

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL NO.1540 OF 2018

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

Indian Immunologicals Limited, Hyderabad, a wholly owned subsidiary of the National Dairy Development Board, is in appeal aggrieved by the interim order dated 25.10.2018 passed by a learned Judge of this Court in I.A.No.1 of 2018 in W.P.No.38211 of 2018. The said writ petition was filed by the first respondent herein assailing the order dated 11.10.2018 issued by the appellant-company through its Managing Director, who was impleaded *eo nomine* as the fourth respondent in the writ petition, terminating his services with immediate effect in terms of Rule 31 of the Conduct, Discipline and Appeal Rules, 1999 (*for brevity*, 'the CDA Rules of 1999'). By way of his interim prayer, the first respondent-writ petitioner sought suspension of the impugned termination order dated 11.10.2018 pending disposal of the writ petition. By the order under appeal, the learned Judge suspended the impugned termination order dated 11.10.2018, disagreeing with the stand taken by the fourth respondent-Managing Director of the appellant-company that it was not reasonably practicable to hold an enquiry against the first respondent-writ petitioner. Hence, this appeal.

Heard Sri Vedula Srinivas, learned counsel for the appellant-company, and Narendra Agrawal, the first respondent-writ petitioner, appearing as a party-in-person.

As the writ petition is still pending consideration and it is an admitted fact that the appellant-company is yet to file its counter-affidavit therein, the scope of this appeal is limited. Sri Vedula Srinivas, learned counsel, would however point out that as the interim order under appeal was passed after

hearing both sides, inasmuch as the appellant-company was on caveat, and after perusing the record, it is in the nature of a final order and would therefore be amenable to appellate review.

The first respondent-writ petitioner entered the service of the appellant-company in February, 2007 as a Manager Grade-III in its Marketing Division. He was promoted as Manager Grade-II in April, 2013. He was terminated from service in January, 2015 and aggrieved thereby, he filed W.P.No.4159 of 2015 before this Court which was allowed with costs by a learned Judge of this Court, *vide* order dated 24.11.2016. He was reinstated in service in February, 2017 after institution of contempt proceedings.

This being the factual background set out in the affidavit, it may be noted that the CDA Rules of 1999 of the appellant-company set out at length the procedure to be followed in the course of disciplinary proceedings against a company employee. Rule 24 details the minor and major penalties that may be imposed on an employee for misconduct. Removal from service and dismissal are amongst the prescribed major penalties. Rule 25 prescribes that the disciplinary authority, as specified in the schedule or any authority higher than it, may impose any of the prescribed penalties on any employee. Admittedly, the Managing Director of the appellant-company is the disciplinary authority in so far as the first respondent-writ petitioner is concerned. Rule 26 details the procedure to be followed for imposing major penalties. Sub-rule 1 thereof states to the effect that no order imposing any of the major penalties shall be made except after an enquiry is held in accordance with Rule 26. The other sub-rules in Rule 26 detail the procedure to be followed in the course of the enquiry and thereafter. Rule 27 deals with

the action to be taken on the enquiry report. Rule 31, however, deals with the special procedure to be followed in certain cases and it reads as under:

'31. Special Procedure in certain cases:

Notwithstanding anything contained in rule 25 or 26 or 27, the disciplinary authority may impose any of the penalties specified in rule 23 in any of the following circumstances:

- I. The employee has been convicted on a criminal charge or on the strength of facts or conclusion arrived at by a judicial trial; or
- II. Where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or
- III. Where the disciplinary authority is satisfied that in the interest of the security of the Indian Immunologicals Ltd., it is not expedient to hold any inquiry in the manner provided in these rules.'

It is in exercise of power under this rule that the Managing Director of the appellant-company issued the termination order dated 11.10.2018 to the first respondent-writ petitioner. The learned Judge was however of the opinion that when serious civil consequences were visited on an employee, he could not be deprived of an opportunity to defend himself against the allegations levelled against him unless there were good reasons. The learned Judge further held that in his opinion, *prima facie*, the reasons given by the Managing Director for taking the view that it was not reasonably practicable to hold an enquiry against the first respondent-writ petitioner appeared to be arbitrary, non-genuine and violative of Article 14 of the Constitution. It was on the strength of this reasoning that the learned Judge granted interim suspension of the impugned termination order.

