
(2001) 09 BOM CK 0054
In the Bombay High Court
Case No : Writ Petition No. 2212 of 1989

Bal Modak

APPELLANT

Vs

Godavari Garments Ltd. and Others

RESPONDENT

Date of Decision : 20-09-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 3 BomCR 296

Hon'ble Judges : N.V. Dabholkar, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : Pradeep Deshmukh, for the Appellant; R.P. Powar and V.K. Jaju, A.G.P., for the Respondent

Judgement

B.H. Marlapalle, J.—In this petition, filed under Article 226 of the Constitution, the petitioner has assailed the punishment of dismissal from service which was preceded by holding a departmental inquiry.

2. The petitioner was initially working under the State Government and on seeking voluntary retirement from the said service he joined the respondent No. 1 as Chief Accountant and Administrative Officer with effect from 2nd November, 1979. Respondent Nos. 1 and 3 are the subsidiaries of respondent No. 2 which is an undertaking of the Government of Maharashtra and registered under the Companies Act, 1956. All these three respondents, therefore, answer the test of "State" within the meaning of Article 12 of the Constitution.

3. The petitioners, as per his service conditions came to be deputed by respondent No. 1 to respondent No. 3 sometimes in 1981 and he continued to be there till the end of 1983. Again, he was deputed by respondent No. 1 to the Powerloom's Division of respondent No. 2 with effect from 14th February, 1984. It needs to be mentioned, at this stage, that when he was deputed to respondent No. 3 he was designated as Executive Director. He came to be served with suspension order and charge-sheet by respondent No. 3 on 2nd April, 1985. This order came to be challenged by the petitioner in Writ Petition No. 208 of 1986

and the said petition came to be disposed of by order dated 1st April, 1986. This Court had set aside the charge-sheet with a direction to issue a fresh charge-sheet and complete the inquiry within three months. Consequently, on 25th April, 1986 a fresh charge-sheet came to be served on the petitioner by respondent No. 1. The charge-sheet was replied to by the petitioner, in writing. Petitioner came in the fresh round before this Court in Writ Petition No. 646 of 1986 contending that the inquiry could not be completed within three months as earlier directed by this Court and, therefore, he ought to have been reinstated. This Court, in the second petition, had directed to complete the inquiry on or before 31st August, 1986 failing which the suspension order would stand revoked and as the inquiry could not be completed before the stipulated date the petitioner was reinstated on 1st September, 1986.

4. The respondent No. 1 appointed an Inquiry Officer by name Dr. N.P. Wagle, who conducted the inquiry into the charges levelled against the petitioner (in all six charges). The respondent No. 1 had examined witnesses in support of the charges levelled and these witnesses were allowed to be cross-examined by the petitioner. The Presenting Officer Shri Tandale was also examined and he was allowed to be cross-examined by the petitioner in the departmental inquiry. The petitioner submitted his written defence before the Inquiry Officer. This defence statement runs into about 63 pages. Finally, the Inquiry Officer submitted his findings on 18th September, 1988. In respect of charge No. 1, the Inquiry Officer held that the petitioner was not guilty nor was there any act of malice or malice could be attributed to him. Regarding charge No. 2 the Inquiry Officer held that the management had failed to establish that the petitioner had purchased raw hides at higher rates and so was the case regarding the other charge of failure to send a selector before the hides were purchased which could not be considered as a serious misconduct and the petitioner was held responsible for not sending the selector in few cases. In respect of Charge No. 3 the petitioner was held to be partly guilty. He was exonerated of Charge Nos. 4, 5 and 6.

5. The disciplinary authority did not agree with the findings recorded by the Inquiry Officer and issued a show cause notice dated 21st December, 1988. Reasons for disagreeing with the findings recorded by the Inquiry Officer and also holding that the charges were duly proved, were elaborately set out in the annexure served along with the show cause notice. The petitioner, vide his elaborate reply dated 16th January, 1989 replied the said show cause notice and submitted that the evidence on record did not support the view of the disciplinary authority holding him guilty of the charges levelled against him. However, by the impugned order dated 7th April, 1989, which was based on the resolution passed by the Board of Directors on 20th March, 1989, the petitioner came to be dismissed from service with effect from 7th April, 1989. This petition was filed before us on 14th June, 1989. By order dated 7th September, 1989, while granting Rule, interim order in terms of prayer Clause (e)(i) and (ii) was granted, as a result of which, the impugned order of dismissal dated 7th April, 1989 came to be stayed and the respondent No. 1 was directed to allow the petitioner to

serve in its employment. We are informed, across the Bar, that pursuant to the said interim order the petitioner was reinstated and he retired from service on reaching the age of superannuation on 31st July, 1994. There is no dispute that his salary has been paid, after he was reinstated and till he continued to be in service. However, the payment of legal dues has been withheld.

