

HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.12982 OF 2004

ORDER:

Heard Mr.SM.Subhan for petitioner and Mr.A.Rama Rao for respondents.

The petitioner prays for writ of Certiorari to call for records leading up to and inclusive of Award dated 03.07.2003 in I.D. No.319 of 2001 and to quash the same as illegal and contrary to well established principles of law.

The counsel argued the writ petition on the quantum of punishment and disproportionality thereof. Hence, the circumstances relevant for considering the point are referred to:

The petitioner was working as Conductor in Jammalamadugu RTC Depot/2nd respondent. The son of petitioner was suffering from a very serious ailment. The petitioner had provided treatment and for the treatment provided, submitted medical bills for reimbursement worth Rs.3,50,000/- to respondents. The respondents have got the bills verified through vigilance and it transpired that the petitioner submitted inflated bills and were not genuine. The figures in the bills were also altered. Hence treating the same as misconduct, the respondents issued charge Memo to petitioner with the following charges:

- "1. For having altered the Medical Bills increasing the amounts as shown in the statement below and claimed for reimbursement which is defrauding the corporation, dishonestly, which constitutes a misconduct under Reg.28(x) of APSRTC Employees (Conduct) Reg.1963.
- 2.. For having tampered the particulars, forging the Doctor's signature and affixed duplicates rubber stamps

with the designation and Hospital name on the Medical Bills submitted by you for reimbursement of the amounts which are said to be for your son's treatment which tantamount to cheating the Corporation which is prima facie detrimental to the interest of Corporation and constitutes misconduct under Reg.28 (xxxi) of APSRTC Employees (Conduct) Reg. 1963."

The petitioner submitted explanation that he is unaware of details borne out by the medical bills. He has merely forwarded the bills received from the hospital through his relatives to respondents. The 2nd respondent conducted departmental enquiry and through order dated 12.04.2001 removed the petitioner from service. The petitioner filed I.D. No.319 of 2001 before the 3rd respondent and the 3rd respondent through Award impugned in the writ petition dismissed the I.D. Hence the writ petition.

The Tribunal framed the following points for consideration:

- i. Whether the findings of the Enquiry Officer are based on record or not?
- ii. Whether the punishment is proportionate to the proved misconduct?

On point No.1, the Tribunal held that the petitioner claimed excessive amounts basing on altered bills; the signatures in bills were forged and affixed with fake rubber stamps. The Tribunal concurred with the findings recorded by the Enquiry Officer. On the quantum of punishment, the Tribunal held that the same does not appear to be disproportionate or shocks the conscience of a person.

Mr.Subhan, counsel for petitioner, contends that the finding of the Tribunal on point No.2 is perverse and not conforming to the jurisdiction conferred on the Labour Court by Section 11-A of the Industrial Disputes Act. According to him, the son of petitioner

suffered from Cancer, the petitioner by spending his own money had provided treatment to his son; submitted the bills given by his relatives to the department; the charge can be treated as serious, if the amount has been sanctioned or paid to petitioner and with such payment the Corporation has incurred financial loss. According to him, on verification of bills, the bills were stopped. Therefore, treating the very submission as a financial irregularity and illegality and imposing the punishment of removal should shock the conscience of this Court and submits that the petitioner cannot be denied the good service benefits to which he is entitled from 1986 to 2001. Therefore, he prays for reinstatement without continuity of service, back wages or alternatively to at least consider imposing compulsory retirement from service. He relies on the decision in U.P. State Road Transport v. Mahesh Kumar Mishra¹.

Mr. Subhan contends that the 3rd respondent has not properly exercised the jurisdiction conferred on it by Section 11-A of the Industrial Disputes Act. The record of departmental enquiry is not placed before the Tribunal, but still findings on genuineness of bills, conclusions etc., have been recorded. Therefore, he prays for setting aside the Award by remitting the matter to Labour Court for disposal in accordance with law.

