

(2014) 06 AP CK 0127
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 565 of 2014

Hindustan Petroleum Corporation Ltd.	APPELLANT
Vs	
V. Srinivasa Rao	RESPONDENT

Date of Decision : 09-06-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 417, 420, 466, 468, 471

Citation : (2014) 5 ALD 335 : (2014) 5 ALT 374

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : E. Manohar, Senior Counsel for Dr. P.B. Vijay Kumar, Advocate for the Appellant; M.V. Raja Raam, Advocate for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The respondents in W.P. No. 21244 of 2003 filed this Writ Appeal, feeling aggrieved by the order, dated 31.01.2014, rendered by a learned Single Judge of this Court. The sole respondent herein filed the writ petition.

2. The facts, in brief, that gave rise to filing of the writ appeal, are as under.

3. The 1st appellant, namely, M/s. Hindustan Petroleum Corporation Limited (for short "the Corporation"), is a State owned oil company, appellants 2 to 5 are the Officers by designation at various levels, and appellants 6 to 9 are the persons, who held different posts in the Corporation.

4. The respondent filed the writ petition, challenging the order, dated 23.05.2003, passed by the Corporation, through which he was dismissed from the post of electrician. He stated that he belongs to Scheduled Tribe and, initially, he joined as a workman in M/s. Visakha Refineries in the year 1987, and when the Corporation issued an advertisement for various posts exclusively for Scheduled Castes and Scheduled Tribes, he too applied for the post of Junior Maintenance Technician and was selected and appointed in that post. It is also

stated that his services were regularized with effect from 03.07.1989, and in the year 1998, he was transferred to Vijayawada.

5. The respondent stated that a complaint was submitted against him in G. Konduru Police Station by the 7th appellant, alleging certain offences, and as a result, he was arrested and sent to judicial custody by the Court of the VI Metropolitan Magistrate, Vijayawada. It is also stated that on 22.04.2002, a charge sheet was issued to him, alleging that he procured employment through impersonation and filing false documents, and that the same amounts to misconduct under Clauses 31.4, 31.22, 31.25 and 31.36 of the Standing Orders of the Corporation. The allegation was that the respondent somehow got possession of certificates of one Mr. Veeramalla Srinivasa Rao and claiming himself to be the said Srinivasa Rao, he secured the employment. The respondent filed explanation denying the charge. An Enquiry Officer was appointed and a report was submitted by him, holding that the charges against the respondent were proved. Taking the same into account, the Disciplinary Authority issued a show-cause-notice to the respondent, requiring him to explain as to why, he be not dismissed from service. Thereafter, an order of termination was passed.

6. The plea of the respondent was that he did not impersonate anyone, and not only a false criminal case was filed against him, but also disciplinary proceedings were initiated, framing baseless charges. He further pleaded that the Enquiry Officer gave an incomplete and ex parte report holding that the charges are proved, and that he was not given opportunity.

7. A counter affidavit was filed by the Corporation, opposing the writ petition. It was stated that the discreet enquiries revealed that the respondent's real name is Bhukya Tulsiram Naik and he impersonated as Srinivasa Rao. It was stated that the respondent has gone to the extent of stating that he did not file any certificates of qualification, much less, did he undergo any education worth its name, and that the employment was given to him, on the basis of his previous employment in Visakha Refineries. It is urged that there is no record to disclose that the respondent has ever worked in any refinery and the question of employing an uneducated person in a skilled post of technician does not arise.

8. The learned Single Judge allowed the writ petition, taking the view that the respondent was not given adequate opportunity by the Enquiry Officer, and that a fresh enquiry needs to be conducted after giving opportunity to the respondent. Direction was also issued to the Corporation to replace the Enquiry Officer and to conduct a de novo enquiry. Hence, this Writ Appeal.

9. Sri E. Manohar, learned Senior Counsel for the Corporation, submits that the respondent secured the employment in the Corporation, by using the certificates of another person, and that as soon as the truth came out, a complaint was submitted and disciplinary proceedings were initiated. He submits that the respondent has chosen not to participate in any enquiry, despite repeated

opportunities have been given to him, and that the direction issued by the learned Single Judge cannot be sustained in law. He submits that every possible accommodation in the context of fixing the dates of enquiry was made to the respondent, and still, he did not appear, at any stage.

10. The learned Senior Counsel further submits that the witnesses that were examined in the enquiry including the person, by name, Veeramalla Srinivasa Rao, whose certificates were filed at the time of recruitment, clearly stated that his certificates were used by the respondent for securing the employment, and that the Sub Inspector of Police, who conducted the enquiry, had identified those certificates, and it emerged that the respondent impersonated, for procuring the employment. He submits that there would have been justification to hold that the principles of natural justice were violated, if only no opportunity was given to the respondent in the course of enquiry. He contends that the record clearly discloses that the respondent deliberately avoided his appearance in the enquiry, obviously feeling embarrassment to face the truth.

11. Sri M.V. Raja Ram, learned counsel for the respondent, on the other hand, submits that the allegations and the charges against his client are not proved and the entire exercise was resorted to, only because the acts of harassment of Scheduled Tribe employees in the Corporation were being highlighted by the respondent and other employees of that category. He submits that though the order of dismissal in its entirety was liable to be set aside without leaving scope for any further proceedings, the learned Single Judge has directed to conduct a de novo enquiry, and since the respondent is prepared to face it, no exception can be taken to the order under appeal.