As Rule 31 of the CDA Rules of 1999 details the exceptional circumstances in which the regular procedure prescribed in Rules 25, 26 and 27 could be dispensed with, we called for the record pertaining to the decision taken by the appellant-company under this rule.

Sri Vedula Srinivas, learned counsel, thereupon produced the Personnel File in original. Perusal thereof reflects that the Vice President,

Human Resources, of the appellant-company put up a Note on 09.10.2018 to the Managing Director of the appellant-company, through the Senior Manager (Legal), whereupon the Managing Director passed an order on 10.10.2018. Therein, the reasons cited for dispensing with the usual procedure applicable to disciplinary proceedings are as follows: In the context of the complaint made by the first respondent-writ petitioner resulting in a report from the Central Drugs Standard Control Organization, New Delhi (CDSCO), the Managing Director opined that it would not be possible to summon the authorities of the CDSCO as witnesses and to get their statements recorded in support of the stand of the company. The Managing Director further noted that the filing of the complaint by the first respondent-writ petitioner was an admitted fact and it was an extreme case of misconduct on his part in levelling allegations that the company was obtaining licences on fake documentation, resorting to acts of fraud and cheating the Government departments as well as the public. The Managing Director observed that such misconduct was a total abuse of the senior position occupied by the first respondent-writ petitioner and that he had resorted to making false, defamatory, derogatory and baseless accusations against the company, leading to the management losing confidence in him and his continuation in service would be against the interest of the organization. He also adverted to the finding of certain critical documents in the possession of the first respondent-writ petitioner, upon verification of the contents of his laptop, and it pertained to the security of the organization. He stated that the security of the company had been threatened by the allegations of the first respondent-writ petitioner which could potentially stall the manufacturing operations of the company, thereby putting its very existence into question. He also noted that the first respondent-writ

petitioner had become a security threat in the premises of the organization and that he could go to any extent to create disturbance in the company premises as his riotous and rebellious behaviour could disturb the peaceful working environment of the company. He concluded by stating that he was satisfied that it was not reasonably practicable to hold an enquiry in the manner provided in CDA Rules of 1999 in the light of these facts and circumstances and that the situation warranted imposition of the major punishment of removal from service by dispensing with the normal procedure. He accordingly directed issuance of an order to that effect to the first respondent-writ petitioner.

In terms of Rules 31(II) and (III), the question that arises is whether the aforestated reasons suffice to justify the satisfaction of the disciplinary authority that it was not reasonably practicable to hold an enquiry against the first respondent-writ petitioner as per rules and whether it was in the interest of the security of the appellant-company not to hold an enquiry in the manner provided in the rules.

It may be noted at this stage that the impugned termination order dated 11.10.2018 is titled 'Loss of confidence' and cited the complaint made by the first respondent-writ petitioner resulting in the report dated 05.10.2018 of the CDSCO; the alleged possession of certain documents by the first respondent-writ petitioner pertaining to bulk antigen and excipients raw material; and a document on his laptop which showed that he was contemplating an all-out action against the company if his demands were not met. The order then states as follows:

'The instances cited above are conclusive evidence that you are indulging in anti-Company activities that could seriously jeopardise the interests of the Organization. You have been holding a responsible senior position in the Organisation and expected to maintain high

fiduciary relationship with the Organisation. Unfortunately you have acted in breach of your duties and responsibilities and abused your senior position by making false, defamatory, derogatory and baseless accusations against the Organisation.

All of the above cited instances, coupled with your incessant, unjust and baseless tirade that you run against the Management pose a serious threat to the interests, reputation and overall image of the Company and can even harm its continued existence.

