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Ramanna S vs the Management of

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Court : Karnataka

Decided On : Nov-29-2024

Judge : E.S.Indiresh

Appeal No. : WP/17971/2012

Appellant : Ramanna S

Respondent : The Management of

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF NOVEMBER, 2024 BEFORE THE HON'BLE MR. JUSTICE E.S.INDIRESH WRIT PETITION NO.17971 OF 2012 (L-TER) BETWEEN: RAMANNA S. S/O LATE SIDDAPPA, AGED ABOUT 58 YEARS, R/AT C/O KRISHNAPPA , BEHIND ESWARA TEMPLE, A.N.K. ROAD, DEVANGANAGAR, DODDABALLAPUR, BENGALURU RURAL DISTRICT.

PETITIONER (BY SRI. K.B. NARAYANASWAMY, ADVOCATE) AND: Digitally signed by SHARMA ANAND THE MANAGEMENT OF CHAYA Location: High M/S. INDIAN INSTITUTE OF Court of Karnataka MANAGEMENT

BANNERGHATTA ROAD BENGALURU - 560 076 REPRESENTED BY ITS DIRECTOR. RESPONDENT (BY SRI. PRADEEP S. SAWKAR, ADVOCATE) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET -2- ASIDE THE AWARD DATED 09.09.2010 PASSED BY THE III ADDITIONAL LABOUR COURT, BENGALURU IN REF. NO.58/2006 AS AT ANNEXURE-A AND DIRECT THE RESPONDENT TO REINSTATE HIM IN TO THEIR SERVICE WITH FULL BACK WAGES, CONTINUITY OF SERVICE AND ALL OTHER CONSEQUENTIAL BENEFITS, AND / OR TO PASS ANY OTHER

ORDER AS DEEMED APPROPRIATE IN THE FACTS AND

CIRCUMSTANCES OF THE CASE. THIS WRIT PETITION HAVING BEEN RESERVED FOR ORDERS, COMING FOR PRONOUNCEMENT, THIS DAY, E.S. INDIRESH J., MADE THE FOLLOWING: CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH

CAV ORDER

1. In this writ petition, petitioner is assailing the Award dated 09.09.2010 in Ref. No.58/2006 (Annexure-A) on the file of III Addl. Labour Court, Bangalore, rejecting the Reference.

2. It is the case of the petitioner, in nutshell that, the

petitioner was working as a Driver with the respondent - Management and the respondent - Management has issued the -3- Articles of Charges dated 10/18.07.1986 (Annexure-B) with the statement of imputations of misconduct on the part of the petitioner, alleging that the petitioner has suppressed certain vital facts and furnished false information regarding his antecedents while joining the service. Petitioner has filed reply to the same, however, the respondent - Management having not been satisfied with the explanation offered by the petitioner, conducted the Departmental Enquiry against the petitioner. In the Domestic Enquiry, the Enquiry Officer found the petitioner guilty with charges and as such, the Disciplinary Authority, having taken note of the findings of the Enquiry

Officer, dismissed the petitioner from service on 20.04.1987 (Annexure-C). The Appeal preferred by the petitioner against the order of dismissal before the Board of Governors of the respondent - Management came to be dismissed and as such, the petitioner has approached the Government seeking reference of the dispute. Pursuant to the order dated 02.11.2006 passed by the State Government, reference was registered as Ref.No.58/2006 before the Labour Court. The Labour Court, after considering the material on record, by its Award dated 09.09.2010 (Annexure-A), dismissed the claim -4- petition filed by the petitioner and as such, reference was rejected. Feeling aggrieved by the same, petitioner has presented this Writ Petition.

3. I have heard Sri. K.B. Narayanaswamy, learned counsel appearing for the petitioner and Sri. Pradeep S. Sawkar, learned counsel appearing for the respondent - Management.

