications. Further, the respondent had barged into the office of the Principal, which would, obviously, be a case of forcible entry. There is no explanation of this behavior on the part of the respondent in his reply. Penalty of removal for such a serious misconduct cannot be treated as disproportionate. It does not seem to be unreasonable and does not shock the conscience of the court. It does not appear to be excessive either. Merely because in the opinion of the court lesser punishment could have been more justified, cannot be a reason to interfere with the said penalty. In all cases dealing with the penalty of removal, dismissal or compulsory retirements, hardship would result. That cannot a ground for the court to interdict with the penalty. Courts should not be guided by misplaced sympathy or continuity ground, as a factor in judicial review while examining the quantum of punishment. [Para 10-12] [907-H; 908-A-H; 909-C-E; 910-C]

- A *H.G.E.Trust & Anr. vs. State of Karnataka & Ors.* 2005 (5) Suppl. SCR 937 = (2006) 1 SCC 430; *Karnataka Bank Ltd. Vs. A.L.Mohan Rao* (2006) 1 SCC 63; *Ex-Constable Ramvir Singh vs. Union of India & Ors.* 2008 (17) SCR 1112 = (2009) 3 SCC 97; and *Charanjit Lamba vs. Commanding Officer* 2010 (7) SCR 820 = (2010) 11 SCC 314 - relied on.

C 1.5 In the instant case, it cannot be imputed that the departmental authorities while imposing the punishment acted in a manner which manifests lack of reasonableness or fairness. The judgment of the High Court is set aside and that of the Tribunal restored, upholding the punishment of removal of the respondent from service. [Para 12 and 14] [910-A, G]

Case Law Reference:

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|---|-------------------------|-------------|---------|
| D | 1988 (1) SCR 512 | referred to | Para 8 |
| | 2005 (5) Suppl. SCR 937 | relied on | Para 11 |
| | (2006) 1 SCC 63 | relied on | Para 12 |
| E | 2008 (17) SCR 1112 | relied on | Para 13 |
| | 2010 (7) SCR 820 | relied on | Para 13 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8948 of 2013.

F From the Judgment and Order dated 20.04.2006 of the High Court of Judicature at Bilaspur (C.G.) in W.P. No. 162 of 2004.

G S. Rajappa for the Appellant.

M.K. Choudhary, Namita Choudhary, Yudhister Bhardwaj, S.K. Verma for the Respondent.

The Judgment of the Court was delivered by

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A.K. SIKRI, J. 1. Leave granted.

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2. The respondent herein was served with a charge memo dated 2/3rd August 2000 under the provisions of Rule 14 of the Central Civil Services (CCA) Rules, 1965 and Rule 20 of the Central Civil Services (Conduct) Rules 1964. Primary allegation against him was that he had forcibly entered into the office of Principal of Kendriya Vidyalaya Sangathan, Tura in the State of Meghalaya, where he was posted and working as Upper Division Clerk. It was on 24.5.2000 at around 11.30 a.m. The respondent was in a fully drunken state.

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The respondent in his reply admitted the incident, namely he entered the office of the Principal in that condition. However, according to him, he did not enter the office of the Principal forcibly. The respondent also offered his unconditional apology for consumption of alcohol and requested the Disciplinary Authority to take a sympathetic view of the matter and pardon him. The Disciplinary Authority went through the reply. Since the respondent had admitted the charge, it was felt that in view thereof, no regular enquiry was needed and on the basis of admission, the orders dated 31st August 2000 were passed, imposing the penalty of 'removal' from the service for the said misconduct. Departmental Appeal filed by the respondent was also dismissed by the Appellate Authority. The respondent knocked the Judicial Forum challenging both the orders passed by Disciplinary as well as Appellate Authority. He first approached the Central Administrative Tribunal. The Tribunal, however, dismissed his petition. Against the order of the Tribunal, the respondent filed Writ Petition. This time he succeeded in his effort inasmuch as by the impugned judgment, the High Court has found the penalty of removal from service to be disproportionate to the nature and gravity of his misconduct. Thus, invoking the doctrine of proportionality, the High Court has directed reinstatement of the respondent into service with continuity of service only for the purpose of pensionary benefits. It is, further, directed that the respondent would not be entitled to two annual increments without any

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A cumulative effect and no back wages for the intervening period shall be admissible to him. According to the High Court, the aforesaid penalty, instead of removal, would meet the ends of justice. It is in these circumstances, the appellant-school has approached this Court questioning the reasoning and rationale of the direction given by the High Court.

3. In the aforesaid backdrop, the only question to be examined in these proceedings is as to whether the penalty of removal from service inflicted upon the respondent herein by the appellant-school offends the principle of proportionality i.e. whether the penalty is disproportionate to the gravity of the misconduct to the extent that it shocks the conscience of the Court and is to be treated so arbitrary so as to term it as violative of Article 14 of the Constitution?

