
(2013) 04 AHC CK 0207
In the Allahabad High Court
Case No : Service Bench No. 1108 of 2008

Dr. Raj Veer Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-04-2013

Acts Referred:

Citation : (2013) 5 ALJ 581

Hon'ble Judges : Devi Prasad Singh, J;Arvind Kumar Tripathi, J

Bench : Division Bench

Advocate : Sharad Bhatnagar, for the Appellant;

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and the learned standing counsel. Instant writ petition under Article 226 of the Constitution of India, has been preferred against the impugned order dated 28.3.2008 initiating disciplinary proceeding against the petitioner broadly on the ground that he has approached High Court against the order of transfer passed by the State Government as an interim management. According to petitioner's counsel, the controversy is covered by the basic structure doctrine and the petitioner's right to approach the Court for justice cannot be treated adversely by the Government.

2. By an order dated 29.6.2007, the petitioner was transferred from Bareilly to Lucknow. In consequence thereof, he submitted his joining report on 7.7.2007. The order of transfer was modified by another transfer order dated 31.7.2007 which was the subject matter of dispute before this Court in Writ Petition No. 977 (S/B) of 2007. A Division Bench of this Court had stayed the order of transfer dated 31.7.2007 to the extent it related to the petitioner. In consequence thereof, the petitioner continued at Lucknow.

3. It appears that the State Government was not pleased with the petitioner who had exercised his constitutional right in preferring the writ petition in High Court. In consequence thereof, the impugned chargesheet dated 28.3.2008 was served

on the petitioner. He filed objection dated 3.5.2008 claiming his constitutional right of approaching High Court for judicial review of the order passed by the State Government. The copy of the impugned chargesheet dated 28.3.2008 is filed as Annexure No. 1 to the writ petition. Reply to the chargesheet has been filed as Annexure No. 3 to the writ petition. The Division Bench of this Court, after considering factual matrix on record, stayed the disciplinary proceeding against the petitioner by an order dated 19.8.2008.

4. Petitioner's counsel has invited attention to the Division Bench judgment of this Court reported in [2010 (28) LCD 1248] : (2010 (5) ALJ (NOC) 680) Dhirendra Kumar Rai v. State of U.P. and others. In the case of Dhirendra Kumar Rai (supra), the Division Bench (judgment delivered by one of us Hon'ble Mr. Justice Devi Prasad Singh), while considering the controversy with regard to disciplinary proceeding, had considered and defined the misconduct. The relevant portion of the said judgment is reproduced as under:--

79. House of Lord in the case of Johnson v. Marshall, Sons and Co. Ltd. reported in (1906) AC 409 (HL) where the issue was whether the workmen was guilty of serious and wilful misconduct their Lordships held that burden of proving guilt was on employer. Misconduct is reduced to the breach of rule, from which breach injuries actionable or otherwise could reasonably be anticipated is dependent upon each case.

80. In the case of Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation and Another, Hon'ble Supreme Court has held that unless either in the certified standing order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and would not be comprehended in any of the enumerated misconduct.

81. In the case of Union of India (UOI) and Others Vs. J. Ahmed, , Hon'ble Supreme Court has held that, deficiency in personal character or personal ability do not constitute misconduct for taking disciplinary proceedings.

82. In the case of A.L. Kalara v. Project & Equipment Corporation (1984) 3 SCC 316 : (AIR 1984 SC 1361) Hon'ble Supreme Court has held that acts of misconduct must be precisely and specifically stated in rules or standing orders and can not be left to be interpreted ex-post facto by the management.

83. The case of Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation and Another, , the apex court has held that it is well settled that unless either in the certified standing order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and would not be comprehended in any of the enumerated misconduct. (Para 5)

84. In the case of State of Punjab and Others Vs. Ram Singh Ex. Constable, , Hon'ble Supreme Court held that the word misconduct though not capable of

precise definition as reflection receives its connotation from the context, the delinquency in its effect on the discipline and the nature of duty. It may involve moral turpitude, it must be improper or wrong behaviour, unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and context where in the terms occur; regard being had to the scope of the statute and public purpose it seeks to serve.