4. Sri. K.B. Narayana Swamy, learned counsel appearing for

the petitioner contended that, the petitioner was appointed as a Driver in the respondent - Management and an enquiry was initiated against the petitioner for suppressing the information relating to his past service as a Police Constable in the Home Department and also working at Hindustan Aeronautics Ltd. It is submitted by the learned counsel that, the petitioner has provided the relevant material at the time of filing of the application and same was drawn by the Officer-in-Charge erroneously and further the petitioner has signed the same with good faith without looking into the contents of the information and therefore it is contended by the learned counsel for the petitioner, that the said aspect of the matter was not considered by the Labour Court. It is also the contention of the -5- learned counsel appearing for the petitioner, by inviting to the statement of Articles of Charges at Annexure-B that, the petitioner never withheld the vital information from the respondent - Management and has resigned from the post of Constable on 25.06.1983 and was also working as a Driver in HAL and these facts could not be a basis to consider for issuing the imputation of charges against the petitioner and therefore, sought for interference of this Court.

5. It is further submission of the learned counsel appearing

for the petitioner that, there was no justification for the respondent - Management to impose major punishment of dismissal from service on the sole ground of not providing the information about working with the Department of Police and HAL and accordingly, he sought for interference of this Court. In order to buttress his arguments, learned counsel referred to the Judgment of the Hon'ble Supreme Court in the case of AVTAR SINGH Vs. UNION OF INDIA AND OTHERS reported in (2016) 8 SCC 471; in the case of RAJU RAMSING VASAVE Vs. MAHESH DEORAO BHIVAPURKAR AND OTHERS reported in (2008)9 SCC 54; in the case of RAJASTHAN RAJYA VIDYUT PRASARAN NIGAM LIMITED -6- Vs. ANIL KANWARAYA reported in (2021) 10 SCC 136 and in the case of PAVAN KUMAR Vs. UNION OF INDIA reported in (2022) Livelaw (SC) 441, and argued that the imposition of the punishment of termination is harsh and disproportionate to the allegation made against the petitioner, and accordingly, sought of interference of this Court.

6. Per contra, Sri. Pradeep S. Sawkar, learned counsel

appearing for the respondent - Management submitted that, the reference was made by the Government with inordinate delay of ten years and therefore, the Reference ought to have been dismissed on the ground of delay and laches. He further contended that, as per Ex.M19, there was a specific indication that in the event of furnishing any false information with regard to previous antecedents or suppressing any material relating to past services, such employee would be liable for termination and therefore, he contended that, as the petitioner has suppressed a vital material information about his previous employment and antecedents and further, as the petitioner obtained the employment by playing fraud on the respondent - Management and therefore, no sympathy be extended to the petitioner herein and accordingly, by referring to the finding -7- recorded by the Labour Court, it is argued by Sri. Pradeep Sawkar, learned counsel appearing for the respondent - Management that no interference is called for by exercising jurisdiction under Article 226 and 227 of the Constitution and

accordingly, sought for dismissal of the Writ Petition. In order

to buttress his arguments, Sri. Pradeep S. Sawkar, learned counsel appearing for the respondent - Management, refers to the Judgment of the Hon'ble Supreme Court in the case of STATE OF ANDHRA PRADESH AND OTHERS Vs. CHITRA VENKATA RAO reported in (1975) 2 SCC 557, in the case of STATE OF RAJASTHAN AND OTHERS Vs. BHUPENDRA SINGH in Civil Appeal No.8546-8549 of 2024 reported in 2024 SCC OnLine SC 1908 and contended that, the petitioner is not entitled for misplaced sympathy. He further argued that, as the reasons assigned by the Labour Court is on merits of the case and also it is concluded in the Departmental Enquiry that the petitioner has suppressed the material facts with regard to his past service in the Police Department as well as at HAL and therefore, the petitioner is not entitled for relief in this Writ Petition. It is also the contention of the learned counsel appearing for the respondent - Management that the -8- suppression of truth and making false representation at the time of entering into service is a serious charge against the petitioner herein and therefore, it is contended that, this Court cannot sit in appeal over the findings of fact recorded by the Labour Court and accordingly, sought for dismissal of the Writ Petition.

