HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-3481-2021
Reserved on 05.09.2023
Decided on 17.11.2023

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Vidya Devi & Ors. ... Petitioners

VS.

DHBVNL & Ors. ... Respondents

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Mr. Anurag Jain, Advocate and
Ms. Suruchi Sharma Tewari, Advocate for the petitioners

Mr. SS Mann, Addl. AG Haryana

Mr. Ravi Kumar Girdhwal, Advocate for
Mr. Sanjay Mittal, Advocate for respondents No.1 to 6

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Sandeep Moudgil, J.

(1). The petitioners have filed the present writ petition invoking Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing of the memo dated 23.10.2020 (Annexure P46) passed by respondent No.3 – Chief Engineer/HR; the order dated 12.10.2020 (Annexure P44) passed by Under Secretary/HR-I; order dated 04.02.2020 (Annexure P42) passed by respondents No.3 & 4; enquiry report dated 12.07.2019 (Annexure P34) submitted by respondent No.5 – SE/CBO and charge-sheet dated 16.08.2018 (Annexure P2) issued by respondent No.4 - Superintending Engineer (Admn.) vide which the husband of the petitioner has been dismissed. Further a direction is sought for the release of arrears of salary from the date of suspension of deceased Krishan Kumar i.e. 06.08.2018 till his unfortunate demise on 21.02.2020, along with consequential pensionary benefits and interest.

(2). The deceased, namely Krishan Kumar was appointed by respondent No.6 – Superintending Engineer (Operation) on 10.09.1993 as Meter Reader. Thereafter, he was promoted as Upper Division Clerk and further promoted as Commercial Assistant and further designated as Assistant (F) and as such he had rendered almost 27 years of unblemished service till 2020. The petitioner was placed under suspension vide order dated 06.06.2018 (Annexure P1) on the basis of special audit report dated 04.05.2018 on the ground that he petitioner, along with other officers/officials, was found extending undue benefits to consumers. An FIR No.334 dated 07.06.2018 was registered under Sections 167/120-B/409/420/467/471 IPC and Section 13(1)(d)(ii) of Prevention of Corruption Act against all the delinquents including the petitioner. Respondent No.4 – Superintending Engineer (Admn) issued charge-sheet against the petitioner on 16.08.2018 (Annexure P2) to which he submitted detailed reply on 15.01.2019 (Annexure P3). The enquiry officer submitted his report on 12.07.2019 (Annexure P34) and a copy of which was provided to the Krishan Kumar (deceased), who also submitted his objection (Annexure P36). A show cause notice was issued on 29.11.2019 (Annexure P37). Krishan Kumar could not appear and sought exemption for presence of personal hearing as he was admitted in Medanta Hospital, Gurugram for treatment of blood cancer. Krishan Kumar, Assistant (F) died as such on 21.02.2020. The petitioner, being the legal heir, sought service/pensionary benefits pension and compassionate appointment of his son. However, to her dismay, the XEN of UHBVNL vide letter dated 17.03.2020 (Annexure P41/A) informed the petitioners that Krishan Kumar had already been dismissed from service vide order dated 04.02.2020 (Annexure P42). The petitioners filed statutory appeal which was dismissed on 12.10.2020 (Annexure P44). They further preferred revision petition, which too met with the same fate as the same was dismissed on 23.10.2020 (Annexure P46) by respondent No.3 without any intimation to the petitioners. Hence the present writ petition has been filed.

(3). Learned counsel for the petitioners contended that the dismissal order of the Krishan Kumar is without any jurisdiction inasmuch as the punishing authority for the post of Assistant (F) is SE/HR i.e. respondent No.7 whereas the charge-sheet (Annexure P3) has been issued by respondent No.4 and punishment of dismissal has been inflicted by respondent No.4 being an appointing authority. The charge-sheet under Regulation 7 for imposing major penalty could be issued only by respondent No.6 being the appointing authority of the KrishanKumar and since admittedly respondent NO.4 is not the appointing authority of Krishan Kumar, the proceedings culminated into dismissal of Krishan Kumar is *void ab initio* and without jurisdiction.

(4). Mr. Anurag Jain, Advocate for the petitioners vehemently argued that the punishment of dismissal of an employee of respondent-Nigam can be imposed only on proved grave misconduct as provided under Regulation 3(k) of the DHBVN Employees (Punishment & Appeal) Regulations, 2019 whereas in the present case, there is neiher any evidence nor any finding to that effect to prove that there was grave misconduct on the part of the deceased Krishan Kumar. He further contended that the alleged loss of Rs.2.8 lacs has only been stated to be wrong refund and there is no allegation of misappropriation by the deceased Krishan Kumar inasmuch, the alleged loss, if any, was due to error in raising consumption bills on account of wrong audit objection which stands proved from subsequent audit report (Annexure P28) and the said dues were subsequently recovered by the department as is evident from bills (Annexure P48) and as such the loss if any, stands recovered.

