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Court : Chennai

Decided On : Sep-14-1998

Reported in : (2000)ILLJ873Mad

Judge : Y. Venkatachalam, J.

Acts : [Constitution of India](#) - Article 227; [Industrial Disputes Act, 1947](#) - Sections 11A

Appeal No. : W.P. No. 1783/1990

Appellant : Jeniston Devaraj N.

Respondent : Chief General Manager, S.B.i. and anr.

Advocate for Def. : P. Ibrahim Kalifullah, Adv.

Advocate for Pet/Ap. : M. Liaqat Ali, Adv.

Disposition : Petition partly allowed

Judgement :

Y. Venkatachalam, J.

1. This writ petition is filed by the writ petitioner, by name N. Jeniston Devaraj, invoking Article 226 of the Indian Constitution, for the relief sought for, to scrap the award passed by the second respondent in I.D. No.35 of 1985, dated April 17,

1989, and to direct the first respondent to reinstate the petitioner in service with effect from July 15, 1981, with all other attendant benefits as if the petitioner had continued as clerk.

2. In support thereof, he filed an affidavit, wherein he narrated all the facts and circumstances that forced him to file the writ petition and requested the Court to allow the writ petition scrapping the impugned award passed by the second respondent.

3. On the other hand, the first respondent filed counter rebutting all the material allegations levelled against the respondents one after another and requested the Court to dismiss the matter for want of merit.

4. The arguments of learned advocates on both sides are heard. The point for consideration is, as to whether there are any valid grounds to allow the writ petition or not ?

5. I have perused the material available on record, particularly with regard to the contents of the affidavit, contents of the counter and also the relevant material documents available in the typed set of papers. The learned advocates for the petitioner as well as the first respondent have cited some rulings, which I will deal with at a later point of time after discussing the brief facts of the case.

6. It is the case of the writ petitioner, that the writ petitioner was appointed as clerk in the State Bank of India, Nagercoil Branch, that he was an active-member of the trade union activities, and on account of this, one Kadaksham, an officer of the same branch developed animosity towards the petitioner. As the said officer attempted to hit the petitioner by the car he was travelling, on July 31, 1980, and that attitude of the said officer was questioned by the petitioner in the office later and enraged at that, with the connivance of the Branch Manager a false case was cooked up and he was placed under suspension on August 4, 1980, and two charges were framed against him (1) that the petitioner shouted, abused and assaulted Thiru. K. Kadaksham, Field Officer in the bank hall in front of the Branch Manager in his room, and (2) that he later on ran into the Branch Manager's room where K. Kadaksham was then seated and attempted to hurl a letter tray and

attacked him. According to the petitioner, immediately after the said Kadaksham attempted to knock down the petitioner by his car, he became nervous and to some extent mentally upset and he submitted his explanation and thereafter enquiry took place and finally his services were terminated under paragraph 521 of the Sastri Award. According to the petitioner, his ailment was diagnosed as paranoid psychosis and such patient will not know what he was doing. According to the petitioner, he was not furnished with the various notices stated to have been issued to him and the enquiry was held ex-parte. However, in March 1982, the doctor declared him fit to work. Thereafter, he appealed to the first respondent on March 13, 1982, to reconsider the entire matter and it was rejected as time-barred. Thereafter, the petitioner filed an application before the Deputy Commissioner of Labour, Tirunelveli, and it was dismissed as not maintainable. Thereafter, the petitioner raised an industrial dispute and it was referred to the second respondent by the Government of India. According to the petitioner, before the Industrial Tribunal, in the claim petition, the respondent bank admitted in their counter that there was an attempt to knock the petitioner, down by Kadaksham by his car on July 31, 1980. But the first respondent contended that the notices issued to the petitioner were returned by the petitioner. As the petitioner did not participate in the enquiry it was held ex parte. However the learned advocate for the petitioner would contend that the petitioner was not given a fair opportunity to defend the case.

