

The Managing Director Vs. Amit Kumar Sinha

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Court : Karnataka

Decided On : Mar-13-2024

Judge : Chief Justice and Krishna S Dixit

Appeal No. : WA 1617/2023

Appellant : The Managing Director

Respondent : Amit Kumar Sinha

Judgement :

- 1 - NC:

2024. KHC:10312-DB WA No.1617 of 2023 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE13H DAY OF MARCH, 2024 PRESENT THE HON'BLE MR. N.V. ANJARIA, CHIEF JUSTICE AND THE HON'BLE MR. JUSTICE KRISHNA S DIXIT WRIT APPEAL No.1617 OF2023(S-RES) BETWEEN:

1. THE MANAGING DIRECTOR HINDUSTAN AERONAUTICS LTD., CORPORATE OFFICE, 15/1, CUBBON ROAD, BENGALURU - 560 001.
2. THE GENERAL MANAGER AERO ENGINE RESEARCH AND DESIGN CENTRE HINDUSTAN AERONAUTICS LTD., POST BAG NO.9310, C.V. RAMAN NAGAR BENGALURU - 560 093.

3. THE DIRECTOR (ENGINEERING AND R AND D) HINDUSTAN AERONAUTICS LTD., P B NO.93/0 C.V. RAMAN NAGAR BENGALURU - 560 093. APPELLANTS (BY SRI PRADEEP S. SAWKAR, ADVOCATE) - 2 - NC:

2024. KHC:10312-DB WA No.1617 of 2023 AND:

1. AMIT KUMAR SINHA S/O MANOJ KUMAR SINHA AGED ABOUT 33 YEARS, R/AT HOUSE NO.4, 6TH CROSS 3D PHASE, RAMANASHREE NAGAR BENGALURU - 560 076. RESPONDENT (BY SRI K.B. NARAYAN SWAMY, ADVOCATE FOR C/R-1) THIS WRIT APPEAL FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE

ORDER

DATED 23.11.2023 PASSED BY THE LEARNED SINGLE JUDGE IN W.P.No.30380/2018. THIS WRIT APPEAL COMING ON FOR PRELIMINARY HEARING THIS DAY, CHIEF JUSTICE DELIVERED THE FOLLOWING:

JUDGMENT

Heard learned advocate Mr. Pradeep S. Sawkar for the appellants and learned advocate Mr. K.B.Narayanswamy for the respondent.

2. The present writ appeal preferred by the appellant-Hindustan Aeronautics Limited-original respondent No.1 under Section 4 of the Karnataka High Court Act, 1961 is directed against the order dated 23.11.2023 passed in Writ Petition No.30380 of 2018, whereby learned Single Judge set aside the order of punishment imposed upon the petitioner-delinquent. It was further provided that - 3 - NC:

2024. KHC:10312-DB WA No.1617 of 2023 the respondents would not be entitled to enforce the terms of security contract and recover the sum of Rs.2,22,757/- and if the amount has already been recovered, it would be required to be refunded to the petitioner.

3. The facts in the background are inter alia that the petitioner, who was serving as an Engineer (Design-ELS) under the respondents, faced the departmental inquiry in respect of the charge of remaining unauthorisedly absent. The charge sheet

indicated that the period of such absence was from 22.09.2016 till 06.01.2017. The petitioner sought to defend himself in the departmental proceedings by taking a stand that he made repeated requests for grant of leave as he was unwell and that due to his indisposed health, he could not report to the duty. 3.1 At the conclusion of the inquiry, the inquiry officer found the delinquent guilty of the charges and punishment of dismissal from service was imposed on the petitioner. The petitioner was treated liable to pay Rs.2,22,757/- to the employer under the terms of service contract.

