

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 236 of 2011**

Gorelal, Aged about 45 years, S/o. Ramadheen R/o. Ompur Colony,
Rajgamar, Tahsil and District Korba, Chhattisgarh

---- Petitioner

Versus

1. South Eastern Coal Fields Ltd., through: its Chairman-cum-Managing Director, Seepat Road, Raipur, Chhattisgarh
2. Deputy General Manager/Deputy Regional Manager, Rajgamar Area, Tahsil and District Korba, Chhattisgarh

---Respondents

For Petitioner	:	Mr. Parag Kotecha, Advocate with Mr. Shalvik Tiwari, Advocate
For Respondents	:	Mr. Shailendra Shukla, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/09/2019

1. The challenge in the present writ petition is to the order of termination Annexure P/4 dated 23.03.2004. Vide the impugned order the respondents after a detailed departmental enquiry conducted against the petitioner have inflicted him with an order of dismissal from service vide Annexure P/4, which is under challenge in the present writ petition.
2. The contention of the petitioner is that the impugned order is bad for the reason that there is no substantial cogent and strong material produced by the Management before the Inquiry officer to substantiate the allegations leveled against the petitioner and in the absence of cogent/strong material, the findings of the Inquiry Officer

could not have been accepted and hence the action on the part of the Disciplinary Authority terminating the services of the petitioner is bad in law.

3. According to the petitioner, he had brought on record before the Inquiry Officer the affidavit of his mother Anand Kunwar, wherein she has specifically stated to be the wife of Ramadheen and the petitioner being the son of from their relationship and that he in fact is Gorelal Gond and not Gorelal Chandra. This according to the petitioner has not been properly appreciated by the Disciplinary Authority, nor by the Inquiry officer before the impugned order was passed.
4. The further contention of the petitioner is that the petitioner has been falsely implicated in the case for the reason that the original complainant in the instant case Hetram Sahu is a person against whom the wife of the petitioner has in fact leveled the charge of outraging her modesty and the said complainant Hetram Sahu was also subjected to a criminal trial for the offence under Section 354 of the Indian Penal Code, therefore in retaliation the said complainant has lodged a false complaint against the petitioner, which has been examined by the Department in a mechanical manner without proper appreciation of evidence and the petitioner has been terminated from service.
5. Given the aforesaid facts and circumstances of the case, what has to be seen in the instant case is to the extent of judicial review that is permissible in a disciplinary proceeding of such nature.

Admittedly the petitioner was issued with a charge-sheet on 22.09.2000. The petitioner had initially challenged the said charge-sheet vide WP No. 119/2001. The said writ petition finally got dismissed on 10.03.2004. There was no interim protection to the petitioner against the charge-sheet and in the process the departmental enquiry continued and the Inquiry officer submitted his report. Based on the inquiry report, the Disciplinary Authority passed the impugned order dated 23.03.2004 (Annexure P/4), which is under challenge in the present writ petition.

6. Though the order was passed on 23.03.2004, surprisingly the petitioner did not avail the remedy of departmental appeal available against the said order. Neither did the petitioner approach the Court of law immediately. The present writ petition has been filed after about 7 years from the date of issuance of the order of termination. No plausible explanation has been provided by the petitioner for not approaching the Court within the reasonable time, thus, prima-facie the writ petition suffers from delay and laches.
7. Considering the fact that the impugned order is an order of termination and the present writ petition is one, which was entertained in the year 2011, this Court in order to decide the case on merits went through the records available with the writ petition and which has been produced by the counsel appearing for the either side in the course of arguments. In the course of hearing, it is found that in the departmental enquiry the petitioner had participated in all the proceedings. The petitioner had also taken the

assistance of a Defense Assistant, who had also participated along with the petitioner on each of the dates of hearing before the Inquiry officer. What is also revealed from the documents which have enclosed along with the reply is that the petitioner as well as Defense Assistant extensively cross-examined the witnesses examined on behalf of the Management. The witnesses on behalf of the Management had also adduced certain evidences and proved the fact that the petitioner in fact was not Gorelal Gond son of Ramadheen, but was in fact Gorelal Chandra son of Bahadur Chandra. There is no cogent evidence brought by the petitioner to either rebut the evidences, which the respondent-Management has brought before the Inquiry officer or sufficient evidence to disprove the allegations leveled by the complainant or the allegations that have been leveled against the petitioner in the charge-sheet. The only document, which the petitioner intends to rely upon is an affidavit of his mother. Except of which, there is no other strong material available on record to accept the contention of the petitioner or to hold that the evidence produced before the Inquiry officer was not sufficient.

8. So far as the scope of judicial interference in disciplinary proceedings are concerned, it is by now well settled that the High Court under Article 226 of the Constitution of India would not substitute itself as another fact finding agency or an authority who would threadbare go into the evidences collected during the course of inquiry and reach to another conclusion.

