IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.254 of 2011
IN
Civil Writ Jurisdiction Case No. 15715 of 2008

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1. The State of Bihar through the Principal Secretary, Department of Finance, Government of Bihar, Patna
2. The Additional Secretary, Department of Finance, Government of Bihar, Patna
3. The Additional Finance Commissioner, Finance Department, Government of Bihar, Patna
4. The District Magistrate cum Collector, Jehanabad
5. The Additional Collector(Naxal), Jehanabad
6. The Director, Accounts and Administration cum Establishment Deputy Collector, Jehanabad
7. The Treasury Officer, Jehanabad

.... Appellant/s

Versus

Uma Shankar Prasad, son of Late Bisheshwar Dayal Lal, resident of 129-B, Rajendra Path, Telbigha, P.S.-Civil Lines, Gaya in the District of Gaya

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Bishwa Vibhuti Kumar Singh, Adv
For the Respondent/s	:	Mr. Chitaranjan Sinha, Sr. Adv
		Mr. Surya Nilambari, Adv
		Mr. Sunil Kumar, Adv

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CORAM: HONOURABLE THE CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 07-09-2017

This is an appeal filed by the State Government seeking exception to an order dated 30th July, 2010 passed by the Writ Court in Civil Writ Jurisdiction Case No. 15715 of 2008.

The respondent employee was working as an Assistant in Jehanabad Treasury. At the relevant point of time, in the year 2008 when the cause accrued for filing the writ petition as on

09.09.2008, he was dismissed from service. Prior to taking the aforesaid action, he was suspended on 22.11.2004. The same was revoked and he was permitted to join the duties on 26.07.2006. The departmental proceedings continued and the Enquiry Officer submitted a report on 12.02.2008 holding the applicant only guilty of negligence in discharging his duties and observed that he should be more careful in passing of bills in the Treasury for payments to various beneficiaries. A second show cause notice was issued and the impugned punishment was awarded.

The learned Writ Court went into various aspect of the matter. The duties of an Assistant Accountant as are enumerated in Rule 60 of the Bihar Treasury Code, Volume-I, the provisions pertains to duties of a Treasury Officer as contained in Rule 185 and found that the petitioner is an officer subordinate to the rank of the Treasury Officer. He was functioning under the control of the Treasury Officer and it was the duty of the Treasury Officer to compare the signature of the bills on cheques presented with the specimen signature available in the Treasury Office. The learned Writ Court found after due evaluation that the Treasury Officer has been acquitted, no action was taken against him and in spite of the fact that the Enquiry Officer has found that petitioner is not guilty of any interpolation but only has not been cautious enough in scrutinizing the bills found there are certain procedural irregularities. The learned Writ Court found that based on the findings of the Enquiry Officer, no punishment should be issued. Even for the negligence committed, the punishment is too harsh and after placing reliance of various judgments of the Supreme Court interfered into the matter and also found that there has been discrimination in dealing with the Treasury Officer and the petitioner. Accordingly, learned Writ Court has interfered into the matter.

Even though learned counsel appearing for the State Government vehemently argued that because of the acts of the petitioner the bills were passed in an illegal manner, we are of the considered view that it was only the case of the Department that the petitioner is habitual in committing such acts of negligence. On the contrary, the findings of the Enquiry Officer are that he has not been cautious enough. He should be more careful in future. If we analyze the conduct of the petitioner in the backdrop of law laid down by the Supreme Court in the case of ***Union of India versus J. Ahmed reported in AIR 1979 SC 1022***, we find that with regard to misconduct, Hon'ble Supreme Court in the aforesaid case has dealt with the issue in Para 11 in the following manner.

> *"11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that the conduct which is blameworthy for the*

government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see Pearce v. Foster) (1886) 17 QBD 536 (at p. 542). A disregard of an essential condition of the contract of service may constitute misconduct [see Laws v. London Chronicle (Indicator Newspapers)]. (1959) 1 WLR 698. This view was adopted in Shardaprasad Onkarprasad Tiwari v. Divisional Suptd., Central Railway, Nagpur Divn., Nagpur, 61 Bom LR 1596: (AIR 1961 Bom 150) and Satubha K. Vaghela v. Moosa Raza, (1969) 10 Guj LR 23. The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under :

"Misconduct means, misconduct arising from ill motive ; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct."

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in Management, Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik, (1966) 2 SCR 434 : (AIR 1966 SC 1051), in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In S. Govinda Menon v. Union of India (1967) 2 SCR 566 : (AIR 1967 SC 1274), the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in P.H. Kalyani v. Air France, Calcutta, (1964) 2 SCR 104 : (AIR 1963 SC 1756), wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident

> *to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct under the consequences directly attributable to negligencewould be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar (examples) instances of which (are) a railway cabinman signaling in a train on the same track where there is a stationary train causing headlong collision: a nurse giving intravenous injection which ought to be given intramuscular causing instanceous death ; a pilot overlooking an instrument showing snag in engine and the aircraft crashing causing heavy loss of live. Misplaced sympathy can be a great evil (see Navinchandra Shakerchand Shah v. Manager, Ahmedabad Co-op. Department Stores Ltd., (1978) 19 Guj LR 108 at p. 120). But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty."*

Thereafter, the conclusion arrived at is that a negligent or careless way of dealing with the matter on isolated occasion, without there being any evidence show that the delinquent employee habitual in committing such acts of commission and omissions would not amount to misconduct, it may only be a careless approach on the part of the employee for which action should be taken. If we apply the principle of law laid down in the case of J.Ahmad (supra) we find that learned Writ Court has not committed any error in interfering into the matter and granting liberty to the respondent employee.

Finding no merit, we dismissed the appeal.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Shageer/-

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