4. Learned advocate for the appellants, by referring to the findings of the inquiry officer, submitted that not only the absence - 4 - NC:

2024. KHC:10312-DB WA No.1617 of 2023 was unauthorised, the medical certificates subsequently produced by the delinquent to support his leave were not believable and were misleading. It was further submitted that the absence on part of the delinquent continued till the order of punishment was passed against him. 4.1 It was also submitted that although the learned Single Judge took into account the punishment to be of dismissal, he failed to notice that the said punishment of dismissal was subsequently substituted with lesser penalty of simple removal in the departmental appeal preferred by the petitioner. The order passed by the departmental appellate authority dated 01.09.2017 figures on record. The appellate authority has reduced the punishment imposed and observed that removal from service shall not be a disqualification for future employment under the Government or a Corporation/Company owned or controlled by the Government. 4.2 On the other hand, learned advocate for the respondent-delinquent submitted that it was the ailment which prevented him from reporting to duty and that the order of removal would force the petitioner out of his job and would render him without any income.-. 5 - NC:

2024. KHC:10312-DB WA No.1617 of 2023 4.3 What weighed with learned Single Judge was the following reasoning supplied in paragraph 5 of the impugned order, as under, As could be seen from the chargesheet (Annexure-P) the sole charge against the petitioner was that he was unauthorizedly absent from 22.09.2016 till 06.01.2017 i.e., for a period of about four months. The defense of the petitioner

was that he had been sanctioned leave from 06.09.2016 to 21.09.2016 due to back pain and the subsequent requests made by him for grant of medical leave had not been considered and therefore, it would be improper to allege that he was guilty of mis-conduct. The Enquiry Officer has taken note of the fact that the request of the petitioner had not been granted and therefore, his defense could not be accepted and the petitioner was, therefore, guilty of unauthorized absence.

4.3.1 Learned Single Judge took the view that the period of unauthorised absence was only 107 days and therefore, the punishment of dismissal from service would be wholly disproportionate to the gravity of misconduct. It is to be noted that the absence of the delinquent continued beyond the period indicated in the charge sheet, upto total eight months.

5. Having noticed the controversy and the rival contentions, relevant principles of law emanating from the decisions of the Supreme Court may be looked into. In *Ranjit Thakur vs Union of - 6 - NC*:

2024. KHC:10312-DB WA No.1617 of 2023 India and others [(1987) 4 SCC611, it is stated by the Supreme Court in the context of scope of judicial review of order of punishment imposed pursuant to inquiry by the employer, the judicial review is not directed against a decision but it is addressed to the decision making process. It was observed that the question of the choice and quantum of punishment is within the jurisdiction and discretion of the employer. It was emphasised that the sentence has to suit the offence and should not be so disproportionate so as to shock the conscience. 5.1 The Supreme Court, while dealing with a case of habitual absenteeism, in *L&T Komatsu Ltd vs N. Udayakumar*, [(2008) 1 SCC224 held that such absenteeism amounts to gross violation of discipline. The workman in that case was found to be guilty of unauthorized absence for several times in the year. It was held that the consequential dismissal from service was not liable to be interfered with by the High Court since it could not be said to be harsh. In the present case, the absenteeism on the part of the delinquent has continued for eight months for which he is subjected to the order of simple removal from service.-. 7 - NC:

2024. KHC:10312-DB WA No.1617 of 2023 5.1.1 In L & T Komatsu Ltd. (supra), the Supreme Court referred to its own earlier decision in Kerala Solvent Extractions Ltd. vs A.Unnikrishnan [(1994) 1 Scale 631]. to observe that the recent times have witnessed the tendency towards a denudation of the legitimacy of judicial reasoning and process. It was stated that the relief granted by the Courts must be seen to be logical and tenable within the framework of law and it should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy, generosity and private benevolence. The Supreme Court underlined the need to maintain integrity of legal reasoning and legitimacy of the conclusions. It was further observed that they must emanate logically on the legal findings and the judicial results must be supportable on those findings. 5.2 The law on proportionality of punishment and the scope of judicial review by the Courts was considered by the Supreme Court also in Jai Bhagwan vs Commissioner of Police and others, [(2013) 11 SCC187. It was held that quantum of punishment is in the realm of discretionary power vested in the disciplinary authority. The general rule is of non interference unless punishment imposed is found to be outrageously disproportionate to the gravity of - 8 - NC:

2024. KHC:10312-DB WA No.1617 of 2023 misconduct. In Jai Baghwan (supra) the appellant was Assistant Wireless Operator who used rude language against the superior officer. In totality of the facts and circumstances, the Supreme Court held that punishment of dismissal imposed for such kind of misconduct was grossly disproportionate. 5.3 The initial punishment of dismissal was converted by the appellate authority into simple removal which would not be a disqualification for the petitioner in future government employment. In a way, the stigma was removed by substituting the punishment to be lesser one of removal. In the facts obtained, the punishment of removal could not be said to be disproportionate from instant point. 5.4 Thus there is no gainsaying that though the period of unauthorised absence of the delinquent was apparently stated to be of 107 days only as indicated in the charge sheet, the petitioner continued to remain absent even thereafter till the order of punishment was passed. Reckoning the period, the total absence without obtaining prior leave comes to eight months. The absence of period of eight months could be said to be reasonably long to be viewed seriously.-. 9 - NC:

2024. KHC:10312-DB WA No.1617 of 2023 5.4.1 Evaluating further applying above parameters, there are outweighing aspects emerging from inquiry report. The inquiry report refers to the medical certificates issued by two doctors named Dr.Chittaranjan Sharma and Dr.Mohammed Mazhar Hussain. The inquiry officer, upon consideration of the medical certificates by the doctors and other material before him, recorded that the charge sheeted officer did not furnish the details about the treatment taken after 15.02.2017. It was further stated that Dr.Chittaranjan Sharma confirmed that the medical certificate was issued at the behest of the officer facing the allegations. The delinquent officer did not turn up for the follow-up treatment despite given assurance that the expenses would be borne by the hospital. This aspect about conduct of the delinquent in not furnishing the details of the treatment as well as not reporting for duty, casts serious doubts about his bona fides for remaining absent, on the ground of health and medical treatment. 5.4.2 Furthermore, as reflected in the confidential communication from the office of the respondents dated 01.09.2017 figuring on record, in which the letter dated 14.12.2016 of Dr.Chittaranjan Sharma is referred to, it is stated that said Dr.Chittaranjan Sharma - 10 - NC:

2024. KHC:10312-DB WA No.1617 of 2023 had advised the delinquent to report to duty and to continue the medicines as there was no requirement for bed rest. The bed rest was recommended for three months only which too was done at the request of the delinquent and not on account of any medical exigency. It was, therefore, a conclusion to be rightly drawn, as drawn by the inquiry officer, that a continued absence on part of the delinquent was not based on any medical condition and the medical ground was in a way an excuse put forth not to come on duty.

6. When the above aspects have emerged on record coupled with the fact that the total unauthorised absence was of upto eight long months and further that the punishment of dismissal was reduced in the departmental appeal to removal, this court finds that the punishment of removal without future qualification for employment in the government imposed by the employer could hardly be said to be disproportionate in the facts obtaining. It is eminently commensurate to the misconduct committed. 6.1 Learned Single Judge failed to notice the above

relevant aspects including that the punishment has been reduced to simple removal. It was erroneous to hold that the medical ground - 11 - NC:

2024. KHC:10312-DB WA No.1617 of 2023 advanced by the delinquent was required to be accepted for that, the punishment of dismissal was disproportionate.

6.2 At the same time, it is to be observed that when the delinquent is removed from service and the removal is upheld as above by the court, the recovery of Rs.2,22,757/- from the delinquent would operate harsh on him. Therefore, the direction of learned Single Judge in that regard is maintained and it is provided that there shall be no recovery from the petitioner. The order of removal shall operate, having been confirmed.

7. In the result, the writ appeal deserves to be allowed. Accordingly, learned Single Judges order dated 23.11.2023 is set aside except the recovery part. The order of removal shall operate. In view of disposal of the appeal, the interlocutory applications, if any, would not survive and they stand accordingly disposed of. Sd/- CHIEF JUSTICE Sd/- JUDGE KPS List No.:

1. SI No.:

4.

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