

(2014) 12 CAL CK 0057
In the Calcutta High Court
Case No : WPCT 92 of 2011

Harul Al Rasid

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : AIR 2015 Cal 49 : (2015) 2 CHN 464 : (2015) 144 FLR 564 : (2015) 1 LLJ 134 : (2015) 2 LLN 85 : (2015) 1 SCT 512

Hon'ble Judges : Shubhro Kamal Mukherjee, J; Nishita Mhatre, J; Harish Tandon, J

Bench : Full Bench

Advocate : Achin Kumar Majumder, Advocate for the Appellant; Moloy Kumar Das and Aparna Ghosh, Advocate for the Respondent

Judgement

Nishita Mhatre, J.—The following question has been referred to us for determination:

"When a disciplinary proceeding is quashed including the order of dismissal from service and the matter is remanded back to the Disciplinary Authority for starting the proceeding de novo from the stage of enquiry would the delinquent be entitled to be reinstated and be allowed to join their duty as a matter of right?"

2. The brief facts which have given rise to the aforesaid question in the present case are as follows:

"The petitioner was suspended pending a disciplinary enquiry which was to be held against him on 26th December, 2001. A charge-sheet was issued to him alleging that he had submitted false certificates and documents in order to procure employment as a Gangman with the respondents. The petitioner submitted a representation to the authorities to provide him with documents which were relevant for effectively defending himself. On conclusion of the evidence before him, the Enquiry Officer submitted his findings on 23rd

December, 2003. The Enquiry Officer held that the petitioner was guilty of the charges levelled against him. A second show cause notice was issued to the petitioner on 3rd September, 2004 directing him to show cause as to why the punishment of dismissal should not be imposed on him. The petitioner's reply to the show cause notice was not accepted by the respondents and he was removed from service on 23rd February, 2005. The appeal preferred by the petitioner was rejected by the Appellate Authority on 21st April, 2005. The petitioner and two other employees who were dismissed for the same acts of misconduct, approached the Administrative Tribunal to challenge the order of dismissal issued against each of them by filing three separate applications. The three applications being O.A. 810 of 2005, O.A. 811 of 2005 and O.A. 812 of 2005 were decided by a common order on 3rd June, 2010 by the Tribunal. The Tribunal quashed and set aside the order of removal and remanded the matters to the Appellate Authority for fresh consideration."

3. The other employees, whose applications were decided along with the petitioner's application, approached this Court by filing WPCT 245 OF 2010. The Division Bench of this Court (P.K. Chattopadhyay and A.K. Dasadhikari, JJ.) disposed of the writ petition by remanding the matter to the disciplinary authority and directing it to take a fresh decision in the matter from the stage of completion of the enquiry proceedings. The Division Bench also directed that since the order of dismissal was quashed, the employees should be permitted to resume duty immediately. It further directed that other consequential benefits should be granted to the employee within three weeks from the date of communication of the order.

4. In the present case, another Division Bench (A.K. Banerjee and Dr. M.K. Chaudhuri, JJ.), held that it was not possible to agree with the observations of the earlier Division Bench that the delinquent employee should be permitted to resume duty because the order of dismissal was quashed. The Division Bench has concurred with the view of the earlier Division Bench that the Tribunal ought to have remanded the matter to the Disciplinary Authority. However it has held that it was not possible to accept the direction of the earlier Division Bench to permit the delinquent employee to resume duty when the disciplinary enquiry has been set aside because there were irregularities in the decision making process. The Division Bench observed that considering the gravity of the charges it would not be proper to permit the petitioner to resume duty. As the Division Bench differed with the view taken by the earlier Division Bench, the aforesaid question has been referred to us for adjudication.

5. The Administrative Tribunal has been empowered to deal with the service matters in relation to employees of the State Government or Central Government or of local authority or a corporation or society owned or controlled by the Government. Service matters include issues relating to the maintenance of discipline at the workplace by the employees. All acts of the State Government or Central Government or the aforesaid bodies taken to regulate orderliness or

discipline including the conduct of disciplinary proceedings against a delinquent employee can be questioned before the Administrative Tribunal. The Administrative Tribunal may decide such issues circumscribed by the power vested in it by the Administrative Tribunals Act, 1985.

