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

Date of Decision: December 23, 2015

+ W.P.(C) 2366/2004

RAJ KUMAR JAIN

..... Petitioner

Through: Mr. Pradeep Jain, Mr. Ashish
Bansal and Ms. Preeti Manderna,
Advocates

versus

VALLABHBHAI PATEL CHEST INSTITUTE Respondent

Through: Mr. Ashwani K. Sakhija and
Mr. Puneet Saini, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Petitioner who was employed as Laboratory Attendant in the respondent in Vallabhbhai Patel Chest Institute of Delhi University (hereinafter referred to as '*respondent-Institute*') was dismissed from service on 30th May, 2003 consequent upon a departmental inquiry. Petitioner had unsuccessfully challenged the Termination Order (*Annexure P-25*) by way of filing a statutory appeal, which also stands dismissed vide impugned order of 30th September, 2003 (*Annexure P-30*).

Quashing of Termination Order (*Annexure P-25*), Appellate Order (*Annexure P-30*) and Memorandum (*Annexure P-23*), which is the Inquiry Report of 9th May, 2003 is sought in this petition with

consequential benefits.

Out of eight charges framed against petitioner, Articles of Charge Nos.1, 3, 4, 7 and 8 stood proved against petitioner in the departmental proceedings. The first Article of Charge related to petitioner's habitually coming late to the office and the third charge pertained to unauthorized absence of petitioner on 15th January, 1999, 20th January, 1999 and 22nd January, 1999. The fourth charge relates to misconduct of non-adherence to the instructions by superior officers. The seventh charge relates to using abusive and impertinent language in conversation with superior officers.

On the eighth charge, the Inquiry Officer in his report has opined that the eighth charge is off shoot of Articles of charges No.1, 3, 4 and 7 which already stand proved. The Disciplinary Authority acting upon the Inquiry Officer's Report passed the dismissal order (*Annexure P-25*) holding that petitioner had committed grave misconduct and had rendered himself unfit for continuation as an employee of the respondent-Institute. Appellate Authority vide impugned order of 30th September, 2003 (*Annexure P-30*) has held that the procedure laid down for the conduct of inquiry has been duly followed and the termination of petitioner's service is in accordance with the rules and that the penalty of *dismissal from service* inflicted upon petitioner is not disproportionate to the proved misconduct of petitioner.

The challenge to the impugned order, termination order and the Inquiry Report by learned counsel for petitioner is on the ground that the inquiry against petitioner proceeds at three memos issued in one day i.e. on 25th January, 1999. It is pointed out that the first memo was issued in

the morning and the second memo in the afternoon and the third memo in the evening on that day and the evidence on record does not substantiate the first charge of petitioner habitually coming late to the office. It was pointedly submitted that no witness has deposed on this aspect to prove the first charge and so far as third charge is concerned, it was submitted that once a leave application is given, then in normal course it is accepted. Non-acceptance of petitioner's leave on the ground of domestic work would have entailed the deduction of salary for the few days in January, 1999 in which month, the petitioner had remained on leave. It was submitted by learned counsel for petitioner that the fourth charge of insubordination to superior assistant *Sh. Randhir Singh* does not stand proved at all because his evidence is contrary to the aforesaid charge. It was also submitted by learned counsel for the petitioner that there is no evidence on record to prove the charge of petitioner refusing to perform the duty assigned to him and that the service record of petitioner for the last three decades is good and petitioner had crossed the efficiency bars. Regarding the seventh charge, it was submitted by learned counsel for petitioner that this charge is clearly motivated because petitioner was being asked to do the job of *daftari*, whereas he was employed as a Lab Assistant and when petitioner had resisted in doing the work of *daftari*, then such a charge has been levelled against petitioner.

Lastly, it was submitted that in any case the penalty of *dismissal from service* is wholly disproportionate to the proved charges. To contend so, reliance was placed upon a decision in *Girish Bhushan Goyal Vs. BHEL and Anr.* (2014) 1 SCC 82.

