

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

LETTERS PATENT APPEAL NO.113 OF 2012

In
Writ Petition No.275/2003

Sheshrao Vasant Gakhare,
R/o.-Hetikundi Farm, Post- Kannamwargram,
Tah-Karanja (Ghadge)m Distt. Wardha. **...APPELLANT**

VERSUS

The State of Maharashtra,
through Regional Joint Director of Animal Husbandry,
Amravati. **...RESPONDENT**

Shri S.A. Kalbande, Advocate for appellant.
Mrs. S.S. Jachak, AGP for respondent.

**CORAM : A.S. CHANDURKAR &
PUSHPA V. GANEDIWALA, JJ.**

Date on which argument heard : 22-09-2021
Date on which judgment pronounced : 14-10-2021

JUDGMENT : (Per PUSHPA V. GANEDIWALA, J.)

This Letters Patent Appeal arises out of the judgment of the Single Bench of this Court dated 18-11-2011 in Writ Petition No.275/2003, whereby the learned Judge quashed and set aside the award passed by the Labour Court, Amravati, dated 28-05-2002 in

Reference (IDA) No.42/1995.

2. The facts, in brief, leading to the filing of the present Letters Patent Appeal may be stated as under :-

The appellant was appointed as a Chowkidar at Farm House, Pohara of the respondent since 24-04-1982 on monthly salary of Rs.230/-. On 11-11-1985, the respondent discontinued the appellant from services. As the appellant was not reinstated, he filed an application under Section 2-A of the Industrial Disputes Settlement Act before the Conciliation Officer. During conciliation proceedings, a settlement was arrived at between the parties. The respondent has agreed to reinstate the appellant on the condition that he will waive the back wages. Accordingly, the appellant was appointed vide order dated 30-09-1993 and he resumed duty on 11-10-1993. It is the grievance of the appellant that again the respondent served him termination letter dated 09-02-1994 stating therein that his services were withdrawn with effect from 11-02-1994. It is his grievance that without issuing show cause notice to him he has been abruptly terminated from services.

3. Feeling aggrieved by the termination order, the appellant filed a reference under Section 10(5) read with 12(1) of the Industrial Disputes Act (for short, 'I.D. Act') with a prayer for reinstatement with

full back wages and continuity in service. The Deputy Commissioner of Labour referred the matter to the Labour Court, Amravati. The learned Presiding Officer of Labour Court accordingly issued notices to both the parties. The appellant filed a statement of claim before the Labour Court stating therein his grievance that he has been terminated without giving an opportunity of hearing. While the respondents in their written statement resisted the case of the appellant and specifically pleaded that while settlement in the conciliation proceedings, his appointment was subject to certain conditions. One of which was verification of the criminal antecedents of the appellant. The respondent received an information from the Deputy Superintendent of Police, Wardha, vide letter dated 04-01-1994 informing that the appellant was convicted in a cognizable offence and was sentenced to pay fine of Rs. 100/- in default to undergo imprisonment for five days. Accordingly, it is stated that vide order dated 09-02-1994, the services of the appellant were withdrawn with effect from 11-02-1994.

4. The learned Presiding Officer of the Labour Court after trial recorded the finding that the termination of the services of the appellant is illegal. The appellant is held to be entitled for reinstatement with continuity in service and full back wages. The learned Presiding Officer observed that the respondent has not given opportunity to the appellant to explain on the point of previous

conviction.

5. This judgment of the Labour Court was challenged by the respondents/employer in Writ Petition No.275/2003. The learned Single Judge of this Court has quashed and set aside the order of the Labour Court predominantly on the ground that the respondents/employer has rightly terminated the services of the appellant/employee as his appointment was subject to the condition in the appointment order and in view of the adverse Police report received from the Superintendent of Police. This judgment of the learned Single Bench of this Court is challenged before this Court by the appellant employee.

6. We have heard Shri S.S. Kalbande, learned Advocate for the appellant and Mrs. Jachak, learned A.G.P appearing on behalf of the State. We have also perused the record of the case with the assistance of both the learned Counsel.

