

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition Nos.9080 & 15583 of 2006

COMMON ORDER:

The genesis of these two writ petitions, one by the workman and the other by the employer, is the Award, dated 21.01.2006, of the learned Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur, passed in I.D.No.217 of 2001.

2. The parties shall hereinafter be referred as petitioner-Corporation and the 3rd respondent-workman as arraigned in W.P.No.9080 of 2006.

3. I have heard the submissions of *Sri Milind G. Gokhale*, learned counsel appearing for the petitioner-Corporation, and of *Sri E Venkata Reddy*, learned counsel appearing for the 3rd respondent-workman. I have perused the material record.

4. The introductory facts, which lead to the filing of these writ petitions, in brief, are as follows:

The 3rd respondent-workman joined the petitioner-Corporation, that is, Prudential Sugar Corporation Limited, having its registered office at Koppedu-Pisattur, Chittoor of Andhra Pradesh, as Deputy Manager (Process), on 25.09.1995. The 3rd respondent-workman completed one year probation and five years of service. According to the management of the petitioner-Corporation, during the said period of probation and service, the services of the 3rd respondent-workman were far below the expectations of the management and that he was found to be negligent while on duty and that his performance was poor and that he resorted to defaming and causing disrepute to the Corporation on many occasions and that the Corporation was losing heavily on account of his dismal performance and that despite taking lenient

view and administering warnings orally and in writing, he did not mend himself and change his ways and that, therefore, the management decided to discharge him from service of the Corporation by paying three months salary in lieu of three months notice period; and, accordingly the management served a notice, dated 14.05.2001, informing that he will be discharged from services of the Corporation from 19.05.2001 and his accounts will be settled as per Rules of the Corporation. The aggrieved 3rd respondent-workman filed W.P.No.10497 of 2001 challenging the said notice as illegal, unjust, contrary to law and mandatory provisions of the Industrial Disputes Act, 1947; this Court noticed that by the impugned proceedings, dated 14.05.2001, the management of the Corporation terminated the services of the 3rd respondent-workman while on probation by paying three months salary in lieu of three months notice and that the Corporation is not a State within the meaning of Article 12 of the Constitution of India and that it is also not an instrumentality of the State or other authority coming within the meaning of Article 12 of the Constitution of India and that the petitioner-Corporation is a private sector unit manufacturing sugar and it cannot be said to be discharging sovereign functions and, therefore, the writ petition under Article 226 of the Constitution of India is not maintainable and accordingly dismissed the writ petition. Thereafter, the petitioner raised an Industrial Dispute and filed a claim petition. The same was resisted by the Corporation. On merits and by the Award impugned in these writ petitions, the learned Chairman of the Tribunal while partly allowing the claim petition set aside the order of discharge of the 3rd respondent-workman from service issued by the Corporation and ordered reinstatement into service as a fresher in the same cadre of Deputy Manager on the same earlier terms and conditions on which he was initially appointed; further, it is made clear in the Award that he shall not be entitled for attendant benefits and back wages, but, would be entitled for continuity of service for the purpose of reckoning at the time of

retirement as per Rules. Aggrieved thereof, the Corporation filed W.P.No.9080 of 2006; the workman filed W.P.No.15583 of 2006 insofar as the denial of attendant benefits and back wages.

5. The case of the 3rd respondent-workman and the submissions made on his behalf, in brief, are as follows:

Having been appointed in the Corporation, on 16.09.1995, as Deputy Manager (Process), the 3rd respondent-workman was performing his duties till the date of the discharge letter, dated 14.05.2001. In the said letter it is stated by the management that his performance is not up to the expectations and that he is negligent and his performance is poor and resulted in loss to the Corporation. It is also stated that a paper published in SISTA journal during the convention held from 03.10.1997 to 04.10.1997 without the permission of the management caused damage and loss of reputation to the Corporation and that it amounted to divulging the Corporation's statistical information and equipment against the Rules of the Corporation. It was also stated in the said letter that the Corporation is losing heavily on account of the 3rd respondent's dismal performance & lack of interest in the work and that he failed to rise to the expectations of the management during the crushing season 1999-2000 and that, therefore, the management felt that the continuation of the 3rd respondent in the organisation causes irreparable loss to the organisation and that his indiscipline sets a bad example for the other members of staff and that, therefore, the management decided to pay three months salary in lieu of three months notice and that the 3rd respondent would accordingly be discharged from the services of the Corporation, on 19.05.2001, as per the Rules of the Corporation. The learned Chairman of the Tribunal observed to the following effect: '..that for various earlier misconducts, the workman's explanations were called for and he was warned from time to time; further such past instances for which warnings were

