

Sudhakar Vs. the Additional Registrar, High Court, Bombay and Others

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Court : Mumbai

Decided On : Jan-08-1990

Reported in : [1991(61)FLR492]; (1991)IILLJ191Bom

Judge : Dhabe and;M.B. Ghodeswar, JJ.

Appeal No. : W.P. No. 371/1987

Appellant : Sudhakar

Respondent : The Additional Registrar, High Court, Bombay and Others

Judgement :

Dhabe, J.

1. The Petitioner, who is an employee of this Court, has challenged the punishment of reduction in rank permanently meted out to him by the Additional Registrar, i.e., the respondent No. 1, by his order dated 29th August, 1985. The appeal filed against the said order being dismissed by the Honourable the Administrative Judge of this Court, as communicated to the petitioner by the Additional Registrar by his letter dated 4th December, 1986, the petitioner has preferred the instant writ petition in this Court. At the time of the admission of this petition on 10th April, 1987, the rule is restricted only to the question of punishment. Hence what has to be considered in the instant writ petition is whether the punishment imposed upon the petitioner is legal and proper and

whether it is imposed by an authority which has power to inflict the same.

2. Briefly, the facts necessary to consider the question of punishment, are that the petitioner was charge-sheeted on 26th March, 1985 for the following misconducts :

(i) That you attended late, i.e., at 10.00 a.m. in office on 21st March, 1985;

(ii) That your behaviour with the Havaladar on 21st March, 1985 and with the Senior Superintendent (Establishment) on 25th March, 1985 was most indisciplinatory. You obstructed the Havaladar on 21st March, 1985 from performing his official duty, viz., marking you late and disobeyed the orders of your superiors on 21st March, 1985; and

(iii) You used very filthy and abusive language against the Havaladar on 21st March, 1985 and created a scene in the office.

3. The petitioner denied the said allegations of misconduct against him. A departmental enquiry was conducted in which the Enquiry Officer held the petitioner guilty of all the misconducts for which he was charge-sheeted. The Enquiry Officer submitted his report to the Additional Registrar who gave show-cause notice to the petitioner upon the proposed punishment on 5th August, 1985. After receipt of the reply of the petitioner to the show-cause notice, the Additional Registrar, Nagpur Bench, Nagpur, passed the impugned order on 29th August, 1985, the operative part of which is as follows :

'The delinquent Sudhakar Shankar Dahake presently working as Chobdar will stand reduced in rank from the post of Chobdar to his substantive cadre of Peon permanently, but his present pay shall be projected. This order will have effect from 1st September, 1985. It is further ordered that the delinquent who is under suspension from 26th March, 1985 will suffer the period as such, i.e., he shall not be entitled to anything more than the permissible subsistence allowance by way of his emoluments'.

4. It is clear from the above operative part of the impugned order that the petitioner who was then working as Chobdar was reduced in rank from his former post of Chobdar to his substantive post of peon permanently. However, his pay at the time

of the impugned order was protected. The said order was given effect to from 1st September, 1985. The learned counsel for the petitioner has urged before us that the Additional Registrar who has passed the said order had no authority to do so because he was not the appointing authority of the petitioner. According to the learned counsel for the petitioner, as per rule of the Rules for Recruitment of Peons and Hamals in the High Court, his appointing authority was the Registrar. Further, according to him, as per rule (a) of the Bombay High Court Discipline and Appeals Rules, 1984 (for short 'the Rules'), the Competent authority, i.e., the Registrar, and not the Additional Registrar who has exercised the said power. The learned counsel appearing for the respondents has, how ever, brought to our notice the office order dated 16th September, 1982 by which the power to make appointments in the Class III and Class IV posts is delegated to the Additional Registrar, Nagpur, as per clause (10) and the power to take disciplinary action is also delegated to him as per clause (17) of the said Office Order. In view of the above delegation of powers, the submissions made on behalf of the petitioner that under rule (a) of the Rules, it is only the Registrar who can impose major punishment does not survive for consideration.

5. On merits, it is urged on behalf of the petitioner that the punishment of reduction in rank permanently imposed by the respondent No. 1 is too harsh and is disproportionate to the nature of the misconducts alleged against the petitioner. In support of his submission the learned Counsel for the petitioner has relied upon the decision of the Supreme Court in the case of Rama Kant Mishra v. State of U. P. : (1982)IILLJ472SC . It is urged that in the above case the delinquent employee was dismissed for using abusive and threatening language against his superiors and the Supreme Court held in the said case that he punishment was wholly disproportionate and the ends of justice would be met if a punishment of withholding of increment was imposed upon the delinquent employee in that case. In our view, the quantum of punishment depends upon the facts in each case and the view taken by the Supreme Court in the case cited supra about the punishment has, therefore, to be viewed in the facts in the case before it. The submission on behalf of the petitioner that as in the said case the ends of justice in the instant case would be met by withholding of one increment only, cannot, therefore, be accepted.

