IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JANUARY 2025

PRESENT

THE HON'BLE MR. JUSTICE S. G. PANDIT
AND
THE HON'BLE MR JUSTICE RAMACHANDRA D.HUDDAR

WRIT PETITION NO.20289/2021 (S-KSAT)

BETWEEN:

1. THE STATE OF KARNATAKA
REP. BY ITS SECRETARY
DEPARTMENT OF EDUCATION
M. S. BUILDING
DR. B.R. AMBEDKAR VEEDHI
BENGALURU- 560001.

2. THE KARNATAKA LOKAYUKTHA
REP. BY ITS REGISTRAR
M.S. BUILDING
DR. B.R. AMBEDKAR VEEDHI
BENGALURU- 560001.

... PETITIONERS

(BY SRI. V SHIVAREDDY, AGA)

AND:

SRI A.S. PRABHU
S/O LATE SANNAPUTTACHAR
AGED ABOUT 64 YEARS
WORKING AS SECOND DIVISION ASSISTANT
OFFICE OF THE BLOCK EDUCATION OFFICER
THEERTHAHALLI
SHIVAMOGGA DISTRICT
(NOW UNDER ORDER OF DISMISSAL)

R/AT VEERABHADRESHWARA NILAYA
1ST CROSS, SUBHAS NAGAR
HOSAMANE, BHADRAVATHI
SHIVAMOGGA DISTRICT.

…RESPONDENT
(BY SRI KRISHNAPPA FOR SRI SRINIVASA K.R., ADV.)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS IN APPLICATION NO.7783/2016, ORDER DATED 29.06.2020 ON THE FILE OF THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL, BENGALURU AS PER ANNEXURE-A AND SETTING ASIDE THE IMPUGNED ORDER DATED 29.06.2020 IN APPLICATION NO.7783/2016. ON THE FILE OF THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL, BENGALURU AS PER ANNEXURE-A.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON **08.11.2024** COMING ON THIS DAY, ***S.G.PANDIT J.,*** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE S.G.PANDIT
AND
HON'BLE MR JUSTICE RAMACHANDRA D.HUDDAR

CAV ORDER

(PER: HON'BLE MR JUSTICE S.G.PANDIT)

This writ petition by the State Authorities is directed against the order dated 29.06.2020 in Application No.7783/2016 passed by the Karnataka State Administrative Tribunal at Bengaluru (for short, 'the Tribunal'), by which, the Tribunal modified the

penalty of dismissal from service to that of compulsory retirement for the proved misconduct of demanding and accepting of bribe amount of Rs.20,000/-.

2. Brief facts of the case are that, the respondent was working as Second Division Assistant in Education Department and at the relevant point of time he was working as Block Education Officer, Bhadravathi, a complaint was lodged by one Sri.S.Panchaksharaiah alleging demanding a bribe of Rs.25,000/- for rectifying the mistakes in the Pre-University marks card and on the said complaint, trap was laid against the respondent on 29.04.2010 while receiving while receiving Rs.20,000/- from the complainant as bribe. On the said incident, a departmental enquiry came to be initiated by issuance of articles of charge dated 11.12.2012 (Annexure-A1) and simultaneously charge sheet was also filed in

Spl.Case.No.129/2012 on the file of II Additional District and Sessions Judge, Tumkur (for short, 'Trial Court') for the offence punishable under Sections 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption of Act, 1988 (for short, 'the Act').

3. The second petitioner on completion of the enquiry, submitted report dated 28.05.2015 along with recommendation of the Upa Lokayukta to the first petitioner – State Government. The first petitioner – State issued second show cause notice dated 25.07.2015 enclosing enquiry report as well as recommendation of Upa Lokayukta to the respondent. The respondent submitted his reply to the second show cause notice in terms of Annexure-A7 dated 19.08.2015. Thereafter, first petitioner under order dated 21.07.2016 (Annexure-A8) imposed the penalty of dismissal in exercise of its power under Rule 8(iii) of the Karnataka Civil Services (Classification, Control

and Appeal) Rules, 1957 (for short, 'CCA Rules'). Questioning the said order of dismissal, petitioner was before the Tribunal in Application No.7783/2016. The Tribunal under impugned order dated 29.06.2020 modified the punishment of dismissal to that of compulsory retirement. Against which, petitioners – State Authorities are before this Court in this writ petition.

4. Heard learned Additional Government Advocate Sri.V.Shivareddy for petitioners and learned counsel Sri.Krishnappa for Sri.K.R.Srinivas, learned counsel for respondent. Perused the writ petition papers.

5. Learned Additional Government Advocate would submit that the Tribunal committed grave error in modifying the punishment of dismissal to that of compulsory retirement for the proved misconduct of

demanding and accepting bribe. It is submitted that for proved misconduct of accepting the bribe, proper punishment would be dismissal or removal from service, as held by the Hon'ble Apex Court in catena of decisions. The Tribunal has not come to the conclusion that the charge is not proved. But, however, it felt that punishment of dismissal is harsh and as such modified the punishment of dismissal to that of compulsory retirement, which is impermissible.

