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

+ **W.P.(C) 1715/2012**

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Date of Judgment: 14th October, 2015

DHARA SINGH MEENA

..... Petitioner

Through: Mr. Ravinder Singh, Advocate.

Versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Mr. Santosh Kumar Tripathi, ASC for
GNCTD/R-1.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. By way of the present petition, the petitioner challenges the order dated 18.11.2011 passed by the Learned Central Administrative Tribunal, New Delhi in O.A. No. 637/2011, whereby the Tribunal was pleased to hold that the suppression of material information and also giving false statement is a serious misconduct and as such the petitioner cannot be allowed to be retained in service.
2. To appreciate the controversy in hand, it would be necessary to give a brief gist of the facts. The charge against the petitioner was that he had committed gross misconduct inasmuch as he submitted false information in Col. 11 of the attestation form given to him by the respondents department at the time of his appointment and he not only concealed the material facts but has also furnished false information. The aforesaid charge was served upon the

petitioner but he denied the same. Thereafter, an enquiry was conducted under the provisions of Rule 14 of CCS (CCA) Rules, 1965 and the enquiry officer held that the charge levelled against him stood proved. The disciplinary authority considered the factual information that FIR No. 23/95 u/s 147,148,149,302,303 IPC was registered against the petitioner in Police Station Toda Bhim on 18.12.1995. The charge sheet No.65 was prepared on 26.7.1995 in the aforesaid case and the *challan* was put up before the Court of ACJ (JD) JM Hindon City (N.I) on 26.10.1996. It was during the pendency of the aforesaid case that the petitioner had applied for the post of TGT (Training) on 22.3.1999 with Delhi Subordinate Services Selection Board (DSSSB for short). On having been selected he was offered appointment by the Directorate of Education on 27.12.1999. Section 10 of the letter of Offer of Appointment contains the following provisions:

"10) That if at stage it is found that any information/declarations and submissions given by the candidate is found false and any information has been concealed. The appointment will be terminated and he/she will be liable to proceeded - -- in this manner deemed fit"

Thereafter, vide letter dated 03.01.2000, the petitioner accepted all the terms and conditions of appointment including the aforesaid provisions contained in Section 10. The petitioner also submitted an affidavit on a stamp paper affirming that all the documents submitted by him along with his application were genuine and if proved to be false subsequently his service shall be liable to be terminated in addition to the penal action warranted in the matter. Again, on 04.01.2000 he filled up the form for verification of character antecedents, which also contains the following declarations:

*“1.The furnishing of false information or suppression of any factual information in the attestation form which would be disqualification and is unfit for employment under the Government.
2. If detained, convicted, debarred etc subsequent to the completion and submission of this form, the details should be communicated immediately to the Union Public Service Commission on the Authority to whom the attestation form has been sent earlier as the case may be, failing which it will be deemed to be a suppression of factual information.
3. If the facts or false information has been furnished or that there has been suppression of any factual information in the attestation form comes to notice at any time during the service of a person, his services are liable to be terminated.”*

However, having complete knowledge of the instructions above, the petitioner deliberately concealed the facts of his prosecution and the consequent penalty. In Section 11 of the Verification of Character and Antecedents Form, there were specific questions whether any case was pending against the petitioner in any court of law, whether he had been arrested, prosecuted, detained, bound down, fined by a court of law, convicted by a court of law etc. In response to all these questions, the petitioner crossed out ‘yes’ option and ticked ‘No’. As regards to the question whether the petitioner was fined by a court of law, the petitioner left it unanswered deliberately which shows that the petitioner was in a dilemma whether to conceal or reveal the facts in his case. Moreover, even after the judgment of Criminal Court was pronounced on 20.02.2003 and declared him guilty under Section 147 (guilty of rioting) and under Section 323 (guilty of causing hurt voluntarily) of the IPC, he did not disclose the

