

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No.855 of 2015 (O&M)

Date of Decision: 29.05.2015

Pepsu Road Transport Corporation, Patiala
and another

..... Appellants

Versus

Naurang Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Balwinder Singh, Advocate
for the applicant/appellant.

S.S. SARON, J.

This appeal has been filed by the Pepsu Road Transport Corporation, Patiala and its General Manager (appellants) against the judgment and order dated 03.04.2014 passed by the learned Single Judge in CWP No.1331 of 2005. In terms of the said impugned judgment, the quantum of punishment in respect of the workman (respondent No.1) has been modified from dismissal from service to compulsory retirement w.e.f. 02.12.1994. Along with the appeal, CM No.1784 LPA of 2015 has been filed seeking condonation of 387 days delay in filing the appeal.

The workman (respondent No.1) worked as a driver with the Pepsu Road Transport Corporation (appellant No.1) for 17 years and 8 ¼ months. He also had a letter of appreciation

dated 08.08.1995 (Annexure P-1) in his favour. However, his services were terminated without any notice on 02.12.1996. The said termination according to respondent No.1 was on the basis of an illegal and improper enquiry, besides, without paying any compensation. Therefore, he claimed reinstatement in service with full back wages. He was getting Rs.3800/- per month as salary at the time his services were dispensed with.

The Punjab Government referred the industrial dispute raised by respondent No.1 to the learned Labour Court, Ludhiana (respondent No.1). The reference was to the effect as to whether the termination of service of the workman Naurang Singh (respondent No.1) by the appellants was legal and justified? If not, to what benefit the workman was entitled in that regard.

The learned Labour Court, Ludhiana (respondent No.2) vide its award dated 11.09.2003 answered the reference against the workman (respondent No.1) and in favour of the appellants. It was held that the workman (respondent No.1) had attained the age of superannuation in April, 2003. His date of birth as stated in his cross-examination was 05.04.1945 and he attained the age of superannuation on 30.04.2003. It was held that even if it was admitted for the sake of arguments that the workman (respondent No.1) had rendered more than 17 years of service at the time of his termination from service, even then, it could be said that the punishment inflicted upon him was not shockingly disproportionate to the charges levelled against him. It was observed in the termination order that the workman (respondent

No.1) used to remain absent from duty. Passenger transport service is a public utility service. Absence of a conductor or a driver can lead to financial loss to the Corporation (appellant). In this situation, the dismissal of the workman from service was held to be fully justified and the charges levelled against him were held to be very serious.

The workman (respondent No.1) filed CWP No.1331 of 2005 against the order dated 11.09.2003 passed by the learned Labour Court, Ludhiana (respondent No.2) in this Court. The learned Single Judge, after detailed consideration, applied the 'doctrine of proportionality' and converted the order of dismissal dated 02.12.1996 into an order of compulsory retirement. The case law on the issue was considered.

Learned counsel for the appellants has contended that the learned Labour Court, Ludhiana (respondent No.2) had found that the punishment of dismissal from service of the workman (respondent No.1) was not shockingly disproportionate to the gravity of the offence. Therefore, the same was not liable to be interfered with by the learned Single Judge. It is submitted that the act of remaining absent from duty of a public utility service is a gross misconduct and the punishment of dismissal that was imposed, was commensurate with the gravity of the offence. In case, the punishment is converted into compulsory retirement, it would according to the learned counsel send a wrong signal amongst the workers and encourage them to remain absent and get away by getting retiral benefits.

Learned counsel for the appellants cites 'Sri Gopalakrishna Mills Pvt. Ltd. Vs. Labour Court (1980) 1 LLG 425, to contend that seriousness of the charges would not be mitigated with reference to the motive with which the workman behaved. Nor is the length of service of the workman relevant in imposition of punishment to prove misconduct because length of service cannot give a license to a workman to commit misconduct. Therefore, it is submitted that the length of service taken into account by the learned Single Judge is misplaced.

As regards the delay of 387 days in filing the appeal, it is submitted that time was consumed in inter-departmental communications and consultations between the Managing Director and the Legal Advisers and also amongst the legal advisers inter se. One of the legal advisers without taking action on the query of the Managing Director left the job without putting up the file. He left a notice stating that it be treated as his resignation. Thereafter, the file was traced and assigned to the learned counsel who has now filed the appeal. A reference has been made to the affidavit of the Managing Director of the appellant-Corporation which has been filed in support of the application seeking condonation of 387 days' delay in filing the appeal.

We have given our thoughtful consideration to the matter and gone through the records.