6. Further, learned Additional Government Advocate would submit that the Tribunal failed to properly appreciate the judgment of criminal Court dated 29.09.2018 in Spl.Case.No.129/2012 and has wrongly concluded that the judgment of acquittal is not merely based on the absence of reasonable doubt, but based on certain inconsistencies in the evidence. Learned Additional Government Advocate would submit that the standard of proof required in criminal

trial as well as in departmental enquiry stand on a different footing. Hence, the acquittal in criminal case cannot be a base for exonerating respondent in departmental proceedings. Further, learned Additional Government Advocate inviting attention of this Court in the judgment in criminal proceedings which is placed on record during the course of hearing submits that there is no dispute with regard to recovery of tainted amount from the respondent and the criminal Court has acquitted respondent No.1 on the benefit of doubt. As such, learned Additional Government Advocate would submit that the Tribunal committed grave error in placing judgment of the criminal Court to modify the punishment imposed on the respondent.

7. Further, learned Additional Government Advocate invites attention of this Court to the enquiry report and submits that on behalf of the Disciplinary Authority, three witnesses were examined i.e., PW1 –

complainant, PW2 – shadow witness and PW3 – Investigating Officer. The evidence of the witnesses would prove the charge. It is submitted that PW1 has categorically stated that respondent – DGO received Rs.20,000/- from him and the said amount was recovered from the respondent. The hands of respondent were washed in Sodium Carbonate Solution and his hands were turned to pink colour. The evidence of PW2 – Panch witness also supports the Disciplinary Authority wherein he has also stated that the DGO received the amount from the complainant and the amount was recovered from the respondent – DGO, whose hands were washed in Sodium Carbonate Solution and his hands were turned to pink colour. Thus, learned Additional Government Advocate would submit that recovery of amount from the respondent – DGO is sufficient to prove the charge. Moreover, he submits that DGO has not

denied the recovery of amount from him and in his statement i.e., Ex.P5 has stated that the amount was forced on him. Further, it is stated that there is no evidence to substantiate the contention of the respondent – DGO that amount was thrust upon him. Thus, learned Additional Government Advocate would pray for allowing the writ petition and to restore the punishment of dismissal imposed by the State.

8. Per contra, learned counsel Sri.Krishnappa appearing for respondent would support the order passed by the Tribunal and submits that no work of the complainant was pending as on the date of the incident and further he submits that the respondent – DGO had taken a defence that the amount was forced or thrust upon him. Further, learned counsel would submit that mere recovery of amount would not be sufficient to prove the charge, unless the demand and acceptance along with pendency of work would be

necessary. Learned counsel Sri.Krishnappa would further submit that the Tribunal rightly placed reliance on the decision of ***UNION OF INDIA AND OTHERS VS. GYAN CHAND CHATTAR***[1] and reduced the punishment.

9. Learned counsel invites attention of this Court to the judgment dated 29.09.2018 in Spl.Case No.129/2012 and submits that the Tribunal has acquitted the respondent – DGO observing that the prosecution has utterly failed to establish the work pendency, demanding and acceptance of bribe as on the date, time and place of the alleged incident, which needs to be taken note of by this Court. Thus, he would pray for dismissal of the writ petition.

10. Having heard the learned counsel appearing for the parties and on perusal of the writ

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[1] *(2009) 12 SCC 78*

petition papers, the only point which falls for our consideration is as to,

> *"Whether the Tribunal is justified in modifying the punishment of dismissal to that of compulsory retirement in the facts and circumstances of the present case?"*

11. Answer to the above point would be in the negative and the Tribunal is not justified in modifying the punishment of dismissal to that of compulsory retirement, for the following reasons:

12. It is settled position of law that criminal proceedings and departmental enquiry would stand on a different footing. Moreover, the standard of proof required in criminal proceedings would be strict rule of evidence, whereas in departmental proceedings, the charge could be proved on the basis of preponderance of probabilities.

13. The charge against the respondent was that, he demanded bribe amount of Rs.25,000/- and accepted Rs.20,000/- as bribe on 29.04.2010 to correct the mistakes in marks card of Kum.Roopadevi, daughter of complainant Sri.S.Panchaksharaiah. To prove the said charge, the Disciplinary Authority examined three witnesses i.e., PW1 – complainant, PW2 – shadow witness and PW3 – Investigating Officer. The complainant – PW1 has categorically stated that respondent – DGO received Rs.20,000/- bribe amount from him, counted and kept it in his pant pocket. The bribe amount was recovered from the DGO's pant pocket and his hands washed in Sodium Carbonate Solution, which turned to pink colour. PW2 – shadow witness also deposed to the same effect by stating that the DGO received bribe amount of Rs.20,000/- which was recovered from his pant pocket and his hands were turned to pink colour.

14. Ex.P5 is the statement of DGO wherein he has stated that the amount was forced on him and he has admitted that amount was recovered from his possession. But, there is no further explanation for the said recovery and there is no material or evidence to prove that the amount was forced on him. The above evidence would be sufficient to prove the charge against respondent – DGO.