same. On the other hand, it was the District Magistrate (DM for short) Karauli who informed the respondents vide his letter dated 12.12.2003 that the petitioner was found guilty under Section 147 and 323 of the IPC and that the petitioner was released on a bail bond of Rs.1000 for a year along with a sum of Rs.500 to be deposited as Prosecution Fee and subject to his good conduct in future that the petitioner will not repeat his crime and shall present himself before the Court whenever called upon. On the basis of specific information provided by the DM, the respondents wrote to the HOS GBSSS No.1 Tagore Garden on 24.1.2004 to call for an explanation from the petitioner on the report of the DM. It was in response to the said letter that the petitioner finally disclosed the fact of his conviction.

3. During the departmental enquiry, the petitioner took a different stand. In the reply to the charge sheet dated 7.12.2004, the petitioner expressed ignorance that his name had been included in the case in which he had been committed. The petitioner in his deposition before the Inquiry Officer, has claimed that he did not himself place on record the fact of the pending cases while responding to column A to F of Sl. No.11 of the Attestation Form. He has also submitted that since he was not punished at that time, it was not necessary to record the information in the attestation form. However, the petitioner in his representation dated 11.06.2007 accepted that he was penalised with fine of Rs.500/- but stated that he did not disclose the fact as he was under the impression that he has been discharged.
4. The petitioner was also given an opportunity for personal appearance before the disciplinary authority on 31.03.2010 but the petitioner failed to appear. Instead, the petitioner submitted the representation on 31.3.2010 repeating his submissions made by him earlier. The petitioner further prayed that he

was an ST candidate and he has a large family dependent upon him. However, the disciplinary authority came to the conclusion that the petitioner got his job by concealing information about the criminal case pending against him under grave Sections of the IPC under Sections 302, 323, 147, 148, 149 etc. It has also been held that if the petitioner had revealed about his involvement in such criminal act, the petitioner would not have been offered the appointment. Accordingly, the disciplinary authority has imposed the punishment of penalty of dismissal from service upon the petitioner vide its order dated 11.08.2010.

5. The petitioner preferred an appeal against the aforesaid order of the disciplinary authority but the same was rejected by the Appellate authority vide its order dated 10.11.2010 holding that the petitioner had not made out any case in his appeal warranting interference with the orders of the disciplinary authority.
6. Thereafter, the petitioner challenged the orders of the disciplinary authority as well as the Appellate Authority in the Original Application on the ground that the order of dismissal passed by the disciplinary authority is without any application of mind, arbitrary and hence not sustainable in the eyes of law.
7. The learned Counsel for the petitioner has submitted that he was not supplied with material documents, namely, application form, attestation form so that he could come to know as to whether there was any concealment on his part. The learned counsel for the petitioner has also submitted that the petitioner was not given a copy of the enquiry report as the report which was given to him is that of one Sh. Ramesh Chander, Head Clerk, the presenting officer and also he was not supplied the copy of documents as mentioned therein. The learned counsel for the petitioner

further submitted that even though the respondents became aware of the incident immediately on its occurrence but they failed to take any action for a considerable period of time. The petitioner further added that on 09.02.1995 the case was filed against the petitioner under Section 323/302/149/336/148/147 of IPC but he was not convicted for any heinous crime except u/s 147, 323 of IPC and he was awarded with fine of Rs.500/- along with furnishing a bond of good conduct.

8. Learned counsel for the petitioner submitted that the penalty of the dismissal from the service is arbitrary, grossly excessive and out of proportion as compared to the offence as the order of dismissal from service with disqualification for future employment in Government Department was too harsh and oppressive.
9. Counsel for the petitioner further submitted that the conviction of the petitioner under Section 323 and 147 of Indian Penal Code does not necessarily disqualify the petitioner from a government job as the same is not an offence of moral turpitude. Furthermore counsel for the petitioner submitted that the Learned Trial Court directed the petitioner to furnish a bond in the sum of Rs. 1000/- for one year which demonstrates that the culpability of the petitioner was of a minor nature and the penalty of the dismissal from the service does not commensurate with the offence allegedly proved and the same is arbitrary, grossly excessive and out of all proportion to the offence committed and not warranted by the facts and circumstances of the case.
10. The Counsel for the petitioner submitted that the impugned order failed to take note of the settled principle of law of estoppel, waiver and acquiesce. Furthermore, the Counsel for the petitioner submitted that the respondents