The workman (respondent No.1) had admittedly rendered 17 years and 8 ¼ months of service as a driver of the

appellants. The said period of service was taken into consideration while passing the award by the learned Labour Court, Ludhiana (respondent No.2). It was held that even the punishment was not shockingly disproportionate to the charges levelled against him. The learned Single Judge, however, held that the workman had never raised any worthwhile defence and the authorities should have taken into consideration his long period of service which they failed to do so. There was no denying the fact that the respondent No.1 had more than 17 years of service and by virtue of his dismissal order, he had lost out on his retiral benefits. As per the rules of the Department, the workman could have been duly punished by imposing lesser punishment which the Labour Court failed to take into consideration and did not exercise its power under Section 11-A of the Industrial Disputes Act, 1947 ('Act' - for short) merely on the ground that the workman had retired during the period of reference. It was held that the misconduct was not that of misappropriation or embezzlement and only on the ground of absence. The long period of service from 1979 should have been taken into account by the Labour Court keeping in view the provisions of Section 11-A of the Act. In the circumstances, the learned Single Judge interfered with the quantum of punishment after referring to the case law.

It may appropriately be noticed that the Supreme Court in 'Coal India Ltd. and another Vs. Mukul Kumar Choudhuri and others' (2009) 15 SCC 620, relied upon by the learned Single

Judge and also referred to by learned counsel for the appellants in the grounds of appeal has held as follows:

"(1) To judge the validity of any administrative order or statutory discretion, normally the Wednesbury Test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The Court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The Court would also consider whether the decision was absurd or perverse. The Court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the Court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational — in the sense that it was in outrageous defiance of logic or moral standards.

The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU (i.e. Council of Civil Service Union vs. Ministers of Civil Service, 1985 AC 374) principles.

(3)(a) As per Bugdaycay, Brind and Smith as long as the Convention is not incorporated into English law, the English courts merely exercise a *secondary* judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the

primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of 'proportionality' and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14.

Dealing with the question of proportionality with regard to punishment in disciplinary matters, the Court said: (G. Ganayutham case, (1997) 7 SCC 463 pp. 479-80, paras 32-34)

32. Finally, we come to the present case. It is not contended before us that any fundamental freedom is affected. We need not therefore go into the question of 'proportionality'. There is no contention

that the punishment imposed is illegal or vitiated by procedural impropriety. As to 'irrationality', there is no finding by the Tribunal that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in '*outrageous*' defiance of logic. Neither Wednesbury nor CCSU tests are satisfied. We have still to explain '*Ranjit Thakur*' (1987) 4 SCC 611 ''.

A reference was made to Ranjit Thakur's case (Supra) and it was observed that the Court had interfered with the punishment only after coming to the conclusion that the punishment was in outrageous defiance of logic and was shocking. It was also described as perverse and irrational. A reference was also made to B.C. Chaturvedi v. Union of India (1995) 6 SCC 749 wherein it was held that the High Court/Tribunal while exercising the powers of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the Disciplinary Authority/Appellate Authority to reconsider the penalty imposed or to shorten the litigation it may itself in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. Similar view was taken in Indian Oil Corporation Ltd. v.

Ashok Kumar Arora, (1997) 3 SCC 72 that the Court will not interfere unless the punishment is wholly disproportionate. A reference was also made to the case Coimbatore District Central Coop. Bank v. Employees Assn. (2007) 4 SCC 669 wherein the doctrine of proportionality was considered and it was held that so far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. It was held that with the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by the Courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a Court of law can interfere with such action by exercising power of judicial review. On of such modes of exercising power, known to law is the 'doctrine of proportionality'. 'Proportionality', it was held is a principle where the Court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The 'doctrine of proportionality' thus steps in focus true nature of exercise – the elaboration of rule of permissible priorities. It was held that De Smith states that 'proportionality' involves 'balancing test' and 'necessity test'. Whereas the former ('balancing test') permits scrutiny of excessive onerous penalties

or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter ('necessity test') requires infringement of human rights to the least restrictive alternative.

The above shows that on Wednesbury principle the Court would consider whether relevant material which was necessary for consideration in the decision making process had been taken into account and whether irrelevant material had been adverted to as also whether the action was bona fide. Besides, whether the 'doctrine of proportionality' has rightly been applied in modifying the punishment of dismissal from service to that of compulsory retirement.

In the present case, the length of service rendered by the workman i.e. 17 years and 8 ¼ months, was admittedly not taken into account by the authorities while imposing the punishment. Therefore, the learned Single Judge interfered with the punishment which was imposed while upholding the plea of guilt of the workman (respondent No.1). The length of service rendered by an employee is an important and relevant aspect that is to be considered in the context of the gravity of the charge for the purpose of imposition of punishment.