85. In the case of General Manager, Appellate Authority, Bank of India and Another Vs. Mohd. Nizamuddin, Hon'ble Supreme Court has held that, it is well settled law that gravity of misconduct has to be measured in terms of the nature of misconduct. (Para 9)

86. In Black's Law Dictionary Seventh Edition, the word, "mis-conduct" has been defined as under:

misconduct 1. A dereliction of duty; unlawful or improper behavior.

Affirmative misconduct. 1. An affirmative act of misrepresentation or concealment of a material fact; intentional wrongful behavior.

Official misconduct. A public officer's corrupt violation of assigned duties by malfeasance, misfeasance, or nonfeasance. Also termed misconduct in office; misbehavior in office; misconduct in office; misdemeanor in office; corruption in office; official corruption."

"Wanton misconduct. An act, or a failure to act when there is a duty to do so, in reckless disregard of another's rights, coupled with the knowledge that injury will probably result-Also termed wanton and reckless mis-conduct.

Wilful misconduct. Misconduct committed voluntarily and intentionally.

"This term of art [wilful misconduct] has defied definition, but it is clear that it means something more than negligence. Two classic examples of misconduct which will defeat the seaman's claim are intoxication and venereal disease." Frank L. Maraist, Admiralty in a Nutshell 185-86 (3 ed. 1996).

87. In Law Lexicon by P. Ramanatha Aiyar, misconduct has been defined as under:

Misconduct. A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, wilful in character, improper or wrong behaviour, its synonyms are mis-demeanor, misdeed, misbehavior. Delinquency, impropriety, mismanagement, offences, but not negligence or carelessness. Term "misconduct" when applied to act of attorney, implies dishonest act or attempt to persuade court or jury by use of deceptive or reprehensible methods. People v. Sigal, 249 CA 2D 299, 57 Cal Rptr. 541, 549. Misconduct, which renders discharged employee ineligible for unemployment

compensation, occurs when conduct of employee evinces wilful or wanton disregard of employer's interest, as in deliberate violations, or disregard of standards of behavior which employer has right to expect of his employees, or in carelessness or negligence of such degree or recurrence as to manifest wrongful intent or evil design. *Walson v. Brown*, La. App., 147 So. 2D 27, 29 (Black).

88. Various meanings have been given of word, "misconduct" in the celebrated book, "Words and Phrases" published by West Publishing Company. The definition of mis-conduct in reference to present context is reproduced as under:

The term "misconduct" implies a wrongful intention, and not a mere error of judgment. *Smith v. Cutler*, N. Y., 10 Wend. 590, 25 Am.Dec. 580; *U.S. v. Warner*, 28 Fed. Cas. 404.

Word "misconduct" has several different meanings; it is bad behavior, improper conduct, mismanagement; wrong behavior, wrong conduct; any improper or wrong conduct; in usual parlance, a transgression of some established and definite rule of action, where no discretion is left; except what necessity may demand; it does not necessarily imply corruption or criminal intention, but implies wrongful intention, and not mere error of judgment. *Boynton Cab Co. v. Neubeck*, 296 N. W. 636, 639, 237 Wis. 249.

89. Thus from the dictionary meaning, the word, "mis-conduct" implies wrongful intention and not mere error of judgment or bona fide error of judgment on the part of Government servant.

90. In a case, reported in *State of Punjab and Others Vs. Ram Singh Ex. Constable*, , their Lordships of Hon"ble Supreme Court have interpreted the word, "misconduct". To reproduce relevant portion from the judgment of Ram Singh (supra), to quote;

Thus it could be seen that the word "misconduct" though not capable of precise definition, its reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.

