(2010) 03 DEL CK 0037

In the Delhi High Court

Case No : WP (C) No. 1074 of 2010

All India Institute of Medical Sciences — APPELLANT

Vs

Sh. Mohan Lal — RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2010) 03 DEL CK 0037

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Rajat Katyal, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner All India Institute of Medical Sciences has challenged the order dated 23rd January, 2009 passed in T.A No. 43/2008 titled Sh. Mohan Lal v. All India Institute of Medical Sciences setting aside the penalty imposed upon the respondent and directing petitioner to restore the withheld salary and further directing for recovery of Rs. 47,709/- after probing the matter and recover the same from those who are responsible within a period of three months.

2. The brief facts to comprehend the controversies are that the respondent was working as LDC in Hostel section in All India Institute of Medical Sciences. Though the respondent was not appointed as a cashier nor was given charge of cashier, however, on account of shortage of about Rs. 47,709/- major penalty proceedings were initiated against him on the ground that in the record of students hostel the said amount was found short and the respondent had been maintaining the stock register. The stock register maintained by the respondent on the basis of which major penalty proceedings were initiated was not the proper cash book and was handled by different persons from time to time nor it was registered nor verified by any officer incharge.

3. The respondent had given a statement on 29th December, 1993 that he has deposited the shortage, therefore, on the basis of this it was held that there is an admission on his part of the misconduct and he was held guilty and in the light of non revision of his subsistence allowance in the wake of 5th Central Pay Commission recommendations, the arrears of subsistence allowance payable to him later on was adjusted towards the amount which was alleged to have been admitted by him that he will deposit. Later on for the recovery of Rs. 47,709/- it was ordered to adjust the same from the arrears of subsistence allowance and major penalty of reduction of pay was also imposed by disciplinary authority by order dated 12th June, 2000 and an appeal filed was dismissed without any reasons on 3rd July, 2001.

4. Before the Tribunal the respondent had challenged the imposition of penalty of Rs. 47,709/- by order dated 12th June, 2000 and 3rd July, 2001 on the ground that the alleged loss has no direct nexus to the respondent as the cash register was handled by several officers and the respondent was not solely responsible for maintaining the account which was not even the cash book and in the circumstances the liability of shortage of cash cannot be imputed solely on the respondent. The orders of the disciplinary authority and the appellate authority were also challenged on the ground that the statement made by the respondent on 29th December, 1993 is not an admission especially in view of the fact that in the departmental proceedings it had not been established that respondent was solely responsible for the loss of the amount. The orders were also impugned by the respondent that they did not show any application of mind as none of the pleas and contentions of the respondent were considered nor any cogent reasons were given for imputing liability solely on him.

5. The petition was contested by the petitioner before the Tribunal on the ground that in view of the specific admission by the respondent to deposit the shortfall, no further evidence was required nor the order of the disciplinary authority and the appellate authority require to disclose any further reasons.

6. The learned Counsel for the petitioner All India Institute of Medical Sciences has reiterated the contentions raised before the Tribunal that the offer by the respondent on 29th December, 1993 shall constitute admission on his part and consequently the order of the Tribunal setting aside the punishment order is liable to be set aside.

7. We have heard the learned Counsel for the parties and have also perused the enquiry report. The analysis and assessment of evidence by the enquiry officer itself stipulates that the cash register was not the proper cash book in the prescribed format and it was not kept properly besides the register was handled by different persons from time to time and was not verified and attested either by officer incharge or any other officers from time to time. The enquiry report also stipulated that the respondent during the proceedings did not admit the shortage of cash imputable solely to him. The sole reliance is given on the alleged confessional statement though in the enquiry report it also stipulated

that the respondent sought to contest the alleged confessional statement. The enquiry report also stipulated in its analysis and assessment of evidence that from the deposition of witnesses it is apparent that no proper system of maintenance and handling of cash was worked out and there was lack of supervision and direction from the officers.

8. On consideration of the enquiry report the Tribunal has held that the enquiry report does not hold the respondent as the sole defaulter for loss of money and in the circumstances it is vague and indefinite as far as the respondent is concerned. The learned Counsel for the petitioner is also unable to show in the facts and circumstances as to how the respondent can be held solely responsible for the alleged shortage. In the circumstances, it is apparent that the findings of the enquiry officer holding respondent liable are contradictory and are based on no evidence and the analysis and assessment of evidence does not implicate the respondent solely nor demonstrate the culpability of the respondent so as to be liable for punishment.

9. The enquiry officer has also made certain recommendations which dilutes the alleged implication of the respondent considerably which has been considered by the tribunal. The disciplinary authority has also proceeded on the basis of the statement by the respondent to fulfill the shortage, however, that will not reflect the culpability of the respondent which has not been established on the basis of the evidence before the enquiry officer. From the report of the enquiry officer it appears that the respondent has rather been absolved of the charges and the disciplinary authority has not differed with the enquiry officer nor has given any disagreement note and has mechanically held the respondent liable for the loss on account of shortage and has also imposed the penalty of stoppage of increment during the pendency of the penalty order and that the reduction will not have effect after three years from the date of penalty order.

11. The appeal filed by the respondent does not deal with the pleas and contentions and was rejected stipulating that the appeal has been considered and has been rejected. The learned Counsel for the petitioner in the circumstances is unable to show any cogent reasons given by the disciplinary authority and appellate authority to reject the pleas and contentions of the respondent. On the basis of orders of the disciplinary authority and appellate authority it cannot be held that the charges had been made out against the respondent.

12. In the ultimate analysis neither the enquiry report nor the order of the disciplinary authority or the appellate authority implicate the respondent even on the preponderance of probabilities so as to make the respondent liable for punishment imposed upon him. Consequently the order of the tribunal setting aside the order of the punishment dated 12th June, 2000 and the appellate order dated 3rd July, 2001 cannot be faulted on any of the grounds raised by the learned Counsel for the petitioner. This Court also does not find any such illegality or irregularity in the order of the Tribunal dated 23rd January, 2009

which will require interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

13. The writ petition is without any merit, and it is, therefore, dismissed. All the applications are also disposed of.