To controvert the aforesaid submissions of learned counsel for

petitioner, learned counsel for respondent relied upon a Division Bench decision of 25th February, 2015 in LPA No.106/2015 *Director, Vallabhbhai Patel Chest Institute Vs. C. Ramesh & ors.* to submit that the disciplinary power is vested in the Executive Council of University of Delhi and it does not lie with the Disciplinary Authority or the Appellate Authority. It was pointed out that in terms of Division Bench decision of this Court in *C. Ramesh (supra)*, this matter has to be referred to the Executive Council of University of Delhi for considering Inquiry Officer's report and to take further action.

At this stage, learned counsel for petitioner submits that today petitioner is seventy three years old and is not in good health and that he has already faced agony of these proceedings for last sixteen years and so, petitioner ought not be relegated to the Executive Council of University of Delhi, as in *C. Ramesh (supra)* the employee was aged about forty five years and had 14 or 15 years of service left and SLP against Division Bench decision in *C. Ramesh (Supra)* is still pending. Thus, it was submitted that agony of petitioner be brought to an end, as the penalty was inflicted upon petitioner, a day prior to his retirement.

The pertinent observations of Division Bench in *C. Ramesh (supra)* are as under:-

“The clarification being in consonance with the reasoning of the decision dated January 29, 2014 passed by the learned Single Judge; since the disciplinary power is vested in the Executive Council of the University of Delhi, it may be observed that the issue of disciplinary action against the respondent could be placed before the Executive Council of the

University of Delhi for its decision.”

After having hearing learned counsel for the parties and upon perusal of the Termination Order (*Annexure P-25*), Appellate Order (*Annexure P-30*), Inquiry Officer’s Report (*Annexure P-23*), the material on record and decisions cited, I find that in view of dictum in *C. Ramesh (supra)*, the impugned termination order is rendered unsustainable and thus, is set aside.

In the instant case, petitioner is of fairly advanced age and has faced agony of these proceedings for last fifteen years but the law, as declared in *C. Ramesh (Supra)* has to be followed in letter and spirit. During the course of hearing, it was brought to the notice of this Court by learned counsel for respondent that the Executive Council of University of Delhi has delegated its powers to the Governing Body of respondent-Institute and so, Governing Body of respondent-Institute has to take a call as to what penalty is to be awarded to petitioner. However, such a course is not required to be followed in the instant case because I find that petitioner’s appeal has been rejected by the Appellate Authority, who happens to be the Governing Body of respondent-Institute. Though the findings of the Inquiry Officer does not suffer from any palpable error but it is required to be seen as to whether the penalty of *dismissal from service* imposed upon petitioner is adequate or disproportionate to the misconduct of petitioner. While considering this aspect, it has to be kept in mind that petitioner has clean service record and has crossed the efficiency bars.

Doctrine of proportionality, as reiterated by the Apex Court in *Chennai Metropolitan Water Supply & Sewage Board & ors. Vs. T.T.*

Murali Babu (2014) 4 SCC 108, is as under:-

“19. The doctrine of proportionality is, thus, well recognised concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be: Would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.

21. In a case like the present one where the misconduct of the delinquent was unauthorised absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have intention nor desired to W.P.(C) 6134/2002 Page 8 of 8 disobey the order of higher authority or violate any of the Company's rules and regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of

removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations.”

Considering the nature of misconduct attributed to petitioner and the quality of evidence led and the fact that on one day, three Memorandums were given to petitioner, on the basis of which Inquiry was held and that petitioner had a clean service record, I find that penalty of *dismissal from service* is unduly harsh and disproportionate. In the considered opinion of this Court, penalty of stoppage of three increments would be commensurate with the misconduct attributed to petitioner.

Accordingly, penalty of *dismissal from service* inflicted upon petitioner is substituted with the penalty of *stoppage of three increments*.

With aforesaid modification, this petition is disposed of, while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

DECEMBER 23, 2015
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