9. So far as scope of interference in disciplinary matter is concerned, it has been time and again reiterated by the Supreme Court that in matters pertaining to disciplinary proceedings the scope is very limited and it can be interfered with only on the findings being either erroneous or is manifestly arbitrary or the finding is such which is not based on facts and materials which are produced before the enquiry officer.
10. Supreme Court in this regard in the case of **S. R. Tewari Vs. Union of India, (2013) 6 SCC 602** in paragraph 19, 20 & 21 have held as under :-

“19. In the case of CIT v. Mahindra & Mahindra Ltd., AIR 1984 SC 1182, this Court held that various parameters of the court’s power of judicial review of administrative or executive action on which the court can interfere had been well settled and it would be redundant to recapitulate the whole catena of decisions. The Court further held:

“11.It is a settled position that if the action or decision is perverse or is such that no reasonable body of persons, properly informed, could come to, or has been arrived at by the authority misdirecting itself by adopting a wrong approach, or has been influenced by irrelevant or extraneous matters the court would be justified in interfering with the same.”

“20. The court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous. Such exercise of power would stand vitiated. The court may be justified in exercising the power of judicial review if the impugned order suffers from mala fide, dishonest or corrupt practices, for the reason, that the order had been passed by the authority beyond the limits conferred upon the authority by the legislature. Thus, the court has to be satisfied that the order had been passed by the authority only on the grounds of illegality, irrationality and procedural impropriety before it interferes. The court does not have the expertise to correct the administrative decision. Therefore, the court itself may be fallible and interfering with the order of the authority may impose heavy administrative burden on the State or may lead to unbudgeted expenditure. (Vide: Tata Cellular v. Union of India, AIR 1996 SC 11; People’s Union for Civil Liberties & Anr. v. Union of India & Ors., AIR 2004 SC 456; and State of N.C.T. of Delhi & Anr. v. Sanjeev alias Bittoo, AIR 2005 SC 2080).”

“21. In Air India Ltd. v. Cochin International Airport Ltd., AIR (2000) SC 801, this Court explaining the scope of judicial review held that the court must act with great caution and should exercise such power only in furtherance to public interest and not merely on the making out of a legal point. The court must always keep the larger public interest in mind in order to decide whether its intervention is called for or not.”

11. A similar view has also been taken by the Supreme Court in the case of **Sanjay Kumar Singh Vs. Union of India & Ors., AIR 2012 SC 1783** and also in the case of **Union of India & Others Vs. Bodupalli Gopalaswami, (2011) 13 SCC 553**, wherein the Supreme Court has in a very categorical terms held that in departmental enquiry proceedings the scope of Court's are very limited. It has been reiterated by the Supreme Court that in a disciplinary proceeding matters the Court cannot substitute its own finding and thus by replacing the finding arrived at by the authority that too after detailed appreciation of the evidence brought on record. It has been repeatedly held by the Supreme Court under Article 226 of Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority as also the appellate authority. It has also been repeatedly held by the Supreme Court that the High Court under Article 226 would not re-appreciate the entire evidence and come to a different and independent finding.
12. A similar view also has been taken by the Supreme Court in the case of **Union of India & Others Vs. P. Gunasekaran, (2015) 2 SCC 610**, For ready reference paragraph 12 & 13 of the said judgment reproduced hereinunder :-

“12. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of

its powers under Article 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence.

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.”

“13. Under Articles 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.”

13. Once when the law is settled that in disciplinary proceedings unless there is a ground of perversity or the finding being contrary to the evidence on record or there being technical flaw in the conducting of the departmental enquiry, the Court should be slow in interfering

with such findings which are based on evidence which has come on record.

14. The Hon'ble Supreme Court in the case of **“State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya”** reported in 2011 (4) SCC 584 in paragraph No.7 held as under:

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (vide B. C. Chaturvedi -Versus- Union of India – 1995 (6) SCC 749, Union of India vs. G. Gunayuthan – 1997 (7) SCC 463, and Bank of India -Versus- Degala Suryanarayana – 1999 (5) SCC 762, High Court of Judicature at Bombay vs. Shahsi Kant S Patil– 2001 (1) SCC 416).”

15. Given the aforesaid legal position as it stands and the evidence which has come on record, this court is of the opinion that the findings arrived at by the authorities cannot be said to be, in any manner, bad in law, arbitrary or contrary to the rules.
16. A limited scope permissible under the writ jurisdiction is whether the decision making process is hit by the principles of natural justice or not, whether the petitioner-delinquent employee has been granted a fair and reasonable opportunity of hearing or not, and whether the impugned order has been passed by a competent person or by a incompetent person?

17. None of these grounds are raised for challenging the impugned order of termination. In the absence of which, this Court finds it difficult to interfere with the impugned order of termination dated 23.03.2004 (Annexure P/4).
18. The writ petition, thus, in addition to the fact that it suffers from inordinate delay and laches also does not have any merit and therefore the same stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

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