

V/s.

Union of India and Ors. ... Respondents

Mr. K.P Anilkumar a/w. Ms. Priyanka Kumar with Ms. Roshni Vipani and Ms. Chinmay Apte for the petitioner.

Mr. Agnel Carneiro a/w. Mr. Vaibhav Shah I.by Mulla and Mulla and CB and C for the respondent no. 3 and 4.

**CORAM : SMT. SADHANA S. JADHAV &
SARANG V. KOTWAL, JJ.**

DATED : SEPTEMBER 2, 2021.

P.C. : (PER SADHANA S. JADHAV, J.)

The present petition was admitted on 8th December 2006 and is taken up for final hearing.

2. Heard the learned counsel for the parties.

3. The petitioner herein was working as ‘Senior Stenographer’ with the Administrative department of Tata Memorial Centre.

4. The Petitioner is challenging the order dated 19th July 2004, by which the services of the petitioner were terminated. The order reads as follows:-

“ In accordance with Rule 21(1) of Bombay Industrial Employment (S.O.) Rules, 1959 as amended from time to time, the services of Shri K. Sivasankaran, Personal Assistant, Tata Memorial Hospital, are hereby terminated with immediate effect.

2.0 It is further ordered that he shall be paid one month's wages (including all allowances, as admissible to him) in lieu of notice, which shall be paid to him before the expiry of the second working day of the date of this order”.

5. It is submitted across the bar by the respondent that the petitioner was working as a Senior Stenographer with Dr. Kulkarni. However, the order of termination is issued to the petitioner in his capacity as a Personal Assistant and therefore it deserves to be held that at the time of termination the petitioner was working as a 'Personal Assistant'

6. The petitioner was tried for offence punishable under section 120/B, 420, 465, 467, 468 read with 34 of Indian Penal Code by the Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai. The criminal case was initiated on the basis of a complaint lodged by the General Branch, Crime Branch, CID, Mumbai. The petitioner was tried along with one Hiren Rameshbhai Shah. The petitioner was acquitted of all the charges levelled against him vide

judgment and order dated 26th July 2012.

7. The petitioner had filed an application before the Director, Tata Memorial Centre on 17th August 2012 with a request to reinstate the petitioner with all benefits on account of his acquittal by the Court. It is pertinent to note that the said request was neither rejected nor allowed, no orders were passed on the request application. The department had sent a communication and had informed the petitioner as follows:-

“2.0 As you are aware, the W.P. no. 2024 of 2005 filed by you before the Hon’ble High Court, Bombay, was admitted on 8th December, 2006, pending hearing and final disposal. In the said W.P., you have challenged the termination order issued to you on July 29, 2004. Thus, the matter is sub-judice.

3.0 Please let us know, if any appeal would be/is filed by the State against the order of the Ld. Magistrate Court. Notwithstanding this, you may like to consider moving the Hon’ble Court, with the aforesaid order of the Ld. Magistrate Court, as may be legally advised by your Lawyers, for such orders as the Hon’ble High Court may pass on your W.P. No. 2024”.

8. In the course of hearing, the learned counsel for the respondent, upon instructions has submitted that by an order of acquittal, it cannot be said that the petitioner deserves to be reinstated in service as it would be at the discretion of the appointing authority,

moreover, according to learned Counsel, the fact that he was chargesheeted and tried for serious offences cannot be ignored by the Appointing Authority.

9. Per contra, the learned counsel for the petitioner has submitted that in fact, the termination order passed by the employer was bad in-law and therefore, he deserves to be reinstated after being honorarily acquitted. The termination order is impugned before this Court in the present petition. However, at present the petitioner has reached age of superannuation. It is the contention of the learned counsel for the respondent that by passage of time the petition has become infructuous and that the petitioner had not availed all the provisions of the respondent's rules of service. The said contention is controverted by the fact that the petitioner had challenged the order dated 19th July 2004 by filing a departmental appeal through proper channel. The appeal was filed on 31st August 2004. By an order dated 2nd November 2004 the said appeal was rejected without there being an application of mind. The order reads as follows:-

“I consider that there are no extenuating circumstances warranting intervention in the said order no. CC 24200 dated July 19, 2004 issued by the Chief Administrative

Officer, and therefore uphold the same. In the result, your appeal is rejected” .