(5). Learned counsel further asserted that since Krishan Kumar was admitted in hospital for treatment of blood cancer since 2011 as such, no opportunity was given to him to defend his case properly. He also grieved the conduct of the respondents in examining a separate set of witnesses in enquiry vis-à-vis the one mentioned in the charge-sheet which is in violation of the principle of natural justice and also no examination-in-chief was recorded of Surender Reddu, SDO in the enquiry as such the charge has to be proved by the respondent-Nigam and in the absence of deposition of the said witness, any deposition by way of cross-examination, is a nullity and in clear violation of Regulation 7(12) of the 2019 Regulations.

(6). Notice of motion was issued on 15.02.2021 and pursuant thereto, the respondent-Nigam has filed its reply on 07.01.2022.

(7). Learned counsel for the respondent-Nigam averred that the audit inspection was carried out as per the direction of management to investigate the BR items (bill revision) and R-APDRP system and charge-sheet was issued against the petitioner and 6 others on the basis of discrepancies found during inspection. He also submitted that enquiry officer i.e. SE/Commercial Back office conducted the proceedings in accordance with the regulations. He also informed that Surender Kumar, SDO was cross-examined by Amit

Singh/SDO, Anil Kumar, JE, Krishan LDC and Vijay LDC and that the petitioner gave statement dated 11.02.2019 that he does not want to cross-examine the witness, namely, Vijender Singh, XEN. He also submitted htat the petitioners sought releasing of pensionary benefits and compassionate appointment of son of deceased on 17.03.2020 in view of the circular dated 15.11.2019. It is informed that the dismissal order of Krishan Kumar was sent to his home address by registered post on 17.03.2020 (Annexure R10).

(8). It is further averred that the application of the petitioners received on 15.06.2020 (Annexure R1) to set aside the dismissal order of Krishan Kumar was marked to LR/HPU, Panchkula who gave opinion that the petitioners are not entitled for pensionary benefits. He also informed that out of medical assistance given to the husband of the petitioners of Rs.16.50 lakhs, Rs.10 lakhs has been deposited by the son of the deceased in the Nigam's account on 16.03.2020.

(9). On the legal issue, learned counsel for the respondent-Nigam averred that as per the 2019 regulations, SE is the punishing authority to award minor/major punishment in case of LDC and the petitioner being the LDC, all the proceedings has been rightly initiated by SE. Further as regards non-mentioning of list of evidences, it is stated that as per note appended in the list (Annexure P2), the respondent-Nigam has right to add documents/evidences at any time of the departmental enquiry.

(10). The petitioners have also filed rejoinder to the reply filed by the respondent-Nigam countering the averments made by the Nigam.

(11). Heard learned counsel for the parties and gone through the record.

(12). It is a matter of fact that in the departmental enquiry in the charge-sheet, only the name of Pawan Kumar, Amit Kumar and Anil were mentioned against the list of witnesses. Whereas, the presenting officer gave the list and examined Vijender Lamba, XEN, Surender Singh, SDO, Pawan Kumar, AO and Satish Kumar, XEN as witnesses in the inquiry and out of these four witnesses, except Vijender Lamba, no other witnesses tender chief examination to prove the charge-sheet (Annexure P-2). Admittedly, Satish Kumar, XEN proved by tendering that no loss has been caused to the department (Annexure P28). One witness Vijender Singh, Xen (Op) Divn. No. 1, Hisar, deposed regarding the allegations which were beyond the scope of charge sheet.

(13). Further, the said losses shown by the Nigam were due to error in raising consumption bills which were subsequently recovered by the department, as is appearing from bills (Annexure P-48). As regards some of the charges viz. sub-charges 1(a), (b), (d) & (f) as well as Charges No.II, III, IV &V the enquiry report shows that no evidence was led by the department.

(14). So much so, as per Regulation 3(k), the punishment dismissal can only be imposed on account of proved grave misconduct. There is no finding of any misconduct proved by the respondent-Nigam as per the record as neither there was any evidence nor any finding regarding the allegation of grave misconduct, there being no allegation of mis-appropriation on the part of the Krishan Kumar.

