NON - REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7717 OF 2014
(arising out of Special Leave Petition (Civil) No. 39113 of 2013)

THE LIFE INSURANCE CORPORATION
OF INDIA & OTHERS .....APPELLANT(S)

VERSUS

S. VASANTHI .....RESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

Leave granted.

2) This appeal is preferred against the final judgment and order dated June 26, 2013 in Writ Appeal No. 1279 of 2010 passed by the High Court of Judicature at Madras whereby the Division Bench of the High Court has modified the punishment imposed by the disciplinary authority of appellant No.1, i.e. Life Insurance Corporation of India (hereinafter referred to as the 'LIC') on the respondent employee in a departmental enquiry.

3) Insofar as facts are concerned, it is sufficient to note that a charge-sheet was served upon the respondent with the

allegations of tampering with the premium position and other records pertaining to 17 insurance policies, which resulted in settlement of surrender value payments, though these policies had not acquired surrender value. It was alleged in the charge-sheet that by this act of the respondent, pecuniary loss was caused to the LIC. These charges stood proved in the enquiry held against the respondent by the Enquiry Officer vide Report dated December 23, 1997. Based on the said Report, the disciplinary authority issued show-cause notice to the respondent proposing the following punishment:

(i) Recovery of loss to the Corporation of Rs.16,001.90, and

(ii) Reduction in Basic Pay to the lowest time scale (i.e.) Rs.1950/-.

4) The respondent submitted her reply to the said show-cause notice. After going through the same, the Divisional Manager, as disciplinary authority, passed orders dated December 30, 1998 accepting the findings of the Enquiry Officer and imposing the punishment as proposed in the show-cause notice. Appeal of the respondent preferred thereagainst was dismissed by the appellate authority. The respondent filed a Memorial before the Chairman of the LIC, which was also rejeged vide orders dated September

25, 2000.

5) At this stage, the respondent took recourse to judicial proceedings by filing the writ petition in the High Court of Judicature at Madras. This writ petition was dismissed by the learned Single Judge of the High Court, who not only held that a proper enquiry was conducted in consonance with the principles of natural justice as well as the extant rules, but even the punishment imposed by the disciplinary authority was justified and upheld the same. Being aggrieved, the respondent preferred writ appeal, which has been decided by the Division Bench of the High Court vide impugned judgment dated June 26, 2013. Interestingly, the Division Bench has concurred with the learned Single Judge regarding the guilt of the respondent in tampering of records, which is clear from the following:

> "61. On a careful consideration of respective contentions and in view of the detailed discussions and for the reasons mentioned aforesaid, in the instant case, we hold that the conclusions arrived at by the authorities concerned are based on evidence and on available materials on record. In fact, the Enquiry Officer has submitted a Report dated 23.12.1997, inter alia, holding that the Appellant is clearly guilty of deliberately tampering with the premium position as detailed in the Report. The Divisional Manager (Disciplinary Authority) of L.I.C. of India has passed the final order on 30.12.1998 by imposing the punishment of (i) Recovery of loss to the Corporation of Rs.16,001.90 and (ii) Reduction in Basic Pay to the lowest time scale (i.e.) Rs.1950/-. The Appellate

> Authority also, on 28.10.1999, has confirmed the order of the Disciplinary Authority dated 30.12.1998. Even to the Memorial dated 09.02.2000 submitted by the Appellant/Petitioner, addressed to the 1st Respondent/Chairman of the L.I.C. of India, Mumbai, an order of rejection has been passed on 25.09.2000 finding no merit in the Memorial warranting no interference with the penalties of 'reduction in basic pay to minimum of scale' and 'recovery of financial loss of Rs.16,001.90'. As such, we are in complete agreement in regard to the conclusions arrived at by the authorities concerned that the charges levelled against the Appellant/Petitioner have been proved."

6) However, the Division Bench chose to tinker with the quantum of punishment imposed by the disciplinary authority. Though it upheld the punishment of recovery of loss, the punishment of reduction in pay scale has been set aside and substituted by the punishment of withholding of one increment with cumulative effect for a period of one year as per Regulation 39(1)(b) of the L.I.C. of India (Staff) Regulations, 1960. Discussion on this aspect can be found in paragraph No.62 of the impugned judgment, which reads as under:

> "62. Bearing in mind an important fact that awarding of punishment must suit the offence and offender and also that the said punishment should not be either vindictive or unduly harsh, we are of the considered view that in the present case, for the proved charges against the Appellant/Petitioner (Delinquent Employee), the imposition of penalty viz., recovery of loss to the L.I.C. of India to an extent of Rs.16,001.90 in terms of Regulation 39(1)(c) of L.I.C. of India (Staff) Regulations, 1960 is just

> valid and proper one. However, to secure the ends of Justice, inasmuch as the imposition of 'punishment of reduction in basic pay to the lowest scale pay (i.e.) Rs.1950/-' imposed on the Appellant/Petitioner in terms of Regulation 39(1)(d) of the L.I.C. of India (Staff) Regulations, 1960, is on the higher side, accordingly, we set aside the same and instead we impose a penalty of withholding of one increment with cumulative effect for a period of one year as per Regulation 39(1)(b) of the L.I.C. of India (Staff) Regulations, 1960, by restoring her to the original position at the time of order of punishment dated 30.12.1998. However, we hereby direct the Respondents that the period of service put up by the Appellant/Petitioner in the lowest time scale of pay viz., Rs.1950/- be treated as service in the original post held by her prior to the award of the penalty, subject to the condition that the Appellant/Petitioner shall not be entitled to any difference of salary for and during the period of reduction to the lowest time scale of pay. Consequently, the order passed by the Learned Single Judge dated 26.04.2010,. in dismissing the Writ Petition, is set aside by this Court for the reasons assigned in this Appeal."

