

(2015) 1 S.C.R. 1

DIWAN SINGH

v.

LIFE INSURANCE CORPORATION OF INDIA AND

OTHERS

(Civil Appeal No, 3655 of 2010) JANUARY 5, 2015

[VIKRAMAJIT SEN AND PRAFULLA C. PANT, JJ.]

Service Law: Compulsory retirement — Misappropriation of funds — Deposit of Rs.533 by policy holder with the appellant-cashier on 13.8.1990 but the amount not deposited with LIC - Temporary embezzlement of Rs. 533/- for the period 13.08.1990 to 27.11.1990 and forging entry of Rs. 533/- in the carbon copy of ledger sheet dated 13.08.1990 by the cashier - Order of removal from service — High Court substituting punishment of compulsory retirement in place of removal from service — On appeal, held: In view of nature of charge of which the cashier was found guilty, the punishment of compulsory retirement cannot be said to be harsh and disproportionate — In such matters, no sympathy can be shown by the courts.

Dismissing the appeal, the Court

HELD: The plea of the appellant was that the amount could not be credited by him on 13.8.1990 as the cash actually paid by the policy holder on that day was short and, as such the act on the part of the appellant was bonafide. This explanation was not convincing, as the cashier would not have issued a receipt without counting the cash at the counter. Secondly, had the act on the part of the appellant been bonafide, he would not have made forged entry of Rs. 533/- in the carbon copy of ledger sheet on 13.8.1990 between entry Nos. 12 and 13. As

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such, the finding of the enquiry officer holding the appellant guilty cannot be said to be against the evidence on record. The punishment cannot be said to be harsh or disproportionate to the guilt, in view of the nature of the charge of which the appellant is found guilty in the present case. In such matters no sympathy should be shown by the Courts. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant. [Paras 5, 6, 7 and 11] [4-G; 5-A-B, D; 7-B]

Divisional Controller, N.E.K.R.T.C v. M. Amaresh (2006) 6 SCC 187: 2006 (3) Suppl. SCR 585; Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane (2005) 3 SCC 254;

Niranjan Hemchandra Sashittal and Anr. v. State of Maharashtra (2013) 4 SCC 642:2013 (4) SCR 767; Rajasthan State Road Transport Corporation and Anr. v. Bajrang Lal (2014) 4 SCC 693: 2014 (3) SCR 782 ; Municipal Committee, Bahadurgarh v. Krishnan Behar and Ors. (1996) 2 SCC 714:1996 (2) SCR 827 - relied on.

Case Law Reference :

2006 (3) Suppl. SCR 585 Relied on Para 8

(2005) 3 SCC 254 Relied on Para 9

2013 (4) SCR 767 Relied on Para 10

2014 (3) SCR 782 Relied on Para 11

1996 (2) SCR 827 Relied on Para 11

CIVIL APPELLATE JURISDICTION : Civil Appeal No.

3655 of 2010.

From the Judgment and Order dated 27-08-2009 of the High Court of Judicature at Allahabad in Special Appeal No. 1167 of 1999.

Gaurav Agrawal for the Appellant.

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OF INDIA

Kailash Vasdev, A.V. Rangam, Buddy A. Ranganadhan for the Respondenis.

The Judgment of the Court was delivered by

PRAFULLA C: PANT, J. 1. This appeal is directed against judgment and order dated 27.8.2009, passed by the High Court of Judicature at Allahabad, in Special Appeal No. 1167 of 1999, whereby said Court has partly allowed the appeal, and substituted the punishment of removal awarded to the appellant, by compulsory retirement from service.

2. We have heard learned counsel for the parties and perused the papers on record.

3. Briefly stated, the facts are that the appellant was a cashier with Life Insurance Corporation of India (hereinafter referred to as “LIC”) and posted at Bilaspur, District Rampur in U.P. A policy holder, Bhograj Singh, deposited with the appellant an amount of Rs.533/- towards half yearly insurance premium on 13.8.1990 but the same was not deposited with LIC nor credited in the account of the policy holder till 27.11.1990, though a receipt was issued on 13.8.1990 by the appellant. It appears that when the LIC agent did not get his commission out of the premium deposited, and made enquiries in this regard, aforesaid amount of Rs.533/- was shown deposited by the appellant with late fee of Rs.15.90/-, and entry was made in the cash register on 28.11.1990. Also, a forged entry was made in ledger sheet on back date. In connection with the above misconduct on the part of the appellant, a charge- sheet was served on him on 29.4.1991 on two counts, namely, temporary embezzlement of Rs.533/- for the period 13.8.1990 to 27.11.1990, and forging entry of Rs.533/- in the carbon copy of the ledger sheet dated 13.8.1990 between entry Nos. 12 and 13. On conclusion of the departmental enquiry, the appellant was found guilty, and served with copy of enquiry report, whereafter he was removed from service vide order dated 21.1.1992. The departmental appeal appears to have been

dismissed by the authority concerned on 22.2.1992.

