
(2010) 12 DEL CK 0098

In the Delhi High Court

Case No : Writ Petition (C) No. 20 of 2000

Ex-Ct Nardev

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-12-2010

Acts Referred:

Citation : (2011) 180 DLT 328

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : Tek Chand Sharma, for the Appellant; Ashwani Bhardwaj, for the Respondent

Judgement

Gita Mittal, J.—This writ petition has been filed by the Petitioner assailing the order dated 19th July, 1999 of removal of the Petitioner from service on the sole ground that the Petitioner had completed his matriculation and had been issued a certificate from Central Board of Higher Secondary Education, New Delhi. The Respondents have taken a plea that this Board had not been recognized by the Ministry of Human Resource Development, Government of India. The Petitioner has assailed his removal on the ground that the recruitment rules which were applicable at the time of the Petitioner's recruitment on 1st April, 1990 did not contain any such stipulation and consequently the Petitioner's removal was bad in law. It is noteworthy that the Petitioner's appeal against order of removal was rejected by the competent authority by an order dated 27th October, 1999 on the same ground. The Petitioner has also challenged the order dated 27th October, 1999 passed by the appellate authority rejecting his appeal.

2. This very issue has been the subject matter of several writ petitions filed in this Court. In a judgment dated 27th August, 2002 passed in Tarachand v. Union of India and Ors. W.P.(C) No. 5552/2000, this Court had held as follows:

10. A perusal of the said Rule would, Therefore, show that at the relevant point of time, no educational qualification was necessary for obtaining an employment

in the post of a Constable.

11. It stands accepted that the Petitioner filed the said certificate in the year 1986. It also is not in dispute that the recruitment process began in the year 1986.

xxx xxx xxx 12. Once the certificate is held to be genuine, the question of producing a false certificate would not arise. The question which ought to have been raised in the afore-mentioned situation was as to whether the Petitioner obtained employment in violation of the essential conditions of service rules. The services rules were amended in the year 1987 whereas the recruitment process had started in the year 1986. Only because the Petitioner had filed the certificate to show his educational qualification, it cannot be said that he committed a misconduct of filing a false certificate to secure employment. The question of filing a false certificate to secure employment would arise provided holding of the said qualification was an essential term in terms of the statutory rules or otherwise.

xxx xxx xxx 15. In *Probodh Kumar Bhowmick v. University of Calcutta and Ors.* 1994 (2) C LJ 456, it was observed:

14. Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down exhaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, "improper behavior; intentional wrong doing on deliberate violation of a rule of standard or behavior:

Misconduct is a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law, a forbidden act. It differs from carelessness. Misconduct even if it is an offence under the Indian Penal Code is equally a misconduct.

15. Even in Industrial laws, acts of misconduct specified in standing order framed under Industrial Employment (Standing Order) Act, 1946 is not treated to be exhaustive. Various misconducts specified in Clause 14(3) of Model Standing Order are merely illustrative.

16. In (5) *Mahendra Singh Dhantwal Vs. Hindustan Motors Ltd. and Others*, , a three Judge Bench of the Supreme Court observed "standing orders of a company only describe certain cases of misconduct and the same cannot be exhaustive of all the species of misconduct which a workmen may commit. Even though a given conduct may not come within the specific terms of misconduct described in the standing order, it may still be a misconduct in the special facts of a case, which it may not be possible to condone and for which the employer may take appropriate action.

17. Even in the absence of the rules specifying misconduct, it would be open to the employee to consider reasonably what conduct can be properly treated as

misconduct.

See (6) W.M. Agnani v. Badri Das (1963) 1 LLJ 684 .

18. In (7) Delhi Cloth and General Mills Co., Ltd. Vs. Workmen and Others etc., at Shah, J. states "misconduct spreads over a wide and hazy spectrum of industrial activity; the most seriously subversive conducts rendering an employee wholly unfit for employment to mere technical default covered thereby.

19. To some extent, it is a civil crime, which is visited with civil and pecuniary consequences. See (8) Rama Kant Misra Vs. The State of Uttar Pradesh and Others, .

20. The Supreme Court in (9) State of Punjab and Ors. v. Ram Sing Ex. Constable upon which Mr. Mukherjee himself has placed reliance upon held:

5. Misconduct has been defined in Black's Law Dictionary, Sixth Edition at Page 999 thus:

A Transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior, its synonyms are misdemeanour, misdeed, misbehavior, delinquency, impropriety, mismanagement, offence, but not negligence or a carelessness.