7. The learned advocate for the petitioner cited the following rulings:

(1) Hind Construction and Engineering Company Ltd. v. Their Workmen 1965-I-LLJ-462 (SC) wherein the Supreme Court of India has held in a case where a particular Sunday was asked by the workmen to be declared a holiday, which was not acceded to by the management and the workmen did not turn up for work on that day and the management holding that the workmen were guilty of misconduct for staging a strike without any justification and dismissed those permanent workmen after enquiry and the Industrial Tribunal set aside that order on the ground that the punishment was severe and it was victimisation and when the matter was taken up to the Apex Court, the Apex Court held that no reasonable employer would impose such punishment in like circumstances and dismissed the

appeal preferred by the management.

(2) In *Workmen of Motipur Sugar Factory (P) Ltd. v. Motipur Sugar Factory (P) Ltd.* 1965-II-LLJ-162 where notice was issued by the management to the workmen that they were adopting go-slow tactics at the instigation of the union secretary and those workmen were discharged from service; as they did not mend themselves even after second notice from the management and the Industrial Tribunal upheld the decision of the management and when the matter was taken to the Apex Court by the workmen, it dismissed the appeal by the workmen.

(3) In *Binny Limited v. Their Workmen* 1972-I-LLJ-478 (SC) the Apex Court has held that before relying upon the past misconduct of the delinquent employee, he must be given opportunity to explain the same. In that case, it was further held that where a delinquent is charged of a particular misconduct, but the dismissal order is passed as a result of cumulative effect of the particular misconduct charged as well as the past lapses for which opportunity to explain was not given, the order is not maintainable. In that case, it was also held that mere lapse of time is not sufficient for refusing reinstatement and the management must show that reinstatement would cause dislocation of work.

8. On the other hand, learned advocate for the respondents cited the following decisions:

(1) *State of Punjab v. Ram Singh*, (1993-I-LLJ-218) (SC) wherein the Apex Court has 3 held as follows:

'The contention that there must be plurality of acts of misconduct to award dismissal is fastidious. The word 'acts' would include singular 'act' as well. It is not the repetition of the acts complained of but its quality insidious effect and gravity of situation that ensues from the offending 'act'. The colour of the gravest act must be gathered from the surrounding or attending circumstances. Take for instance, the delinquent that puts in 29 years of continuous length of service and had unblemished record; in 30th year, he commits defalcation of public money or fabricates false records to conceal misappropriation. He only committed once. Does it mean that he should not be inflicted with the punishment of dismissal but

be allowed to continue in service for that year to enable him to get his full pension. The answer is obviously no. Therefore, a single act of corruption is sufficient to award an order of dismissal under the rule as gravest act of misconduct.' (2) The next decision cited by the learned advocate for the respondents is in *Engine Valves Ltd. v. Labour Court* 1991-I-LLJ-372 (Mad) wherein it has been held as:

'With reference to the third submission of learned counsel for the appellant there could be no difficulty in agreeing with the proposition generally, that where there are more than one charge held proved resulting in an order of punishment, the fact that any one of those charges has been subsequently held not proved by the competent authority or Court does not undermine the validity or efficacy of the order of punishment and the same can be allowed to stand on the proved charges, if they are by themselves sufficiently grave, warranting imposition of such maximum penalty.' (3) The next decision is *T. Sudarshan v. Labour Court* 1996 2 LLN 554 wherein it is held:

'.....it is relevant to note at the threshold that the power of judicial review of the awards of the Labour Court under Article 227 of the [Constitution of India](#) is circumscribed by a line of decisions of the Apex Court and this Court. The exercise of the discretionary power by the learned presiding officers of the Labour Courts and Industrial Tribunals under Section 11-A of the [Industrial Disputes Act, 1947](#), cannot be interfered with lightly by the High Court unless the penalty imposed by the disciplinary authority and affirmed by the Labour Court or Industrial Tribunal is one which should shock the conscience of the Court or it is unreasonably disproportionate to the gravity of the proved misconduct.' (4) The other decision cited by the learned advocate for the respondent is *B. Govindarajulu v. Management of K.P.V. Shaik Mohammed Rowther and Co. (P) Ltd.*, 1996-II-LLJ-593 (Mad) wherein our High Court has held thus:

'The learned Judge, in our view, is right in not considering or placing any reliance upon the workman's past conduct in deciding as to whether the dismissal of the workman by the management was in accordance with law. The charge against the workman having been established before the enquiry officer, the order of dismissal was frilly justified.' (5) The last decision cited by the learned advocate for the

respondent is N. Mohandas v. Southern Industrial Polymers (P) Ltd. (1996 III LLJ (Supp) 518 wherein it is held as follows at P 521:'So far as the quantum of punishment is concerned, the learned Advocate-General appearing for the first respondent management relied upon the decision in State Bank of India v. Samarendra Kishore Endow : (1994)ILLJ872SC to contend that the imposition of appropriate punishment is within the discretion and judgment of the disciplinary authority, and though it may be open to the appellate authority to interfere with it, the High Court cannot in exercise of its jurisdiction under Article 226 of the [Constitution of India](#) assume the role of the appellate authority to interfere with the punishment. The power under Article 226 of the [Constitution of India](#), it was contended, is one of the judicial review of the manner in which the decision was made and to ensure that the individual receive fair treatment, and not to ensure that the authority after according a fair treatment, reaches on matter, which is authorised by law to decide for itself a conclusion, which is correct in the eyes of the Court. No doubt, the Labour Court under Section 11-A of the Industrial Disputes Act is entitled to go into the quantum of punishment also keeping in view the gravity of the charges to see whether the punishment imposed is grossly disproportionate to the charges held proved. As noticed earlier, even on this aspect, the Labour Court has meticulously and at great detail analysed the question or quantum of punishment and specifically recorded its finding about the gravity of the charges held proved and also the recalcitrant and incorrigible attitude, as evidenced by the past history of service of the appellant, as reflected from the materials available on record and held that the punishment imposed upon the appellant cannot be said to be disproportionate to the charges held proved.'

9. Learned advocate for the petitioner stated across the Bar during the course of arguments that the proved charge is very nominal, in that, the writ petitioner misbehaved or tried to attack to assault his superior. It is not a case where he was involved in a proved misconduct of cheating the institution of the first respondent or he was involved in misappropriation of funds or that he was involved in fabrication of caste certificate or educational qualification certificate. Therefore, the proper punishment is only a nominal punishment, because the proved charge is nominal for which the capital punishment of discharge from service has been awarded. Therefore, the writ petition may be allowed scrapping the impugned

order of discharge. On the other hand the learned advocate for respondent No. 1 vehemently opposed the argument placed by the learned advocate for the petitioner and stated that the writ petitioner in question was involved in a proved misconduct of grave offence and it is not a case where he was involved in a proved minor charge. He attacked his superior officer and tried to assault him. It is also stated that the writ petitioner in his own affidavit has stated that he is not mentally normal and he is unable to understand as to what he is doing and if such a person is involved in a proved misconduct of assaulting his superior officer, he is of the opinion that the proper punishment is not less than the discharge from service. It is not a case where he was dismissed from service. If he is dismissed from service or it is a fatal attack on the person concerned on account of the fact that in a case of dismissal he will not become eligible for any other job, he is not entitled to any other benefit. In the case of retirement also, he is entitled to all monetary benefits. Here, he is simply discharged and he is entitled to get any other job. Therefore, the writ petition may be dismissed.

10. Now, I am examining the rule of law raised before this Court on behalf of the respondent. On going through the aforesaid decisions, I am of the opinion that none of the decisions cited by the learned advocate for the respondent is applicable to the facts of this case, as the facts involved in each one of the decisions referred to above are different. Therefore, I am of the clear opinion that none of the aforesaid decisions can be relied upon by the learned advocate for the respondent for its application to the facts of the case on hand.