Upon plain reading of the said order we have no doubt that it was a cryptic order and hence the same cannot be comprehended. No reasons are assigned in the order.

10. The Hon’ble Apex Court in the case of ‘***Union of India and Others v/s. Jai Prakash Singh and Anr***¹ has held as follows:-

"The giving of reasons is one of the fundamentals of good administration".

"Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can , by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. the "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

1 ((2007) 10 SCC 712

11. There has been a violation of principles of natural justice. The petitioner was terminated without an enquiry and without assigning any specific reason for termination. The appeal of the petitioner was not decided on merits. In fact, it was decided without giving a hearing to the petitioner and hence there has been a violation of principles of natural justice.

12. The learned counsel for the respondent has submitted that the acquittal of the petitioner by a Judicial Magistrate, does not ipso facto absolve him from the liability under the disciplinary jurisdiction of the respondent.

13 The learned counsel for the respondent has placed reliance upon the judgment of the Apex Court in the case of ‘ *Ajit Kumar Nag V/s. General Manager (PJ), Indian Oil corporation Ltd. Haldia and Ors.*² has held as follows:-

‘in certain circumstances, application of the principles of natural justice can be modified and even excluded. Both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct in the taking of prompt action, such a right can be excluded. It can also be excluded where the nature of the action to be taken, its

2 (2005) 7 SCC 764

object and purpose and the scheme of the relevant statutory provisions warrant its exclusion. The maxim *audi alteram partem* can not be invoked if import of such maxim would have the effect of paralyzing the administrative process or where the need for promptitude or the urgency so demands. The principles of natural justice have no application when the authority is of the opinion that it would be inexpedient to hold an enquiry and it would be against the interest of security of the Corporation to continue in employment the offender workman when serious acts were likely to affect the foundation of the institution’.

14. However, it needs to be appreciated that in the same judgment ***Ajit Kumar Nag*** (cited supra) the Hon’ble Court has held as follows:

‘.....taking of appropriate action in exceptional circumstances is a matter of assessment to be made by the disciplinary authority and must be judged in the light of the circumstances then prevailing. Normally, it is the officer on the spot who is the best judge of the situation and his decision should not be interfered with lightly. In certain cases, the exigencies of a situation would require that prompt action should be taken and suspending (a work man) would not serve the purpose and sometimes not taking prompt action might result in the trouble spreading and the situation worsening and at times becoming uncontrollable. Not taking prompt action may also be construed by the trouble-makers as a sign of weakness on the part of the authorities and thus encourage them to step up their activities or agitation. Where such prompt action is taken in order to prevent this happening, there is an element of deterrence in it but this is an unavoidable and necessary concomitance of such an action resulting from a situation which is not of the creation of the authorities....’

15. In the present case the respondent is unable to show as to what were extenuating circumstances in which the prompt action was taken. It is orally submitted that since the criminal prosecution was initiated against the petitioner he was terminated and therefore we feel that the judgment of *Ajit Kumar Nag (cited supra)* would be of no avail to hold that the termination order was proper.

16. In order to substantiate the contention that the order of termination was bad in-law, the learned counsel for the petitioner has drawn our attention to the fact that the order of termination was passed under Rule 21 (1) of ‘The *Bombay Industrial Employment (standing orders) Rules 1959*’ now called ‘*The Maharashtra Industrial Employment (standing orders) Rules 1959*’. Rule 21 (1) of the standing orders reads as under:-

“21.(1) The employment of a permanent workman may be terminated by one month’s notice or on payment of one month’s wages (including all allowances), in lieu of notice”.

In fact, Rule 21(2) of the standing order reads as follows:-

“21.(2) The reasons for the termination of service of a permanent workman shall be recorded in writing and shall be communicated to him, if he so desires, at the time of discharge, unless such communication, in the opinion of the

Manager, is likely, directly or indirectly to lay any person open to civil or criminal proceedings at the instance of the workman”.

