

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

**+CM Nos.7694-95/2010 (for restoration of CM No.266/2010 and for
condonation of delay in applying for the same) in W.P.(C) 4165/2000**

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Date of decision: 3rd June, 2010

KULWANT SINGH

..... PETITIONER

Through: Mr. K.K. Rai, Senior Advocate
with Mr. Atul T.N., Advocate

Versus

P.O. INDUSTRIAL TRIBUNAL-I & ANR.

..... RESPONDENTS

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may
be allowed to see the judgment? NO
2. To be referred to the reporter or not? NO
3. Whether the judgment should be reported
in the Digest? NO

RAJIV SAHAI ENDLAW, J.

1. The petitioner has filed these applications for restoration of CM No.266/2010 and for condonation of 20 days delay in applying for the same.

2. CM No.266/2010 was filed for restoration of CMs15448-49/2009 which were dismissed in default for non prosecution on 9th December, 2009.

3. CMs No.15448-49/2009 were filed for restoration of the writ petition dismissed for non prosecution on 30th September, 2008 and for condonation of 399 days delay in applying for the same.

4. Though the advocate for the petitioner, in support of the applications being CMs No.7694-95/2010 has filed his own affidavit but finding the default of the petitioner to be three fold as aforesaid and further finding that the writ petition had been pending for the last ten years, this Court was not inclined to entertain the same. However, in order to satisfy the conscience of this Court that by upholding the dismissal of the writ petition for non prosecution, no injustice is being caused to the petitioner, the senior counsel for the petitioner was also asked to submit on the merits. The senior counsel for the petitioner has been heard.

5. The senior counsel for the petitioner at the outset contended that Rule having been issued in the writ petition, the arguments on merit be heard only after restoring the writ petition to its original position. However, it is found that Rule was issued on the very first day when the petition came up before this Court i.e. on 1st August, 2000. Considering the nature of the controversy, there was no application of the petitioner for interim relief and thus this Court then had no occasion to consider even the prima facie case, if any, in favour of the petitioner. Once the writ petition has been dismissed in default for non prosecution, the Court before

restoring the same is entitled to satisfy itself that the petitioner has a prima facie or at least an arguable case on merits.

6. The writ petition impugns the award dated 22nd December, 1999 of the Industrial Tribunal on the following reference:

“Whether the dismissal of Sh. Kulwant Singh is illegal and / or unjustified and if so to what relief is he entitled and what directions are necessary in this regard?”

7. The petitioner was employed with the respondent no.2 National Institute of Public Finance & Policy. He was dismissed from service on 17th January, 1989 after he had been charge-sheeted and domestic enquiry held against him. The Industrial Tribunal as such framed a preliminary issue as to the legality and validity of the inquiry held prior to the dismissal of the petitioner. The Industrial Tribunal vide detailed order dated 9th June, 1997 held that a fair, legal and valid inquiry in accordance with the principles of natural justice had been conducted prior to dismissal. The Industrial Tribunal thereafter went into the question of whether the punishment awarded to the petitioner was disproportionate to the charge and held the punishment meted out to the petitioner of dismissal from service to be proportionate. Accordingly, it was held that the dismissal of the petitioner is neither illegal nor unjustified and the petitioner was held not entitled to any relief.

8. The petitioner has in the writ petition contended that he was served with the charge-sheet on 18th February, 1986, whereas the disciplinary the Disciplinary and Appeal Rules, 1986 of the respondent no.2 Institute came into force two days thereafter on 20th February, 1986. It is contended that unless a misconduct is prescribed under the Rules, an employee cannot be held guilty of the same. Reliance in this regard is placed on *M/s Glaxo Laboratories (I) Ltd. Vs. Presiding Officer* (1984) 1 SCC 1 & *A.L. Kalra Vs. Project & Equipment Corporation of India Ltd.* (1984) 3 SCC 316. It is urged that the inquiry proceedings were invalid for this reason.

