THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.17545 of 1999

O R D E R:

Petitioner had filed this Writ Petition seeking Writ of Certiorari calling for the records and for quashing order No. E.D.(I/C) (Per)/Dis/3/99 dt.08.07.1999 of the 3rd respondent confirming the order in proceedings No.HSCL/GM/ VZ/072/99-235, dt.13.04.1999 of the 1st respondent dismissing the petitioner from service.

2. Petitioner was working as Assistant Divisional Engineer(Electrical) in Hindustan Steel Works Constructions Limited(for short 'the Company').

3. On the allegation that the petitioner demanded illegal gratification of Rs.1,000/- for processing a final bill, he was prosecuted under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 in C.C.No.17 of 1992 before the Special Judge for CBI Cases, Visakhapatnam.

4. Petitioner was initially convicted on 16.03.1994 in the said CC.

5. On the basis of the said conviction, petitioner was dismissed from service on 02.05.1994.

6. Challenging the conviction, petitioner preferred Criminal Appeal No.252 of 1994.

7. On 28.11.1997 the said Appeal was allowed, his conviction was quashed and he was acquitted of the charges. The Appellate Court took the view that money of Rs.500/- accepted by the petitioner during the alleged trap proceedings was not a bribe amount, but it was a repayment of loan taken by PW1/complainant from the petitioner for the purpose of paying labour charges, which PW1 was liable to pay.

8. Thereafter, petitioner was reinstated into service on 15.09.1998.

9. Subsequent thereto, enquiry was conducted into the following six charges against the petitioner, by issuing a charge memo dt.28.06.1998.

> "i) Taking bribe on illegal gratification.
> ii) Failed to maintain absolute integrity.
> iii) Failed to act and conduct himself all the time in a manner which will enhance the reputation of the Company.
> iv) Acting in a manner prejudicial to the interest of the Company.
> v) Act of unbecoming of the employee of the Company.
> vi) Collection without the permission of the competent authority of any money except as sanctioned by the any law of the land fro the time being in force of rules of the Company."

10. Evidence was adduced by both sides.

11. Thereupon, the Enquiry Officer submitted a report dt.14.02.1999 stating that the judgment of the High Court in Criminal Appeal is binding on him; that its finding that acceptance of money by the accused was not by way of illegal

gratification in respect of any official act, or that the accused by corrupt or illegal means did not obtain for himself any valuable thing or pecuniary advantage, is correct; and *charge(i)* was thus not proved. He also held that *charges (ii) and (iii)* also could not be proved since charge (i) could not be proved and *charge (iv)* also was not proved. He held that *charge(v)* also cannot be sustained in view of finding on charge(i). On *charge (vi),* he held that the money transactions have taken place at the residence of the petitioner and did not taken place within the premises of the company, and so it is also not established. He therefore exonerated the petitioner for all the charges.

12. However, the Disciplinary Authority disagreed with the Enquiry Officer with regard to Charges (iii) to (vi) mentioned above and issued a show cause notice on 27.02.1999. He indicated that *prima facie* he arrived at this opinion on the ground that there is prohibition for collection of money without the permission of the Competent Authority, and though rule 5 (15) of the Conduct, Discipline and Appeal Rules, 1978 (for short 'the Rules') refers to collection of money <u>in the company's premises</u>, since in the instant case admittedly money transaction took place at the residence of the petitioner, the theory of notional extension of work premises should be applied, thereby including the residence of the employee in the company's premises. Petitioner was

asked to show cause why this view of the Disciplinary Authority should not prevail.

13. Petitioner submitted his response thereto on 25.03.1999. He contended that Rule 5(15) of the Rules, cannot be unilaterally modified or re-revised except by the Competent Authority i.e., Board of Directors and when misconduct is defined only with regard to collection of money <u>within the premises</u> of the Company, the principle of 'notional extension of premises' cannot be extended to cover a money transaction which occurred at the residence of the petitioner.