This being the case, the Management is no longer in a position to repose any confidence in you. It is not in the interest of the Company to keep you in employment any longer. In the best interest of the Organisation, it has been decided to terminate your services with the organisation with immediate effect by following Rule 31 of the CDA rules of the Company. You are being paid one month's salary in lieu of notice. The cheque for Rs.77,621/- bearing no.734891 dated 10.10.2018 drawn on HDFC Bank, Lakdikapul branch is enclosed herewith.

This is without prejudice to pending legal proceedings arising out of earlier charge sheets issued to you and our rights and contentions therein.'

Significantly, there is no mention either in the record or in the termination order as to what was the nature of the all-out action anticipated by the company on the strength of some document which was found on the laptop of the first respondent-writ petitioner. Even if the details thereof were not disclosed in the termination order, the disciplinary authority was bound to note the nature thereof in the original record.

That apart, the material placed on record and more particularly, the charge-sheet dated 09.04.2018 addressed by the appellant-company to the first respondent-writ petitioner in relation to some other issues, clearly discloses that the first respondent-writ petitioner had made allegations against the Managing Director of the appellant-company threatening to expose him. This was one of the charges levelled against the first

respondent-writ petitioner in this charge-sheet. This being the situation obtaining in October, 2018, even if the Managing Director was the disciplinary authority in so far as the first respondent-writ petitioner was concerned, it would have been appropriate for the Board of Directors, being the superior authority over and above the Managing Director, to take a decision as to whether the regular procedure should be dispensed with and whether recourse should be taken to the exceptional power vesting in the organization under Rule 31 of the CDA Rules of 1999. However, the Managing Director himself chose to exercise that power. Needless to state, one cannot be the Judge in his own cause and when there was bad blood between the first respondent-writ petitioner and the Managing Director, as is clearly brought out by the charge-sheet dated 09.04.2018, the Managing Director ought not to have wielded the whip.

Be it noted that Rule 31(II) of the CDA Rules of 1999 is akin to Clause (b) of the second *proviso* to Article 311(2) of the Constitution.

As pointed out by the Supreme Court in JASWANT SINGH V/ s. STATE OF PUNJAB¹, the decision to dispense with the enquiry under Article 311(2)(b) of the Constitution cannot rest solely on the *ipse dixit* of the concerned authority and it is incumbent on those who support the order to show that the satisfaction is based on objective facts and is not the outcome of whim and caprice. The Supreme Court further held that it must be shown that there was independent material to justify dispensing with the enquiry.

Applying this yardstick to the case on hand, apart from the technical flaw of the Managing Director having an axe to grind against the first respondent-writ petitioner, thereby entailing the possibility of lack of impartiality at the very least, if not outright bias, we are of the opinion that

¹ (1991) 1 SCC 362

the reasons recorded by him as reflected in the Note dated 10.10.2018 available in the original file are wholly insufficient to justify dispensing with an enquiry.

It is an admitted fact that the CDSCO submitted its report on 05.10.2018. The said report would speak for itself and could be marked in evidence in any disciplinary enquiry by the official of the appellant-company who received it. As the said document stands by itself, there would be no necessity to examine the officials of the CDSCO, as stated by the Managing Director. The validity of the said report would not be the subject matter of the disciplinary proceedings and the first respondent-writ petitioner could not have claimed any right to cross-examine the CDSCO officials in the context of the said report. The reasons cited by the Managing Director vis-à-vis this report therefore do not hold water. Further, merely because the first respondent-writ petitioner had made a complaint, the same by itself could not have been grounds to warrant such extreme disciplinary action against him without adherence to the due procedure. Therefore, the opinion of the Managing Director that as it was an admitted fact that he had made a complaint, it could be treated as an extreme case of misconduct is self-serving to say the least. Loss of confidence cited by the Managing Director is also not reason enough to dispense with the usual procedure. If mere loss of confidence is to be accepted as a ground to dispense with the necessity of an enquiry, every employer who initiates disciplinary proceedings against an employee would straightaway claim such lack of confidence, thereby doing away with errand employees without following the due procedure. Though bombastic statements have been recorded by the Managing Director in his Note dated 10.10.2018 to the effect that the critical document found in the laptop of the first respondent-writ petitioner pertains

to the security of the organization and that his allegations had the potential of stalling the manufacturing operations of the company, thereby putting its very existence at risk, no supporting reasons have been recorded to justify these self-serving opinions. Merely because the presence of the first respondent-writ petitioner in the premises of the organization was found to be disturbing, the Managing Director could not have straightaway resorted to his termination from service by dispensing with the usual procedure.

