

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

% *Date of Judgment: 16.03.2011*

+ **RSA No.121/2009**

SHRI DEEP CHAND BHARTI Appellant
Through: Mr.R.S. Hegde & Mr.Prakash
Chandra Sharma, Advocates.

Versus

M/S FOOD CORPORATION OF INDIA Respondent.
Through: Ms.Neelam Singh Advocate
with Mr.Tapas Ranjan Sethi
Manager (Legal).

**CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J. (Oral)

1. This appeal has impugned the judgment and decree dated 5.6.2009 which had endorsed the finding of the trial judge dated 22.8.2007 whereby the suit filed by the plaintiff Deep Chand Bharti seeking declaration, permanent and mandatory injunction to the effect that the order terminating his service be declared null and void was dismissed.
2. On 18.8.1978 the plaintiff was appointed as a draftsman with the Food Corporation of India (hereinafter referred to as 'the FCI'). He had a unblemished record. On 16.4.1999 he was convicted

under Section 325 and 149 of the Indian Penal Code (hereinafter referred to as 'the IPC'). He was sentenced on 17.4.1999. On 4.9.2009 he was suspended from his service. Plaintiff filed his appeal against his conviction order dated 16.4.1999; it was modified; plaintiff was released on probation vide judgment dated 12.7.2002. These facts were duly informed to the defendant department. Nevertheless the defendant vide order dated 31.7.2003 dismissed the plaintiff from his service. This has been challenged by way of the present suit. Contention is that the plaintiff had been released on probation under section 12 of the Probation of Offenders Act (hereinafter referred to as 'the act'). Plaintiff did not suffer from any "disqualification" in terms of Article 311(2) of the Constitution of India. He is liable to be reinstated.

3. In the written statement position was disputed. It was denied that the plaintiff had informed the department about the criminal proceedings which were initiated and pending against him. It was pointed out that the defendant had not come the court with clean hands.

4. Seven issues were framed by the trial judge. Oral and documentary evidence was led. FCI (Staff) Regulations 1971 were adverted to. The order dismissing the services of the plaintiff is dated 31.7.2003. Trial judge was of the opinion that in view of the conviction which had been suffered by the plaintiff in a criminal case under Section 325 read with Section 149 of the IPC although he has been released on probation yet this did not mean that he had been absolved of a moral turpitude; he had suffered a disqualification; he had also concealed material facts and not

disclosed the details of the criminal proceedings pending against him. His services were rightly terminated.

5. This finding of the trial judge was affirmed in appeal vide the impugned judgment. The finding returned is as follows:

“ The appellant/plaintiff was no doubt released on probation but he was not entitled to benefit of Section 12 of Probation of Offenders Act as the appellant/plaintiff was termination as he did not inform the department that he had been arrested in a criminal case. This act of the appellant/plaintiff amounted to moral turpitude.

The termination of service of appellant/plaintiff was not on ground of conviction, but for concealment of the said fact from the Department. The respondent/defendant was therefore, authorized to terminate the services of appellant/plaintiff as Food Corporation of India Staff Regulation 1971.

The Ld. Trial court did not err in holding that as per Section 12 of Probation of Offenders Act the disqualification shall attach with the conviction by specific provisions and in the present case no such disqualification is given in IPC. Hence, Section 12 of Probation of Offenders Act is not applicable.

The appellant/ plaintiff contended that he was terminated on 31.07.2003 without holding an inquiry which was against the principles of natural justice and in violation of Article 14. If the order dated 31.07.2003 is illegal, then the appellant/plaintiff is to approach the appropriate/competent authority so as to exhaust all alternative available remedies as the suit was not maintainable and the court cannot sit in appeal against the order of the Defendant/Respondent Department on 31.07.2003.

If the plaintiff is aggrieved by order dated 31.07.2003 then the right course was to file an appeal in appropriate authority. The applicant/plaintiff did not exhaust all other remedies available to him and the Ld. Trial Court did not commit any error in holding that the suit was not maintainable.”

6. On behalf of the appellant, it has been urged that finding of the two courts below are illegal. The impugned judgment suffers from a perversity. The punishment of dismissal awarded to the plaintiff for an offence under Section 325 of the IPC when admittedly he had also been released on probation is a penalty

which is disproportionate to any misdemeanor if any on the part of the appellant. Learned counsel for the appellant has placed reliance upon a judgment of the Apex court reported in (2008) 3 SCC 273 State of M.P. Vs. Hazari Lal to support this submission. It is pointed out that in this case also in similar circumstances where the employee had been convicted under the provision of Section 323 of the IPC and has been sentenced with a fine only, his dismissal from service without any enquiry was not called for; the Apex Court had interfered with this finding and set it aside. Learned counsel for the appellant has submitted that this judgment is applicable on all four corners of the case of the appellant. The impugned judgment is also accordingly liable to be set aside.

7. Arguments have been countered. It is pointed out that the FCI (Staff) Rules enable the department to dismiss an employee by following a special procedure without an enquiry. Reliance has been placed upon (2010) 8 SCC 573 Sushil Kumar Singhal Vs. Regional Manager, Punjab National Bank to support a submission that release on probation does not entitle a person to ask for reinstatement in service. Such a conviction suffers a disqualification.

8. This is a second appeal. Interference with the findings of fact are called for only if the same are perverse. The substantial questions of law have been embodied on page 22 of the appeal. They read as follows:

"A. Whether the suit filed for declaration and other reliefs is maintainable in law?

B. Whether the finding of the courts below that the suit is not maintainable without the plaintiff exhausting the alternative remedy of appeal is sustainable in law?