6. We have heard Shri Pradeep Deshmukh, the learned Counsel for the petitioner as well as Shri Powar, the learned Counsel for the respondent No. 1. There is no dispute that respondent No. 1 is the employer and it had the right to proceed against the petitioner. The learned Counsel for the petitioner, in his lengthy arguments, has emphasised that (a) principles of natural justice were violated by the respondent No. 1 in issuing the show cause notice dated 21st December, 1988 as well as in finally recording a finding of guilt by rejecting the findings submitted by the Inquiry Officer; (b) the findings recorded by the disciplinary authority were based on additional evidence which was not placed before the Inquiry Officer, and (c) the action of dismissal is vitiated and is required to be set aside on account of failure to follow the principles of natural justice. In support of these contentions the learned Counsel for the petitioner has relied upon the decision of the Supreme Court in the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, and Yoginath D. Bagde Vs. State of Maharashtra and Another, .

7. In the case of the Punjab National Bank (supra) the Apex Court, after referring to its earlier decisions in the case of State of Assam and Another Vs. Bimal Kumar Pandit, and Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , as under:---

"17.The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the Inquiring Officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the finding of the disciplinary authority."

8. In the case of Yoginath Bagde (supra) the Apex Court, in para 37, observed, thus: "37. Since the Disciplinary Committee did not given any opportunity of hearing to the appellant before taking a final decision in the matter relating to findings on the two charges framed against him, the principles of natural justice, as laid down by a three Judge Bench of this Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, referred to above were violated."

The Apex Court further held that the opportunity of hearing meant the hearing in

person before the Disciplinary Authority and not merely an opportunity of submitting his defence on the findings of the disciplinary authority. It was further stated that when the Disciplinary Authority differs with the findings recorded by the Inquiry Officer, for the reasons to be recorded, such a finding has to be provisional and the disciplinary authority cannot confirm its finding unless the delinquent officer was heard on the said provisional findings. The show cause notice, in the instant case, read thus: "I am directed to forward herewith a copy of the return submitted by the Inquiry Officer who conducted the departmental inquiry into your conduct and to state that Board of Directors does not fully agree with the findings of that officer and for the reasons attached to this notice, consider that charge numbers 1 to 6 framed against you have been proved. The Board of Directors, therefore, proposes to dismiss you from the service and further keep the suspension period as it is with no further payments to be released in this connection on the grounds that you have been found guilty of the aforesaid charges. You are hereby called upon to show cause within 15 days from the date of receipt of this notice, why the proposed action not be taken in regard to you. On your failure to show cause within the time allowed to you, it will be assumed that you do not wish to show cause."

9. The learned Counsel for the petitioner urged before us that this show cause notice was solely against the punishment proposed and not at all against the findings recorded by the disciplinary authority which findings were contrary to the one recorded by the Inquiry Officer and thus the law laid down by the Apex Court in the case of Punjab National Bank and Yoginath Bagde (*supra*) vitiates the action of dismissal by the management. The submissions are well merited. We have also noted, as stated little earlier, that on account of the interlocutory order passed by this Court the petitioner continued in service till he retired on reaching the age of superannuation about 7 years ago and in any case the employer's right to proceed *de novo* from the stage of offering an opportunity of hearing before the disciplinary committee/authority or the Board of Directors, as the case may be, cannot be taken away and in any case there will be no prejudice that is likely to be caused to either of the parties by affording such hearing by the disciplinary committee. The disciplinary committee may arrive at its own conclusions after hearing the petitioner and record a finding expeditiously and by considering, of course all the contentions that have been raised by the petitioner in his written reply to the show cause notice dated 21st December, 1988. The respondent No. 1 may, thereafter, proceed further strictly on merits and decide the action of punishment or otherwise on the basis of such findings. We need not consider the other grounds raised by the learned Counsel for the petitioner and the petitioner is certainly at liberty to raise all issues before the disciplinary committee.

10. In the premises, we allow the petition partly and quash and set aside the dismissal order dated 7th April, 1989. We direct the respondent No. 1 to give a hearing to the petitioner in respect of the show cause notice dated 21st December, 1988 and proceed further from that stage, *de novo*. The whole

process shall be completed as expeditiously as possible and in any case within a period of three months from today. Rule made absolute accordingly but without any costs.