Be it noted that Rule 21 of the CDA Rules of 1999 authorises the appellant-company to place an employee under suspension where a disciplinary proceeding against him was either contemplated or was pending. Therefore, the appellant-company could have taken recourse to exercise of this power if it did not want the first respondent-writ petitioner to be on the premises of the organization for fear of his creating disturbance to the peaceful working environment. Further, we are informed that the first respondent-writ petitioner has already been suspended from service by an order dated 03.09.2018 in relation to some other disciplinary proceedings.

On the above analysis, we must agree with the learned Judge that sufficient reasons were not cited by the Managing Director of the appellant-company to justify dispensing with the regular procedure and for taking recourse to the extreme power vesting in him under Rule 31 of the CDA Rules of 1999.

At this stage, it would be relevant to deal with the case law cited by Sri Vedula Srinivas, learned counsel.

In O.P.BHANDARI V/s. INDIAN TOURISM DEVELOPMENT CORPORATION LIMITED², the Supreme Court was dealing with a rule which provided for termination of an employee by giving notice of the

² (1986) 4 SCC 337

prescribed period or by payment of salary for the notice period in lieu of such notice. While frowning upon this rule which provided for termination of the services of an employee simply by giving 90 days notice or paying salary for the notice period, the Supreme Court however held on facts that the Court, if satisfied that the ends of justice so demand, can certainly direct that the employer shall have the option not to reinstate such an employee provided the employer pays reasonable compensation as indicated by the Court. We are at a loss to understand as to how this decision advances the appellant-company's case before us. We are concerned only with the justification for the appellant-company to take recourse to Rule 31 of the CDA Rules of 1999 in the limited context of the interim suspension granted by the learned Judge. The question as to whether he should be reinstated or whether he should be recompensed would at best arise for consideration in the writ petition and not in this appeal.

In *K.C.SHARMA V/ s. DELHI STOCK EXCHANGE*³, the Supreme Court was dealing with a case where the appellant had made serious allegations against the Directors of the Stock Exchange and other senior members and taking into consideration these circumstances, the Supreme Court, though being of the view that the termination of the appellant's services was illegal, opined that it would be improper and unjust to direct reinstatement and accordingly granted compensation to the appellant. This judgment is also of no aid to the appellant-company for the reasons already cited *supra* in relation to *O.P.BHANDARI*³.

In *M/ S.FRANCIS KLEIN & CO. (P) LTD. V/ s. THEIR WORKMEN*⁴, the Supreme Court observed that once a company lost confidence in its employee, it would be idle to ask it to employ such a person

³ (2005) 4 SCC 4

⁴ (1972) 4 SCC 569

in another job as directed by the Tribunal and accordingly set aside the award of the Tribunal by directing payment of compensation for termination of services on account of loss of confidence which, in the circumstances, would meet the ends of justice.

In *L.MICHAEL V/ s. M/ S.JOHNSON PUMPS LTD.*⁵, the Supreme Court observed that loss of confidence is often a subjective feeling or an individual reaction to an objective set of facts and motivations and the Court would be concerned with the latter and not with the former, although circumstances may exist which justify genuine exercise of the power of simple termination. However, on facts, the Supreme Court found that termination *simpliciter* in that case was not *bonafide* and loss of confidence was not evidentiary of good faith of the employer. The Supreme Court further observed that it was constrained to express itself unmistakably, lest industrial unrest induced by wrongful terminations based on convenient loss of confidence should be generated. In the result, the Supreme Court directed reinstatement of the workman with back wages, leaving it open to the management, if it had sufficient material and if it was so advised, to proceed against the workman for misconduct or on other grounds valid in law. Applying the principle laid down in this case, the Office Note dated 10.10.2018 of the Managing Director of the appellant-company fails to surpass the test required to meet the standard of the loss of confidence being an individual reaction to an objective set of facts and motivations.