already administered cannot be taken into consideration; on the same past acts and allegations, which are already dealt with appropriately by the management, the severe punishment of discharge from service is not just and fair; while discharging the workman from services, the Corporation did not initiate any disciplinary action by giving an opportunity to the workman to put-forth his defence; at the same time the workman was earlier warned by the Corporation for his dereliction of duties and for crossing the disciplinary limits such as participating in conventions and presenting papers; the workman ought not to have resorted to such acts and incurred the unpleasantness of the management.’ Having observed so, the learned Chairman of the Tribunal had set aside the order of removal from service and imposed a modified lesser penalty, which is referred to supra. When the learned Chairman of the Tribunal found that the past conduct, which was exonerated by administering warnings, cannot be taken into consideration and that the workman only crossed the disciplinary limits and failed to discharge his obligations enjoined upon him and that he only caused unpleasantness to the management but did not cause any loss of reputation or loss of revenue to the Corporation, he ought to have ordered reinstatement with continuity of service instead of ordering appointment as a fresher and denying back wages and other benefits. Participation in convention at SSTA and presenting paper is not illegal and for such participation no permission is required. The adverse findings in the Award are unsustainable as such findings are based on surmises and conjectures. The learned Chairman of the Tribunal failed to properly exercise the powers under Section 11(A) of the Act. Hence, the writ petition may be allowed and the relief of reinstatement with continuity of service and back wages may be awarded.

6. Per contra, learned counsel appearing for the Corporation would contend as follows: - ‘The 3rd respondent-workman was not showing any interest in the work and is highly negligent in performing the work entrusted

to him. He never bothered to properly complete any work entrusted to him, leave alone completing the work perfectly. Thus, the 3rd respondent-workman was not only not showing interest in the work and not completing the work entrusted to him but also not keeping up to the minimum standards and quality of work both on general and non general days and he was always being found to be away from work during seasons, that is, during times of the equipment giving trouble and at the times when his presence is required. He was also found not taking most active part in rectifying the troubles of the equipments and was found just standing by and watching while the others who were directly or indirectly connected were seriously attending to find out the cause for trouble and trying to rectify the same. The 3rd respondent-workman did not mend his ways despite counselling by colleagues and superiors and did not change his attitude towards work and was found of little use to the organisation at a time when there was heavy competition in sugar market and when there was absolute need to produce high quality sugar for the survival of the Corporation and when constant and highly dedicated and committed services are required and are expected of every employee. While so, the workman participated in a convention on SISTA held, on 03.10.1997 and 04.10.1997, at Hyderabad, by styling himself as Sugar Technician and stated that there is no need to obtain prior permission to attend such meeting and present papers and also for revealing the technical information of the Corporation. Therefore, a detailed charge sheet, dated 10.11.1997, was served upon him. The charge formulated verbatim reads as under:

Firstly, your designation given by the Company is "Dy.Manager (Process)" but not sugar Technologist. You should not arrogate to yourself whatever designation you desire to have and it amounts to dishonesty. Secondly, you did not obtain the permission of the management to attend the Seminar and to present the paper and it is wrong to have published that the permission of the undersigned, Sri K. Subba Rao, and Sri P.S.R. Murthy was obtained. The sketches and diagrams presented by you did not reflect the correct equipment installed at our Sugar Factory in Nindra and the Process also was not correctly mentioned therein. The sketches and

diagrams portrayed by you, revealed partly the technical information of the company's equipment which should not have been revealed without the consent of the undersigned and the rest of it grossly different to what is existing at our factory site and your wrong representation has resulted in very poor image of our factory's technology to the August Gathering. The subject matter of the paper was grossly sub-standard and there are number of mistakes, English is very poor and no proper meaning was conveyed. There is no subject which has not only damaged the prestige of the Company, but also brought defame and disrepute. More so, you had presented it in the capacity of Sugar Technologist of Prudential Mouli Sugars Ltd. It is also found that no sequence in presentation of the matter was followed and you did not appear to be knowing what to present and what not to present.

You have submitted a letter to the Company on 6.10.97 from which nothing could be understood and in the same standard, you have presented the paper also. With the subject knowledge you had exhibited, it is highly doubtful that you can function as Dy.Manager (Process) successfully and your presence in the factory may lead to any complication and cause damage to the process and property.

Unauthorised presentation of the paper, wrong intimation of the acknowledgments in the Journal, divulging the Company's statistical information, equipment as well as process, amounts to defaming the Company and bringing disrepute.'