7. Shri Kalbande, learned Counsel for the appellant argued mainly on the point that had the appellant been issued show cause notice and called explanation about his involvement in the alleged offence, he would have explained the real facts. The learned Counsel invited our attention to the document (Annexure-B) purportedly

received from the Court of Judicial Magistrate First Class, Karaja (G.) indicating the conviction of the appellant in Crime No.286/1991 on 19-04-1994 and sentence of Rs.100 in default, sentence of imprisonment for 5 days. This crime was registered on 30-04-1992 for the offence punishable under Section 12 of the Prevention of Gambling Act. The learned Counsel also drew the attention of this Court to the communication issued by the Deputy Superintendent of Police, Wardha dated 04-01-1994, informing the respondent about registration of Crime No.286/1991 for the offence punishable under Section 12 of the said Act and he was convicted by the Court of J.M.F.C., Karanja on 20-01-1993 and sentenced to pay fine of Rs.100/- in default imprisonment of five days. The learned Counsel submitted that as per the record of the J.M.F.C. the date of conviction is 19-04-1994 which indicates that at the time of his removal, he was not convicted and the trial was pending. The learned Counsel submits that had the appellant been given an opportunity of hearing, he would have explained the trivial nature of the offence and he would not have pleaded guilty in the said offence. The learned Counsel urged to grant relief as prayed for.

8. *Per contra*, Mrs. Jachak, the learned A.G.P. appearing for the State, while supporting the impugned judgment of the Single Bench of this Court submitted that the appellant is convicted for the

cognizable offence and in terms of the conditions in the settlement order. She further states that the appellant was rightly removed on the report of the Deputy Superintendent of Police informing about his criminal antecedents. The learned AGP urged to dismiss the appeal.

9. We have considered the rival submissions. At the outset, it is evident from the record that the termination of the appellant is on the basis of the report of the Deputy Superintendent of Police, Wardha, informing about his criminal antecedents. The record indicates inconsistency with the date of conviction of the appellant. The extract from the register of the learned Court of J.M.F.C., Karanja (G.) would reveal his date of conviction as 19-04-1994 while the communication dated 04-01-1994 of the Deputy Superintendent of Police, Wardha, indicates the date of conviction of the appellant is 20-01-1993. It appears very strange that how the Deputy Superintendent of Police, Wardha, came to know about the conviction of the appellant when actually the case was pending against the appellant at that point of time and his conviction was much later thereafter i.e on 19-04-1994. In any case, as rightly argued by the learned A.G.P. that a cognizable offence was registered against the appellant and the trial was pending against him at the relevant time. Now the question before this Court is “whether the termination of services would be appropriate considering the nature of offence in which he is convicted and he was not given an

opportunity of hearing?”.

10. Shri Kalbande, learned Counsel for the appellant relied on the decision of the Hon'ble Supreme Court in *State of Uttar Pradesh and another vs Ram Vinai Singh*, reported in *(2010) 15 SCC 305* wherein it is held that “before holding that the employee was unsuitable and terminating his services, no notice was issued to the respondent and no enquiry was conducted and he was not given any opportunity of being heard. Therefore, the impugned termination of service was in violation of the principles of natural justice, illegal and arbitrary.”

11. In *State of Madhya Pradesh and others vs Hazarilal*, reported in *(2008) 3 SCC 272*, the Hon'ble Apex Court applied the doctrine of proportionality and held that-the power conferred on the disciplinary authority to dispense with the enquiry against a Government servant and to impose penalty under the relevant Rules "on the ground of conduct which has led to his conviction on a criminal charge" would not mean that irrespective of the nature of the case in which he is involved or the punishment which has been imposed upon him, an order of dismissal must be passed. Such a construction is not warranted.” It is further held that “an authority with a statutory discretionary power is bound to take into consideration all the

attending facts and circumstances of the case before imposing an order of punishment. While exercising such power, the disciplinary authority must act reasonably and fairly.”

