

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

% *Judgment Reserved on : January 12, 2015*
Judgment Pronounced on : January 22, 2015

+ **LPA 643/2012**

STATESMAN LIMITED Appellant
Represented by: Mr.Samar Bansal, Advocate with
Mr.Vinayak Mehrotra, Advocate
versus

ANIL DOGRA & ANR. Respondents
Represented by: Mr.Atul T.N., Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The Appropriate Government made a reference of an industrial dispute to the Labour Court, when the first respondent was dismissed from service with effect from February 01, 1997, post inquiry held against her.

2. The first respondent was engaged as a receptionist-cum-typist by the appellant on December 20, 1972 and her claim before the Labour Court was that due to she being involved in the activities of the Union of which she was a member, the management of the appellant, with mala-fide intent issued a charge-sheet to her on March 12, 1994 alleging the following misconduct:-

- (i). Habitually coming late to the office and not putting correct time of arrival in the attendance register.
- (ii). Signing over and above red mark put against her name in the attendance register.

(iii). Misbehaving with Mr.Shivaji Samaddar at 5:00 PM on March 09, 1994 by speaking rudely and in an insulting manner with him and leveling false allegations against him.

(iv). Neglecting duty by habitually coming late for work.

(v). Showing indiscipline by shouting at the departmental head in his cabin and outside his cabin thereby destructing the normal work of the office.

3. After listing the aforementioned misconducts and labeling the same to be grave as per the Certified Standing Orders of the Company applicable to the first respondent, the memorandum dated March 12, 1994 called upon the first respondent to show cause why disciplinary action be not initiated. It was also intimated to the first respondent that she was suspended with immediate effect.

4. The first respondent submitted a response on March 14, 1994 as under:-

“This refers your memo dated March 12, 1994 which was received by me on the same afternoon. In this regard an explanation was given to you in person wherein I explained you that there was some misunderstanding about the whole episode.

However as I’m interested in the interest of congenial working atmosphere in the office and not to prolong the disharmony I regret the whole episode, as I’d no intention of hurting anybody’s feelings. I would like the whole matter to be closed in good faith.

In the end I assure you of my sincere efforts in performing my duties and assure you of my best co-operation always.

*Sd/-
Anil Dogra”*

5. On March 23, 1994, with reference to the notice dated March 12, 1994, and the response of the first respondent dated March 14, 1994 thereto,

the management of the appellant passed an order noting therein that the first respondent had not given any explanation for the misconducts alleged at serial No.1, 2, 3 and 5 of the notice dated March 12, 1994, and thereby recorded an opinion that it was apparent that the first respondent had no explanation to offer in regard thereto and since she had tendered an unqualified apology, notwithstanding the misconduct being grave, taking a lenient view on humanitarian grounds and further to afford one more chance to the first respondent to improve, the matter was being closed; letting off the first respondent with a mild punishment of four days suspension being the measure of the punishment. It was indicated that the period of absence from March 02, 1994 to March 04, 1994 and thereafter from March 14, 1994 to March 23, 1994 would be adjusted against leave.

6. The first respondent sent a letter to the management of the appellant on March 23, 1994 in which she wrote as under:-

*“The Branch Manager,
The Statesman Ltd.,
New Delhi.*

Ref.: Your memo of March 23, 1994

Dear Sir,

This has reference to the aforesaid memo. I am pained that you have drawn wrong conclusions from my reply dt.14.3.94 to your memo of 12.3.94. I'd given my reply in good faith and you have wrongly interpreted the contents of the letter.

