

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NOS.11729 AND 11745 OF 2018

COMMON ORDER

Since the issue involved in both the writ petition is similar, they are being disposed of by this common order.

These writ petitions are filed challenging the charge sheet dated 06.10.2017, whereby the petitioners were charged with the following acts of omissions, which if proved would constitute misconduct and violation of Certified Standing Orders of Hindustan Aeronautics Limited, Hyderabad Division:

Clause 26:

- 2) ... fraud ...;
- 8) Breach of Standing orders or Rules ... applicable to the establishment;
- 25) Deliberately making false statements before a superior ...
- 35) Making false declaration regarding ... qualification ... in the application for appointment ...
- 46) Breach of rules and regulations, instructions, ... applicable to the company for regulating work, ... discipline, good conduct, ...

Petitioners were called upon to submit their explanations. Aggrieved by the above charge sheet, present writ petitions have been filed.

Learned counsel for the petitioners Sri Prabhakar Sipada, submits that petitioners were possessing higher qualifications than that were notified by the respondent – company and non-disclosure of such qualifications, cannot be construed as misconduct, thereby breaching the Standing Orders of the respondent – Company. He stated that the impugned disciplinary proceedings were sought to be initiated at the instance of National Commission for Scheduled Castes and Tribes. Relying on the judgment of the Apex Court in *ALL INDIA INDIAN OVERSEAS BANK SCHEDULED CASTES AND SCHEDULED TRIBES EMPLOYEES WELFARE*

*ASSOCIATION vs. UNION OF INDIA*¹, learned counsel contended that the said Commission has no such power to require the respondent – company to initiate disciplinary proceedings. He stated that the respondent – company, has not exercised the discretion vested in it independently and merely in compliance with the directions of the Commission, initiated the disciplinary proceedings, and the same is arbitrary. To buttress this argument that failure to exercise discretion vested in the authority, amounts to arbitrariness, learned counsel relied on the judgment of the Apex Court in *ANIRUDHSINHJI KARANSINHJI JADEJA v. STATE OF GUJARAT*.

On the other hand, Ms. V. Uma Devi, learned Standing Counsel for the respondent – company submits that misconduct pertains to false declarations and undertakings given by the petitioners. As per the notification, candidates are required to possess diploma in relevant branch. In the notification it was specifically mentioned that candidates possessing higher qualification than the required qualification need not apply. Petitioners were graduates in Engineering. Suppressing their qualification, they have applied for the post and after selection, gave an undertaking that they do not possess graduation in Engineering and secured appointment orders. As the petitioners suppressed their qualification, they were charged with misconduct and petitioners submitted their explanations and Inquiry Officer was appointed and he is in the process of submitting report. Therefore, at this stage, this court may not interfere with the inquiry, which is in progress. She submits that employer is entitled to initiate disciplinary proceedings based on information received from any source with regard to misconduct and that

¹ 1996(8) Supreme 298

² (1995) 5 SCC 302

source cannot be an issue for deliberations and the only issue that falls for consideration of the employer would be whether the alleged misconduct is proved. With these submissions, she sought to dismiss the writ petition.

The petitioners in this writ petition are seeking to interdict the disciplinary proceedings. Ordinarily this court will not interfere with the disciplinary proceedings, unless the authority which initiated disciplinary proceedings, lacks jurisdiction. In the present case, it is not the case of petitioners that the 3rd respondent – company, which is their employer, lacks jurisdiction to initiate disciplinary proceedings on the alleged misconduct. Therefore, they cannot question the authority of their employer in conduct inquiry for the alleged misconduct.

A reading of the notification issued by the 3rd respondent inviting applications goes to show that there is a specific note appended to the notification to the effect that “*candidates possessing higher qualification than the required qualification need not apply.*” Learned Standing Counsel for the respondents based on record, stated that the petitioners have given undertaking in conformity to the note appended to the notification, by suppressing their actual qualifications. Here it is to be noticed that the misconduct alleged against the petitioners is with regard to suppression of their actual qualifications, and not with regard to possessing higher qualification, which is being inquired into.

Judgments relied on by the learned counsel for the petitioner are in different contextual background and hence cannot be made applicable to the facts of the present case.

Having regard to the above facts and circumstances, and as already noted above, since the disciplinary authority of the 3rd respondent

— company, is within its competence to initiate disciplinary proceedings for the alleged misconduct, and the inquiry is stated to be in progress, I am not inclined to interdict with the process by invoking jurisdiction under Article 226 of the Constitution of India.

The writ petitions are accordingly dismissed.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

A. RAJASHEKER REDDY, J

DATE: 11—04—2018

AVS