14. Notwithstanding the same, the Disciplinary Authority passed the impugned order on 13.04.1999 dismissing the petitioner from service stating that occurrence of the money transaction has been accepted by the petitioner, that it was also proved during trial in the Criminal Court, and merely because the money transaction did not took place within the work premises, petitioner cannot escape any punishment. Reliance was placed on an unreported judgment of the High Court of Patna which is said to have been upheld by the Supreme Court to come to this conclusion. He observed that collection of money involving lending or borrowing or placing oneself under pecuniary obligation with any person with whom he has or is likely to have official dealings, is against the conduct of the petitioner and Rule 14 of the Rules is applicable to the petitioner.

15. Petitioner then preferred an appeal against the order of the Disciplinary Authority imposing punishment of dismissal.

16. The said appeal was also dismissed on 08.07.1999 by the 3rd respondent.

17. Assailing the same, this Writ Petition is filed.

18. Sri P.B.Vijay Kumar, Counsel for petitioner contended that the Disciplinary Authority, having dropped a charge of bribe as was done by the Enquiry Officer, could not have proceeded on charges (iii), (iv) and (v) originally framed against the petitioner, since they are dependent on the charge of bribery, which was dropped. As regards charge (vi), on which the Disciplinary Authority proceeded against the petitioner, it is contended that Rule 5(15), which defined 'misconduct', specifically stated that "collection without the permission of the Competent Authority of any money within the premises of the Company except as sanctioned by law of land for the time being in force or rules of the Company", alone is a 'misconduct'; and when admittedly the money transaction in question did not take place within the premises of the Company, the said charge also could not have been proceeded with by the Disciplinary Authority. He relied upon the decision in ***M/s Glaxo Laboratories (I) Ltd., v. Presiding Officer, Labour Court, Meerut and others***[1] wherein the

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[1] 1984(1) SCC 1

Supreme Court has stated that misconduct must be strictly construed and should not be extended beyond normal requirements; and the concept of notional extension of premises applied by the Disciplinary Authority has no place in service jurisprudence. He further contended that though Rule 14 of the Rules prohibits lending money or placing oneself under pecuniary obligation with any person with whom he has or likely to have official dealings, in the absence of a charge of that nature being framed at all, the punishment of dismissal on that ground cannot be sustained. He relied upon the judgment of the Supreme Court in ***Laxmi Devi Sugar Mills Ltd., v. Nand Kishore Singh***[2] and of this Court in ***No.7317424 S.G.Constable, A.K.Mndal, CISF, Unit Visakhapatnam, Fort Trust, Visakhapatnam v. Union of India rep. by its Secretary, Ministry of Home Affaris, New Delhi***[3].

19. Per contra, Sri T.S.Anand, Standing Counsel for respondents states that the charge of 'bribery' framed in the Disciplinary Proceedings had not been dropped by the Disciplinary Authority when he disagreed with the finding of the Enquiry Officer; that the collection of money by an employee without permission of the competent authority *per se* is an act subversive of discipline; that if this is ignored, the employer could find it very difficult to control the acts of

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[2] AIR 1957 SC 7
[3] 1996(4) ALD 895

employees receiving pecuniary advantages at their residence or other places other than the work premises. According to him, this conduct of the petitioner is against normal decency and morality prevailing in the society and is prejudicial to the interest of the Company. Even otherwise, he contends that Rule 14 of the Rules specifically prohibits lending activities by an employee and since the petitioner himself admitted to have money transaction with PW1 in the Criminal Case, he can be proceeded with under Rule 14 of the Rules, even though no charge is framed.

20. I have noted the contentions of both sides.

21. Firstly, I am unable to agree with the contentions of the counsel for respondents that a charge of receiving bribe or illegal gratification, which was charge(i), was also one of the charges in respect of which the Disciplinary Authority proceeded against the petitioner.

22. A reading of the notice dt.27.02.1999 issued by the Disciplinary Authority to the petitioner nowhere mentions that the charge of bribery is also being considered by the Disciplinary Authority, and in fact in page 4 where the Disciplinary Authority indicated the charges which he is intending to consider against the petitioner, the charge of bribery or receiving illegal gratification, is specifically omitted.

23. Once the charge of receiving bribe or illegal gratification which was initially framed is dropped by disciplinary authority, the charges (ii) to (v) which are dependent on charge (i) would automatically fall.

