HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 194 of 2009

Order:

The petitioner was appointed as a Post Graduate Teacher in the respondent Society in the year 1984. Thereafter, she was promoted as a Principal in the year 1995. While she was working as a Principal, an adverse news item was published in Eenadu edition of Mahaboobnagar district on 21.09.2006 stating that the petitioner was taking bribes from the Contractor who was constructing hostel building sanctioned under Sarva Shiksha Abhiyan and the transaction was recorded by ETV Correspondents. Subsequently, the Deputy Secretary, Zone VI of the Society visited the DPIP School, Jedcherla, Mahaboobnagar district on 14.10.2006 and conducted a preliminary enquiry. He submitted a report on 16.10.2006. The report says that VCD which was recorded by the ETV Correspondents related to a money transaction that took place with regard to payment of final bill for Rs.1,14,000/- for construction of classrooms under Sarva Shiksha Abhiyan and besides the same certain other financial irregularities in maintenance of the institution were noticed. In view of the said preliminary enquiry report, the petitioner was placed under suspension pending enquiry by proceedings dated 10.11.2006. Thereafter, four articles of charges were framed against the petitioner and they were communicated on 28.07.2007. The petitioner submitted a representation on 13.12.2007 and requested to furnish the copies of the circular instructions and copy of the alleged CD. Accordingly, the copies of circular instructions and copy of CD recorded by ETV Correspondents were supplied to the petitioner on 04.01.2008. After receipt of the said material, the petitioner did not submit any further explanation. In those circumstances, an Enquiry Officer was appointed on 21.02.2008 to enquire into the charges. After appointment of the Enquiry Officer, the petitioner submitted her written statement of defence on 10.03.2008. The Enquiry Officer conducted the enquiry and submitted his report on 24.04.2008. A copy of the enquiry report was communicated to the petitioner on 17.07.2008 and she submitted an explanation/representation on 12.08.2008 to the enquiry report furnished to her. On consideration of the representation of the petitioner, an order was passed on 05.11.2008 awarding the punishment of dismissal from service. Challenging the same, the above Writ Petition was filed.

The charges levelled against the petitioner are as follows:

> "1. That Smt. P. Renukadevi, Principal (under suspension), Jedcherla, Mahaboobnagar district, has failed to maintain discipline and not behave in a manner which is unbecoming of derogatory to the prestige of the Society and thus, violated Rule 2 of the Conduct Rules of APSWREI Society, 1987.
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> 2. That Smt. P. Renukadevi, Principal (under suspension), Jedcherla, Mahaboobnagar district, has failed to implement revised diet menu in the institution and violated the Society's Standing Order No.2/99, dated 07.07,.1999 and 4/2006, dated 07.08.2006.
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> 3. That Smt. P. Renukadevi, Principal (under suspension), Jedcherla, Mahaboobnagar district, has failed to conduct Mess Committee Meeting and House Committee meeting as per norms, thereby she resorted to dereliction of duties and violated the instructions issued on Academic Planning in Circular No.G2/20536/02, dated 09.07.2002.
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> 4. That Smt. P. Renukadevi, Principal (under suspension), Jedcherla, Mahaboobnagar district, has failed to ensure that the job chart prescribed to the Care Taker and it proves that stock issues of diet items and the value of the items found on shortage. Thereby she violated instructions issued in Circular Memo Rc.No.Accts-111/4646/99, dated 09.04.1999."

Learned counsel for the petitioner submits that all the charges relate to violation of Rule 2 of the Conduct Rules and there is no specific charge relating to the violation of any alleged misconduct mentioned in the Conduct Rules 1987 applicable to the petitioner. He further submitted that the deficiencies in personal character and personal inability to discharge duties or inefficiency in discharge of duties will not come under the acts of commission or omission under the disciplinary rules nor it would amount to a failure to maintain devotion to duty under the Conduct Rules and hence the proceedings taken against the petitioner on the above charges are not maintainable. He relied on a decision reported in Union of India v. J. Ahmed[1]. He further pointed out that no proceedings can be initiated on the basis of general indication of misconduct without there being any specific head of misconduct. He relied on A.L. Kalra v. The Project and Equipment Corporation of India Limited[2].