The workman (respondent No.1) had remained absent from duty and he in fact admitted his guilt in the reply to the charge sheet and even before the Enquiry Officer. At the time of personal hearing on 08.10.1996 also, the workman (respondent No.1) admitted his guilt and he stated that the enquiry may be dispensed with and his case be decided on the basis of his

admission. It was indeed not a case of misappropriation or embezzlement but of absence from duty. The workman (respondent No.1) had submitted a medical certificate which disclosed that he was suffering from 'jaundice'.

Learned counsel for the appellant tried to derive certain mileage from the fact that the workman (respondent No.1) had produced a medical, which in fact was not liable to be relied upon as he in his cross-examination, he stated that he had spent a sum of Rupees Two lacs on his treatment whereas he was getting Rs.3800/- per month as salary and, therefore, he could not spend such a heavy amount on his treatment. However, in case, the workman (respondent No.1) was cross-examined as regards the amount of money that was spent on his treatment, he could have been further cross-examined as to the source of the money. For reasons best known, the workman (respondent No.1) was not questioned on this aspect.

The admission on the part of the workman (respondent No.1) that he had spent a sum of Rupees Two Lacs, but he being not further cross-examined as regards the source from where he got the money, would be inconsequential. In 'Sita Ram Bhau Patil v. Ramchandra Nago Patil (dead) by LRs and another, AIR 1977 SC 1712, it was held that even if an admission is proved in accordance with the provisions of the Evidence Act and if it is to be used against the party who has made it, "it is sound if a witness is under cross-examination on oath, he should be given an opportunity, if the documents were

to be used against him to tender his explanation and to clear up the point of ambiguity or dispute. This is a general salutary and intelligible rule". Therefore, a mere proof of admission, after the person whose admission it is alleged to be, has concluded his evidence, will be of no avail and cannot be utilized against him.

Learned counsel for the appellants has shown a Medical Certificate dated 03.12.1995 in which the doctor at Malerkotla opined that the workman (respondent No.1) was suffering from 'Hepatitis and Gastroenteritis'. According to the learned counsel for the appellants, he could not have been treated for 'Jaundice' which is different from 'Hepatitis and Gastroenteritis'. In this regard, it may be noticed that the workman (respondent No.1) was a driver of the Corporation (appellant) and may be semi-literate and if a person like him asks the doctor as to what is his ailment, he is normally informed by the doctor that he is suffering from 'Pilia,' which has been translated to 'Jaundice'. A driver of a Roadways Corporation Bus is not expected to know medical terms such as 'Hepatitis and Gastroenteritis.' Therefore, not much significance can be placed on the fact that the workman (respondent No.1) stated that he is suffering from 'jaundice' while the medical certificate now shown mentions that he was suffering from 'Hepatitis and Gastroenteritis.'

In the circumstances, we do not find any merit in the appeal and the learned Single Judge has rightly interfered with the quantum of punishment that was imposed, that is, of

dismissal from service to that of compulsory retirement. The period of 17 years 8 ¼ months of service rendered by the respondent No.1 was an important aspect that was liable to be taken into consideration and was not considered by the appellants while imposing the punishment. The learned Labour Court also failed to exercise jurisdiction vested in it under Section 11-A of the Act. Judicial intervention by judicial review if it is exercised in a manner which is out of proportion to the fault of the delinquent employee, the same can be interfered with especially when it is in excess of the fault or is disproportionate or not commensurate to the gravity of the misconduct. This having rightly been applied by the learned Single Judge would not warrant interference in appeal. The case law referred to by the learned counsel for the appellant is inapplicable to the facts of the present case as each case is to be considered in relation to the gravity of the misconduct with which a delinquent employee is charged.

As regards the delay of 387 days in filing the appeal, the explanation even if it is taken to be proper would not be of much significance as we have otherwise found no merit in the appeal. However, the explanation of the inordinate delay of 387 days in filing the appeal is not convincing. The mere fact that time was taken in consultations and one of the officials resigning from the job would not warrant an inordinate delay of 387 days to be condoned.

In the circumstances, there is no merit in the appeal as also in the application filed seeking condonation of delay in filing the appeal, both are accordingly dismissed.

(S.S. SARON)
JUDGE

29.05.2015
yogesh/A.Kaundal

(RAMENDRA JAIN)
JUDGE

Note: To be referred to reporter: Yes