
(2013) 03 JH CK 0040

In the Jharkhand High Court

Case No : Writ Petition (S) No. 1005 of 2002

Bindeshwari Prasad

APPELLANT

Vs

Hindustan Copper Ltd. and Others

RESPONDENT

Date of Decision : 15-03-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 3 AJR 230 : (2013) 3 JLJR 267

Hon'ble Judges : S.Chandrashekhar, J

Bench : Single Bench

Advocate : Saurav Arun, for the Appellant; Pandey Neeraj Rai and Mr. Rohit Ranjan Sinha, for the Respondent

Final Decision : Dismissed

Judgement

S.Chandrashekhar, J.—The petitioner has challenged order dated 18.01.2002 whereby a penalty of downgrading the petitioner from E-II grade to E-I grade has been imposed and it has further been ordered to treat the intervening period as leave without pay and without any consequential benefits including two time bound promotion due to him. Petitioner was transferred from Malanjkhanda Copper Project to Khetri Copper Complex on 10.06.1993 and he joined his duties on 30.06.1993. On 20.12.1996, he was served a memorandum along with the statement of article of charge, statement of imputation of misconduct and list of documents. The specific allegation levelled against him was that even though he joined his duties at Khetri Copper Complex on 30.06.1993, he failed to vacate Quarter No. B1/111 and therefore, he contravened Rule 1-4(c) and committed misconduct under Rule 5-1(e), (f) and (t) of Hindustan Copper Limited (Conduct, Discipline and Appeal) Rules, 1979. On conclusion of enquiry, the disciplinary authority passed an order on 31.10.1998 of removal of the petitioner from the service of the Company. The appeal preferred by the petitioner was also dismissed on 11.01.1999. The petitioner moved the High Court in C.W.J.C. No. 2862 of 1999(R) which was disposed of on 04.09.2001. The Hon'ble Court has

directed as under,

6. In view of the fair stand taken by Mr. P.K. Sinha, I dispose of this writ application with a direction to respondent no. 2, the Chairman-cum-Managing Director before whom the representation is pending, to re-consider the matter and award reasonable punishment which should be proportionate to the charge levelled against the petitioner. It is made clear that punishment of removal of the petitioner from service cannot be sustained in law. The Chairman shall take decision within 30 days from the date of receipt of a copy of this order. Needless to say that the Chairman shall also consider the question of giving consequential benefits to the petitioner to which he may be found entitled under law.

2. As the representation of the petitioner was not disposed of within a reasonable time, the petitioner had to move the High Court again by filing Cont. Case (C) No. 945 of 2001. However, finally order dated 18.01.2002 was served upon the petitioner whereby order dated 31.10.1998 of removal from service was set aside and the penalty of downgrading from E-II grade to E-I grade, as noticed above, was passed against the petitioner. Still aggrieved, the petitioner has approached this Court by filing this writ petition.

3. Counter-affidavit and supplementary counter-affidavit have been filed in which it has been stated that the petitioner, inspite of repeated requests and directions, did not vacate the official accommodation at Malanjkhanda Copper Project and therefore, the Company had to institute a case under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Even after the order passed in the eviction proceeding the petitioner did not vacate the premises and therefore, police help was sought by the Company for removing the petitioner from the premises. Again, the petitioner has been suspended for not vacating Bungalow No. 4E, which he had taken for three days on account of marriage of his daughter. As he did not vacate the said house inspite of letters dated 16.05.2005 and 04.06.2005 written to him requesting him to vacate the premises, the petitioner was again suspended on 11.06.2005 and a departmental proceeding was again initiated against the petitioner.

4. Heard learned counsel for the parties and perused the documents on record.

5. Learned counsel for the petitioner has submitted that order dated 18.01.2002 has not been passed in the light of true letter and spirit of order dated 04.09.2001. He has further contended that in the eviction proceeding the petitioner has been ordered to pay penal rent for retaining the house and as such, for retaining the house he cannot be punished again for, it would amount to double jeopardy. He has further contended that failure to vacate the house would not amount to "misconduct" and therefore, he could not have been proceeded against in a departmental proceeding. In support of his contention, learned counsel for the petitioner has relied on a judgment of Mysore High Court in "B.R. Venkappayya Vs. State of Mysore & Ors.", reported in 1972 S.L.R. 59.

6. Learned counsel for the respondents has resisted the claim of the petitioner on

the ground that the conduct of the petitioner squarely falls under Rule 5.1(e), (f) and (t) of the Hindustan Copper Limited (Conduct, Disciplinary and Appeal) Rules, 1971, which are extracted below:

Rule 5.1

(e) Acting in a manner prejudicial to the interests of the company.

(f) Willful insubordination or disobedience, whether or not in combination with others, of any lawful and reasonable order of his superior.

(t) Commission of any act subversive of discipline or good behaviour.

7. In so far as the contention of the learned counsel for the petitioner with respect to failure to vacate the quarter not being a "misconduct" is concerned, I find that the petitioner has willfully disobeyed the directions issued to him for vacating the quarter and he has acted in a manner prejudicial to the interest of the Company and therefore, his action would definitely constitute a "misconduct". The judgment relied upon by the learned counsel for the petitioner is irrelevant in the facts of the case because it has been held in "B.R. Venkappayya Vs. State of Mysore & Ors." (supra) that the omission or failure to vacate quarter within a reasonable time allowed or permissible under the Rule may or may not be misconduct which would be dealt with by disciplinary action being taken against the person concerned. I further find that this issue is not open to the petitioner to re-agitate particularly, in view of the order dated 04.09.2001 of the High court, which has been noticed above. The limited direction issued by the High Court was with respect to quantum of punishment and thus, it is not open to the petitioner to challenge the findings recorded against him in the departmental enquiry.