Misconduct in offence has been defined as:

Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office holder had no right to perform, acts performed improperly and failure to act in the face of an affirmative duty to act.

21. P. Ramanath Aiyar's Law Lexicon, Reprint Edition 1987 at Page 821 defines "misconduct" thus:

The term misconduct implies a wrongful intention and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act and is necessarily indefinite. Misconduct in office may be defined as unlawful behavior or neglect by a public officer, by which the rights of a party have been affected.

6. Thus it could be seen that the word "misconduct" though not capable of precise definition, on 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 behavior; unlawful behavior, willful 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."

16. This aspect of the matter has recently been considered by the Apex Court in *Baldev Singh Gandhi Vs. State of Punjab and Others*, in the following terms:

9. "Misconduct" has not been defined in the Act. The word "misconduct" is antithesis of the word "conduct". Thus, ordinarily the expression "misconduct" means wrong or improper conduct. Unlawful behavior, misfeasance, wrong conduct, misdemeanour etc. There being different meaning of the expression "misconduct", we, Therefore, have to construe the expression "misconduct" with reference to the subject and the context wherein the said expression occurs. Regard being had to the aims and objects of the statute..

In the light of the above discussion, in *Tara Chand's* case, the court concluded as follows:

17. Can it, in the afore-mentioned premise, be said that the Petitioner has committed a misconduct? The answer thereto must be rendered in the negative. Firstly, the Petitioner did not file any false or forged document with a view of securing employment; secondly, the qualification of holding a matriculation certificate being not essential, it is wholly immaterial as to whether such a certificate was filed for the purpose of showing the educational qualification held by the Petitioner; and thirdly, the rules which were prevailing at the time when the recruitment process started would be applicable in the instant case (See *A.A. Calton Vs. Director of Education and Another*, *P. Mahendran and others Vs. State of Karnataka and others*,)

(Emphasis furnished)

3. Placing reliance on the above observations, *Zile Singh v. Union of India* W.P. (C) No. 2932/1995 was allowed by a judgment dated 18th March, 2010. Yet another *Ex. Lance Nayak Ved Prakash v. Union of India and Ors.* W.P.(C) No. 3225/2003 was also allowed on 10th March, 2010.

4. In view of the aforenoticed principles and abiding judicial precedents, it has to be held that the allegations made against the Petitioner which were the subject matter of the charge on which the disciplinary enquiry was held prior to his removal from service, did not constitute misconduct and in any case these allegations have not been substantiated. The applicable rules contained no prescription in the rules of possession of the matriculation certificate by a Board or a institute recognized by Ministry of Human Resource Development or Central

Board of Secondary Education. As such, the conclusion arrived at by the disciplinary authority as well as appellate authority are based on irrelevant material and are contrary to rules.

5. It is noteworthy that the Petitioners had rendered nine years satisfactory service without any complaint in the discharge of his duties.

6. In view of the above, the orders dated 19th July, 1999 passed by the disciplinary authority removing the Petitioner from service as well as order dated 27th October, 1999 passed by the appellate authority, are not sustainable in law and are hereby set aside and quashed.

As a result of the above, the Respondents are directed to forthwith reinstate the Petitioner with all consequential benefits including continuity in service benefits, seniority and notional promotions from the date when their immediate juniors were promoted with full back wages etc. Orders in this behalf shall be passed within a period of eight weeks from today.

7. It is noteworthy that the adjudication by this Court in the judgment dated 27th February, 2002 in Tarachand v. Union of India and Ors. WP(C) No. 5552/2000 has attained finality. The Respondents were bound to follow the law laid down in the said judgment and implement the same.

Yet this writ petition has remained pending in this Court since 2000.

8. The subsequent judgment dated 18th March, 2010 in Zile Singh v. Union of India WP(C) No. 2932/1995; on 10th March, 2010 in Ex. Lance Nayak Ved Prakash v. Union of India & Ors. W.P.(C) No. 3225/2003 on 7th August, 2010 in Golukendra Mann v. Union of India WP(C) No. 2583/2010 and on 4th June, 2010 in Nek Mohd. v. Union of India and Ors. WP(C) No. 5135/2003 also did not motivate the Respondents to take action. This non action necessitated the present adjudication.