The 3rd respondent-workman submitted an explanation *vide* letter, dated 19.11.1997. In continuation of the said letter he submitted further explanation. He was severely warned on 26.03.1998. Thereafter, a complaint was given against the petitioner, on 18.06.2000, by the Senior Manager (Process) for his indifference, irresponsibility, negligence and disinterestedness towards work. He was issued a show cause notice, dated 21.10.2000. He submitted an explanation, dated 28.10.2000. A warning letter, dated 18.11.2000, was issued to the 3rd respondent- workman, *inter alia*, indicating serious objections to the contents of the explanation of the workman and the lack of regard in the manner of giving explanation and he was asked to show overall improvement in his performance and that otherwise punishment would be awarded. In the said warning letter, it is stated that his explanation was irresponsible and some of its contents are uncalled for and

unwarranted and accordingly remarks were also passed against him in the warning letter. Since he was on probation there was no need to give any notice and conduct any enquiry, as a probationer can always be discharged from service. The learned Chairman of the Tribunal failed to see that the 3rd respondent-workman committed serious irregularities and was grossly negligent in performing his duties and that he did not change and mend his ways despite oral and written warnings and that his conduct throughout coupled with the instances pointed out in the discharge notice are sufficient justification for the management coming to the conclusion that his services are no longer useful and, therefore, he is liable to be discharged from services. When he is discharging ministerial duties and is also recommending leaves though not granting leaves and further doing other managerial functions, he is not a workman as defined under the provisions of the Act. When he failed to change his attitude and improve his performance and when he participated in convention SSTA and presented a paper disclosing confidential technical aspects of the process of sugar technology and when the same caused loss of reputation and damage to the Corporation, the Corporation is justified in discharging him from service. Therefore, the writ petition of the 3rd respondent-workman may be dismissed and the writ petition of the Corporation may be allowed by setting aside the modified penalty imposed by the Tribunal and restoring the order of discharge passed by the Corporation. When once the learned Chairman of the Tribunal also found that the 3rd respondent-workman indulged in acts of misconduct and crossed the disciplinary limits, which an employee is supposed not to cross, interference with the discharge order is uncalled for, in the facts and circumstances of the case. The writ petition filed by the 3rd respondent-workman is devoid of merit and is liable for dismissal.

7. Before proceeding further, it is apt to note that this Court, on 04.06.2007, has taken note of the fact that the 3rd respondent-workman is

already reinstated into service. At the hearing, this Court is informed that he retired from service during the pendency of this writ petition.

8. I have given earnest and thoughtful consideration to the facts and submissions. The 3rd respondent-workman was appointed as Deputy Manager (Process) in the petitioner-Corporation on a consolidated pay of Rs.5,500/- (basic pay of Rs.4,500/- + allowance of Rs.1,000/-) and was also provided free accommodation without any other remunerations over and above the said salary and accommodation. In the appointment order, it was stated that his salary will be restructured by adjusting the remuneration as and when the Company introduces Provident Fund and Gratuity and other benefits to its employees and that the appointment is purely on temporary basis for one year from the date of appointment and the services will be considered for confirmation on satisfactory completion of the probationary period. Be that as it may. It is an undisputed and admitted fact that for his previous acts of non performance of duty to the satisfaction of the management and for his mistakes and acts of negligence while on duty etcetera resulting in losses to the Corporation, he was served with notices from time to time and warnings were administered to him by taking lenient views and he was cautioned to improve his performance from time to time and was also warned not to repeat such mistakes, acts and conduct in future and that any repetition of any such mistakes and acts in future would be viewed seriously. He was also advised to improve his efficiency and maintain cordial relationships with his colleagues and workmen and improve working parameters. During the SISTA convention at Hyderabad from 03.10.1997 to 04.10.1997, the 3rd respondent-workman presented a paper on "Evaporator Design – Fundamental's Waffle" with the designation as Sugar Technologist of the petitioner-Corporation and conveyed thanks in the article to the Managing Director, Vice President (Engineering) and another officer for their permission for presentation of the paper for publication and also thanked the management and staff of the

petitioner-Corporation for the help in the presentation of the paper, which was published in SISTA sugar journal volume – 22 No.1 January-June, 1997 issue at pages 45-46. The management of the Corporation took serious objection to presentation of such paper by the 3rd respondent-workman by wrongly styling himself as Sugar Technologist by arrogating that designation to himself at his desire and for not obtaining the permission of the management to attend the seminar and present & publish a paper and for wrongly stating that permission is obtained from the superiors. The management also found fault with the 3rd respondent-workman as the sketches and diagrams presented in that paper are not reflecting correct equipment installed in the sugar factory at Nindra and for wrong mentioning of the process style in the paper presented by the workman. According to the management, the subject matter of the paper was grossly sub-standard and it contained number of mistakes both in language and subject and that some of the sentences did not convey a proper meaning and, therefore, the paper reflected shallow knowledge of the 3rd respondent-workman and eventually damaged the prestige of the Corporation and brought disrepute to the Corporation and defamed it. Hence, by letter, dated 10.11.1997, the charge to the above effect was formulated and served upon the workman and he was called upon to give his explanation. He was also informed by the said letter that failure to give explanation would result in initiation of disciplinary action. As already noted W.P.No.10497 of 2001 was dismissed on the ground of maintainability and for the reasons which are stated in the order passed in the said writ petition, which are already noted supra. Be that as it may. Learned Chairman of the Tribunal having analysed the facts and evidence came to a conclusion that the past acts of misconduct and dereliction towards duty for which action was already taken and warnings were administered cannot be taken into consideration and that on the same past acts and allegations, which are already dealt with appropriately by the management, the severe