8. From the record I find that a hostel accommodation was provided to the petitioner when he was transferred to Khetri Copper Complex where he joined on 30.06.1993. He was issued notices on 22.02.1994, 02.03.1994, 11.01.1995, 06.05.1995, 02.09.1996 and 14.12.1996, still he did not vacate the accommodation which was allotted to him when he was posted at Malanjkhanda Copper Project. The only defence taken by the petitioner was that when he was transferred from Malanjkhanda Copper Project to Khetri Copper Complex, his children were writing examinations. It is an admitted fact that even after the order passed in eviction proceeding, the petitioner did not vacate the said premise. The petitioner has been charged penal rent because he had occupied the official accommodation unauthorisedly. His misconduct is proved from the fact that for getting the said house vacated, the Company was constrained to file a suit against the petitioner. Payment of penal rent for occupying the premises unauthorisedly and punishment for the proved misconduct are two different things and in my view, it would not amount to double jeopardy. The observation of the Hon'ble High Court as contained in order dated 04.09.2001, was mere observation by way of illustration and it cannot be said that the Hon'ble High Court confined the nature of punishment which can be imposed upon the

petitioner. The option to impose the penalty has always been a matter within the purview of the disciplinary authority/appellate authority.

9. The power of the High Court in exercising the jurisdiction under Article 226 of the Constitution of India has been settled by a catena of judgments of the Hon"ble Supreme Court. In *State of Orissa Vs. Bidyabhushan Mohapatra*, , the Hon"ble Supreme Court has held as under:

9. The High Court has held that there was evidence to support the findings on heads (c) and (d) of Charge (1) and on Charge (2). In respect of charge 1(b) the respondent was acquitted by the Tribunal and it did not fall to be considered by the Governor. In respect of charges 1(a) and 1(e) in the view of the High Court "the rules of natural justice had not been observed." The recommendation of the Tribunal was undoubtedly founded on its findings on charges 1(a), 1(e), 1(c), 1(d) and Charge (2). The High Court was of the opinion that the findings on two of the heads under Charge (1) could not be sustained, because in arriving at the findings the Tribunal had violated rules of natural justice. The High Court therefore directed that the Government of the State of Orissa should decide whether "on the basis of those charges, the punishment of dismissal should be maintained or else whether a lesser punishment would suffice." It is not necessary for us to consider whether the High Court was right in holding that the findings of the Tribunal on charges 1(a) and 1(e) were vitiated for reasons set out by it, because in our judgment the order of the High Court directing the Government to reconsider the question of punishment cannot, for reasons we will presently set out, be sustained. If the order of dismissal was based on the findings on charges 1(a) and 1(e) alone the Court would have jurisdiction to declare the order of dismissal illegal but when the findings of the Tribunal relating to the two out of five heads of the first charge and the second charge was found not liable to be interfered with by the High Court and those findings established that the respondent was prima facie guilty of grave delinquency, in our view the High Court had no power to direct the Governor of Orissa to reconsider the order of dismissal....

10. In *State of Andhra Pradesh Vs. Sree Rama Rao*, , the Hon"ble Supreme Court held that High Court has no power under Article 226 to interfere with the finding of misconduct recorded during the departmental enquiry. In para- 7 the Hon"ble Supreme Court has observed as under,

7. ...The High court is not constituted in a proceeding under Article 226 of the constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ

under Article 226 to review the evidence and to arrive at an independent finding on the evidence.

11. In *State of Andhra Pradesh and Others Vs. Chitra Venkata Rao*, the Hon''ble Supreme Court has held that the High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against the public servant. Taking note of the judgment of the Hon''ble Supreme Court in *State of Andhra Pradesh Vs. Sree Rama Rao*, , the Hon''ble Supreme Court has observed as under,

21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in *State of Andhra Pradesh Vs. Sree Rama Rao*, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant-considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

12. Besides the settled position in law regarding judicial review of finding recorded in domestic enquiry, as noticed above I find that in the present proceeding the petitioner cannot be permitted to question finding of misconduct recorded against him. The matter was remanded to the appellate authority to

consider the quantum of punishment and the appellate authority has passed order dated 18.01.2002. The plea raised by the petitioner that once he has been ordered to pay penal rent, the penalty imposed by order dated 18.01.2002 would amount to double jeopardy is not tenable. As discussed above, I am unable to accept the contention raised on behalf of the petitioner. It is also a settled law that the High Court has very limited power in exercise of jurisdiction under Article 226 of the Constitution of India to interfere with the quantum of punishment.

13. In Union of India and another Vs. G. Ganayutham (Dead) by LRs., , the Hon"ble Supreme Court has held that, "in the matter of penalty imposed in a disciplinary case, unless the Court/Tribunal opines in its secondary role, that the administrator was, on the material before him irrational, the punishment cannot be quashed."

14. In Apparel Export Promotion Council Vs. A.K. Chopra, , the Hon"ble Supreme Court has held,

22. ...The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty. The impugned order of the High Court cannot be sustained on this ground....

15. In B.C. Chaturvedi Vs. Union of India and others, , the Hon"ble Supreme Court has held that the Court will not interfere with the order of punishment unless the punishment awarded is one which shocks the conscience of the Court. A similar view has been expressed by the Hon"ble Supreme Court in Madhya Pradesh Electricity Board Vs. Jagdish Chandra Sharma, and several other cases. In view of the aforesaid discussion, I find no merit in the writ petition. Accordingly, it is dismissed.