9. It is noteworthy that while allowing Nek Mohd. v. Union of India W.P.(C) No. 5135/2003 dated 4th June, 2010, we had directed the Respondents to send a copy of this judgment to all similarly situated persons mentioned in the list which was placed by the Respondents in the said judgment. Despite these directions, it appears that no remedial action was initiated by the Respondents.

10. We may note that the Petitioner/Constable Nardev Singh has been constrained to file an application bearing CM No. 13656/2010 dated 27th September, 2010 requesting for early hearing in the matter in view of the judicial pronouncements. Despite pendency of this application ever since and its listing on at least two dates prior thereto, no steps have been taken at all by the Respondents to ensure justice to the Petitioner.

11. In view of the above, we are of the view that the Petitioner is entitled to costs of this adjudication which has been necessitated purely and squarely for the fault of the Respondents. We may note that valuable judicial time has been

unnecessarily required to be expended on such matters which rest on settled law. The judicial pronouncements aforementioned have attained finality and have been even implemented by the Respondents. We find the failure of the Respondents to take positive action in the matter as completely unjustified and unwarranted.

12. We deem it necessary to note that such non-compliance with settled law was considered by the Supreme Court. In the pronouncements reported at *Shri Baradakanta Mishra Ex-Commissioner of Endowments Vs. Shri Bhimsen Dixit*, , the Supreme Court has commented on failure of authorities to follow judgments. The court had held as follows:

The conduct of the Appellant in not following previous decisions of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of Contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggest that his conduct falls within the purview of the law of Contempt . Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly the deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the Rule of Law and engender harassing uncertainty and confusion in the administration of law" (para 15)

13. The observations of the Gujarat High Court in the judgment reported at *State of Gujarat Vs. Secretary, Labour Social Welfare and Tribunal Development Deptt. Sachivalaya and Another*, on the same issue are topical and read as follows:

In a government which is ruled by laws, there must be complete awareness to carry out faithfully and honestly lawful orders passed by a court of law after impartial adjudication. Then only will private individuals, organizations and institutions learn to respect the decisions of Court. In absence of such attitude on the part of all concerned, chaotic conditions might arise and the function assigned to the courts of law under the Constitution might be rendered a futile exercise.

14. These judgments have been relied by one of us (J.R. Midha, J) in a judgment dated 12th November, 2009 in MAC App. No. 284/2008 entitled *Head of Deptt. Air Force Station, Amla and Anr. v. Ram Kumar Giri through L Rs.* and held that:

34. If the executive does not follow the certain well settled law laid down by the Hon"ble Supreme Court, it shall create confusion in the administration of justice and undermine the law laid down by the Apex Court and shall impair the

constitutional authority of the Apex Court. The disobedience of the law laid down by the Court shall also amount to contempt of Court.

15. The instant case manifests such conduct of the Respondents. The present adjudication has been necessitated only because the Respondents have failed to abide with the dicta laid down by this Court in the judgment passed as back as in 2002 and subsequently.

16. It, therefore, needs no elaboration that failure to abide by the principles laid down by the Supreme Court as well as by this Court in the aforementioned binding judicial precedents would render the authorities liable for proceedings under the Contempt of Court Act.

We have brought this noteworthy aspect to the notice of the Respondents and are refraining from taking further action on this occasion.

17. There is yet another aspect to this matter. The failure of the executive to abide with the well settled legal principles generates unwarranted and frivolous litigation. This very issue has also been considered in *Head of Deptt. Air Force Station v. R.K. Giri* through *L Rs. (supra)*.

18. For the reasons and the ratio of the aforementioned judicial precedents, we are of the view that the present writ petition was wholly unnecessary and the Respondents should have voluntarily taken the initiative to grant such relief to the Petitioners to which they were entitled in view of the rule position as well as the principles of law laid down by this Court which had been affirmed by the Division Bench as well as by the Supreme Court. Valuable judicial time has been wasted. The Petitioners, positioned as they are, can ill afford this kind of litigation. The Respondents are therefore liable to pay costs of this litigation.

However, it is clear that in case the judicial pronouncements are not complied with and action taken at the earliest by the Respondents, we would be compelled to take more serious view in the matter.

19. The Petitioner is directed to be reinstated in service with consequential benefits of seniority and notional promotional from the date his juniors were promoted with full back wages.

20. The costs in the matter are quantified at Rs. 10,000/-.