

(2011) 12 DEL CK 0353
In the Delhi High Court
Case No : Writ Petition (C) 5263 of 1998

B.M. Bhatnagar

APPELLANT

Vs

Hindustan Vegetable Oils Corporation Ltd. and Others

RESPONDENT

Date of Decision : 09-12-2011

Acts Referred:

Companies Act, 1956 — Section 630
Constitution of India, 1950 — Article 14
Hindustan Vegetable Oils Corporation Ltd. (Conduct Discipline and Appeal) Rules, 1985
— Rule 26(3), 4(1), 5(10), 5(2), 5(9)

Citation : (2012) 3 AD 69 : (2012) 186 DLT 80

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Gaurav Mitra and Ms. Priyanka Gupta, for the Appellant; Sonia Arora, for R-1 to R-4, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The writ petition was filed nearly 13 years ago for, declaration of Rule No.4.1(iii) of the Hindustan Vegetable Oils Corporation Ltd. (Conduct Discipline and Appeal) Rules, 1985 as void on the ground that the same is vague, arbitrary and without any guidelines, capable of inherent gross discrimination and violative of Article 14 of the Constitution of India, and further impugning the order dated 17.03.1998 of dismissal of the petitioner from service of the respondent. Rule was issued on 22.10.1998. The writ petition thereafter was dismissed for non prosecution. Application for restoration was filed and allowed. On 27.11.2008, the counsel for the petitioner submitted before the learned Single Judge that since the vires of the Conduct Rules had been challenged, the petition ought to be heard and adjudicated by a Division Bench. The writ petition was accordingly placed before the Division Bench and Rule DB issued on 05.12.2008. The petition was again dismissed in default; yet again restoration was applied for and allowed. On 07.10.2009, it was pointed out that the respondent Company was in liquidation; accordingly, the respondent was

directed to be served through the Official Liquidator. Yet again the writ petition was dismissed and on application being filed, restored. During the hearing on 02.12.2011, the counsel for the petitioner stated that he was not pressing the challenge to the vires of the Rule aforesaid. However, the writ petition already being very old, both counsels submitted that instead of reverting the petition to the learned Single Judge, the same be heard by this Bench only. We have accordingly heard the counsels for the parties.

2. The petitioner joined the services of the respondent Company in the year 1974 as a Laboratory Assistant and was allotted and occupied residential accommodation bearing No.7670, G.T. Road, Subzi Mandi, Clock Tower, Delhi-110 007. The petitioner in the year 1976 was transferred out of Delhi and though required to vacate the aforesaid official accommodation, failed to vacate the same. On 04.12.1992 i.e. after nearly 16 years of the petitioner having remained in unauthorized occupation of the official accommodation inspite of having been posted outside Delhi, the petitioner was informed that if he did not leave the same within one month, he would be placed under suspension. In pursuance thereto, the petitioner was placed under suspension on 11.02.1993. The petitioner challenged the suspension order by filing a writ petition in the High Court of Calcutta where he was then posted but the same was dismissed as premature; appeal preferred there against was also dismissed. The petitioner was issued a charge sheet on 15.06.1993. The suspension order was revoked on 28.08.1993. The petitioner replied to the charge sheet and an Inquiry Officer was appointed. A complaint u/s 630 of the Companies Act, 1956 was also filed against the petitioner in January, 1996. The Inquiry Officer in the report dated 29.09.1997 found the charge against the petitioner to have been made out and the Disciplinary Authority of the respondent, after giving a notice to show cause to the petitioner of its intention to inflict the punishment of dismissal from service on the petitioner, vide order dated 17.03.1998 dismissed the petitioner from the service of the respondent. Impugning the same, this writ petition was filed.

3. During the hearing on 02.12.2011, we were told that even in the absence of the dismissal order, the petitioner would have retired on attaining the age of superannuation about eight years ago. It was further told that the petitioner till then continued to be in possession of the accommodation aforesaid and the proceedings u/s 630 of the Companies Act were also languishing. Seeing no reason as to why the petitioner should continue to occupy the premises even after eight years of attaining the age of superannuation, we asked the counsel for the petitioner as to why the petitioner should not be heard on this ground alone. The counsel for the petitioner then stated that the petitioner is ready to vacate and hand over the vacant possession of the premises immediately. Accordingly, the petitioner was directed to vacate the premises on 03.12.2011 and the writ petition posted for today. We are informed that the petitioner has so vacated the premises and delivered possession thereof to the Official Liquidator. The counsels have been heard further.

4. The counsel for the petitioner has contended that, the respondent has continued to deduct HRA from the salary of the petitioner till the dismissal from service and thus has not suffered any loss; that the petitioner was not given a housing / HRA at any other place outside Delhi where so ever he was posted; that the petitioner has been dismissed from service for conduct unbecoming of a public servant within the meaning of Rule 4.1.(iii) aforesaid; that the Supreme Court in A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., has held that what in a given context would constitute conduct unbecoming of a public servant to be treated as misconduct would expose a grey area not amenable to objective evaluation; that the penalty of dismissal from service is disproportionate to the misconduct of not vacating the official accommodation; reliance is placed on Ram Dayal Rai Vs. Jharkhand State Electricity Board and Others, and Union of India Vs. M.A. Jaleel Khan 1999 SCC (L&S) 637.

