

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4645 of 2007**

1. Smt. Sahebi @ Sahodari W/o Late Jiyaram Kushwaha, Aged About 50 Years R/o Village Gopalpur, Post Surajpur, Tahsil & District Surajpur (Chhattisgarh).
2. Lalita Kushwaha D/o Late Jiyaram, Aged About 38 Years W/o Devendra Kushwaha, R/o Village Amhar, Post Patna, District Korea (Chhattisgarh).
3. Premrata Kushwaha D/o Late Jiyaram Kushwaha, Aged About 34 Years W/o Ishwar Prasad Kushwaha, R/o Village Harrapara (Bhaiyathan), Post & Tahsil Bhaiyathan, District Surajpur (Chhattisgarh).
4. Devendra Kumari Kushwaha D/o Late Jiyaram Kushwaha, Aged About 30 Years W/o Surendra Kushwaha, R/o Village Sornga, Post Pandavapara, District Korea (Chhattisgarh).
5. Pallavi Kushwaha D/o Late Jiyaram Kushwaha, Aged About 28 Years W/o Manoj Kumar Kushwaha, R/o Village Salka, Post Salka, District Surajpur (Chhattisgarh).
6. Pooja Kushwaha D/o Late Jiyaram Kushwaha, Aged About 23 Years R/o Village Gopalpur, Post Surajpur, District Surajpur (Chhattisgarh).

---- Petitioners**Versus**

1. State Of Chhattisgarh Through Secretary, Nagari Prasasan And Development Department, Secretariat, Raipur (Chhattisgarh).
2. Director, Nagari Prasasan And Development Department, Raipur (Chhattisgarh).
3. The Collector, District - Surguja (Chhattisgarh).
4. The President, Nagar Panchayat, Surajpur, District - Surguja (Chhattisgarh).
5. Chief Municipal Officer, Nagar Panchayat, Surajpur, District - Surguja (Chhattisgarh).

---- Respondents

For Petitioner	:	Shri Sangeet Kumar Kushwaha, Advocate
For Respondent / State	:	Shri Satish Gupta, Govt. Advocate
For Respondent No.5	:	Shri Saurabh Sharma, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****20/06/2017**

This petition was originally filed by one – Jiyaram Kushwaha (since deceased) assailing legality and validity of order dated 14/02/2007 passed by the Commissioner in appeal by which the Commissioner, reversing the order passed by the Collector, affirmed the order of imposition of penalty of dismissal from service in a departmental enquiry against the deceased petitioner. During the pendency of the petition, the original petitioner died and his legal representatives were permitted to be brought on record to pursue the petition.

2. Relevant facts necessary for decision of controversy involved in this petition are that during the period, the deceased petitioner was working as Sanitary Inspector, in Nagar Palika Parishad, Surajpur, a charge sheet was issued on 26/06/2003 instituting a departmental enquiry on as many as four charges of misconduct. The petitioner submitted his reply and denied charges. Enquiry was held in which the prosecution and the defense led their respective evidence, both oral and documentary. As the record goes to show, the enquiry officer found charge No.1 and 4 proved, charge no.3 partly proved and charge No.2 and 5 not proved. The disciplinary authority, on the basis of the report of enquiry officer, imposed extreme penalty of dismissal from service. Against the order of penalty, the petitioner preferred an appeal before the Collector. Vide order dated 07/08/2006, the Collector allowed the appeal in the manner that while holding that charges were found proved, they were not so grave as to warrant imposition of extreme penalty. The matter was remitted to the disciplinary authority for passing appropriate orders. Aggrieved by this order of the Collector, the employer preferred an appeal before the Commissioner which was eventually allowed vide order dated 14/02/2007 setting aside the order of the Collector and restoring the order of the disciplinary authority. It is this order which is under challenge in this petition.