4. The parties are not at cudgels in so far as facts are concerned and in such a scenario we have to examine the nature of misconduct imputed to the respondent in the charge memorandum and then apply the principle of proportionality thereto. The sole article of charge was that the respondent, on 24th May 2000 in duty hours, entered forcibly in the Principal's office in duty hours at 11.30 a.m. in fully drunken alcohol state. The statement of imputation of the said misconduct/misbehavior annexed with the charge sheet as Annexure II reads as under:

"That the said Md. J.Hussain, while functioning as UDC reported at Kendriya Vidyalaya, Tura on 24th May 2000 in duty hours and entered forcibly in the Principal's Office at around 11.30 a.m. in fully drunken alcohol state. He was beyond the control. It was complaint to the police beat office Araimile, New Tura, by the Principal vide her letter dated 24.5.2000. The Police Authority escorted Md.J.Hussain to the Tura Civil hospital for Medical examination under Ref.No.Araimile B.H./GDE No.316 dated 24.5.2000 as mentioned by in-Charge Araimile B.H., Tura letter dated 28.5.2000. The consumption of alcohol by Md.J.Hussain was confirmed by the Senior Medical &

Health Officer, Tura Civil Hospital, vide his certificate TCH A
Ref. No.E.2806/2000 dated 24.5.2000.

Thus Md.J.Hussain, UDC, has committed a serious
misconduct and violated rule 3(1) (i) (ii) & (iii) of CCS
(Conduct) Rules 1964 as extended to the employees of B
Kendriya Vidyalaya Sangathan."

5. As pointed out above in his reply, the respondent
accepted the charge, though he insisted that it was not a case
of forcibly entry. It would also pertinent to add that immediately
after the incident police was called and respondent was C
medically examined as well. The medical examination
confirmed that the respondent was under the influence of liquor.

6. When the charge proved, as happened in the instance
case, it is the disciplinary authority with whom lies the discretion
to decide as to what kind of punishment is to be imposed. Of D
course, this discretion has to be examined objectively keeping
in mind the nature and gravity of charge. The Disciplinary
Authority is to decide a particular penalty specified in the
relevant Rules. Host of factors go into the decision making while E
exercising such a discretion which include, apart from the nature
and gravity of misconduct, past conduct, nature of duties
assigned to the delinquent, responsibility of duties assigned to
the delinquent, previous penalty, if any, and the discipline
required to be maintained in department or establishment F
where he works, as well as extenuating circumstances, if any
exist. The order of the Appellate Authority while having a re-
look of 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 G
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: *Union Territory of Dadra* H

A & *Nagar Haveli vs. Gulabhia M.Lad* (2010) 5 SCC 775) 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
 B is available only when 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.

C 7. 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
 doctrine of *Wednesbury Rule* of reasonableness, only when in
 D 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*
 E *Civil Service Unions vs. Minister for Civil Service* in the
 following words:

"Judicial review has I think developed to a stage today
 when, without reiterating any analysis of the steps by which
 F the development has come about, one can conveniently
 classify under three heads of the grounds on 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
 G 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."

H 8. Imprimatur to the aforesaid principle was accorded by
 this Court as well, in *Ranjit Thakur vs. Union of India* (1987)

4 SCC 611. Speaking for the Court, Justice Venkatachaliah (as he then was) emphasizing that "all powers have legal limits" invokes the aforesaid doctrine in the following words: A

"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 recognized grounds of judicial review." B C D

9. To be fair to the High Court, we may mention that it was conscious of the narrowed scope of the doctrine of proportionality as a tool of judicial review and has stated so while giving lucid description of this principle in the impugned judgment. However, we are of the view that it is the application of this principle on the facts of this case where the High Court has committed an error while holding that the punishment was shocking and arbitrary. Moreover, while interfering therewith, the High Court has itself prescribed the punishment which, according to it, "would meet the ends of justice", little realizing that the Court cannot act a disciplinary authority and impose a particular penalty. Even in those cases where it is found that the punishment is disproportionate to the nature of charge, the Court can only refer the matter back to the Disciplinary Authority to take appropriate view by imposing lesser punishment, rather than directing itself the exact nature of penalty in a given case. E F G

10. Here in the given case, we find that the High Court has totally downplayed the seriousness of misconduct. It was a case H

A where the respondent employee had gone to the place of work in a fully drunken state. Going to the place of work under the influence of alcohol during working hours (it was 11.30 a.m.) would itself be a serious act of misconduct. What compounds the gravity of delinquency is that the place of work is not any commercial establishment but a school i.e. temple of learning.