The charges 1,2,3,4,5 & 6 are wrong as stated and the each and every charge denied. I did not admit any charge in my reply of 14.3.1994 and I did not tender unqualified apologies to Mr.Samaddar. The facts of the case are that I'd intimated office that I will be coming late to the office for some days

because of my children's examinations. I did report to duty and worked on March 2,3 & 4, 1994 for which you have marked me absent, which should be verified from the records available in the office. Just because I had demanded the scales of Bachawat Wage Boad recommendations, it is hardly fair to victimise me. Your action in suspending me for 4 days from 24.3.1994 to 28.3.1994 is not based on facts or law. Further you adjusting my suspension period from my alleged absence from 2.3.1994 to 4.3.1994 when I'd actually reported for duty is illegal and wrongful. Similarly your adjusting part of my suspension period from 14.3.94 to 23.3.1994 against my leave is arbitrary, illegal and wrongful because the management had forced me not to perform duty to say the least. Moreover you have no authority to suspend me or issue charge-sheet under the certified standing Orders, you being the Dy.Branch Manager.

Taking advantage of my reply dt. 14.3.1994 you have given me the last and final warning without giving me an opportunity to defend myself.

Since your action tantamounts to violation of elementary principles of natural justice, you are requested to revoke the Suspension, withdraw the charge sheet and the last and final warning as I have committed no mistake.

Thanking you,

*Yours faithfully,
Sd/-
(MS.ANIL DOGRA)
Advertisement Department*

March 30, 1994"

7. It is apparent that the first respondent somersaulted and stated that she did not admit the charges levied against her and claimed to have tendered no

apology to Mr. Shivaji Samaddar. She claimed that the penalty of four days suspension levied upon her as per the communication dated March 23, 1994 was in breach of the principles of natural justice. She requested that the penalty as also the charge sheet should be revoked.

8. The appellant responded to the communication dated March 30, 1994 by writing a letter to the first respondent on April 02, 1994. It was intimated to the first respondent that the penalty of four days suspension was revoked and for the said four days period she would be paid subsistence allowance. It was indicated to her that an inquiry would be held with respect to the show cause notice March 12, 1994.

9. An inquiry officer was appointed before whom the management examined four witnesses : Shivaji Samaddar MW-1, Ashok Handa MW-2, H.L.Khanna MW-3 and Bhupinder Singh MW-4.

10. The first respondent examined herself and one Mohammad Frahim Shah.

11. The inquiry officer submitted a report on October 21, 1996 opining that the charges against the first respondent were proved.

12. The report of the inquiry officer was forwarded to the first respondent under cover of a letter dated November 07, 1996 granting her an opportunity to furnish her comments to the report of the inquiry officer. The first respondent submitted her response on November 21, 1996. Considering the same, the management of the appellant inflicted the penalty of dismissal from service upon the first respondent vide order dated January 02, 1997, in respect of which the first respondent raised a dispute, which as noted above was referred by the Appropriate Government to the Labour Court for adjudication.

13. The first respondent filed a statement of claim before the Labour Court, to which the appellant filed a reply.

14. Pleadings were completed. Parties led evidence.

15. A preliminary issue: whether the domestic inquiry was not held in accordance with the principles of natural justice, was answered by the Labour Court vide order dated March 06, 2007, holding that the first respondent was given full opportunity to participate at the domestic inquiry and that the record would evince that she fully exercised her right to participate at the inquiry and cross examined the witnesses of the management.

16. Thereafter, vide order dated July 10, 2007 the learned Labour Court held that in view of the law declared in various decisions where a workman was found using abusive language against superior officers, a penalty of dismissal from service could not be held to be shockingly disproportionate to the gravity of the wrong. Thus, the penalty of dismissal from service levied upon the first respondent was affirmed and the reference made to the Labour Court was answered against the first respondent and in favour of the appellant.

17. The first respondent preferred a writ petition before this Court challenging the award dated July 10, 2007 passed by the Labour Court, and inherently the penalty of dismissal from service inflicted upon her. She pleaded in the writ petition that the penalty imposed was in violation of the principles of natural justice and that the decision of the Labour Court dated July 10, 2007 was not correct.

18. Vide impugned decision dated August 03, 2012 the learned Single Judge has held that having levied the penalty of suspending the petitioner vide order dated March 23, 1994, the management could not levy a penalty for the same wrong. The writ petition was accordingly allowed and the order terminating the service of the first respondent has been set aside.