The contention of petitioner that findings have been recorded without looking into departmental proceedings can be considered, if the petitioner has challenged the validity of departmental enquiry before the 3rd respondent. I do not find any ground taken to that effect. Therefore, at this stage of the matter having accepted the

¹ (2000 (I) LLJ 1113)

legality of departmental enquiry, this challenge is not available to petitioner.

Mr.Rama Rao, *per contra*, contends that the findings of fact recorded by the 2nd respondent and the Tribunal are unexceptional and there is no case made out for any of the reliefs prayed for by the petitioner. He relies upon the decisions in Managing Director, North East Karnataka Road Transport Corporation v. K.Murthi² and Union of India v. P.Gunasekaran³ for the proposition that the scope of judicial review in disciplinary proceedings is very limited and that once the findings of the Tribunal on the principal charge are accepted, then the scope of judicial review for granting alternative punishment is very limited.

I have taken note of the submissions of learned counsel appearing for parties and perused the material available on record.

Now, the point for consideration is:

Whether the punishment of removal in the facts and circumstances of the case is disproportionate and shocks the conscience of the Court or not?

Before proceeding to consider the point, I refer to the decision in Mahesh Kumar Mishra's case (1 supra) which reads as follows:

"The High Court can interfere with the quantum of punishment inflicted by the punishing Authority if it was convinced that punishment imposed was shockingly disproportionate to the charges proved."

² (2006) 12 SCC 570

³ (2015) 2 SCC 610

The scope of interference on the quantum of punishment is well established. The counsel for the respondents admits that this Court has jurisdiction and power to interfere with the quantum of punishment, but on the facts of this case, submits that no case for such consideration is made out. Keeping the above submissions in view, the following circumstances are noted:

The petitioner has provided treatment to the serious ailment suffered by his son and paid all the medical bills. The petitioner through the bills referred in Charge-1, claimed reimbursement. It is admitted case of petitioner as well as respondents that no amount against the bills presented by the petitioner was paid. The bills were scrutinised and on ascertaining that the bills were presented with inflated figures etc. charge sheet was issued. By the time the petitioner faced the charge sheet, the petitioner had put in nearly 15 years of service in the corporation. The record does not disclose that the petitioner on previous occasion suffered either minor or major penalties in discharge of his duties. The explanation offered by the petitioner is that he was busy in providing treatment to his son and attending to duties, and he has forwarded the bills given by his relatives and friends, who helped him financially in the hour of crises. The respondent corporation has not exhibited these bills before the Labour Court. Further, a finding is recorded on these bills. Even assuming the petitioner submitted inflated bills still these bills are not paid by the respondents. The non-payment amounts to an unsuccessful attempt on the part of the petitioner for taking extra pecuniary gain by submitting inflated bills from respondents 1 and 2. In other words, an attempt to embezzle amount than what is

due to petitioner was made. Rightly the petitioner was unsuccessful in convincing the respondents. The very conduct of petitioner submitting these inflated bills certainly leads to a situation of loss of confidence on petitioner by the Corporation. Once loss of confidence arises, the respondents are justified in severing the relationship of Master and Servant. For doing so, though this Court cannot sit in the arm chair of the employer to evaluate each one of the circumstances, but still in exercise of its power of judicial review considers the issue of punishment both from the perspective of employer and employee. In the case on hand, the punishment of compulsory retirement from service would meet the ends of justice, thereby the petitioner for the good service rendered for 14 to 16 years will get a few of the statutory benefits and at the same time, for the proven misconduct, he is punished by denying the employment in the 1st and 2nd corporation.

By applying the principle referred to above and after taking the totality of circumstances, I am satisfied that the consideration and disposal of Point No.2 by Labour Court is unsustainable and accordingly the findings are modified by changing the punishment from removal to compulsory retirement.

The writ petition is ordered as indicated above. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT,J

Date:21.03.2017

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