12. In *Shankar Dass vs Union of India and another*, reported in *(1985) 2 SCC 358*, the Hon'ble supreme Court has held that “the power conferred under Clause (a) of the second proviso to Article 311(2) of the Constitution, that power, like every other power, has to be exercised fairly, justly and reasonably.”

13. Keeping in mind the ratio as laid down in the aforesaid authorities, we now appreciate the facts of the present case. As the appellant was convicted and sentenced for the offence punishable under Section 12 of the said Act and he was awarded fine of Rs. 100/- in default, imprisonment of five days, by itself would reveal the nature of the offence. No doubt, under the Prevention of Gambling Act the Police has authority to arrest the accused without warrant like in the case of cognizable offence in Indian Penal Code. However, the gravity of the offence can also be seen from the nature of punishment provided for the said offence.

14. The Hon'ble Apex Court in case of *State of Madhya Pradesh and others* (supra) while dilating on the ‘doctrine of

proportionality' in paragraph 8 of the judgment has cautioned the disciplinary authority that "while imposing an order of punishment, the disciplinary authority is bound to take into consideration all the attending facts and circumstances of the case". In that case, the employee was not convicted for any act involving moral turpitude.

15. In the case in hand, the nature of the offence is such that only a fine of Rs. 100/- was imposed on him and as stated earlier which itself suggests that the removal from the services on account of conviction for such offence would be harsh. Furthermore, as rightly argued by the learned Counsel Shri Kalbande, had he been given an opportunity, he would have explained the circumstances under which the crime was registered against him and whether he was convicted or not. Therefore, the respondent has committed fault in not giving an opportunity of hearing to the appellant before serving removal letter on him directly. In such fact situations, the removal of the appellant from the services is required to be held to be illegal and against the settled principles of law. The respondents, without giving him fair opportunity of hearing and without verifying the factum of the conviction of the appellant, abruptly issuing him letter of removal, is clearly in violation of the principles of natural justice. Moreover, for the sentence of fine of Rs. 100/- he has been removed from the job. It is not the mandate of

the law that once an employee is convicted for any offence, of whatsoever nature, he shall be removed from the services. The Hon'ble Apex Court in the above cited judgments expounded that the authority has to consider all the attending facts and circumstances leading to his conviction, before imposing the harsh punishment of removing from the service. There may be cases, for example under Motor Vehicles Act, for breach of traffic rules, petty offences are registered against the citizens and on pleading guilty and/or on payment of fine amount they are released from the offence. Similarly, in the case in hand, the learned counsel for the appellant has urged that had he been issued notice, he would not have pleaded guilty in that petty offence. We found substance in the argument. The removal of the appellant, in our opinion, is clearly against the constitutional mandate.

16. The absence of due opportunity to the appellant to put forth his case has not been considered by the learned Single Judge. In our view, in the light of the aforesaid legal position, we are of the considered view that the impugned judgment of the learned Single Judge needs to be set aside and the same is accordingly set aside.

17. Coming to the aspect of relief that can be granted to the appellant, it is seen that the appellant was re-employed on 30-09-1993 and his services were terminated on 09-02-1994. We are told that now the age of the appellant has crossed the age of superannuation. Though

it was submitted by the learned counsel for the appellant that if the order of termination was set aside, the appellant would be entitled to all benefits flowing from the direction of the reinstatement such as continuity of service, we are not inclined to issue that direction. The order of re-employment dated 30-09-1993 clearly states that the appointment of the appellant was purely on temporary basis. The termination was effected within a short period of five months of his re-employment. In these facts, we find it appropriate to award compensation of Rs.1,00,000/- in lieu of reinstatement and back wages and the respondent is directed to deposit the said amount within a period of three months with the registry of this Court. The appellant would be at liberty to withdraw the same with interest, if any, accrued thereon. In case the said amount is not deposited within a period of three months, the said amount would carry further interest at the rate of 6% per annum till its realisation.

18. Letters Patent Appeal is allowed in aforesaid terms by setting aside the judgment dated 18-11-2011 in Writ Petition No.275/2003. The parties shall bear their own costs.

JUDGE

JUDGE