19. A perusal of the orders dated March 06, 2007 and July 10, 2007 passed by the Labour Court reveal that the first respondent never set up a case that having levied the penalty of four days suspension vide order dated March 23, 1994, the management of the appellant could not penalize the first respondent a second time for the same acts of misconduct. The reason being that in the statement of claim filed by the first respondent, she never raised the said point.

20. A perusal of the statement of claim filed by the first respondent shows that she herself treated she being suspended on March 12, 1994 not as a penalty order. Her statement of claim as drafted would evince that she was conscious of the fact that the order dated March 23, 1994 was the one which levied the penalty of suspension and that the said penalty was withdrawn by the management in view of her response dated March 30, 1994 to the order dated March 23, 1994, culminating in the order dated April 02, 1994 being passed by the management of the appellant.

21. Even in the writ petition the contention on which the learned Single Judge has granted relief to the first respondent has not been pleaded.

22. It is thus the case where the learned Single Judge has found a case in favour of the first respondent which was not even pleaded by her.

23. It is trite, as held in the decision reported as AIR 2006 SC 975 L.K.Verma Vs. HMT Ltd. & Anr. that suspension is of three kind. It could be penal by way of punishment in terms of the conduct rules. It could be purely administrative in exercise of the inherent power of the employer in the sense that the employer may not take any work from the delinquent, but in that event the entire salary is to be paid. It could be in terms of a service rule requiring only a subsistence allowance to be paid. As held in the decision reported as AIR 1964 SC 787 R.P.Kapoor Vs. UOI & Anr., a suspension is not penal and if there is no express term in a contract relating

LPA No.643/2012 Page 7 of 9

to suspension, the employee would be entitled to full remuneration for the period of interim suspension. The purpose of a suspension is generally to facilitate a departmental inquiry and to ensure that while such inquiry is going on, the employee is not in a position to misuse the authority.

24. A perusal of the facts noted above would evince that vide memorandum dated March 12, 1994, the first respondent was issued a charge sheet and simultaneously placed under suspension. She submitted a response on March 14, 1994 expressing regret and desiring that the chapter be closed which resulted in the management taking a lenient view and passing the order on March 23, 1994 directing that the suspension of the first respondent would be revoked and the penalty inflicted would be the period during which she remained suspended for the reason suspension is one of the various penalties prescribed under the applicable standing orders of the appellant-company. The first respondent thereafter questioned the penalty alleging that she never intended to apologize and claimed that principles of natural justice were violated, which indeed were if a penalty had to be levied because the standing orders envisage an inquiry before a penalty is levied, and thus the management withdrew the penalty levied vide order dated April 02, 1994 and directed a full fledged inquiry to be held.

25. Since the penalty of suspension for four days was expressly withdrawn vide order dated April 02, 1994, it cannot be said that post inquiry, the penalty of dismissal from service levied on January 02, 1997 violated the rule of double jeopardy.

26. The learned Single Judge overlooked the difference between suspension as a penalty and a suspension which was the inherent right of the management, and if the first respondent had any issue concerning only subsistence allowance being paid to her for the four days period during which she remained suspended and desired full salary to be paid for said

period, she could have raised the issue; and if she had raised the same the Court could have looked into whether the applicable standing orders empower the appellant to suspend a workman pending inquiry and during the period of suspension paid subsistence allowance. If it was found that the applicable standing orders have no such provision, the general principle of law that it is the inherent right of the employer not to take work from an employee by suspending the employee but liable to pay full wages for the period of suspension could be gone into.

27. The appeal is accordingly allowed. The impugned order dated August 03, 2012 is set aside. Since the writ petition has not been decided by the learned Single Judge with reference to the grounds urged therein, and as noted above, has been decided on a point not even urged, we restore the writ petition for adjudication afresh with reference to the grounds urged in the writ petition.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JANUARY 22, 2015
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