24. Coming to charge(vi), which deals with collection without permission of the competent authority of any money except as sanctioned by the law of the land for the time being in force or rules of the Company, it appears that either inadvertently or deliberately the words "within the premises" mentioned in Rule 5(15) of the Rules, was omitted.

25. There is no power conferred on the Disciplinary Authority to *suo motu* modify the 'misconduct' defined in Rule 5(15) of the Rules by adding or omitting any words therein and this can only be modified by the Competent Authority, which is the Board of Directors.

26. In ***M/s Glaxo Laboratories***' case(1 supra) the Supreme Court held that where the standing orders described various heads of misconduct, they must be strictly construed and they cannot be extended beyond their normal requirement. It observed that if the framers intention in using the expression "committed <u>within the premises</u> of establishment or in the vicinity thereof', are words of limitation, they must cut down the operation of the clause, then these words of limitation must receive their due share at the hands of the

interpreter and should not receive such an approach which renders the words of limitation redundant.

27. Applying the above principle, I am of the view that when Rule 5 (15) of the Rules makes collection without permission of the Competent Authority of any money “within the premises of the Company” as a misconduct, where admittedly money transaction in question took place at the residence of the petitioner and not within the premises of the Company, the Disciplinary Authority or the Appellate Authority cannot ignore the words “within the premises of the Company”, apply the theory of notional extension of the premises of the Company on the basis of their personal opinion that it is desirable to do so, and hold the petitioner guilty of the said misconduct.

28. That apart, the Disciplinary Authority could not have held the petitioner guilty on the basis of collection of money involving lending or borrowing or the petitioner placing himself under pecuniary obligation to any person with whom he has or is likely to have official dealings covered by Rule 14 of the Rules, without framing any charge in that regard.

29. In ***Laxmi Devi Sugar Mills Ltd.***’s case(2 supra) and ***S.G.Constable***’s case(3 supra) it has been held that the charge sheet which was furnished by the employer to an employee is the basis of the enquiry by the Enquiry

Officer/Disciplinary Authority; and an employer cannot be allowed to justify his action on other grounds which are not contained in the charge sheet. It was held therein that a person cannot be punished on a ground which is not a subject matter of a charge and penalty imposed by the Disciplinary Authority in such circumstances cannot be sustained in law.

30. Having regard to the above reasoning, I am of the view that the respondents were not right in dismissing the petitioner from service on the basis of misconduct of getting involved in lending activity for which no charge is framed and by applying the theory of 'notional extension of premises' which does not apply in service law, and which is applied usually only in cases under the Workmen Compensation Act, 1923.

31. Therefore, this Writ Petition is allowed and the impugned Order No. E.D.(I/C) (Per)/Dis/3/99 dt.08.07.1999 of the 3rd respondent as well as the order in proceedings No.HSCL/GM/ VZ/072/99-235, dt.13.04.1999 of the 1st respondent, both are set aside.

32. Admittedly, petitioner was dismissed initially on 02.05.1994 on his being convicted by the Criminal Court and was reinstated on 15.09.1998. Again he was dismissed on 13.04.1999.

33. Counsel for petitioner submits that petitioner would have attained the age of superannuation, had he continued in service on 31.05.2005, that no pension is admissible to the petitioner under Service Rules even if he retired like any other normal employee, and therefore, petitioner would be entitled to salary for the period from 02.05.1994 to 14.09.1998 and for the period from 13.04.1999 to 31.05.2005 with all attendant benefits and with appropriate rate of interest.

34. Once the punishment of dismissal imposed on the petitioner on 13.04.1998 is set aside, normally there would be a direction to reinstate, but since the petitioner would have attained superannuation on 31.05.2005 itself, I hold that the petitioner is entitled to salary with all attendant benefits including Pay Revision, if any, for the period from 02.05.1994 to 14.09.1998 and from 13.04.1999 to 31.05.2005 with interest @ 9% per annum till the said payment is made, which shall not be more than three (03) months from the date of receipt of a copy of this order.

35. The Writ petition is allowed as above. There shall be no order as to costs.

36. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

23rd August, 2017.
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