In *INDIAN RAILWAY CONSTRUCTION CO.LTD. V/ s. AJAY KUMAR*⁶, the Supreme Court was dealing with a rule in the Indian Railway Construction Company Limited (Conduct, Discipline and Appeal) Rules, 1981, which was akin to Rule 31 in CDA Rules of 1999, providing for dispensing

⁵ (1975) 1 SCC 574

⁶ (2003) 4 SCC 579

with the enquiry in certain cases. The Supreme Court observed that the power to dismiss an employee by dispensing with an enquiry is not to be exercised so as to circumvent the prescribed rules and the satisfaction as to whether the facts exist to justify dispensing with the enquiry has to be of the disciplinary authority. The Supreme Court cautioned that where two views are possible as to whether holding of an enquiry would have been proper or not, it would not be within the domain of the Court to substitute its view for that of the disciplinary authority as if the Court is sitting as an appellate authority over the disciplinary authority. *Per* the Supreme Court, what the High Court was required to do was to see that whether there was any scope for judicial review of the disciplinary authority's order dispensing with the enquiry and the focus was required to be on the impracticability or otherwise of holding the enquiry. In this context, the Supreme Court observed that to arrive at a decision on 'reasonableness', the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must be within the four corners of the law and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a *bonafide* one. The Supreme Court held that in order to characterize a decision of the administrator as 'irrational', the Court has to hold, on material, that it is a decision 'so outrageous' as to be in total defiance of logic or moral standards. On facts, the Supreme Court found that the reasons which weighed with the disciplinary authority to dispense with the enquiry did not appear to be proper and as they were *prima facie* acts of misconduct, the employer could legitimately raise a plea of losing confidence in the employee warranting his non-continuance in the employment. The Supreme Court held

that payment of monies in full and final settlement of all his claims would suffice.

In the case on hand, even going by the aforestated legal principle, this Court is of the opinion that the reasons cited by the Managing Director of the appellant-company to dispense with the regular procedure so as to get rid of the first respondent-writ petitioner were wholly insufficient to demonstrate any impracticability in holding the enquiry. Self-serving, whimsical and bombastic statements were made by the Managing Director in his Office Note dated 10.10.2018 to support his conclusion that it was not reasonably practicable to hold an enquiry without any factual foundations therefor. That apart, as already pointed out *supra*, when there was bad blood between the first respondent-writ petitioner and the Managing Director, propriety demanded that the Managing Director of the appellant-company should have asked the Board of Directors to exercise power, if warranted, under Rule 31 of the CDA Rules of 1999 and not done it himself. Further, none of the reasons cited by him pass the test whereby one could even state that two views are possible. The above judgment is therefore of no avail to the appellant-company.

In *INDIAN AIRLINES LTD. V/s. PRABHA D.KANAN*⁷, the Supreme Court was dealing with a regulation of the Indian Airlines Limited which permitted termination of services without due procedure. While holding the said regulation to be lawful, the Supreme Court observed that on facts, the said regulation was not applicable to the respondent. However, keeping in mind the peculiar facts and circumstances of that case, the Supreme Court directed payment of eight years' salary towards back wages and loss of future employment.

⁷ (2006) 11 SCC 67

In *DIVISIONAL CONTROLLER, KARNATAKA STATE ROAD TRANSPORT CORPORATION V/ s. M.G.VITTAL RAO*⁸, the Supreme Court observed that once the employer loses confidence in the employee and *bonafide* loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity and in a case of loss of confidence, reinstatement cannot be directed. This was however a case where a regular departmental enquiry was conducted and not one where the extreme power of terminating the services without due procedure was exercised.

As already stated *supra*, the cases cited turn upon loss of confidence on the part of the employer being justification to settle the claim of the disgruntled employee with monetary compensation. However, that stage is yet to come in so far as this case is concerned as the writ petition is still pending consideration and the appellant-company is yet to make its stand known therein. These judgments therefore have no application at this stage when we are exercising appellate jurisdiction in relation to the interim suspension granted by the learned Judge.