11. Now, it is my duty to discuss the proved charge from the point of view of the nature of punishment imposed on the writ petitioner. The proved charge is that the writ petitioner tried to assault his superior officer. It is not a case where he gave a grievous injury to his superior officer. It is not a case where he was involved in a proved misconduct of forgery, misappropriation or fabrication of material document. It is not a case where the writ petitioner obtained job with a forged caste certificate or forged educational qualification certificate. All the above attract the meaning of 'grave charges'. The spirit of the above cited rulings go to show that where the workman is involved in a 'proved misconduct of grave charges', in such a case, the Court should not be liberal and it is another significant aspect to

note that the second respondent, who is no other than the Industrial Tribunal, which decided the reference, came to the conclusion that there is 'no need to consider the past service of the writ petitioner'. But admittedly, it is a proved fact that the behaviour and past record of the writ petitioner is free from blemish. Now, I would like to examine as to whether in a case of this nature, the fatal punishment of discharge from service is 'proportionate to the proved charge or not'. Admittedly, the writ petitioner is 'not a probationer' working for the last one or two years. It is not a case where the writ petitioner is a 'temporary workman' and he is involved in a series of proved charges of this nature previously. On the other hand, the proved fact is that the writ petitioner is working with the first respondent for the 'past 19 years without any black mark or stigma or punishment.' Now, I would like to deal with the enquiry report. It is not the case of the respondent that he was mentally not sound and, therefore, he is not fit to hold the post of clerk in the first respondent-Bank. In such a case, if he is mentally not sound the only proper course open for the first respondent is to refer him to mental hospital and obtain expert opinion whether he is having any mental disease or mentally he is all right. But no charge is framed against the petitioner for the said offence. The only charge framed against the writ petitioner is that he 'misbehaved with his superior' and as observed earlier, the rulings cited by the learned advocate for the respondents are not at all applicable to the facts of the case on hand. Here, none of the proved grave charges is made out in the present case on hand.

12. In view of the discussions made above on the various aspects referred to above, I am of the clear view that the fatal punishment of discharge from service without notice invoking the Sastri Award, is not proportionate to the proved charge and such an order cannot stand legal scrutiny and is liable to be set aside.

13 When once, I have scrapped the impugned order of discharge from service, giving a finding that the punishment is disproportionate to the proved charge, now I have to examine and give a finding, what is the proper, just and appropriate punishment to the writ petitioner for the proved charge in a case of this nature, where the proved charge is his misbehaviour with his superior. In my view 'stoppage of one annual increment without cumulative effect' would be sufficient punishment. Now I would like to examine as to whether he is entitled to get back-

wages or not. On this issue, the rule of law goes to show that the writ petitioner who is no other than the workman, is not entitled to get back-wages provided if he was gainfully employed elsewhere for the same period in question, because one individual cannot get two salaries for the single day from two institutions.

14. I have seen the entire material available on record and I am convinced that there is no material on record to show that the petitioner was gainfully employed elsewhere during the period in question from the date of discharge till this date.

15. In view of my elaborate discussion on various aspects referred to above, the following final order is passed.

16. In the result, the writ petition is partly allowed, setting aside the order of discharge without giving notice and imposing the punishment of stoppage of one annual increment without cumulative effect and the writ petitioner is entitled to get all back-wages, attendant benefits and also continuity of service. In case, the writ petitioner did not attain the age of superannuation, that is, 58 years, he should be reinstated in service within 30 days from the date of receipt of this order. On the other hand, if the writ petitioner is retired from service on attaining the age of superannuation, the first respondent is hereby directed to refix the pay scale of the writ petitioner from the date of discharge till he attained the age of superannuation giving usual annual increment from year to year, together with all other attendant monetary benefits. The first respondent is also directed to pay all the monetary benefits in lump sum on one count either in cash or by D.D. to the petitioner within sixty days from the date of receipt of this order. It is also ordered that there is no question of extension of time beyond 60 days granted herein to pay the monetary benefits in cash or by D.D. to the petitioner. The writ petitioner is entitled to all retirement benefits in case he is retired from service with continuity of service. This writ petition is ordered accordingly with the above directions. But in the circumstances, no costs.