while passing the order of dismissal and disposing of the appeal had not considered that the alleged incident came to knowledge and notice of the respondents immediately thereafter on its occurrence but the respondents have chosen not to take any action against the petitioner.

11. The Counsel for the petitioner submitted that the petitioner has unblemished record in his entire service career and no complaint was ever found or made against him.
12. Whereas the Counsel for the respondent submitted that the petitioner concealed the information that an F.I.R No. 23/1995 was registered on 18.02.1995 u/s 147,148,149,302,303 against certain persons including the petitioner before joining the respondents' school as TGT (Drawing) in the year 2000. Counsel for the respondent further submitted that the order by the Learned Trial Court came on 20.02.2003 whereby the petitioner was held guilty u/s 147,323 of IPC and fined Rs. 500/- by the Learned Trial Court and was released on probation subject to furnishing bail bond of Rs. 1000 for one year and to remain present as and when required by the court during the said period.
13. The Counsel for the respondent to further support his case relied upon a judgment of Apex Court in the case of ***KVS Vs. Ram Ratan Yadav, AIR 2003 SC 1709.***
14. We have heard the learned counsel for the parties.
15. The law relating to the interference in the punishment by the court is well settled by the Apex Court. The interference with the punishment can only be after coming to the conclusion that the punishment was in outrageous defiance of logic, perverse, irrational and shocking. In ***B.C.***

Chaturvedi v. Union of India : (1995) 6 SCC 749 a three-Judge Bench held as under: (SCC p. 762, para 18)

“18. ... The High Court/Tribunal, while exercising the power 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.”

16. In ***Chairman cum Managing Director, Coal India Limited and Anr. v. Mukul Kumar Choudhuri and Ors. : (2009) 15 SCC 620*** , Hon’ble Apex Court held:

“26. The doctrine of proportionality is, thus, well recognized 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. 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...”

17. In ***Dev Singh v. Punjab Tourism Development Corporation Ltd. and Anr.*** : (2003) 8 SCC 9, the Apex Court while observing that a Court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty. The Court however, held that if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. In the case before it, the court, noticing that the charge established against the appellant was not motivated by any ulterior consideration and at the most could be an act of negligence, substituted the penalty imposed upon him by punishment of withholding one increment stoppage at the efficiency bar and also directed that he would not be entitled to any back-wages for the period of suspension.
18. On perusal of facts and submissions advanced by the counsel for both the parties, we are of the considered view that the punishment imposed by the learned Tribunal dismissing the petitioner from his service is harsh and would cause injustice to the petitioner. F.I.R. No. 23/1995 was registered on 18.02.1995 u/s 147,148,149,302,303 against the petitioner although the learned Tribunal failed to consider that the petitioner was only charged u/s 147,323 of IPC and fined Rs. 500/- by the Ld. Trial Court and was released on probation subject to furnishing bail bond of Rs. 1000/- for one year and to

remain present as and when required by the court during the said period. This clearly shows that the offence for which the petitioner was charged by the Learned Trial Court was not grievous in nature and therefore, in the present case the order of dismissal from service is not appropriate.

19. To meet the ends of justice, the order of the Central Administrative Tribunal is modified to the extent that :-

- a) The petitioner is entitled to reinstatement with continuity in service.
- b) The petitioner will not be entitled to any back-wages.

The writ petition is accordingly disposed of. There shall be no orders as to costs.

SANGITA DHINGRA SEHGAL, J

G. S. SISTANI, J

OCTOBER 14, 2015

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