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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 660 OF 2013

Shri Rajendra D. Harmalkar,
Flat No.3, Saptagiri Apartment,
Simple Sancoale, Near Government School,
Sancoale Goa 403 801.
Indian National, Major of age. ... Petitioner

V e r s u s

M/s. Indian Oil Corporation Limited
Through its Chairman
R.S. Butola,
254-C, Dr. Annie Besant Road,
Prabhadevi, Mumbai 400 025.
Indian National, Major of age. ... Respondent

Mr. G. Vijaychandran, Advocate for the petitioner.

Mr. G. K. Sardesai, Advocate for the respondent.

**Coram:- F. M. REIS &
K. L. WADANE, JJ**

Judgment Reserved on :- 24.02.2015

Judgment Pronounced on :- 29.06.2015

J U D G M E N T (Per K. L. Wadane, J)

By this petition, the petitioner/workman challenges the order of dismissal from the services dated 10.03.2006 passed by the Disciplinary Authority and subsequently, confirmed by the Appellate Authority and the Central Government Industrial Tribunal

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No. 1, Mumbai in Reference No. CGIT-1/32 of 2007 dated 11.03.2013.

2. Briefly, the facts of the case may be stated as follows :

The petitioner was appointed as a casual employee at Air Fueling Station (AFS) at Dabolim airport by the respondent. The petitioner was involved in attending the work relating to refueling of aircrafts, driving/assisting driver of fueling vehicles, repairs, maintenance of the vehicles etc.

In the year 1988, the petitioner/workman was appointed as a Refueling Helper. Although, the appointment of the petitioner was made without any regard to the educational qualification or age restriction still the petitioner/workman submitted a copy of SSLC which he had obtained through Open School appearance under the bonafide belief that it was genuine. The petitioner was confirmed as a Senior Operator (Field) by January, 2003. Acting on a complaint that the petitioner had submitted the forged SSLC marks certificate to secure the job with the respondent, The Airport Terminal Manager, Dabolim (AFS) asked the petitioner to submit his original SSLC marks certificate. The petitioner then replied that the original had been misplaced. He applied for a duplicate copy to the Karnataka Secretary Education Examination Board but he could not obtain the same.

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When the respondent verified from the Karnataka Secondary Education Examination Board, Bangalore, it was revealed that the certificate bearing register No. 206271 produced by the workman is relating to one Agrahar Jayant and not to the workman. The birth date on the certificate was also different from that of the petitioner.

3. Looking to the misconduct committed by the petitioner, the respondent had issued charge-sheet against the petitioner and the charges were as follows :

(a) Willful insubordinate or disobedience whether or not in combination with another, of any lawful and reasonable order of a superior.

(b) Giving false information regarding one's age, father's name, qualifications or previous services at the time of employment.

4. The first charge levelled against the petitioner was for not responding promptly to the letters of the superiors while the second charge was on account of furnishing a false SSLC certificate. The petitioner has given his reply to the charges. In his reply, he has impliedly admitted the guilt and stated that he might have given a wrong declaration of having passed Xth

Standard.

5. Since the petitioner has impliedly admitted his guilt, the disciplinary authority has imposed maximum penalty of dismissal from the service and the Appellate Authority upheld the said order of dismissal. The petitioner requested for a review of the above orders but to no avail. According to the petitioner, even on assuming but not admitting the charges to be proved the penalty imposed on the petitioner/workman is grossly excessive as against the charges as proved against him. Therefore, the petitioner in the present petition has prayed that the punishment awarded to him be set aside and he be reinstated in service w.e.f. the date of his dismissal from service.

6. It is the say of the respondent that since the petitioner is dismissed from the service by order dated 10.03.2006 for the act of misconduct as stated in the charge sheet dated 30.09.2005, therefore, the workman is not entitled for any relief. According to the respondent, the petitioner joined the services on 26.09.1988 as Junior Operator (Field) and was working as Senior Operator (Field) at Aviation Fuel Station, Dabolim since 01.07.2002. The petitioner for obtaining employment had submitted a false SSLC certificate. An inquiry was held against the workman wherein the

workman participated along with his defence representative. The Inquiry Officer held that the workman/petitioner guilty of the charges levelled in the charge sheet and services of the petitioner were terminated w.e.f. 10.03.2006.