5. The dismissal order dated 17.03.1998 inter alia records as under:

The charges against Sh. B.M. Bhatnagar referred for inquiry are hereunder:

Sh. B.M. Bhatnagar while functioning as Sr. Manager at Bangalore Unit was ordered to vacate the company quarters retained by him in Delhi (DVU). He was again instructed to vacate the said quarters within one month's time when he was posted at Calcutta Unit. The company's quarters at Delhi are primarily meant for employees of the Corporation posted at Delhi. Sh. B.M. Bhatnagar did not obey the lawful and reasonable orders of his superiors and did not vacate the company quarters occupied by him at Delhi and continued his unauthorized custody / possession of the quarters which is an act unbecoming of a public servant and prejudicial to the interests of the corporation thereby committing misconduct under 4.1(iii) 5.2, 5.9, 5.10 of HVOC CDA Rules 1985

On completion of inquiry, the inquiry officer Sh. R. Sreekumar arrived at the following findings:-

The article of charge stands proved. The charged officer who is a public servant, wilfully disobeyed the lawful orders of his superiors to vacate the company quarters consequent to his transfer from Delhi. In furtherance of such disobedience, continued to occupy the quarters located at the premises of DVU which was prejudicial to the interest of the Corporation. The above acts of the charged officer come clearly within the ambit of the definitions of misconduct described under 4.1(iii), 5.2, 5.9 & 5.10 of HVOC CDA Rules 1985

AND WHEREAS on careful consideration of the aforesaid Inquiry Report, connected documents and statements of witnesses recorded during the inquiry, the undersigned agree with the findings of the Inquiry Officer. As a responsible officer of the Corporation Sh. B.M. Bhatnagar has exhibited acts unbecoming of a Public Servant and the undersigned has come to the conclusion that the gravity of the charges against Sh. B.M. Bhatnagar is such that his retention in Public Service is undesirable.

NOW THEREFORE the undersigned in exercise of the power conferred by Rule 26.3 of HVOC CDA Rules, 1985, hereby impose the penalty of "DISMISSAL" from service on Sh. B.M. Bhatnagar, Sr. Manager, HVOC, Calcutta Unit.

THESE orders will come into force from the date of service on the officer or in the event of his remaining on leave / absence the day on which the same are displayed on the Notice Board of his place of work whichever is earlier.

Shri B.M. Bhatnagar is also directed to vacate the Company accommodation in question forthwith.

6. We may also record that Rules 5.2, 5.9 & 5.10 of the Rules aforesaid constitute "unauthorized custody and use of company's equipment, tools, quarters, offices, godowns, land or any other property of the company", "acting in a manner prejudicial to the interest of the Corporation" and "wilful insubordination or disobedience, whether or not in combination with others, of any lawful and reasonable order of his superior" - as misconduct.

7. On a reading of the dismissal order as well as the Rules aforesaid defining misconduct, we find that the petitioner was charged not only with conduct unbecoming of a public servant but also of misconduct within the meaning of Rules 5.2, 5.9 & 5.10 aforesaid and found guilty of the same and the Disciplinary Authority has meted out the punishment of dismissal not only for conduct unbecoming of a public servant but also for the misconduct aforesaid. The reliance by the petitioner on A.L. Kalra (supra) is thus misconceived.

8. As far as the reference by the counsel for the petitioner to the other two judgments is concerned, the employee in Ram Dayal Rai (supra) had vacated the official accommodation on 06.01.2000 instead of 01.11.1999 and it was further found that extension to vacate the official accommodation had been granted by the High Court and it was in this context that the punishment was found to be disproportionate. Similarly, in M.A. Jaleel Khan (supra) also, it was in the facts of that case that the punishment of dismissal was found to be disproportionate.

9. However, the facts of the present case stare us in the face. The petitioner retained unauthorized occupation of the official accommodation for 35 years i.e. for a term longer than his service with the respondent. He refused to vacate the same even after the dismissal order had been issued against him. He refused to vacate the same for eight years after the date of superannuation also. The petitioner is found to have violated the law with impunity and deserves no sympathy or any equitable relief from the Court. The benefit enjoyed by the petitioner from the unauthorized occupation of the premises situated in a prime sought after locality for 35 long years is far more than the retiral dues of which the petitioner may have been deprived. In fact the counsel for the petitioner could not even inform us whether there was / is any provision for pension in the respondent company. The petitioner is found to have abused the process of law by embroiling the respondent in litigations, representations and appeals at various stages which is also evident from the long period of six years for which

the disciplinary proceedings remained pending & fifteen years since when proceedings u/s 630 supra are pending. In fact, it is the respondent who has shown extreme tolerance in initiating the disciplinary proceeding against the petitioner after 16 years of the petitioner continuing in unauthorized occupation of the premises. The petitioner has vacated the premises now only, perhaps seeing that he could not retain the same any longer. Such litigants ought not to be encouraged in any manner by the Courts. We have enquired from the counsel for the petitioner whether the petitioner is willing to pay the market rent, as may be assessed, of the premises for the 35 years of unauthorized occupation. No such willingness is shown. The writ petition is accordingly dismissed.