B The High Court has glossed over and trivialized the aforesaid aspect by simply stating that the respondent was not a "habitual drunkard" and it is not the case of the management that he used to come to the school in a drunken state "regularly or quite often".

C Even a singular act of this nature would have serious implications. There is another pertinent aspect also which cannot be lost sight of. The respondent had barged into the office of the Principal. As per the respondent's explanation, he had gone to the market and his friends offered him drinks which he consumed. It was a new experience for him. Therefore, he felt drowsiness immediately after consumption of alcohol and while returning home, he remembered that he had left some articles in the school premises and therefore he had gone to school premises to pick up those left out articles belonging to him.

D If the respondent was feeling drowsiness as claimed by him where was the occasion for him to go to the school in that condition? Moreover, if he had left some articles in the school premises and had visited the school only to pick up those articles, what prompted him to enter the office of the Principal? There is no explanation of this behavior on the part of the respondent in his reply. It would, obviously, be a case of forcible entry as it is nowhere pleaded that the Principal asked him to come to his room or he had gone to the room of the Principal with his permission or for any specific purpose.

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G 11. Thus, in our view entering the school premises in working hours i.e. 11.30 a.m. in an inebriated condition and thereafter forcibly entering into the Principal's room would constitute a serious misconduct. Penalty of removal for such a misconduct cannot be treated as disproportionate. It does not seem to be unreasonable and does not shock the conscience of the Court. Though it does not appear to be excessive either,

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but even if it were to be so, merely because the Court feels that penalty should have been lighter than the one imposed, by itself is not a ground to interfere with the discretion of the disciplinary authorities. The penalty should not only be excessive but disproportionate as well, that too the extent that it shocks the conscience of the Court and the Court is forced to find it as totally unreasonable and arbitrary thereby offending the provision of Article 14 of the Constitution. It is stated at the cost of the repetition that discretion lies with the disciplinary/ appellate authority to impose a particular penalty keeping in view the nature and gravity of charge. Once, it is found that the penalty is not shockingly disproportionate, merely because in the opinion of the Court lesser punishment could have been more justified, cannot be a reason to interfere with the said penalty. The High Court has also mentioned in the impugned order that the respondent is a married man with family consisting of number of dependents and is suffering hardship because of the said "economic capital punishment". However, such mitigating circumstances are to be looked into by the departmental authorities. It was not even pleaded before them and is an after effect of the penalty. In all cases dealing with the penalty of removal, dismissal or compulsory retirements, hardship would result. That would not mean that in a given case punishment of removal can be discarded by the Court. That cannot a ground for the Court to interdict with the penalty.

This is specifically held by this Court in *H.G.E.Trust & Anr. vs. State of Karnataka & Ors.* (2006) 1 SCC 430 in the following words:

"A person, when dismissed from service, is put to a great hardship but that would not mean that a grave misconduct should go unpunished. Although the doctrine of proportionality may be applicable in such matter, but a punishment of dismissal from service for such a misconduct cannot be said to be unheard of. Maintenance of discipline of an institution is equally important. Keeping the aforementioned principles in view, we may hereinafter

A notice a few recent decisions of this Court."

12. In the present case, it cannot be imputed that the departmental authorities while imposing the punishment acted in a manner which manifests lack of reasonableness or fairness. In *Karnataka Bank Ltd. Vs. A.L.Mohan Rao* (2006) 1 SCC 63, charge against the delinquent employee was that he had colluded with one of the Branch Managers and enabled grant of fictitious loan. The High Court interfered with the punishment of dismissal and ordered reinstatement on sympathetic ground even when he found misconduct was proved. This Court reversed the judgment of the High Court. Repeatedly this Court has emphasized the courts should not be guided by misplaced sympathy or continuity ground, as a factor in judicial review while examining the quantum of punishment.

13. We would like to refer the case of the *Ex-Constable Ramvir Singh vs. Union of India & Ors.* (2009) 3 SCC 97as well. The appellant in that case was working as a Constable in the Border Security Force. Penalty of removal from service was imposed upon him on account of his failure to return to place of duty despite instructions given to him and refusal to take food in protest when he was punished and refusal to do pack drill while undergoing rigorous imprisonment. This Court held that the punishment imposed upon him was not disproportionate. In *Charanjit Lamba vs. Commanding Officer* (2010) 11 SCC 314 where the appellant who was holding the rank of Major in the Indian Army had exhibited dishonesty in making a false claim of transport charges of household luggage. It was held that the penalty of dismissal was not disproportionate.

14. For all these reasons, we find the reasoning of the High Court as unacceptable. We, accordingly allow this appeal, set aside the judgment of the High Court and restore the decision of the Tribunal thereby upholding the punishment of removal of the respondent from service. No costs.

H R.P.

Appeal allowed.