
(1987) 11 BOM CK 0005
In the Bombay High Court
Case No : Writ Petition No. 1115 of 1986

A.C. D'mello

APPELLANT

Vs

Shipping Corporation of India

RESPONDENT

Date of Decision : 20-11-1987

Acts Referred:

Citation : (1988) MhLj 78

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Advocate : Nishita Mhatre with P.M. Patel, for the Appellant; Preeti A. Shah with U.J. Makhija instructed by Mulla and Mulla and Craigie Blunt and Caroe, for the Respondent

Judgement

S.M. Daud, J.—A short, but interesting question as to the eligibility of the petitioner to get his full pay and allowances for the period he was under suspension, pending an enquiry, arises in this petition.

2. Petitioner was employed as a Paint Technologist with the respondent Corporation, which is a Government of India Enterprise. On 1 August 1985, the petitioner was served with a suspension order, which read Thus:-

Pursuant to investigations made by the Corporation and a preliminary enquiry as provided for under Rule No. 24 of Shore Officers Service Conditions of SCI, Mr. A. C. D'Mello, Assistant Manager. is placed under suspension with immediate effect for alleged misconduct.

The enquiry against him began and in due course an order of dismissal was passed against him. For the period between August 1985, to 29 September 1986, the petitioner was paid 50% of his basic salary and dearness allowance. In this petition, he contends that the respondent had no power to withhold the balance of the 50% of his basic salary and dearness allowance payable unto him. This contention is disputed by the respondents, by a return filed on 24 September 1986. The relevant rule has been set out in full in the petition and the

material portions therefrom are thus :

24. Suspension, Dismissal etc.

(i) The Company may dismiss, or terminate the services of, or suspend or otherwise suitably deal with any officer who, on inquiry held as provided herein, is adjudged by the Management guilty of misconduct

(iv) Any officer adjudged guilty of misconduct on such enquiry will be liable to be dismissed without notice, if the misconduct is not deemed by the Management sufficiently serious to warrant dismissal, his services may be terminated without notice or he may be suspended from duty, for a limited period or may otherwise be suitably dealt with. An officer under suspension for any reasons, whatsoever will be paid a non-recoverable subsistence allowance equal to fifty per cent of his basic salary and dearness allowance.

(v) Before taking action under this rule, the Management will take into account the extent or gravity of the proved misconduct, previous record of the officer and any other relevant aggravating and extenuating circumstances that may exist.

Counsel for the petitioner relied on the cases reported in *The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union*, and *Balvantray Ratilal Patel Vs. The State of Maharashtra*, in support of the contention that while the power to suspend an employee pending a departmental enquiry may inhere in every employer, the right to withhold a part of the salary is not inherent or implied, but must be based upon the contract or some rules governing the employment. The two authorities support the submission advanced by learned Counsel for the petitioner and I need only to cite the following from the latter precedent relied upon by Her:

The general principle therefore is that an employer can suspend an employee pending an inquiry into his misconduct and the only question that can arise in such suspension will relate to payment during the period of suspension. If there is no express term relating to payment during such suspension or if there is no statutory provision in any enactment or rule the employee is entitled to his full remuneration for the period of his interim suspension. On the other hand, if there is a term in this respect in the contract of employment or if there is a provision in the statute or the rules framed thereunder providing for the scale of payment during suspension, payment will be made in accordance therewith.

The question now is whether there is anything in the rule reproduced above indicating the existence of a power with the respondent (i) to suspend an employee pending an enquiry, and (ii) deduct any part of the salary during the period of suspension aforementioned. Counsel for the petitioner submits that Rule 24 itself treats dismissal, termination of service, or suspension as being punitive measures which the management can resort to after adjudging an officer guilty of misconduct. Suspension as a punitive" measure is different from

suspension as an interim measure pending the holding of an enquiry. There is no express provision in the rules for suspending an officer pending the holding of an enquiry against him. If so, the Corporation being an employer may exercise the option to suspend the employee pending an enquiry. This however does not vest with the power to withhold the salary and allowance payable to the employee. The service contract continues to be in full force, imposing upon the employee to render service if not prevented by the employer, with the corresponding liability upon the employer, to pay the full salary whether or not it wants the employee to work. This contention is unanswerable, unless there be something in the rules which can be said to be a valid source furnishing the Corporation with the power to pay reduced salary and dearness allowance to the Officer under suspension. On behalf of the Corporation, reliance is placed upon the words "an officer under suspension for any reason whatsoever" appearing in clause (iv) as taking in its sweep suspensions punitive as also interim in the sense of suspension pending the holding of an enquiry against a suspected delinquent. At one stage, I was inclined to take the same view. That however would not be a correct reading of the rule. The clause relied upon by the counsel for the Corporation has to be read in the proper sequence in which it appears. Clause (iv) consists of about 3 sentences, first it speaks of the Corporation's right to dismiss an officer adjudged guilty of misconduct. This punishment it can impose only after coming to the conclusion that the guilt has been established, and, this after an enquiry. Next, comes a case where the Management though holding misconduct ascribed to have been proved, is of the opinion, that it is not sufficiently serious to warrant dismissal. In such a case the services of the delinquent officer may be terminated without notice or he may be suspended from duty for a limited period or he may be otherwise suitably dealt with. The "suspension" contemplated by the second part which is under consideration, is also a suspension imposed as a measure of punishment. The third part, leaving aside the words pressed into service by the Counsel for the respondent, prescribes the rate at which the subsistence allowance is to be calculated. Now, can it be said that the scope of the otherwise restricted clause (iv) is widened by the use of the words "for any reason whatsoever" To give an affirmative answer would be to ignore the commonsense rule of reading words in their proper context. When the preceding sentences or parts of clause (iv) speak only of punitive action, it would be reasonable to read the third part of the clause as restricted only to cases of punitive suspensions. This, as counsel for the petitioner rightly submits, is also the mandate of the 5th clause which requires the management to take into account the extent or gravity of misconduct, the previous record of the Officer and other relevant circumstances before taking action under the rule. I would therefore hold that the Corporation has no power to withhold any part of the basic salary and dearness allowance from an employee placed on suspension, pending the holding of an enquiry. The result of the foregoing discussion is to make the rule absolute in terms of prayer (a), with there being no order for costs.