Rule 23 (1), (2), (3) and (4) of the standing orders read as under:-

23. (1) A workman guilty of misconduct may be-

(a) warned or censured, or

(b) fined, subject to and in accordance with the provisions of the Payment of Wages Act, 1936, or

(c) suspended by an order in writing signed by the Manager for a period not exceeding four days, or

(d) dismissed without notice.

(2) No order under sub-clause (b) of clause (1) shall be made unless the workman concerned has been informed in writing of the alleged misconduct or given an opportunity to explain the circumstances alleged against him.

(3) No order of dismissal under sub-clause (d) of clause (1) shall be made except after holding an enquiry against the workman concerned in respect of the alleged misconduct in the manner set forth in clause (4).

(4) A workman against whom an inquiry is proposed (to be held shall be given a charge-sheet, clearly setting forth the circumstances appearing against him and requiring his explanation. He shall be permitted to appear himself for defending him or shall be permitted to be defended by a workman working in the same department as himself or by any office bearer of a trade union of which he is member. Except for reasons to be recorded in writing by the officer holding the inquiry, the workman shall be permitted to produce witness in his defence and cross-examine any witness on whose evidence the charges rest. A concise summary of the evidenced on either side and the workman's

plea shall be recorded”.

(5).....

(6).....

(7).....

17. There is no doubt the reasons for termination were not assigned in the order dated 19th July 2004. In fact on the face of the record it is seen that there has been a non-compliance of Rule 21 (2) of the Standing Orders.

18. In the present case the employer had neither issued a notice of enquiry nor a charge-sheet which would spell out the reasons for termination. No enquiry was held and therefore it would not be justifiable on the part of the employer to defy the judgment and order of the Magistrate Court thereby acquitting the petitioner of all the charges levelled against him. The petition is filed in the year 2005 and for non-compliance of the mandatory rules of the standing orders the petition deserves to be allowed. During the pendency of this petition, the petitioner is acquitted in the year 2012 and thereafter he has reached age of superannuation and therefore he could not be and cannot be reinstated. We have no doubt to record that termination

itself was bad in-law as the principles of natural justice were also not followed and there was a clear violation of the mandatory rules under the Maharashtra Industrial Employment (standing orders) Rules, 1959.

19. We have perused the judgment delivered by the Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai dated 26th July 2012. The learned Court has clearly recorded the findings that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt. It is specifically observed as follows:-

“The prosecution has further not shown any common intention and criminal conspiracy of all these accused persons to prepare fake / forged said two medical certificates to help separated accused no. 2 to get bail order”.

Hence, it can be said that the petitioner has been honorably acquitted by Magistrate.

20. It is a matter of record that the respondent had not assisted the prosecution as contemplated under section 301 of the Code of Criminal Procedure at the trial and therefore the submission of the learned counsel that there was failure on the part of the prosecutor to plead the case properly against the accused cannot be accepted. It is submitted that the petitioner cannot be reinstated and therefore the

prayer of the petitioner to reinstate cannot be considered. However, the petition deserves to be allowed in terms of prayer clause (a).

21. The petitioner has reached age of superannuation in November 2020. It is also a matter of record that no appeal is filed challenging the order of the learned Chief Metropolitan Magistrate and hence, the judgment and order dated 26th July 2012 has attained finality. The employer had not laid any foundation for terminating the petitioner.

22. In view of the allowing the prayer clause (a), the petitioner would be entitled to all the consequential benefits in accordance with law.

23. The petition succeeds in above terms.

24. Rule is made absolute in terms of prayer clause 'a' which reads thus:-

(a) that this Hon'ble Court may be pleased to issue a writ of Certiorari or a writ in the nature of certiorari of any other appropriate writ, order or direction thereby declaring the termination order dated 19.07.2004 issued under Bombay Industrial Employment (Standing Order) Rules 1959 is illegal, void and bad in law and the same be quashed and set aside;

25. At this stage, the learned counsel for the respondent seeks a stay to the order i.e. passed today. Considering the fact that the petition is filed in 2005 and is being heard in 2021 and the order of termination dated 19th July 2004 is being set aside in 2021, we are not inclined to stay the order.

(SARANG V. KOTWAL, J)

(SMT. SADHANA S. JADHAV, J)