7) The respondent has not filed any appeal thereby accepting the judgment of the Division Bench. However, the appellants are aggrieved by the decision of the Division Bench in modifying the punishment, as mentioned above. Therefore, in the instant appeal, we have heard the learned counsel for the parties on this limited aspect as that is the only scope of the present appeal.

8) It was argued by the learned counsel for the appellants that it was not open to the High Court to modify the penalty of reduction in pay scale to the lowest scale of pay, that too without giving any

reasons, what to talk of justifiable reasons. His submission was that the High Court, in exercise of judicial review, had very limited jurisdiction to interfere with the quantum of punishment imposed by the disciplinary authority. It could be only in those cases where penalty is found to be shockingly disproportionate to the gravity of charge. He also submitted that it was not within the domain of the High Court to impose a particular penalty and thereby assume to itself the role of disciplinary authority. The leanred counsel submitted that the aforesaid approach of the High Court was directly in conflict with the judgment of this Court in ***Om Kumar*** v. ***Union of India,*** (2001) 2 SCC 386, wherein this Court has held that the question of the quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Admnistrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as 'Wednesbury principles'. This Court, while analyzing the said principles, also observed that in case if the Court felt that the quantum of punishment was disproportionate, then it should remand the matter back to the disciplinary authority instead of modifying the punishment on its own. Relevant passage from the judgment is extracted below:

> "71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to *Wednesbury* principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment."

9) We find sufficient force in the aforesaid submission of the learned counsel for the appellants.

10) We have already reproduced paras 61 and 62 of the impugned judgment of the High Court. After detailed discussion of the various contentions advanced by the respondent here (appellant before the High Court), the High Court repelled all those contentions and in para 61 summed up the position by holding that the respondent herein was very much guilty of deliberately tampering with the premium position as detailed in the report. So much so, it expressed its *'complete agreement'* in regard to the conclusions arrived at by the authorities concerned that the charges levelled against the respondent had been proved. As

noticed above, charges pertain to tampering with the premium position and other records pertaining to 17 insurance policies. It had resulted in pecuniary loss to the LIC as well. Charge of tampering with the record is a very serious charge and it adds to the gravity when it is coupled with financial implications. Even for such a severe charge, the disciplinary authority had inflicted the penalty of reduction in basic pay to the lowest time scale. The High Court has not even stated as to how this penalty was bad in law and simply labelled it to be "harsh" that too with no reasons. While intermeddling with this penalty, the only epithet used is *"to secure the ends of justice"*. In the absence of any exercise undertaken by the High Court that how it perceived such a penalty to be "harsh", there was no reason to interfere with the same. Even otherwise, we do not find such a penalty at all to be shockingly disproportionate having regard to the very serious charge levelled against the respondent.

11) The scope and power of judicial review of the courts while dealing with the validity of quantum of punishment imposed by the disciplinary authority is now well settled. In the case of ***Deputy Commissioner, KVS & Ors.*** v. ***J. Hussain***, (2013) 10 SCC 106, the law on this subject, is recapitulated in the following manner:

"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 "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."

12) We are of the opinion that the High Court transgressed its limits of judicial review by itself assuming the role of sitting as departmental appellate authority, which is not permissible in law. The principles discussed above have been summed up and summarised as follows in the case of ***Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) & Anr.*** v. ***Rajendra Singh***, (2013) 12 SCC 372 :

a) When charge(s) of misconduct is proved in an enquiry, the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

b) The courts cannot assume the function of disciplinary/ departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

c) Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

d) Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges

framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

e) The only exception to the principle stated in para (d) above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authoirty even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equaltiy when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable.

13) Learned counsel for the respondent had no answer to the aforesaid position in law and could not justify the stance of the

High Court in modifying the punishment in the manner indicated above. Therefore, sidetracking the central issue, he made a vain attempt to argue that the charges against the respondent could not be held to be proved as per the records. Obviously, that is not even the issue before us. As mentioned above, there are consistent findings, not only of the departmental authorities, but even the Single Judge as also the Division Bench of the High Court to the effect that charges against the respondent stood established in the departmental enquiry. Thus, it is not permissible for the counsel for the respondent even to argue such a proposition, that too when the respondent did not challenge the judgment rendered by the High Court.

14) As a result, the instant appeal is allowed. That part of the directions contained in para 62 of the impugned judgment which modifies the penalty are hereby set aside and the penalty imposed by the disciplinary authority is hereby restored. There shall, however, be no order as to costs.

.....J.
(J. CHELAMESWAR)

New Delhi;
August 14, 2014.

.....J.
(A.K. SIKRI)