C. Whether the order of termination passed without giving

opportunity of hearing to the plaintiff is sustainable?

D. Whether in view of the binding decision of the Hon'ble Supreme Court in State of M.P. Vs. Hazarilal-(2008) 3 SCC 273= AIR 2008 SC 13000 whether the order of termination passed by the disciplinary authority without application of mind and without recording proper satisfaction is legal and valid?

E. Whether in the facts and circumstances of the case the impugned judgment of the courts below are sustainable in law?"

9. The order of the Disciplinary Authority dated 31.7.2003 dismissing the services of the plaintiff is a speaking order running into five pages (page-120 to 124) of the paper book. Admittedly the petitioner had been convicted for an offence under Sections 323/325/326 read with Section 149 of the IPC vide judgment dated 16.4.1999. On 17.4.1999 he had been sentenced for a period of two years with a fine of ₹500/-; in default of payment of fine to undergo RI for two months under Section 325 read with Section 149 of the IPC; he has also been sentenced for the offence under Section 323 IPC to undergo RI for six months and to pay a fine of ₹300/-; in default of payment of fine to undergo RI for one month. On 26.4.1999 the sentence of the appellant was suspended. His revision before the ASJ was disposed of on 12.7.2002. His sentence was modified; he was released on probation for a period of two years. Conviction was maintained. The order of dismissal had recorded that the plaintiff had concealed material facts of his arrest and subsequent release on bail; he had informed his employer only vide his representation dated 04.6.1999. This amounted to a mis-conduct under Regulation 32-A of the FCI (Staff) Regulations. The penalty of dismissal was accordingly awarded.

10. The factual submissions as noted in the order dated

31.7.2003 are not in dispute. Learned counsel for the appellant has not been able to give the date as to when the criminal proceedings were initiated against him but admittedly when he was arrested for the said offence, he had not intimated it to the department. In fact till 4.6.1999 no information was given to the department about the criminal proceeding were pending against him. This was a dishonest concealment on the part of the plaintiff.

11. Regulation 63 of the FCI (Staff) Regulations, 1971 contains a special procedure in certain cases:

“63. Special procedure in certain cases:

Notwithstanding anything contained in Regulation 58 to Regulation 62:

(i) Where any penalty is imposed on an employee on the ground of conduct which had led to his conviction on a criminal charge; or

(ii) Where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these regulations.

(iii) Where the Board is satisfied that in the interest of security of the State, it is not expedient to hold any inquiry in the manner provided in these regulations.

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit.”

12. Admittedly the plaintiff had been convicted in a criminal case. It is also admitted intimation of that all proceedings prior to this conviction (which was on 16.4.1999) had not been given by the plaintiff to the defendant. For the first time on 04.6.1999 the department had been informed. This was much after the date of his conviction. FIR would have been registered much prior thereto; learned counsel for the appellant has not been able to give the date of the registration of the FIR although specific query has been posed to him on this count. Disciplinary authority had passed a reasoned and speaking order. No interference is called for.

13. The facts of *Hazari Lal* (supra) are distinct. In that case the employee had been convicted under Section 323 of the IPC and had been sentenced to pay fine. He was a peon; it was noted that continuation of service in the department of such an employee would not bring a bad name. He was not convicted for any act involving moral turpitude. He was not punished for any heinous offence. In these circumstances, his order of dismissal was set aside. In the instant case, the petitioner has been convicted for a higher offence i.e. for the offence under Section 325 of the IPC and has been released on probation. His punishment is also on a higher scale. That apart what had weighed utmost in the mind of the Disciplinary Authority was the fact that there was a dishonest concealment of facts by the appellant; there was not a whisper or any intimation made by him to his department about the criminal proceedings initiated and pending against him; even after his conviction which was on 16.4.1999, he waited up to 4.6.1999 to inform the department. This was a material and dishonest concealment, it amounted to a moral turpitude.

14. In *Sushil Kumar Singhal* (supra) while dealing with the provisions of Section 12 of the Probation of Offenders Act the word “disqualification” attached to it the Apex Court had noted as follows:

“18. In view of the above, the law on the issue can be summarized to the effect that the conviction of an employee in an offence permits the disciplinary authority to initiate disciplinary proceedings against the employee or to take appropriate steps for his dismissal/removal only on the basis of his conviction. The word “disqualification” contained in Section 12 of the 1958 Act refers to a disqualification provided in other statutes, as explained by this Court in the abovereferred cases, and the employee cannot claim a right to continue in service merely on the ground that he had been given the benefit of probation under the 1958 Act.”

15. Moral turpitude has in fact been defined by the Supreme Court in the case reported in (1996) 4 SCC 17 Pawan Kumar Vs. State of Haryana. It is an expression which is used in legal as also at societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity. In (1997) 4 SCC 1 Allahabad Bank Vs. Deepak Kumar Bhola this expression “moral turpitude” was reconsidered to be explained as follows:

“The expression ‘moral turpitude’ is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act he will still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man.”

16. The act of the plaintiff was clearly within the four corners of the moral turpitude; he was dishonest and actively concealed the fact that a criminal proceedings had been initiated and pending against him; that he had been convicted in the criminal proceedings. It was only after his conviction on 16.4.1999 that on 04.6.1999 he had chosen to make a representation to the department for the first time about these criminal proceedings against him.

17. The findings in the impugned judgment call for no interference. No substantial question of law has arisen. Dismissed.

INDERMEET KAUR, J.

MARCH 16, 2011
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