7. We have heard the arguments of Mr. G. Vijaychandran, learned counsel appearing for the petitioner and Mr. G. Sardesai, learned counsel appearing for the respondent.

8. During the course of the arguments, the learned counsel appearing for the petitioner has argued that the petitioner has admitted his alleged guilt of misconduct under the assurance of a lenient view. Further more, learned counsel has argued that there was no minimum educational qualification and age limit (minimum or maximum) to secure job or even for getting the promotion. In such circumstances, it cannot be said that the petitioner has submitted a false mark sheet with an intent to secure job or promotion. According to Mr. Vijaychandran, the petitioner has submitted the certificate only for the purpose of record and there was no dishonest intention to grab the opportunity of job or promotion.

9. As against this, Mr. G. Sardesai, learned counsel

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appearing for the respondent has stated that since the petitioner has admitted the guilt, the disciplinary authority has rightly dismissed him from the services. Looking to the rival contentions and the arguments advanced on behalf of both the parties, the following point arises for our determination.

<u>POINT FOR DETERMINATION</u>	<u>FINDING</u>
1 Whether the punishment imposed upon the petitioner is grossly disproportionate to the misconduct committed by the petitioner ?	Affirmative
2 What Order ?	Petition is allowed.

REASONS

10. At the outset, it is material to note that the punishment of dismissal from the service was imposed upon the petitioner only on the admission of the misconduct. Therefore, the parties have not adduced any evidence.

11. We have gone through the relevant record available in the proceedings and we find that the punishment imposed upon the petitioner is grossly disproportionate to the misconduct of the petitioner mainly on the following grounds :

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(a) The false certificate submitted by the petitioner/workman was not with an intention to secure job or promotion but it was produced only for the purpose of record.

(b) No minimum qualification or age limit was prescribed for getting job or promotion.

(c) The Criminal Court has acquitted the petitioner for the offence punishable under Sections 468 and 471 of Indian Penal Code regarding same SSLC certificate.

(d) Admitted the guilt under the promise of lenient view.

(e) Good service record.

(f) First charge is not established.

12. As per the say of the petitioner, the petitioner has admitted the guilt under the promise of lenient view.

13. The first charge of insubordination or disobedience is not proved nor admitted by the petitioner.

14. On scrutiny of the record, it is an undisputed fact that there was no minimum qualification for securing job of casual

employee nor age limit either minimum or maximum was prescribed. In such circumstances, there was absolutely no reason for the petitioner to submit the information/document relating to his age and educational qualification.

15. The petitioner/workman was prosecuted for the offence punishable under Sections 468 and 471 of Indian Penal Code relating to same document in question and the Criminal Court has acquitted the petitioner from the charges levelled against him holding that there is no evidence to show that the petitioner has fabricated a false document, rather forged document itself is not on record. This is one of the most important aspects in favour of the petitioner.

16. As referred to earlier, the punishment imposed upon the petitioner by the disciplinary authority is based upon the admission of the guilt. On the background of the acquittal of the petitioner by the Criminal Court, the stand taken by the petitioner for admission of his misconduct assumes importance. Therefore, it is necessary to mention here that the petitioner has admitted the guilt on the advise of the superiors and under the promise of lenient view regarding the punishment to be inflicted upon the petitioner. The stand taken by the petitioner appears to be having

some substance because the petitioner was acquitted by Criminal Court from the charges of fabrication of false record. From the record, it is seen that the petitioner is educated up to VIIth Standard. Therefore, he might be under the guidance of other or under the assurance of lenient view had admitted the guilt of misconduct.