3. Learned counsel for the petitioner assailed correctness and validity of order passed by the Commissioner by submitting that the Commissioner has committed serious illegality and perversity in holding the charges proved against the petitioner. He submits that as far as charge no.1 is concerned, there was contradiction with regard to number of bags which were allegedly sought to be removed by the

petitioner. He further submits that the petitioner's defence that he had directed removal of seven bags of cement on the oral direction of the Chief Municipal Officer, was wrongly rejected though in the circumstances, ought to be taken as sufficient explanation. The other submission of learned counsel for the petitioner is that as far as the penalty of dismissal from service is concerned, the same is shockingly disproportionate to the gravity of misconduct because as far as charge No.1 is concerned, all said and done, misappropriation was not proved because ultimately, the bags were found only in the stock and no shortage was found. Charge No.2 was not found proved by the enquiry officer and no notice of disagreement was given to the petitioner either by the disciplinary authority or by the appellate authority before reversing the finding of the enquiry officer exonerating the petitioner from charge no.2. Charge No.3, by itself, even if held partly proved, is not so grave as to warrant imposition of any major penalty much less gravest major penalty of dismissal from service. Charge No.3, it is alleged, is of misbehavior and using unparliamentary language, there is nothing to show that the manner of behavior or use of filthy language was so abusive in its text and tenor that it warranted imposition of penalty of dismissal from service. It is argued that this kind of misconduct, even if proved, could be justifiably met with any penalty, short of dismissal from service. Lastly, it is submitted that in order to come to the conclusion that the petitioner only deserves extreme penalty of dismissal from service, the Commissioner placed reliance on certain charges of misconduct leveled against the petitioner in the year 1997 which could not be taken into consideration because in appeal, the penalty order was set aside.

4. On the other hand, learned counsel for the respondent submits that the petitioner indulged in more than one misconducts, out of which, misconduct as stated in charge no.1 and charge no.4 were grave in nature. Learned counsel for the respondents submits that even if charge no.2 and 3 are taken out of consideration, charge No.1 and 4 by itself, taken individually and cumulatively, were grave enough to warrant imposition of penalty of dismissal from service. According to him, an attempt made by the petitioner to remove quantity of cement bags from the stock of the Municipality clearly proves that the petitioner's integrity is doubtful and such an employee could not be continued in service any more and the only course left was to dismiss him from service. It is submitted that this charge has been found proved by all the authorities, though it has been recorded that ultimately, it could not be taken away because other employees refused to be part of the act of

the petitioner in stealing cement from the stock of the Council. He further submits that the petitioner's act of indulgence in misbehaving with the higher officer and using abusive and filthy language only discloses the indisciplined attitude of the petitioner. Therefore, that also could lead to imposition of extreme penalty. Lastly, it is submitted that even if two views are possible in the matter of imposition of penalty that could be imposed on a given set of misconduct proved in departmental enquiry, unless the quantum of penalty is found to be shockingly disproportionate, interference would not be called for.

5. Though learned counsel for the petitioner strenuously urged before this Court to re-read and investigate the facts of the case so as to make re-assessment of the case, I am afraid, this cannot be done unless findings are found to be perverse or opposed to law.

6. The enquiry officer found charge no.1 and 4 proved. The Collector, while deciding the appeal, also found those charges proved though with certain different angles with regard to the gravity aspect. Even the appellate authority, upon examining the charge No.4 found proved. Charge No.1 related to attempt made by the petitioner to dishonestly remove the quantity of cement from the stock of the municipality. The petitioner does not dispute this fact but then comes with a defence that it was so done at the oral directions of the higher authority. During the departmental enquiry, the authority has clearly denied that he had extended the petitioner such oral directions. A perusal of the order of the Collector and the Commissioner shows that other employees, who were present at the spot have deposed during the enquiry that the petitioner had directed removal of cement bags. Therefore, when more than four authorities have assessed and re-assessed the evidence of charge no.1, no scope is left for this Court to again enter into re-assessment of the evidence in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India. Charge No.4 has also been found proved against the petitioner. However, it is not clear as to what unparliamentary word was used by the petitioner. In the order of the Collector and Commissioner, this fact was reproduced. But then the oral evidence of the people who were present at the spot when the petitioner used unparliamentary language, only goes to prove charge No.4 and it cannot be said to be a case of no evidence or inadmissible evidence.

7. The order passed by the Collector goes to show that enquiry officer did not find charge No.2 proved and charge no.3 partly proved. There is nothing on record

to show that the petitioner was given any notice of disagreement either by the disciplinary authority or even by the appellate authorities. The Commissioner has proceeded to record a finding of proof of charge No.2 without there being a notice of disagreement given to the petitioner which is clearly violative of the principles of natural justice and the requirement of giving a notice of disagreement as held by the Supreme Court in the case of **Punjab National Bank and ors. v. Kunj Behari Misra**¹. It was held -

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

If that was the legal requirement for the disciplinary authority, it continued and even required the appellate authority also to give a notice of disagreement before recording a finding contrary to and in disagreement with the finding of exoneration recorded by the disciplinary authority. Therefore, to that extent, the order of the Commissioner does not appear to be in accordance with law.