6. In considering the question of punishment, it is necessary to notice in the instant case that the petitioner was only officiating in the post of Chobdar when he had committed the misconducts and by the impugned order he was reverted from his officiating post to his substantive post. The facts on record would show that when the petitioner was sought to be shifted from the Court of Justice Khatri, as he then was, to the Decree Department, the petitioner disobeyed the oral order given in that regard. It is also proved against the petitioner that he had abused the Havaladar in the office of the Deputy Registrar and had quarreled with him when he was marking him late in the attendance register. The Additional Registrar has found that the petitioner had created a scene in the office of the Deputy Registrar and Shri Pathak, the then Assistant Registrar, had to intervene to separate the petitioner from the Havaladar Girija Prasad. It is on the basis of the above facts that the Additional Registrar imposed the punishment of reduction in rank permanently.

7. The question which, however, needs to be considered is whether the punishment of reduction in rank permanently is just and proper in the facts and circumstances of the instant case. In our view, the punishment of reduction in rank permanently is wholly unjust and disproportionate in the facts and circumstances narrated above. It does not appear that such punishment reducing the petitioner to his original post permanently is also intended by the authorities concerned. Perusal of the show cause notice in regard to the proposed punishment given to the petitioner does not mention that the proposed punishment is reduction in rank permanently. Even the impugned order dated 29th August, 1985 passed by the Additional Registrar and in particular para thereof where the question of punishment is considered does not show that the Additional Registrar intended to reduce the petitioner in rank permanently.

7-A. The effect of the reduction in rank permanently would be that even though the work and conduct of the petitioner after the date of the imposition of this punishment improves and is satisfactory or even excellent he can never be considered for promotion to the higher post, thus debarring his promotion permanently. Such a punishment would have a disastrous effect or consequence upon the service career of an employee who normally aspires or looks forward for higher promotion in his service which is an incentive to him for showing more

efficiency and improvement in his work. As observed by the Supreme Court in the case of Council of Scientific and Industrial Research v. K. G. S. Bhatt : (1990)ILLJ246SC , a person is recruited by an organisation not just for job but for his whole career and he must, therefore be given an opportunity to advance. Stagnation in the same post and pay creates frustration and despair in an employee and lowers his efficiency and morale. Since to err is human, it is possible that during his long service an employee may commit some blame-worthy acts or misconducts for which he may be given some punishment not resulting in termination of his employment. In such cases, he should not necessarily be deprived of an opportunity to advance if he shows repentance for his lapses and improves his work and conduct. It may be seen that the petitioner has put in long service of above 18 years and even a long period of five years has now elapsed after he was punished in 1985. In these circumstances, we do not think it proper that he should be reduced in rank to his lower post permanently, thus debarring his promotion in future.

8. At this stage we may refer to the penalty of reduction in rank provided in Rule 4(1) (vii) of the Bombay High Court Discipline and Appeal Rules, 1984. It appears from the said rule that the punishment of reduction in rank is ordinarily a bar to the promotion of an employee of the High Court unless there are directions about restoration of the same in the order imposing such punishment. In our view, such punishment is very harsh to an employee as it bars all his future prospects of advancement and promotion in service. It should, therefore, be made clear in the show cause notice about the proposed punishment that such punishment of reduction in rank permanently is intended to be imposed upon the delinquent employee in which case such an employee has an opportunity to place before the disciplinary authority the circumstances to show why such a punishment debarring his future promotion should not be imposed upon him. In the absence of clear notice about the bar to the future promotion, such a punishment imposed upon the delinquent employee would be arbitrary and violative of the guarantee of fundamental rights under Articles 14 and 16 of the Constitution of India as the protection guaranteed by the said fundamental rights would require the State to comply with the principles of natural justice before imposing such a ban upon promotion of an employee which has a disastrous effect or consequence upon his

service career.

9. The punishment imposed upon the petitioner of permanently reducing him in rank cannot thus be sustained. In this view of the matter, the punishment imposed by the Additional Registrar reducing the petitioner in rank permanently is modified by deleting the word 'permanently' in the operative part of his order which would mean that if the petitioner has shown or shows improvement in his work and conduct after the above penalty was imposed upon him he should be eligible for being considered for future promotion.

10. In the result, the instant writ petition is partly allowed. The operative part of the impugned order passed by the Additional Registrar i.e., the respondent No. 1 is modified by deleting the word 'permanently' with the result that the petitioner can be considered for future promotion if he is otherwise fit and eligible. Rule made absolute in the above terms. No costs.

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