Narendra Agrawal, the first respondent-writ petitioner, would point out that in *L.MICHAEL*⁵, the Supreme Court observed that it is a thorny legal issue as to whether the *ipse dixit* of the employer that he has lost confidence in the employee is sufficient justification to jettison the latter without levelling and proving the objectionable conduct which has undermined his confidence so that the Tribunal may be satisfied about the *bonafides* of the 'firing' as contrasted with the colourable exercise of power, hiding a not-so-innocuous purpose. He would also point out that the

⁸ (2012) 1 SCC 442

Supreme Court posed the question as to whether such an order should be taken to be an innocent and, therefore, legal quit notice sanctioned by the Standing Orders which did not stigmatise the worker but merely bade him good-bye or was it a sinister intent to punish masked as a guileless order based on 'loss of confidence', an alibi which, on a certain reading of the earlier rulings, was also a protective armour against judicial probe and setting aside? He would assert that this Court must examine the impugned order of termination dated 11.10.2018 in the context of the above observations.

He would also rely upon the Constitution Bench judgment in KHEM CHAND V/ s. UNION OF INDIA⁹, where the Supreme Court considered whether the appellant was given a reasonable opportunity of showing cause against the action proposed to be taken against him in terms of Article 311 of the Constitution. In this context, the Supreme Court observed that an employee must not only be given an opportunity but such an opportunity must be a reasonable one to show-cause against the proposed action. The employee should have the opportunity, to say, if that be his case, that he is not guilty of any misconduct to merit any punishment at all and also that the particular punishment proposed to be given is much more drastic and severe than he deserves. The Supreme Court summarised the 'reasonable opportunity' envisaged by Article 311 to include (1) an opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based; (2) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally (3) an opportunity to make

⁹ AIR 1958 SC 300

his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the Government servant tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant. No doubt, some of the aforesaid observations may not be good law as on date owing to the later judgments of the Supreme Court. They however indicate that the normal rule would be applicable to an employee who is sought to be visited with a penalty for misconduct. However, as we have already held on facts, the learned Judge was fully justified in coming to the conclusion that sufficient cause was not made out to take recourse to the extreme power under Rule 31 of the CDA Rules of 1999 and the interim suspension of the termination order dated 11.10.2018 was fully justified.

Though Sri Vedula Srinivas, learned counsel, also raised the issue of maintainability of the writ petition against the appellant-company on the ground that it would not come within the ambit of Article 12 of the Constitution, he would fairly concede that this aspect of the matter was not raised before the learned Judge at the time of passing of the interim suspension order, presently under appeal. He would also concede that in W.A.No.143 of 2017 filed by the appellant-company against the order dated 24.11.2016 passed in W.P.No.4159 of 2015 filed by the first respondent-writ petitioner, the issue of maintainability has been raised but no interim orders were granted therein. We are therefore not inclined to entertain this new ground, given the fact that the writ petition is still pending consideration and the appellant-company is yet to file its counter therein.

As the appellant-company, in its wisdom, chose to file this appeal in the context of the *prima facie* opinion formed by the learned Judge for

passing the order of interim suspension, we had no alternative but to test the validity of that opinion on the strength of the record. However, as the appellant-company is yet to file its counter affidavit in the writ petition, we make it clear that our observations on the merits of the matter hereinabove shall not be treated as final and it would be open to the learned Judge to adjudicate the writ petition independently on the strength of further pleadings filed in the writ petition, subject to the rider laid down by the Supreme Court in ***MOHINDER SINGH GILL V/s. THE CHIEF ELECTION COMMISSIONER***¹⁰.

On the above analysis, we find no grounds to interfere with the order under appeal. The writ appeal is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



SANJAY KUMAR, J

M.GANGA RAO, J

14th DECEMBER, 2018

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¹⁰ AIR 1978 SC 851 : 1978 SCR (3) 272