91. In another judgment, reported in *Baldev Singh Gandhi Vs. State of Punjab and Others*, , their Lordships of Hon"ble Supreme Court had occasion to define the word, "misconduct" which is reproduced as under:

Misconduct has not been defined in the Act. The word "misconduct" is antithesis of the word "conduct". Ordinarily the expression "misconduct" means wrong or improper conduct, unlawful behaviour, misfeasance, wrong conduct, misdemeanour etc. Since there are different meanings of that expression, the same has to be construed with reference to the subject and the context wherein it occurs. Regard has to be paid to the aims and objects of the statute.

92. In a case reported in Union of India (UOI) and Others Vs. J. Ahmed, , their Lordship of Hon''ble Supreme Court held that failure to take any effective preventive measures like error in judgment in evaluating developing situation or failure to visit the scenes of disturbance to perform duty in certain manner are shortcomings in the personal capacity or degree of efficiency. Such allegation of personal quality could not constitute misconduct for the purpose of disciplinary proceedings. To reproduce relevant portion from the judgment of J. Ahmed (supra), which is as under:--

11. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post 513 and allows the enemy to slip through, there are other more familiar instances of which a railway cabin-man signals in a train on the same track where there is a stationary train causing headlong collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil [see Navinchandra Shakerchand Shah v. Manager, Ahmedabad Co-op. Department Stores Ltd. (1)]. But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty.

13. ...It is alleged that respondent showed complete lack of leadership when disturbances broke out and he disclosed complete inaptitude, lack of foresight, lack of firmness and capacity to take firm decision. These are personal qualities which a man holding a post of Deputy Commissioner would be expected to possess. There may be relevant considerations on the question of retaining him in the post or for promotion, but such lack of personal quality cannot constitute misconduct for the purpose of disciplinary proceedings.

93. The ratio of J. Ahmed (supra) in case taken into consideration then the facts and circumstances and the material on record do not constitute misconduct as the allegation relating to petitioner is lack of leadership qualities though that too seems to be not correct keeping in view the facts and circumstances of the case.

5. Subject to aforesaid interpretation of misconduct, the controversy in question may be considered. The impugned chargesheet dated 28.3.2008 was served on the petitioner containing two charges which in its totality, are reproduced as under:--

(Vernacular matter omitted.... Ed.)

6. From the plain reading of the chargesheet, it is evident that the charges against the petitioner broadly relates to factual controversy for which the petitioner has filed the writ petition in the High Court. Under the charge No. 1, it is categorically framed that the petitioner had filed Writ Petition No. 977 (S/B) of 2007 where interim order was passed on 27.8.2007. In pursuance of the interim order, the petitioner resumed duty at Lucknow and started working without any formal order from the Government. The charge No. 2 also more or less, relates to same controversy. According to it, the petitioner has not complied with the transfer policy on 30.6.2007 according to which the employees who are transferred, should resume duty at the transferred place within a specified period. Both the charges co-relate to each other.

7. Petitioner's counsel relied upon the case reported in Dr. Rohit Gupta Vs. The Principal, S.N. Medical College, Agra and others, , Medical College, Agra and others wherein, their Lordships while delivering the judgment held that no authority can say that it will not comply the judgment and order of this court. The judgments of the High Court are binding. The relevant portion from the aforesaid judgment is reproduced as under:--

5. We are distressed to note from Annexure-7 to the petition that the Principal has taken a stand that he will take action in respect of the judgment of the Full Bench of this court only when he receives some communications from the State Government. This action of the Principal, in our opinion, amounts to contempt of court. No authority can say that it will not comply without judgment of this court unless it has received a communication from the State Government. The judgments of this court are binding on all authorities automatically and it is not that they become binding only when approved by the State Government. It is surprising that the Principal of a medical college has taken a wholly illegal and untenable stand in Annexure-7 to the writ petition. We were inclined to issue contempt notice but we refrained ourselves from doing so as we feel that he has issued the letter which is Annexure-7 in ignorance of the legal position but we will grant no further indulgence to him in future. The Principal of S. N. Medical College, Agra and all other authorities in the State must know that orders of this Court are binding on them automatically and must be faithfully and punctually complied with, and such authorities cannot take a stand that they will comply

with the judgment of this court only when they receive some communication from the State Government. In future this Court will not tolerate this kind of attitude from any authority and all authorities are cautioned against taking up such attitude in respect of the orders or judgment of this Court.