8. Charge No.3 does not by itself appear to be of such a grave nature as to warrant imposition of major penalty. Charge No.5 was not found proved by any of the authorities.

¹ AIR 1998 SC 2713

9. In order to come to the conclusion that the petitioner only deserves major penalty, the Commissioner, however, took into consideration the past event of an allegation of misconduct against the petitioner in respect of which, the departmental enquiry was held in the year 1997. However, the order itself goes to show that the order of penalty in that case was set aside by the Collector in appeal. Once the order of penalty was set aside in appeal, the charges on the basis of which penalty was imposed could not at all be taken into consideration. To that extent also, the Commissioner committed illegality.

10. The question, however, which remains to be answered is that whether charge No.1 and 4 in the present case are, by itself, sufficient to impose extreme penalty of dismissal from service.

11. The scope of interference by the Writ Court in the matter of quantum of punishment on charges of misconduct is very limited. In plethora of decisions, it has been succinctly held that interference by the Writ Court would not be justified unless the Court is satisfied that the penalty in question imposed on the delinquent employee is shockingly disproportionate to the gravity of misconduct found proved against an employee.

In the case of **Mithilesh Singh v. Union of India and ors**², the legal position was summarised thus -

“9. The only other plea is regarding punishment awarded. As has been observed in a series of cases, the scope of interference with punishment awarded by a disciplinary authority is very limited and unless the punishment appears to be shockingly disproportionate, the Court cannot interfere with the same. Reference may be made to a few of them. (See: B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749, State of U.P. V. Ashok Kumar Singh, (1996) 1 SCC 302, Union of India v. G. Ganayutham, (1997) 7 SCC 463, Union of India v. J.R. Dhiman, (1999) 6 SCC 403 and Om Kumar v. Union of India, (2001) 2 SCC 386.”

In another decision in the case of **State of U.P. v. Jaikaran Singh**³, it was held -

² (2003) 3 SCC 309

³ (2003) 9 SCC 228

“g.....Normally, the Court in exercise of power under Article 226 does not interfere with the quantum of punishment alone if the charges are established against the delinquent and there is no lacuna in the procedure adopted in the departmental proceedings. But at times if the Court feels that the punishment inflicted is grossly unjust and shocks the conscience then in appropriate cases the Court may interfere.....”

In the case of **State Bank of India v. Ram Lal Bhaskar and another**⁴, it was held -

“13. Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not reappreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to, and yet by the impugned judgment the High Court has reappreciated the evidence and arrived at the conclusion that the finding recorded by the enquiry officer are not substantiated by any material on record and the allegations levelled against Respondent 1 do not constitute any misconduct and that Respondent 1 was not guilty of any misconduct.”

12. Applying the settled legal proposition, it will be required to be seen as to whether imposition of penalty of dismissal from service for making an attempt to dishonestly remove the property of the Municipality and the allegation of using abusive and filthy language against the superior officer taken together or individually, would be so grave as to impose extreme penalty of dismissal from service. Charge No.1 against the petitioner which has been found proved is that the deceased petitioner attempted to unauthorisedly remove seven bags of cement from the go-down of the Municipality. This charge has been proved against the petitioner. This shows that the petitioner's integrity is quite doubtful. The petitioner ultimately failed because other employees refused to cooperate with him and the submission that even the door was locked therefore, it could not be taken away, that does not

4 (2011) 10 SCC 249

mitigate gravity of charge against the petitioner. He was working as a Sanitary Inspector and it was none of the business of the petitioner to unauthorisedly remove the property of the Municipality.

As far as the charge No.3 of using abusive language is concerned, in the case of **Biecco Lawrie Ltd. and anr. v. State of West Bengal**⁵ and **L.K.Verma v. H.M.T. Ltd. And anr**⁶, in almost similar circumstances, dismissal from service on such charge has been found to be justified. Therefore, even if charge No.1 and 4 are taken against the petitioner without taking into consideration charge No.2 and 5 and even without taking into consideration the alleged misconduct of the year 1997, there will be no change in the result as this Court finds it difficult to hold that the penalty of dismissal from service is shockingly disproportionate to the gravity of misconduct as found proved with charge No.1 and 4.

13. Therefore, I do not find any ground to interfere with the order of the Court below. The petition is, accordingly, dismissed.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge

Deepti

5 AIR 2010 SC 142

6 2006 AIR SCW 460