6. A departmental enquiry held against a delinquent workman may be set aside for various reasons including (i) that the delinquent employee was not afforded an opportunity to be heard and therefore there was a violation of principles of natural justice and fair play, (ii) that there was a procedural defect in the conduct of the disciplinary enquiry, (iii) that the second show cause notice had not been issued to the delinquent employee calling upon him show cause why the proposed punishment should not be imposed on him, (iv) that the Disciplinary Authority has differed with the view of the Enquiry Officer without giving an opportunity to the delinquent of being heard etc.

7. In any of the aforesaid cases it would be necessary for the employee to substantiate his allegation that the enquiry was defective and therefore, it was required to be quashed. While doing so it is also necessary for the delinquent employee to indicate the prejudice caused to him by the non-observance of the rules of natural justice and fair play.

8. Once the departmental enquiry has been set aside because it is patently defective, the issue arises whether an employee is entitled to be reinstated. In normal circumstances a delinquent employee who has been dismissed from service on the basis of a defective enquiry would be entitled to reinstatement with all consequential benefits. However, if the Tribunal decides that the matter should be remanded to a stage before completion of the enquiry, the employee must be put back into the same position as he was prior to the decision of the disciplinary authority. In the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., the Constitution Bench of the Supreme Court considered whether the report of an Enquiry Officer or authority appointed to hold a departmental enquiry against a delinquent employee should be furnished to the employee. The Court held thus:

"31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not

setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the enquiry, by placing the employee under suspension and continuing the enquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh enquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the enquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh enquiry from the stage of furnishing the report and no more, where such fresh enquiry is held. That will also be the correct position in law.

(emphasis supplied)

9. This view has been reiterated by the Supreme Court in the case of State of Punjab & Ors. v. Dr. Harbhajan Singh Greasy reported in (2005) 8 SCC 264, Vidya Vikas Mandal and Another Vs. The Education Officer and Another, and U.P. State Textile Corporation Ltd. Vs. P.C. Chaturvedi and Others, .

10. In the case of Chairman, LIC of India and Others Vs. A. Masilamani, the Supreme Court considered the effect in service jurisprudence on the employment of a delinquent employee who has been subjected to a defective disciplinary enquiry. The employee in the aforesaid case was working with the LIC as a Higher Grade Assistant. He applied and obtained a housing loan from an institution to construct his house. He also applied for another housing loan from the LIC under the Corporation's Scheme. The loan was sanctioned after completion of all the requisite formalities. The Corporation thereafter noticed that there were certain irregularities and deviations with respect to the construction of the house and that the loan had been obtained from the LIC as a result of non-disclosure of the requisite facts. A charge-sheet was issued to the employee. He denied the charges levelled against him. As the employee's explanation was not found to be satisfactory, a departmental enquiry was conducted against him. The report was submitted by the Enquiry Officer and a copy of the same was served on the employee with a notice to show cause. The reply was furnished by the employee and after considering the report as well as the reply the disciplinary

authority imposed the punishment on the employee which had been proposed in the show cause notice of reduction in the basic pay to the minimum amount in the time scale. The statutory appeal available to the employee was dismissed after which he preferred a representation to the Chairman of the LIC. That appeal was also dismissed. Aggrieved by the order, the employee preferred a writ petition for quashing the enquiry proceeding and consequential orders. The writ petition was allowed by a learned Single Judge of the Madras High Court who observed that the enquiry was conducted in violation of the statutory rules applicable and in breach of the principles of natural justice. This was because the delinquent was not afforded an adequate opportunity to cross-examine the witnesses. The High Court further held that the Appellate Authority had not applied its mind judicially and had merely concurred with the decision of the disciplinary authority. The Division Bench of the High Court dismissed the appeal preferred by the LIC. Aggrieved by that order the LIC moved the High Court.

11. Two issues were dealt with by the Supreme Court in this case, namely:

"15.1. When a court/tribunal sets aside the order of punishment imposed in a disciplinary proceeding on technical grounds i.e. non-observance of statutory provisions, or for violation of the principles of natural justice, then whether the superior court, must provide opportunity to the disciplinary authority to take up and complete the proceedings from the point that they stood vitiated; and

15.2. If the answer to Question 1 is that such fresh opportunity should be given, then whether the same may be denied on the ground of delay in initiation, or in conclusion of the said disciplinary proceedings."

