Deputy Commissioner,Kvs & Ors vs J.Hussain on 4 October, 2013

Equivalent citations: 2013 AIR SCW 5830, 2013 (10) SCC 106, 2013 (6) ABR 758, (2013) 4 JCR 423 (SC), (2014) 1 SERVLJ 226, (2013) 4 SCT 746, (2013) 6 SERVLR 351, (2014) 3 ESC 297, (2014) 1 CURLR 236, (2014) 140 FACLR 463, (2013) 12 SCALE 416, (2014) 1 CAL HN 23, 2014 (7) ADJ 58 NOC, AIR 2014 SUPREME COURT 766, 2013 LAB. I. C. 4548, (2013) 5 LAB LN 401, (2014) 2 RAJ LW 1783, 2013 (4) KLT SN 155 (SC)

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Bench: A.K.Sikri, Sudhansu Jyoti Mukhopadhaya

[REPORTABLE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8948/2013
(arising out of the SLP (Civil) No. 18271 of 2006)

Deputy Commissioner, KVS & Ors. ….Appellants

Vs.

J.Hussain ….Respondent

J U D G M E N T

A.K.SIKRI,J.

1. Leave granted.

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 Vidayala Sangthan, 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. -

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 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 Artice 14 of the Constitution?

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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 Vidalaya, 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 Ref. No.E.2806/2000 dated 24.5.2000.

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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 Kendriya Vidalaya 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 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 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 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 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 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 & 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 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.

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 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 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 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 -
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> "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."

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:

> "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."

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.

10. Here in the given case, we find that the High Court has totally downplayed the seriousness of misconduct. It was a case 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. 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". 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. 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 no where 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.

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, 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 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.

……J. (Sudhansu Jyoti Mukhopadhaya) ……J. (A.K.Sikri) New Delhi, October 4, 2013