7. In the light of the arguments advanced by the learned

counsel appearing for the parties, it is not in dispute that the petitioner was appointed as a temporary Driver with the respondent - Management and thereafter the service of the petitioner was confirmed with effect from 01.04.1986. The respondent - Management, having taken note of the fact that the petitioner has suppressed the material information in the application filed seeking appointment and has committed misconduct and thereby issued the Articles of Charges as per Annexure-B to the Writ Petition. Imputation of charges at Annexure-B indicates that the petitioner has suppressed some vital facts and furnished false information regarding his antecedents and by this act of omission, the respondent - Management arrived at a conclusion that, petitioner has committed an offence in contravention of Rule 11.3(i)(a) and -9-

(c) and (ii) read with Rule 3 of CCS (Conduct) Rules, 1964. The

petitioner has submitted explanation with regard to allegation referred to above and same was rejected by the Disciplinary Authority by appointing the Enquiry Officer. The Enquiry Officer, after completion of the enquiry, submitted the report to the Disciplinary authority holding that the charges levelled against the petitioner have been proved. Thereafter, the respondent - Management, after complying with the issuance of second show-cause notice, dismissed the petitioner from service on 20.04.1987 (Annexure-C). The appeal preferred by the petitioner against the punishment awarded by the Disciplinary Authority came to be rejected by the Appellate Authority. Thereafter, the petitioner has filed W.P.No.11317/1987 before this Court and this Court disposed of the Writ Petition with a direction to the petitioner to seek reference of his dispute through the State Government and as such, the dispute raised by the petitioner has reached the Labour Court in Ref. No.58/2006. The Labour Court, after considering the material on record, vide Award dated 09.09.2010 (Annexure-A), rejected the reference, which is impugned in this Writ Petition. The charges levelled against the - 10 - petitioner was that the petitioner has suppressed the material information about his service in the State of Karnataka as a Constable and thereafter worked at HAL. Though it is stated by the learned counsel appearing for the petitioner that the aforementioned information is inconsequential in so far as the appointment of the petitioner with the respondent - Management as a Driver, however, the perusal of the finding recorded by the Labour Court would indicate that, the petitioner has not only suppressed the aforementioned information about his previous employment as Police Constable and Driver at HAL, on the other hand, petitioner has provided the false information at the time of making application seeking appointment with the respondent - Management. Perusal of the antecedent record of the petitioner would indicate that, the petitioner was involved in an accident resulting in death of a pedestrian and was convicted by a competent Court in C.C.No.65/1983 on the file of II Metropolitan Magistrate Court, Bengaluru. The said aspect was concealed by the petitioner about his conviction in a criminal case is contrary to the Rules of the respondent - Management. In that view of the matter, taking into consideration the assessment of the evidence made - 11 - by the Labour Court, I am of the view that, the Labour Court, taking into consideration the oral and documentary evidence on record, particularly with regard to the discussion made at paragraph

14 to 21 and 24 rightly rejected the claim petition filed by the petitioner, consequently rejected the reference in Ref.No.58/2006, made by the petitioner.

8. Though the learned counsel appearing for the petitioner

refers to the Judgment of the Hon'ble Supreme Court in AVTAR SINGH (supra) and PAVAN KUMAR (supra), however, the factual aspects on record in the aforementioned case is contrary to the facts on record and therefore, the Writ Petition deserves to be dismissed accordingly. Hon'ble Supreme Court in the case of CHITRA VENKATA RAO (supra) at paragraph Nos.21 to 23, held as follows:

> "21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723 : (1964) 3 SCR 25 : (1964) 2 LLJ 150] . First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal - 12 -

trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has

accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the

proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by

- 13 - some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

22. Again, this Court in Railway Board,

representing the Union of India, New Delhi v. Niranjan Singh [(1969) 1 SCC 502 : (1969) 3 SCR 548] said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In Niranjan Singh case this Court held that the High Court exceeded its

powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shutdown of an air compressor at about 8.15 a.m. on May 31, 1956. This Court said that the Enquiry - 14 -

Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager

to do so and he was not bound by the conclusion

reached by the committee. This Court held that the

should prevail and the High Court should not have interfered with the conclusion.