8. While serving chargesheet virtually, the State Government had tried to interfere with the administration of justice. The Government should not have objected against the petitioner's resumption of duty in pursuance of the order passed by this Court.

Once an interim order is passed, it shall be deemed to substitute the order or decision of the State Government and employees will have right to resume duty in compliance of the order or judgment of the High Court, without awaiting any formal order from the State Government.

9. Experience shows that whenever interim orders are passed or final judgments are delivered, the authorities are not pleased with the employees and they try to keep the matter pending for indefinite period. No early decision is taken by the authority or the Government in pursuance of the order passed by the courts. In consequence thereof, this court is flooded with contempt petitions.

10. The present case is also another example where the State Government has not only objected from resumption of duty but also issued a chargesheet to the petitioner because the petitioner approached this court and interim order was passed in his favour by the Division Bench. In case the Government was aggrieved by the interim order passed by this Court, then appropriate remedy was to file a SLP under Article 136 of the Constitution before the Hon'ble Supreme Court of India instead of objecting the resumption of duty by the petitioner.

11. It is well settled proposition of law that right of citizen to approach higher judiciary or even subordinate courts in accordance with law for judicial review of the State actions, are covered by basic structure doctrine vide, His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, ; Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, and others Waman Rao and Others Vs. Union of India (UOI) and Others, ; Raja Ram Pal Vs. The Hon'ble Speaker, Lok Sabha and Others, ; P.R. Transport Agency Vs. Union of India (UOI), ; Kihoto Hollohan Vs. Zachillhu and Others, .

Citizens have right to approach this Court against the orders or decision taken by the State Government for judicial review and the exercise of such right cannot be objected or obstructed for any reason whatsoever. The petitioner has suffered mental pain and agony on account of highly arbitrary action on the part of the State Government. The Government should not have served the chargesheet which is broadly based on petitioner's filing of writ petition in this Court. Such action on the part of the State Government is deprecated.

12. The petitioner attained the age of superannuation in 2011. However, he has

not been paid retiral dues rather, he suffered mental pain and agony and hardships on account of State actions. In view of the above, he is entitled for exemplary costs in view of law laid down by the Hon"ble Supreme Court in the case reported in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), .

Petitioner also seems to be entitled for interest in view of Apex Court judgment reported in Dr. Uma Agrawal Vs. State of U.P. and Another, .

Accordingly, the writ petition is allowed with costs which is quantified to Rs. 2,00,000.00 (two lakhs). A writ in the nature of certiorari is issued quashing the impugned chargesheet dated 28.3.2008 contained in Annexure No. 1 to the writ petition.

The cost shall be deposited in this Court within three months from today. Out of Rs. 2,00,000.00, the petitioner shall be entitled to withdraw an amount of Rs. 1,00,000.00 (one lakh) and rest amount shall be remitted to Mediation and Conciliation Centre, High Court, Lucknow Bench, Lucknow.

Further direction is issued to respondents to pay the retiral dues along with interest to the petitioner in accordance with rules expeditiously say, within four months from the date of receipt of a certified copy of this order. In case, the cost is not deposited the District Magistrate, Lucknow shall recover the same as land revenue and remit to this Court after three months. Registry of this Court to take follow up action.

It shall be open to the Chief Secretary, U.P. Government to recover the cost from the Principal Secretary, or the officer who took decision and approved for service of chargesheet.