punishment of discharge from service is not just and fair. It was also held that while discharging the 3rd respondent-workman from services, the Corporation did not initiate any disciplinary action by giving an opportunity to the workman to put-forth his defence and that at the same time the workman was earlier warned by the Corporation for his dereliction of duties and for crossing the disciplinary limits such as participating in conventions and presenting papers and that the workman ought not to have resorted to such acts and incurred the unpleasantness of the management. Therefore, while agreeing with the management that the workman is guilty of the constituents of the charge formulated against him, the learned Chairman of the Tribunal found that the punishment of discharge from service is disproportionate to the misconduct. Accordingly, the Tribunal had set aside the discharge order and instead imposed the following punishment: 'The workman is ordered to be reinstated into service as fresher by the respondents in the same cadre of Deputy Manager (Process) on the same terms and conditions as were earlier entered into at the time of initial appointment. He shall not be entitled for attendant benefits and back wages, but entitled for continuity of service for the purpose of reckoning at the time of retirement as per rules.' In the considered view of this Court, in the facts and circumstances of the case, the learned Chairman of the Tribunal ought not to have interfered with the punishment of discharge from service and ought not to have ordered reinstatement more particularly when the 3rd respondent-workman admittedly presented a paper without the permission of the management and wrongly styled himself in that paper as a Sugar Technologist though he is only a Deputy Manager (Process) and when the said paper not only contained incorrect depiction of the process of Sugar technology and the equipment of the Company but also was grossly substandard. At this stage, it is apt to refer to the decision in Union of India v. P. Gunasekaran¹ wherein the Supreme

¹ (2015) 2 SCC 610

Court dealt with the scope of interference of this Court under Articles 226 or 227 of the Constitution of India and held, *inter alia*, as under:

In disciplinary proceedings High Court is not and cannot act as a second court of first appeal and that the High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence and that the High Court can only see whether:

- (a) the enquiry is held by a competent authority;**
- (b) the enquiry is held according to the procedure prescribed in that behalf;**
- (c) there is violation of the principles of natural justice in conducting the proceedings;**
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;**
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;**
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;**
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;**
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;**
- (i) the finding of fact is based on no evidence.**

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;**
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;**
- (iii). go into the adequacy of the evidence;**
- (iv). go into the reliability of the evidence;**
- (v). interfere, if there be some legal evidence on which findings can be based.**
- (vi). correct the error of fact however grave it may appear to be;**
- (vii). go into the proportionality of punishment unless it shocks its conscience."**

9. Be that as it may. At the hearing, it is brought to the notice of the Court that the workman, after his reinstatement as per the Award impugned, served the Corporation and retired from service. It is profitable to refer to

the decision in Karnataka State Road Transport Corporation Vs. B.S.Hullikatti², wherein the Supreme Court, having referred to the relevant facts of the case held as follows:-

On the facts as found by the Labour Court and the High Court, it is evident that there was a short-charging of the fare by the respondent from as many as 35 passengers. We are informed that the respondent had been in service as a Conductor for nearly 22 years. It is difficult to believe that he did not know what was the correct fare which was to be charged. Furthermore, the appellant had during the disciplinary proceedings taken into account the fact that the respondent had been found guilty for as many as 36 times on different dates. Be that as it may, the principle of *res ipsa loquitur*, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket less from as many as 35 passengers could only be to get financial benefit by the Conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a Conductor because such action or inaction of his is bound to result in financial loss to the appellant-Corporation.

It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the Company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.

In our opinion, the order of dismissal should not have been set aside, but we are informed that in the meantime the respondent has already superannuated. We, therefore, on the special facts of this case, do not set aside the order of reinstatement, but direct that the respondent would not be entitled to any back wages at all but he would be entitled to the retrial benefits.

10. Having regard to the facts and circumstances of the instant case and the legal position obtaining, this Court does not find any strong reasons to interfere with the findings of the Tribunal on the quantum of punishment, more particularly at this distance of time and in the light of the fact that this Court is informed that the 3rd respondent-workman retired from service.

11. Accordingly, this Court finds that there is no acceptable merit in the contentions of the writ petitioner/ Corporation as well as that of the 3rd

² AIR 2001 SC 930

respondent-workman and hence, both the writ petitions, which are devoid of merit, are liable for dismissal.

12. In the result, both the Writ Petitions are dismissed.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

JUSTICE M. SEETHARAMA MURTI

01.06.2017
Vjl