23. The jurisdiction to issue a writ of certiorari

under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a

> finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan [AIR 1964 SC 477 : (1964) 5 SCR 64]."

9. It is also relevant to cite the Judgment of the Hon'ble

Supreme Court in the case of KERALA SOLVENT EXTRACTIONS LTD Vs. A. UNNIKRISHNAN AND ANOTHER, reported in (2006) 13 SCC 619, wherein, paragraph Nos. 3, 9 and 10 read as under:

> "3. The appellant challenges the order dated 4-6- 1993 passed by the High Court of Kerala at Ernakulam in Writ Appeal No. 269 of 1993. The

proceedings relate to the empanelling of badli workmen. One of the conditions for eligibility for appointment was that the educational qualification of the candidates should not be more than the 8th standard. The respondent produced a certificate - 16 -

issued by the school authorities to the effect that he had passed the 7th standard on 15-5-1974. The purpose of this was to show that his qualifications were not more than the 8th standard. He, accordingly, succeeded in having himself empanelled as a badli workman. On receiving certain

complaints that the respondent had secured employment by suppression of truth and by false representation, the appellant issued a show-cause notice to the respondent asking as to why action should not be taken against him under the standing orders. In reply the respondent admitted that he had completed 10th standard and pleaded for sympathy. On 3-3-1989 the appellant terminated the services of the respondent for fraudulent misrepresentation.

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9. Shri Vaidyanathan, learned Senior Counsel for the appellant, submitted, in our opinion not without

justification, that the Labour Court's reasoning bordered on perversity and such unreasoned, undue liberalism and misplaced sympathy would subvert all discipline in the administration. He stated that the management will have no answer to the claims of similarly disqualified candidates which might have come to be rejected. Those who stated the truth would be said to be at a disadvantage and those who

- 17 - suppressed it stood to gain. He further submitted that this laxity of judicial reasoning will imperceptibly introduce slackness and unpredictability in the legal process and, in the final analysis, corrode legitimacy of the judicial process.

10. We are inclined to agree with these

submissions. In recent times, there is an increasing evidence of this, perhaps well meant but wholly unsustainable tendency towards a denudation of the legitimacy

of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into

misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity

of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability."

10. In the case of SATISH CHANDRA YADAV vs. UNION OF INDIA AND OTHERS reported in (2023) 7 SCC 536, the Hon'ble Supreme Court at paragraph 61 held as follows:

> "61. In the aforesaid case, this Court held that the purpose of requiring an employee to furnish information regarding prosecution/conviction, etc. in the verification form was to assess his character and antecedents for the purpose of employment and continuation in service; that suppression of material information and making a false statement in reply to queries relating to prosecution and conviction had a clear bearing on the character, conduct and antecedents of the employee; and that where it is found that the employee had suppressed or given false information in regard to matters which had a bearing on his fitness or suitability to the post, he could be terminated from service during the period of probation without holding any inquiry. This Court also made it clear that neither the gravity of the criminal offence nor the ultimate acquittal therein was relevant when considering whether a probationer who suppresses a material fact (of his being involved in a criminal case, in the personal

information furnished to the employer), is fit to be continued as a probationer." - 19 -

11. Recently, in identical circumstances, Hon'ble Supreme

Court in the case of BHUPENDRA SINGH (supra) (at paragraph No.24), had an occasion to consider the jurisdiction of this Court under Article 226 of the Constitution to interfere with the Judgment of the Tribunal in a Departmental Enquiry Proceedings, has held that the High Court is not a Court of Appeal under Article 226 of the Constitution of India and therefore, taking into consideration the declaration of law made by the Hon'ble Supreme Court in the aforementioned decisions, I am of the view that, the petitioner has not made out a case for interference.

12. Accordingly, the Writ Petition is rejected. SD/- (E.S.INDIRESH) JUDGE sac List No.: 1 Sl No.: 63

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