9. The petitioner was charged with making a false representation of having shifted his residence from 5, Janpath, New Delhi to BB/168, Nabi Karim, Pahar Ganj, New Delhi with effect from 1st May, 1980 and of paying rent of Rs.175/- per month for the said premises. The petitioner was also charged with having filed rent receipts purporting to bear the signatures of one Mr. Mahipal Singh as the owner of BB/168, Nabi Karim, Pahar Ganj, New Delhi. The petitioner was also charged with, on the basis of the said representation and documents, having drawn additional house rent allowance over and above 20% available to all employees. The petitioner was thus charged with having defrauded the respondent no.2 Institute of total sum of Rs.1378.30 during the period 1st May, 1980 to 7th June, 1983.

10. The senior counsel for the petitioner has vehemently contended that since there were no Service Rules of the respondent no.2 Institute at the relevant time and further since the Rules whereunder the action aforesaid of the petitioner admittedly amounts to misconduct, were not in force on the date of the charge-sheet, the petitioner could not have been held guilty of misconduct.

11. It was enquired from the senior counsel for the petitioner whether in the absence of any Rules defining misconduct, the employer is barred / disentitled from dismissing an employee on the ground of any misconduct. It was felt that though there may be ambiguity whether certain actions / inactions constitute misconduct or not but there can certainly be no ambiguity qua certain other actions which *per se* constitute misconduct, even if there be no Rules to that effect. It was put to the senior counsel for the petitioner whether an employer is debarred from dismissing an employee on the ground of misconduct of corruption or forgery / fabrication of documents as in the present case or of defalcation of accounts all of which *per se* constitute misconduct and which no employer can be expected to tolerate from the employee. The senior counsel for the petitioner without replying to the said pertinent question, invited attention to **A.L. Kalra** (supra). However, **A.L. Kalra** is not found to be laying down any such proposition. It only lays down that acts of misconduct must be precisely and specifically stated in the Rules or the Standing Orders and

cannot be left to be interpreted *ex post facto* by the management. That was also not a case of “no Rules” but was a case of whether the misconduct alleged was provided for in the Rules or not. Similarly, *M/s Glaxo Laboratories (I) Ltd.* (supra) does not deal with the said aspect. The question therein was whether the act had been committed within the premises, where if committed, was a misconduct under the Rules. The petitioner has also relied on *Northern Railway Cooperative Credit Society Ltd. Vs. Industrial Tribunal* (1967) 2 SCR 476; that was again a case of the action / inaction not ordinarily understood as misconduct and made a misconduct only under the Rules.

12. The petitioner has in the writ petition not raised any ground as to the factual findings of the inquiry officer, of the petitioner having forged and fabricated rent receipts to draw more monies than to which he was entitled from the respondent no.2 Institute. There can be no iota of doubt that the said action of the petitioner is illegal and in breach of the confidence reposed by the employer in its employees. In my view, even in the absence of any Rule constituting such act as a misconduct, the same would be a misconduct entitling the respondent no.2 Institute to proceed against the petitioner. The element of faith between the employer and the employee is necessary and forms the basis of this relationship where both work for their respective gains. Once such faith and trust is breached / broken, the employer cannot be forced to keep the employee in which it has lost faith.

Law does not require the obvious to be stated. There was no need for the respondent no.2 Institute to frame any Rules providing that its employee as the petitioner should be faithful in the discharge of their duties to the respondent no.2 Institute and / or in the discharge of the said duties shall maintain absolute integrity and honesty. The respondent no.2 Institute is thus found entitled to, even without the Rules, charge-sheet the petitioner and / or to proceed with holding the enquiry into such acts which *per se* constitute a misconduct or entitle an employer to terminate the services of an employee and to punish the petitioner if found guilty. It is a different matter if action / inaction which may not, in common parlance or ordinarily, be understood as a misconduct is constituted as a misconduct under the Rules. In such circumstances, an employee is certainly entitled to contend that without the Rule having been framed he / she could not have known that such action / inaction constitutes misconduct.

