IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.20233 of 2010

Management of National
Aviation Company of India Limited
Airlines House
Meenambakkam, Chennai-600 027. .. Petitioner

Vs.

1.The Central Government Industrial
Tribunal-cum-Labour Court
Rep. by its Presiding Officer
Shastri Bhavan
Haddows Road, Chennai-600 006.

2.Indira Tamilarasan .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari calling for records of the 1st respondent relating to its impugned award dated 13.04.2010 passed in I.D.No.8 of 2009 and quash the same.

For Petitioner : Mr.V.Stalin

For R2 : Mr.Balan Haridass

O R D E R

Writ Petition is filed for issuance of a writ of Certiorari calling for records of the 1st respondent relating to its impugned award dated 13.04.2010 passed in I.D.No.8 of 2009 and quash the same.

2(i).The 2nd respondent was working as a Traffic Superintendent in petitioner Management. While she was working as full time employee, she was doing private business without obtaining permission from the petitioner. The said act of the 2nd respondent was in violation of Standing Order. The petitioner came to know about the private business done by the 2nd respondent, when they received a letter from the authorities of the Syndicate Bank with regard to outstanding amounts due in the business carried by the 2nd respondent as Director of M/s.Gemray Stone Private Limited. The petitioner issued a charge memo on 11.02.2005. The 2nd respondent in her explanation has stated that she is not aware that she has to obtain prior permission before doing private business.

2(ii). After conducting domestic enquiry, the 2nd respondent was removed from service on 23.01.2007 as charge levelled against her was proved.

2(iii). The National Tribunal by its order dated 19.06.2007 in A.P.No.2 of 2007 filed under Section 33(2)(b) of the Industrial Disputes Act, 1947, approved the order of removal.

2(iv). The 2nd respondent raised Industrial Dispute in I.D.No.8 of 2009 before the 1st respondent.

2(v). Before the 1st respondent, the 2nd respondent examined herself as W.W.1 and marked 11 documents as Exs.W1 to W11. The petitioner did not let in any oral evidence, but marked 9 documents as Exs.M1 to M9. The 1st respondent considering the oral and documentary evidence, held that the 2nd respondent was an active Director in the Company and the charge levelled against the 2nd respondent was proved. The 1st respondent has further held that punishment of removal from service is disproportionate to the misconduct committed by the 2nd respondent, set aside the order of dismissal ordering reinstatement with continuity of service with attendant benefits and 75% of back wages and directed the petitioner to impose a lesser punishment of withholding of not more than two increments with or without cumulative effect. Against the said award, the petitioner has come out with the present writ Petition.

3. The learned counsel appearing for the petitioner contended that the 1st respondent having held that 2nd respondent was engaged in a private business without any permission of the petitioner while in active service, erred in setting aside the order of removal. The reasoning of the Tribunal that 2nd respondent did not receive any remuneration and no loss was caused to the petitioner, was erroneous. If active employees of the petitioner are indulging in doing private business, they will not be concentrating in the work of the petitioner. The 2nd respondent in the application submitted to the Syndicate bank for obtaining loan, has suppressed the fact that she is employed in the petitioner's

management and has stated that she is self-employed person. The 2nd respondent admitted that she was doing private business before the Vigilance Department on 19.05.2004 and also in the domestic enquiry conducted on 06.06.2005. The permission was granted under Section 33(2)(b) of the Industrial Disputes Act by the National Tribunal by its order dated 19.06.2007 in A.P.No.2 of 2007 for approval of removal. The 1st respondent having rejected the contention of the 2nd respondent that she was acting only guardian of her minor daughters and having held that she was an active Director of M/s.Gemray Stone Pvt. Ltd., erred in holding that the punishment imposed by the petitioner is disproportionate to the misconduct committed by the 2nd respondent. The 1st respondent for erroneous reason ordered reinstatement of the 2nd respondent with continuity of service, attendant benefits and 75% of back wages and prayed for quashing the award of the Tribunal and prayed for allowing the writ petition.

4(i). Per contra, the learned counsel appearing for the 2nd respondent contended that the charge leveled against the 2nd respondent alleging misconduct is not as contemplated in Standing Order 16, Clauses 1, 8, 13 and 39 of the Standing Orders (Regulations) concerning discipline and appeals. The 2nd respondent denied the charges leveled against her. The petitioner conducted domestic enquiry and examined three witnesses before the Enquiry Officer. The Enquiry Officer obtained statement from the 2nd respondent.

4(ii). The 2nd respondent's husband was carrying on business along with one Ramamoorthy and the said Ramamoorthy retired from service and transferred his shares in the name of minor children of the 2nd respondent. The 2nd respondent became Director of the Company as a guardian of minor children as her husband being a Director in the said Company cannot be the guardian of the minor children. The 2nd respondent did not actively participate in the activities of the Company and did not receive any remuneration from the Company. The 2nd respondent was holding the shares of the Company as guardian of the minor children and the shares did not belong to the 2nd respondent. The shares did not have any money value and therefore, the 2nd respondent did not disclose the same in the property statement filed before the petitioner. The 2nd respondent signed one or two documents filed before the Bank for credit facilities and the same has been taken into account that 2nd respondent was an active Director of the Company.