15. This Court under Article 226 of the Constitution of India would not sit as an Appellate Authority and would not examine the sufficiency or otherwise of the evidence. This Court would only examine whether there is some evidence to prove the charge.

16. The Tribunal under impugned order committed grave error in modifying the punishment of dismissal imposed by the petitioners – State

Authorities on the respondent to that of compulsory retirement. As held by the Hon'ble Apex Court in catena of cases, for the proved misconduct of bribe amount, only punishment would be dismissal or removal from service. Unless the Tribunal comes to the conclusion that charge of demanding and accepting bribe amount could not proved, it could not have modified the punishment imposed by the Disciplinary Authority. Placing reliance on the judgment of the Hon'ble Apex Court in ***GYAN CHAND CHATTAR*** (supra) is also misplaced, which decision has been clarified by the Hon'ble Apex Court in subsequent decision in the case of ***STATE OF KARNATAKA AND ANOTHER V/S. UMESH***[2] at paragraphs, 16, 18 and 19, which reads as follows:

> *"16. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution*

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[2] *(2022) 6 SCC 563*

for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities. The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.

17. xxxxxxxxxx

18. In the course of the submissions, the respondents placed reliance on the decision in Union of India v. Gyan Chand Chattar [Union of India v. Gyan Chand Chattar, (2009) 12 SCC 78 : (2010) 1 SCC (L&S) 129] . In that case,

six charges were framed against the respondent. One of the charges was that he demanded a commission of 1% for paying the railway staff. The enquiry officer found all the six charges proved. The disciplinary authority agreed with those findings and imposed the punishment of reversion to a lower rank. Allowing the petition under Article 226 of the Constitution, the High Court observed that there was no evidence to hold that he was guilty of the charge of bribery since the witnesses only said that the motive/reason for not making the payment could be the expectation of a commission amount. The respondent placed reliance on the following passages from the decision : (SCC pp. 85 & 87, paras 21 & 31)

> *"21. Such a serious charge of corruption requires to be proved to the hilt as it brings both civil and criminal consequences upon the employee concerned. He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of quasi-criminal nature was required to be proved beyond the shadow of doubt and to the hilt. It cannot be proved on mere probabilities.*
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> *31. … wherein it has been held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption, the only punishment is dismissal from service. Therefore, the charge of corruption must always be dealt with keeping in mind that it has both civil and criminal consequences."*

19. The observations in para 21 of Gyan Chand Chattar case [Union of India v. Gyan Chand Chattar, (2009) 12 SCC 78 : (2010) 1 SCC (L&S) 129] are not the ratio decidendi of the case. These observations were made while discussing the judgment [Union of India v. Gyan Chand Chattar, 2002 SCC OnLine Guj 548] of the High Court. The ratio of the judgment emerges in the subsequent passages of the judgment, where the test of relevant material and compliance with natural justice as laid down in Rattan Singh [State of Haryana v. Rattan Singh, (1977) 2 SCC 491: 1977 SCC (L&S) 298:(1977)1 SLR 750] was reiterated : (Gyan Chand Chattar case [Union of India v. Gyan Chand Chattar, (2009) 12 SCC 78:(2010) 1 SCC (L&S) 129], SCC p. 88, paras 35-36)

"35. … an enquiry is to be conducted against any person giving strict adherence to

the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges. Enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable, nor the same should be based on conjectures and surmises. There is a distinction in proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact in the context of the statute defining the misconduct.

36. In fact, initiation of the enquiry against the respondent appears to be the outcome of anguish of superior officers as there had been an agitation by the railway staff demanding the payment of pay and allowances and they detained the train illegally and there has been too much hue and cry for several hours on the railway station. The enquiry officer has taken into consideration the non-existing material and failed to consider the relevant material and finding of all facts recorded by him cannot be sustained in the eye of the law."

(emphasis supplied)

On the charge of corruption, the Court observed in the above decision that there was no relevant material to sustain the conviction of the respondent since there was only hearsay evidence where the witnesses assumed that the motive for not paying the railway staff "could be" corruption. Therefore, the standard

that was applied by the Court for determining the validity of the departmental proceedings was whether (i) there was relevant material for arriving at the finding; and (ii) the principles of natural justice were complied with."

17. This Court in W.P.No.1647/2020 dated 01.10.2024 has held that the Court or Tribunal could interfere with the punishment or substitute punishment if it is disproportionate to the proved charge or if it shocks the conscious of the Court.

18. In the instant case, the Tribunal has not come to the conclusion that the charge has not been proved in the departmental enquiry. Unless the Tribunal records a finding that the punishment is disproportionate to the proved charge or records a finding that punishment or penalty shocks the conscious of the Court, the Tribunal would not get jurisdiction to modify or to substitute the punishment.

19. In the light of the reasons recorded above, the following:

ORDER

a) Writ petition is allowed.

b) Order dated 29.06.2020 in Application No.7783/2016 passed by the Tribunal is set aside.

c) Application No.7783/2016 stands rejected.

Sd/-
(S.G.PANDIT)
JUDGE

Sd/-
(RAMACHANDRA D.HUDDAR)
JUDGE

NC
CT: bms