17. Looking to the next aspect, it is material to note that the petitioner is having good service record and was promoted to the post of Senior Operator. Apart from that, from the documents it is seen that there are certain documents on record to show that his work is appreciated by awarding certain certificates. From the certificate dated 23.12.1993, it is seen that the respondent has recognized the individual contribution of the petitioner towards the services rendered in the cause of safety at Dabolim AFS. In the year 1992, he has been awarded British safety award. Likewise, from the certificate, it is seen that the petitioner has successfully completed a Field Service Training Course conducted at Goa from 17.11.1988 to 19.11.1988 on maintenance of Ashok Leyland, heavy duty in the range of vehicles. The respondent issued another certificate in favour of the petitioner regarding the excellent participation and successfully completing training programme on 'Customer Care'. So looking to the service record,

it appears that the service record of the petitioner is good and no adverse entries or remarks were recorded in his service record.

18. Regarding the first charge, it may be mentioned here that though the petitioner was charged for willful insubordination or disobedience whether or not in combination with another, of any lawful and reasonable order of a superior is not proved. Therefore, the second charge of giving false information stands proved on admission of the petitioner. Looking to the evidence and circumstances, we are of the opinion that the punishment awarded to the petitioner is grossly disproportionate with the misconduct committed by the petitioner.

19. Apart from that, there was nothing shown therein to disclose that the petitioner was in fact involved in processing the disputed certificate. The petitioner appears to have been misled by the concerned education institution to obtain a certificate which thereafter was held to be a dubious certificate. As there is no willful act committed by the petitioner, we find that the punishment imposed is shockingly disproportionate to the alleged misconduct committed by the petitioner in disclosing his education qualifications. As already stated, such qualifications were not required for his initial entry into service and it has been found that

there is no material on record to show who is the author of the alleged fabrication of the certificate of the education.

20. Mr. Sardesai, learned counsel appearing for the respondent has relied upon the observations of the Apex Court in the case of **Hombe Gowda Educational Trust and another V/s State of Karnataka and others**, reported in **(2006) 1 SCC 430** at para 30 thus :

“**30.** This Court has come a long way from its earlier viewpoints. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach to the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed that how discipline at the workplace/ industrial undertakings received a set back. In view of the change in economic policy of the country, it may not now be proper to

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allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of [Article 141](#) of the Constitution of India, as noticed in the decisions noticed supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to this Court was bound to follow the decisions of this Court which are applicable to the facts of the present case in question. The Tribunal can neither ignore the ratio laid down by this Court nor refuse to follow the same."

21. We have gone through the facts and observations of the above cited case. It was a case of an employee who had

assaulted the Principal of the educational institute with a chappal and in the departmental proceedings, the employee was held to be guilty of the misconduct and punished accordingly. In the same case, it has been further observed by the Apex Court in para 17 that the jurisdiction to interfere with the quantum of punishment could be exercised only when, inter-alia, it is found to be grossly disproportionate. Further, it is observed in para 20 that the person when dismissed from the service is put to a great hardship but that would not mean that a grave misconduct should go unpunished. Although the doctrine of proportionality may be applicable to such matters, but the punishment of the dismissal from the service for such a misconduct cannot be said to be unheard of. The maintenance of discipline of an institution is equally important. The facts of the cited case are distinct from the facts of the present case because the gravity of the misconduct committed by the delinquent in cited case is very grave and against the discipline of educational institution but here in the present case, the punishment was awarded to the petitioner on admission of his guilt on the background that a leniency may be taken while awarding punishment. Looking to the overall circumstances, and the fact that the petitioner is out of service from the year 2006 and during the course of the arguments, the learned counsel appearing for the petitioner has made a statement upon instructions that the

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petitioner will forgive his back wages and promotion. In such circumstances, we are of the opinion that the punishment imposed upon the petitioner is grossly disproportionate with the misconduct. Therefore, we allow the petition and direct the respondent to reinstate the petitioner from the date of dismissal from service on the post of Refueling Helper without any back wages and other benefits. Rule is made absolute in above terms. The petition stands disposed of accordingly.

K. L. WADANE, J

F. M. REIS, J

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