4. Challenging the order of removal from service and that of the appellate authority, the appellant filed Civil Miscellaneous Writ Petition No. 10308 of 1999 before the High Court which was allowed by the learned Single Judge on 6.9.1999. Aggrieved by said order of the learned Single Judge, Special Appeal was filed before Division Bench of the High Court, by the employer (i.e. — L.I.C.). The Division Bench, after hearing the parties, came to the conclusion that the appellant appears to have committed the forgery to cover his mistake, and partly allowed the appeal by substituting punishment of compulsory retirement in place of removal from service. The appellant- employee has challenged the order of the Division Bench of the High Court by way of Special Leave Petition mainly on the ground that the punishment of compulsory retirement is disproportionate, unreasonable and harsh. Leave was granted by this Court on 19.4.2010.

5. Mr. Gaurav Agrawal, learned counsel for the appellant, drew our attention to Rule 23 of Life Insurance Corporation of India (Employees) Pension Rules, 1995, which reads as under:-

“23. Forfeiture of service. — Resignation or dismissal or

removal or termination or compulsory retirement of an

employee from the service of the Corporation shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.”

It is argued by learned counsel for the appellant that it is a case of temporary embezzlement of a small amount, as such awarding minor punishment of stoppage of increment etc. would have met the ends of justice. It is also submitted before us that the amount could not be credited by the appellant on 13.8.1990 as the cash actually paid by the policy holder on that day was short, as such the act on the part of the appellant was bonafide.

6. We have given thoughtful consideration to the above

argument advanced on behalf of the appellant. The explanation put forth does not appear to be convincing, as the cashier would not have issued a receipt without counting the cash at the counter. Secondly, had the act on the part of the appellant been bonafide, he would not have made forged entry of Rs.533/- in the carbon copy of ledger sheet on 13.8.1990 between entry Nos. 12 and 13. As such, the finding of the enquiry officer holding the appellant guilty, in our opinion, cannot be said to be against the evidence on record.

7. As far as argument relating to quantum of punishment, as modified by the High Court, which results in consequential forfeiture of pensionary benefits in view of Rule 23, quoted above, is concerned, we do not find the punishment to be harsh or disproportionate to the guilt, in view of the nature of the charge of which the appellant is found guilty in the present case. Time and again, this Court has consistently held that in such matters no sympathy should be shown by the Courts.

8. In Divisional Controller, N.E.K.R.T.C v. M. Amaresh', this Court, in para 18 of the judgment has expressed the views on this point as under:

“in the instant case, the misappropriation of the funds by

the delinquent employee was only Rs 360.95. This Court

has considered the punishment that may be awarded to the delinquent employees who misappropriated the funds of the Corporation and the factors to be considered. This

Court in a catena of judgments held that the loss of

confidence is the primary factor and not the amount of

money misappropriated and that the sympathy or

generosity cannot be a factor which is impermissible in

law. When an employee is found guilty of pilferage or of

misappropriating the Corporation's funds, there is nothing

wrong in the Corporation losing confidence or faith in such

an employee and awarding punishment of dismissal. In 1. (2006)6 SCC 187.

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such cases, there is no place for generosity or misplaced sympathy on the part of the judicial forums and interfering therefore with the quantum of punishment.....". 9. In Divisional Controller, KSRTC (NWKRTC) v. A.T.

Mane? in which unaccounted amount was only Rs.93/- this

Court expressed its opinion in para 12 as under:

"Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal'.

10. In Niranjana Hemchandra Sashittal and another v. State of Maharashtra', this Court has made following observations in paragraph 25 of the judgment: -

".... In the present day scenario, corruption has been treated to have the potentiality of corroding the marrows of the economy. There are cases where the amount is small, and in certain cases, it is extremely high. The gravity of the offence in such a case, in our considered opinion, is not to be adjudged on the bedrock of the quantum of bribe. An attitude to abuse the official position to extend favour in lieu of benefit is a crime against the collective and an anathema to the basic tenets of democracy, for it erodes the faith of the people in the system. It creates an incurable concavity in the Rule of Law...."

2. (2005) 3 SCC 254.

3. (2013) 4 SCC 642

4, (2014) 4 SCC 693

5. (1996) 2 SCC 714

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11. In Rajasthan State Road Transport Corporation and another v. Bajrang Lai, this Court, following the case of Municipal Committee, Bahadurgarh v. Krishnan Behari and others', has opined that in cases involving corruption there cannot be any other punishment than dismissal. It has been further held that any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant. In said case (Rajasthan SRTC), the respondent/employee was awarded punishment of removal from service. in the present case it is compulsory retirement. Learned counsel for respondents submitted that on earlier occasion, appellant was awarded minor punishment, for his misconduct, regarding defalcation of stamps. And now he is found guilty for the second time.

12. Therefore, in the above circumstances in view of the law laid down by this Court, as above, we are not inclined to interfere with the impugned order passed by the High Court. Accordingly, the appeal is dismissed with no order as to costs. Devika Gujral Appeal dismissed.