Learned counsel for the respondent submitted that due procedure was followed while conducting the enquiry and the order of dismissal from service was passed only after following the principles of natural justice. He produced before this Court the record of the enquiry leading to the order of suspension.

As per the record, the Enquiry Officer recorded the statements of the petitioner and four other witnesses on 08.05.2008 and no opportunity was given to the petitioner to cross-examine the witnesses. The petitioner in her statement merely stated that she already submitted a statement of defence on 10.03.2007 and she does not want to submit any further explanation. The Superintendent stated that though she was offered money by one Mr. Nandu, Contractor she did not receive the same and he left her stating that he would pay the amount to the Principal only. The Attender, B. Rajamani stated that one K. Sattenna wanted to give an envelope to him on 20.09.2006, but he refused to receive the same.

[1] (1979) 2 SCC 286
[2] AIR 1984 SC 1361

Beyond that he has nothing to state. Another Attender, N.V. Subba Rao in his statement stated that, on 20.09.2006 when he was there in the School, one Sattenna asked him to give an envelope to the Contractor and when he offered the same to the Contractor, the Contractor refused to receive the same, then he left it on the table. Thereafter, the Contractor himself took away the envelope. Beyond that he does not know anything. Another Attender K. Sattenna stated that on the day when the TV Reporters came, he was involved in the quarterly examinations. On that day, the Principal was not well and she directed him to bring the Superintendent. When he came along with the Superintendent, the Superintendent told him to take an envelope and to give it to Rajamani, Attender. When he offered the envelope to the said Attender, he refused to take and he kept the envelope on the table. This is the entire evidence that was recorded by the Enquiry Officer. Nobody spoke with regard to charges levelled against the petitioner. However, he prepared the enquiry report holding the charges as proved. After submission of the enquiry report, a tabular statement of the charges, written statement of defence, remarks of the Enquiry Officer and findings of the Enquiry Officer was prepared and the same was communicated to the petitioner. The petitioner submitted her representation on the enquiry report specifically pointing out that no witnesses were examined in support of the charges in her presence. She further stated that the enquiry report was based on preliminary enquiry report. She also stated that no stock register or issue register was made available during the enquiry, apart from HKC and Mess Committee Registers. She also stated that the statements of the witnesses were recorded behind her back and no opportunity to cross-examine them was given to her.

This Court verified the record and noticed that the irregularities pointed out by the petitioner was correct.

There is no separate procedure or separate heads of misconduct were enumerated in the Conduct Rules applicable to the employees of the respondent Society. Rule 2 of the Conduct Rules applicable to the petitioner reads as follows:

> "1. Every employee shall be devoted to his/her duty and shall maintain absolute integrity, discipline, impartiality and a sense of propriety.
> 2. No employee shall behave in a manner, which is unbecoming of such an employee or derogatory to the prestige of the society.
> 3. No employee shall act in a manner, which will place his/her official position under any kind of embarrassment.
> 4. Confidential matters relating to the society and schools and colleges should not be divulged to any one."

It is in general terms and the charges are framed in accordance with the said general conduct required to be maintained by the employees. The phrase "devotion to duty" was explained by the Hon'ble Supreme Court in J. Ahmed's case (supra). The Hon'ble Supreme Court observed as follows:

> "9…………………..The expression 'devotion to duty' appears to have been used as something opposed to indifference to duty or easy-going or light-hearted approach to duty. If Rule 3 were the only rule in the Conduct Rules it would have been rather difficult to ascertain what constitutes misconduct in a given situation. But Rules 4 to 18 of the Conduct Rules prescribe code of conduct for members of service and it can be safely stated that an act or omission contrary to or in breach of prescribed rules of conduct would constitute misconduct for disciplinary proceedings. This code of conduct being not exhaustive it would not be prudent to say that only that act or omission would constitute misconduct for the purpose of Discipline and Appeal Rules which is contrary to the various provisions in the Conduct Rules. The inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto so as to run counter to the expected code of conduct would certainly constitute misconduct. Some other act or omission may as well constitute misconduct. Allegations in the various charges do not specify any act or omission in derogation of or contrary to Conduct Rules save the general Rule 3 prescribing devotion to duty. It is, however, difficult to believe that lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would themselves constitute misconduct. If it is so, every officer rated average would be guilty of misconduct. Charges in this case as stated earlier clearly

indicate lack of efficiency, lack of foresight and indecisiveness as serious lapses on the part of the respondent. These deficiencies in personal character or personal ability would not constitute misconduct for the purpose of disciplinary proceedings.