13. The senior counsel for the petitioner next contended that the punishment of dismissal from service meted out to the petitioner is discriminatory inasmuch as the witness of the respondent no.2 Institute, before the Industrial Tribunal had admitted that another employee of the respondent no.2 Institute namely one Hari Shankar had also claimed house rent allowance on the basis of forged documents and the punishment only of withholding of annual increment and promotion was meted out to him. It is urged that discretion of the management / employer to deal with its

employees does not extend to discriminating between them and there should be a parity in punishment. It is urged that it is not as if such misconduct is compulsorily to be punished with dismissal from service; the respondent no.2 Institute in its discretion could have also meted out any lesser punishment to the petitioner. It is urged that the respondent no.2 Institute in meting out punishment for the same offence has not applied the choice uniformly. It is further contended that the Industrial Tribunal has not dealt with the said aspect inspite of having been raised before it. Reliance in this regard is also placed on *Director General of Police Vs. G. Dasayan* (1998) 2 SCC 407 & *Anand Regional Cooperative Oil Seeds Growers' Union Ltd. Vs. Shailesh Kumar Harshadbhai Shah* (2006) 6 SCC 548.

14. The Supreme Court recently in *U.P. State Road Transport Corporation Vs. Suresh Chand Sharma* in Civil Appeal No.3086/2007 decided on 26th May, 2010 has reiterated that charge of corruption necessarily entails punishment of dismissal from service. Even otherwise, it has been the settled position that an employer cannot be forced to do with a dishonest employee. An employee who forges and fabricates documents and uses the same for drawing more amounts from the employer, would certainly fall in the category of corrupt and dishonest employee. The judgments relied upon by the petitioner are distinguishable. The charges in neither of the said judgments were serious as in the present case. Also, the

Supreme Court in neither of the judgments has laid down any such general proposition of law and in the facts and circumstances of those cases has altered the punishment to that of meted out to the others. Else, the Supreme Court in *State of Madhya Pradesh Vs. Ramesh Chandra Bajpai* (2009) 13 SCC 635 has held that one illegality cannot form the basis of another. Thus it is no argument in law that because one thief has been let off or let off lightly, the other one also should be. The Division Bench of this Court in *Ved Prakash Malhotra Vs. State Bank of India* MANU/DE/0303/1973 has held that an action taken against an employee does not become discriminatory merely because similar action was not taken against others and the employee cannot be allowed to urge that action should not be taken against him for that reason.

15. Once the position in law is clear that the punishment of dismissal from service is not disproportionate to the gravity of the misconduct, the said punishment cannot be interfered with solely on the ground of admission in cross examination of another employee having been given lesser punishment. In fact there is no other material before this Court to compare the two cases. The punishment may vary from case to case. If an employee on being so charged immediately admits his guilt and seeks pardon, lesser punishment may be meted out to him. However, the petitioner inspite of the charge-sheet, contested the same and went through the rigmarole of the entire examination and cross examination of witnesses

before the inquiry officer and it was only after the respondent no.2 Institute had been successful in establishing the charge and misrepresentation by the petitioner that the petitioner gave up the challenge thereto. The senior counsel for the petitioner has also fairly admitted that had the respondent no.2 Institute also commenced criminal prosecution against the petitioner for the offence committed by him, the petitioner may have been arrested and convicted which could also have constituted a misconduct.

16. The counsel for the petitioner next contended that the amount illegally received by the petitioner is a mere sum of Rs.1378.30p only. That, in my opinion, would not make any difference. A dishonesty remains a dishonesty whether qua a small or a big amount. An employee who had admittedly indulged in such dishonesty, if reinstated would spoil the harmony in the establishment. It would openly send a message that inspite of such serious / grave offence having been committed none can be kicked out / dismissed.

17. A perusal of the order dated 9th June, 1997 of the Industrial Tribunal shows that the challenge by the petitioner to the inquiry proceedings was only for the reason of the petitioner having not been permitted legal representation. The Inquiry Officer though denied legal representation to the petitioner but gave a choice to the petitioner to engage any other employee as his defence assistant. The petitioner chose not to engage

anyone. Such ground can constitute a sufficient ground for setting aside of the inquiry proceedings only if prejudice suffered is shown. No such prejudice is shown in the present case. The petitioner has fully participated in the inquiry and examined and cross examined witnesses and argued before the inquiry officer and cannot be heard to complain of the inquiry being bad for lack of defence assistant.

18. The case is therefore not found to be such in which the petitioner would suffer any grave loss or where the petitioner deserves indulgence of this Court. Rather, no merits are found in the writ petition, to readmit the same.

19. The applications are accordingly dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

3rd June, 2010
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