(15). There is substance in the contention of the petitioners that in the enquiry, four witnesses were examined, of whom, only one witness, namely Pawan Kumar, AO/Inspection, Revenue audit was mentioned in charge-sheet, whereas the names of other 3 witnesses was not mentioned in charge sheet. The action of the respondent-Nigam tantamount to violation of principle of natural justice inasmuch, the respondent-Nigam could not have tendered the statements (Annexure P32) by Pawan AO, Surender Kumar & Vijender Singh, after recording and closing of their previous statements, at the back of charged official without granting any opportunity of cross examining. Further, as per testimony (Annexure P10), it is clear that no chief examination of Surender Reddu, SDO was recorded in the enquiry nor any document was tendered and proved by the said witness. When the chief examination of the witness was not made available to the charged official, how could the petitioner have cross-examined the witness? The charge has to be proved by the respondent-Nigam and in the absence of deposition by way of chief examination, any deposition by way of cross-examination is a nullity and void. Reference can be made to ***Roop Singh Negi vs. PNB (2009) 2 SCC 570*** wherein the Supreme Court held that the enquiry officer cannot draw inference of guilt of the employee on the basis of such evidence which is not legally admissible in evidence. It further held that:-

> *"10. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the*

contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left."

(16). A perusal of the charges framed against the Krishan Kumar would show that in sum and substances, the allegation leveled by respondent-Nigam against Krishan Kumar is of excess payment, bogus, excess and double refund, wrong verification of less units only. This Court is of the considered view that the nature of allegations leveled against Krishan Kumar are not so grave to call for imposition of major penalty of dismissal from service looking into the total length of service and unblemished service record of Krishan Kumar since his appointment in the year 1993. The punishment becomes unjustified and so harsh upon perceiving that the irregularities and deficiencies has been made good by the respondent-Nigam by issuing revised bills and also, when Krishan Kumar has unfortunately expired after prolonged illness of blood cancer. The authorities should have taken a lenient and compassionate view taking into consideration the peculiarities involved in the case. In such a situation, the penalty of dismissal from service of Krishan Kumar has to be held to be too harsh a step in view of the nature of allegations assigned in the enquiry report. Admittedly, it is for the disciplinary authority or the administrative authority to decide the quantum of punishment in a case of misconduct and the role of the Court is only secondary. But in view of the gravity of the misconduct, the interference with the imposition of punishment is necessary.

(17). In ***Union of India & Anr. vs. G.Ganayutham [(1997 7 SCC 463]***, the Supreme Court considered the question whether judicial review powers in administrative law permit the High Courts or the administrative tribunals to apply the principle of "proportionality". In the said judgment, reference was made to leading cases in England and also other precedents touching the question of "proportionality". In para 15 thereof, a reference is made to the case of ***Ranjit Thakur vs. Union of India & Ors. [(1987) 4 SCC 611)*** wherein, after finding the appellant guilty in court martial, he was dismissed from service and a sentence of imprisonment was also imposed as permitted by Army Act. While quashing the said punishment on the ground that it was "*strikingly disproportionate*", the Supreme Court, observed as under:-

> *"25.... The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court-martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concert of judicial review, would*

ensure that even on an aspect which is, otherwise, within the exclusive province of the court-martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review."

(18). In the background of what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly this Court can direct re-reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. It is stated that there was no occasion in the long past service indicating either irregularity or misconduct of Krishan Kumar deceased except the charges which were the subject matter of charge-sheet for dismissal from service. There is nothing to indicate that the deceased had misappropriated any money or had committed any act of fraud. If any loss has been caused to the respondent-Nigam that stands recovered. As the reading of the various articles of charges go to show, at the most there is some procedural irregularity which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service.

(19). For the reasons mentioned above, this writ petition is allowed and the memo dated 23.10.2020 (Annexure P46) passed by respondent No.3 – Chief Engineer/HR; the order dated 12.10.2020 (Annexure P44) passed by Under Secretary/HR-I; order dated 04.02.2020 (Annexure P42) passed by respondents No.3 & 4; enquiry report dated 12.07.2019 (Annexure P34) submitted by respondent No.5 – SE/CBO and charge-sheet dated 16.08.2018

(Annexure P2) issued by respondent No.4 - Superintending Engineer (Admn.) are hereby quashed. Since the very basis i.e. the enquiry report/charge-sheet itself has been set aside, there is no impediment for the respondent-Nigam in releasing the due salary and other service/retiral benefits of the deceased. The same is ordered to be released forthwith but not later than *2 months* from the date of receipt of certified copy of this order.

(20). Since the charge-sheet and punishment order have been quashed and in the light of the admitted facts that Krishan Kumar unfortunately died during the currency of his service period, the claim of the petitioners for compassionate appointment of son of Krishan Kumar shall be considered, sympathetically, in accordance with law as per prevailing regulations and policies framed by the State of Haryana, as applicable to the respondent-Nigam, within the period of two months from the date of receipt of certified copy of this order.

(21). Ordered accordingly.

17.11.2023
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? Yes/No
2. Whether reportable? Yes/No