4(iii). Before the Enquiry Officer, the petitioner has not let in any evidence to prove the breach of Standing Order mentioned in the charge memo as alleged by the petitioner.

The Enquiry Officer without there being any evidence, in a mechanical manner, held that the charges are proved. The Report of the Enquiry Officer is perverse. Unfortunately, the Disciplinary Authority relied on the report of the Enquiry Officer for imposing the punishment.

4(iv). The 1st respondent considering all the materials placed before him has held that the punishment of removal imposed on the 2nd respondent is disproportionate to the charges leveled against the 2nd respondent. The 1st respondent has given valid reason for setting aside the order of removal and ordering reinstatement, continuity of service, attendant benefits and 75% of back wages.

4(v). The learned counsel appearing for the 2nd respondent further contended that the 2nd respondent had put in 22 years of service without any complaint from the petitioner and the 2nd respondent's husband died due to cancer and taking into account the above facts, the order of removal may be modified as that of compulsory retirement. The case of the 2nd respondent may be sympathetically considered and prayed for modifying the order.

5. Heard the learned counsel appearing for the petitioner as well as the 2nd respondent and perused the materials available on record.

6. From the materials available on record, it is seen that the main charge leveled against the 2nd respondent is that she was doing private business without obtaining permission from the petitioner while she was in active service and she has failed to disclose the same in the property statement filed by her. It is an admitted case that the 2nd respondent was a Director in M/s.Gemray Stone Pvt. Ltd. According to the 2nd respondent, she was not actively involved in the business of the said Company and was not receiving any remuneration, but she was Director only as a guardian of her minor children, who held shares in the said Company. The said contention is contrary to the materials available on record. The 2nd respondent has stated in the loan application submitted to the Syndicate Bank that she is self-employed and she had vast experience in execution of export orders. She has suppressed the fact that she was a full time employee of the petitioner management working as a Traffic Superintendent. The 2nd respondent only after issuance of charge memo by the petitioner, resigned from the post of Director in the said Company. The documents relied on by the 2nd respondent to prove her contention that she was not receiving any remuneration from the Company, were also obtained subsequent to issuance of charge memo. The said

documents were issued by the Company Secretary and they are self-serving documents produced by the 2nd respondent. The 1st respondent considering the pleadings, oral and documentary evidence, rejected the contention of the 2nd respondent that she was not an active Director, but a Director only as a guardian of her minor children. The 1st respondent based on the materials on record has given a specific finding that the 2nd respondent was an active Director in the Company. The said finding is supported by the statement made by the 2nd respondent in the loan application submitted by her to the Syndicate Bank. The 2nd respondent has not challenged the said finding of the 1st respondent that she was an active Director of the said Company and not a Director as guardian of her minor children.

7. As far as integrity is concerned, the 2nd respondent has suppressed the fact that she was a full time employee of the petitioner, but has made a false statement that she was self-employed. This shows that her integrity is doubtful in nature. Further she has not disclosed in the property statement that she is a Director of the Company, holding shares as guardian of her minor children. The 2nd respondent has admitted that without obtaining permission from the petitioner, she has become the Director in the Company. The explanation submitted by the 2nd respondent that she was not aware of the said condition is not acceptable. The 2nd respondent was working in the petitioner management for 22 years in a responsible position and in such circumstances, the explanation submitted by the 2nd respondent is unbelievable and is not acceptable.

8. The contention of the learned counsel appearing for the petitioner that 1st respondent erroneously ordered reinstatement of 2nd respondent with continuity of service, attendant benefits and 75% of back wages, has considerable force and is acceptable. At the same time, as far as the quantum of punishment is concerned, the service of the 2nd respondent for 22 years without any blemish has to be taken into consideration. Considering the nature of charges leveled by the petitioner against the 2nd respondent and 22 years of long unblemished service of the 2nd respondent, it will be in the interest of justice, if order of removal is modified as that of compulsory retirement. For the above reason, the award of the 1st respondent is set aside and the order of petitioner removing the 2nd respondent from service is modified as that of the compulsory retirement.

9. In the result, the writ petition is partly allowed. It is made clear that the 2nd respondent is entitled to get pensionary benefits. No costs.

Sd/-
Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

kj

To
The Central Government Industrial
Tribunal-cum-Labour Court
Rep. by its Presiding Officer
Shastri Bhavan
Haddows Road, Chennai-600 006.

+1cc to Mr.N.G.R.PRASAD , Advocate SR.No. 54165
+1cc to Mr.Balan Haridass , Advocate SR.No. 54392

W.P.No.20233 of 2010

A.SK(07/08/2019)