10. It would be appropriate at this stage to ascertain what generally constitutes misconduct, especially in the context of disciplinary proceedings entailing penalty.

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 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 Pierce v. Foster (17 QB 536, 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 Superintendent, Central Railway, Nagpur Division, Nagpur (61 Bom LR 1596) and Satubha K. Vaghela v. Moosa Raza (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 Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik ((1966) 2 SCR 434), 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), 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), 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 duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would 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 instances of

> which a railway cabinman signals in a train on the same track where there is a stationary train causing head-on collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil (see Navinchandra Shakerchand Shah v. Manager, Ahmedabad Co-op. Department Stores Ltd., (1978) 19 Guj LR 108, 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."

With regard to heads of misconduct, in A.L. Kalra's case (supra) the Hon'ble Supreme Court considered the similar provision relating to misconduct obtaining in Project and Equipment Corporation of India Limited Employees (Conduct, Discipline and Appeal) Rules, 1975 and observed as follows:

> "21………The gravamen of the two heads of charges is that the appellant is guilty of misconduct as prescribed in Rule 4(I)(i) and (iii). It reads as under:
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> "4 (1) Every employee shall at all times:
> i) maintain absolute integrity;
> ii) ... .
> iii) do nothing which is unbecoming of a public servant."
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> Rule 5 prescribes various misconducts for which action can be taken against an employee governed by the rules.
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> 22. Rule 4 bears the heading 'General'. Rule 5 bears the heading 'misconduct'. The draftsmen of the 1975 Rules made a clear distinction about what would constitute misconduct. A general expectation of a certain decent behaviour in respect of employees keeping in view Corporation culture may be a moral or ethical expectation. Failure to keep to such high standard of moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5. Any attempt to telescope R. 4 into R. 5 must be looked upon with apprehension because Rule 4 is vague and of a general nature and what is unbecoming of a public servant may vary with individuals and expose employees to vagaries of subjective evaluation. What in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation. Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. It is not necessary to dilate on this point in view of a recent decision of this Court in Glaxo Laboratories (I.) Ltd. v. Presiding Officer, Labour Court, Meerut, (1984) 1 SCC 1 : (AIR 1984 SC 505), where

> this Court held that 'everything which is required to be prescribed has to be prescribed with precision and, no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is nonetheless a misconduct not strictly failing within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty'. Rule 4 styled as 'General' specifies a norm of behaviour but does not specify that its violation will constitute misconduct. In Rule 5, it is nowhere stated that anything violative of Rule 4 would be per se a misconduct in any of the sub-clauses of R. 5 which specifies misconduct. It would therefore appear that even if the facts alleged in the two heads of charges are accepted as wholly proved, yet that would not constitute misconduct as prescribed in Rule 5 and no penalty can be imposed for such conduct. It may as well be mentioned that R. 25 which prescribes penalties specifically provides that any of the penalties therein mentioned can be imposed on an employee for misconduct committed by him. Rule 4 does not specify a misconduct."

In view of the clear law laid down as above, this Court is of the opinion that the charges levelled against the petitioner are vague and general in nature. The procedure followed by the Enquiry Officer is in violation of the principles of natural justice and, as stated above, the statements of the witnesses do not clearly indicate any irregularity against the petitioner.

In view of the same, this Court is satisfied that the impugned order of dismissal passed against the petitioner, based on the said enquiry report, is irregular and is, accordingly, set aside. Since the petitioner was under suspension as on the date of issuance of charge sheet, the petitioner shall be continued to be under suspension and liberty is given to the respondent to initiate fresh enquiry proceedings keeping in view the law laid down by the Hon'ble Supreme Court and pass an appropriate order in accordance with law after following principles of natural justice. If the respondent wants to conduct an enquiry, the same shall be completed within a period of three (3) months from the date of receipt of a copy of this order. It is also open to the respondent to review the entire case and if the case does not warrant any further enquiry, it is open to the respondent to pass appropriate orders with regard to the service of the petitioner including her reinstatement.

The Writ Petition is, accordingly, allowed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions pending in this Writ Petition, if any, shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 19.07.2017
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