12. After considering its earlier judgments in the case of Managing Director, ECIL, Hyderabad (*supra*), *Hiran Mayee Bhattacharyya v. S.M. School for Girls* reported in (2002) 10 SCC 293, *U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another*, and *Union of India (UOI) Vs. Y.S. Sadhu, Ex-Inspector*, held that when an order of punishment is set aside because of infirmities in the disciplinary proceedings, reinstatement cannot be ordered as a matter of course. The Court opined that whether an employer should be granted opportunity to hold an enquiry *de novo* or to complete the enquiry from the point that it stood vitiated depended on the gravity of the delinquency involved and the magnitude of the misconduct alleged. The Court observed further that the departmental enquiry should not generally set aside on the ground of delay in its initiation as such a power is *de hors* the limits of judicial review. In the event the Court or Tribunal exercises such power, it exceeds its power of judicial review at the very threshold. The Court, therefore, observed that normally a charge-sheet or show cause notice issued during the course of departmental proceedings cannot be quashed by the Court. The same principles were applicable where there is a delay in conclusion of the disciplinary proceedings. The Supreme Court observed that the Court or Tribunal must consider all the relevant facts and balance and weigh the same so as to determine whether it is in the interest of clean and honest administration that the judicial proceedings should be allowed to be

terminated on the ground of delay in their conclusion.

13. This view has been reiterated by the Supreme Court in the case of *Shri Anant R. Kulkarni Vs. Y.P. Education Society and Others*, . However based on the facts in this case, where both the School Tribunal and the learned single judge of the Bombay High Court had found that the enquiry was conducted without complying with the rules applicable and had also exonerated the employee, the Supreme Court did not permit the employer to hold an enquiry de novo.

14. Thus, it is evident that in case of service jurisprudence a delinquent would not be entitled to be reinstated as a matter of right if the disciplinary proceedings have been quashed due to technicalities and a defective enquiry. If the enquiry is to be started de novo the delinquent would not be entitled to be reinstated. This would be more so when an employee is placed under suspension pending the enquiry and the enquiry held against him has been set aside for irregularities or because of a procedural defect. The Court may opine whether the enquiry should either start de novo or from the point at which the defect occurred, depending on the service rules applicable. However, the employee would be placed in the same position that he was before the order of punishment was imposed on him, that is, he would still continue under suspension. If the service rules applicable to an employee warrant the reinstatement of the employee in service due to a defective enquiry, the Court would not hesitate in reinstating him unless as the Supreme Court has observed, the charge against the delinquent is of such magnitude and the gravity of the misconduct does not warrant the reinstatement of the delinquent in service during the pendency of the enquiry. This is because the Court has to balance all factors and determine whether it would be in the interest of justice and better administration to reinstate the employee while the disciplinary enquiry proceeds de novo or from the point at which it was vitiated.

15. Similarly under Industrial Jurisprudence an employer is not bound to reinstate an employee immediately the Labour Court or Industrial Tribunal finds that a defective enquiry has been conducted against a delinquent workman. The employer is extended an opportunity to lead evidence before the industrial adjudicator to prove the charges against the charge sheeted workman. After considering the ratio pronounced in several of its earlier judgments, the Supreme Court while deciding the case of *The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others*, held that an employee cannot be reinstated only because there is a defective enquiry conducted against him or if he has been dismissed without holding an enquiry. The employer is permitted to lead the evidence in the Industrial Tribunal or Labour Court to prove the allegations or misconduct against the employee. This is because the Supreme Court observed that it would only delay matters further if the workman was reinstated and a fresh disciplinary enquiry was held by the employer. If it went against the workman he would probably seek a reference again under Section 10 of the Industrial Disputes Act, 1947 for adjudication of his dispute before the Tribunal. In order to avoid this situation the Supreme Court opined that the

employee would continue to be out of service even though the enquiry was vitiated till the employee proved the charges before the industrial adjudicator. Thus even in industrial jurisprudence a delinquent workman is not entitled to reinstatement immediately after the industrial adjudicator decides, as a preliminary point, that either there was no enquiry held or that a defective domestic enquiry had been held against the workman. It is only when the employer leads evidence before the Industrial Tribunal or Labour Court and is unable to prove the charges against the workman that he is entitled to be reinstated with consequential benefits.

16. The aforesaid question referred to as is answered as follows:

"A delinquent is not entitled to be reinstated as a matter of right when a disciplinary enquiry held against him has been quashed and the matter is remanded to the disciplinary authority for proceeding de novo from that stage of the enquiry. The relief of reinstatement at that stage would be dependent on the gravity and the magnitude of the misconduct alleged against him."

17. WPCT No. 92 of 2011 be placed before the regular Court for determination on merits.