12. The respondent was appointed as Junior Maintenance Technician, through proceedings, dated 03.10.1988. It appears that initially, he was posted at Visakhapatnam, and thereafter, he was transferred to Vijayawada. He was issued a charge sheet on 22.04.2002. On the basis of his arrest on 15.03.2002, in relation to Crime No. 28 of 2002 on the file of G. Konduru Police Station, alleging the offences punishable under Sections 417, 420, 466, 468 and 471 IPC, he was arrested and was released on bail on 28.03.2002. The allegation against the respondent was that he secured the employment in the Corporation, by furnishing false information regarding his qualifications and committed fraud and dishonesty with the Corporation in submitting false documents and, thereby, resorted to acts of misconduct, defined under the standing orders of the Corporation. In the body of the notice, it was mentioned that for the posts of Junior Maintenance Technician and Electrician, the minimum qualifications are SSC and ITI, and the qualified candidates were subjected to written test, and that the certificates, on the basis of which, the respondent appeared in the written test, were found to be of a different person.

13. The respondent submitted a reply, which is somewhat curious. He stated that he did not undergo any formal education at all, much less, did he pass SSC or ITI. According to him, he was, initially, appointed as a worker in the Visakha

Refinery, and when a notification was issued for limited recruitment, he submitted an application, and thereafter, appeared in the written test. Faced with this peculiar reply, the disciplinary authority appointed an Enquiry Officer and a report was submitted by him, holding that the charges were held proved and that led to an order of dismissal. The principal ground of attack of the order of dismissal was that an opportunity was not given to the respondent by the Enquiry Officer.

14. If, in fact, the Enquiry Officer did not give the respondent an opportunity or proceeded with undue haste, the plea, in this behalf, can certainly be accepted. If, on the other hand, the respondent was put on notice about the dates of enquiry and he did not choose to attend the same, the contention is bound to be rejected. To appreciate this aspect, it becomes necessary to take note of the proceedings before the Enquiry Officer.

15. A perusal of the record discloses that the Enquiry Officer issued a notice to the respondent, fixing the enquiry on 16.09.2002 at 11.00 a.m. A letter was written with the remark "door locked". Thereafter, the Enquiry Officer met the respondent in person and informed him that the enquiry would be hold on 12.10.2002 at 11.00 a.m. The respondent, however, did not appear on that day. In the afternoon, a phonogram was received, through which," the respondent asked for another date, stating that he is suffering from severe fever. Acceding to the request of the respondent, the enquiry was adjourned to 06.11.2002 and a registered letter to that effect was addressed to the permanent address of the respondent. Thereafter, the Enquiry Officer met the respondent and on that occasion also made a request to collect the subsistence allowance. The respondent appeared on 06.11.2002 and sought time to engage a defence counsel. The enquiry was adjourned to 13.11.2002. However, the respondent did not turn up on that day and the enquiry was adjourned to 16.11.2002. Even on that" occasion, the respondent did not turn up. 26.11.2002 was fixed for the next sitting and intimation was given through a registered letter, duly mentioning that if he does not turn up, the Enquiry would be conducted ex parte. This time also, he did not attend.

16. With a view to give one more opportunity to the respondent, the proceedings were adjourned to 05.12.2002. On that day, the respondent did not turn up, but a telegram was issued by a woman by name V. Sarika Bai from Kodad, stating that the respondent is hospitalized, due to chest pain. The Presenting Officer has produced certain documents in that sitting, which are to the effect that the respondent met some employees of Vijayawada Terminal at Ibrahimpatnam. Statements of the employees, whom the respondent met, were also recorded. The enquiry was adjourned to 09.12.2002, 17.12.2002, 23.12.2002 and 31.12.2002. On none of these days, the respondent appeared. The Enquiry Officer addressed a letter, dated 06.01.2003, imploring upon the respondent to appear in the enquiry. Even the threat by the Corporation, that the subsistence allowance would be withheld, if he fails to participate in the enquiry, did not have

any effect upon the respondent. Even that did not fructify. The enquiry was, ultimately, concluded on 11.01.2003.

17. The above narration clearly discloses that the respondent was determined not to attend the enquiry at all. It is important to note that the reasons mentioned by the respondent in the affidavit filed in support of the writ petition, as regards his failure to attend the enquiry, are somewhat curious. In para 7, he stated that though he made requests for postponement of the enquiry on health grounds, the Enquiry Officer did not accommodate and conducted the proceedings ex parte. In para 8, however, he stated as under.

"I submit that it is also necessary for me to have a protection from the hands of the official respondents who are involved not only taking a serious view of employees who are against the dictum of the official respondents otherwise, they will kill in a manner showing that such a person is dead either on account of accident or otherwise and police also involved in the issues since they have colluded with the respondents herein. Therefore, I am under apprehension that I may be killed at any time for no fault of mine."

18. It is not as if the Enquiry Officer took the charges as proved, taking advantage of the absence of the respondent. On behalf of the Corporation, M.W.I, the person by name Veeramalla Srinivasa Rao, whose certificates were said to have been utilized by the respondent, was examined as M.W.I. He filed copies of various testimonials and the complaint about the loss of certificates. The Sub Inspector of Police, who conducted the enquiry into the identity and social status of M.W.I, was examined as M.W.2. The Presenting Officer has also filed Ex. 12, a certificate issued by the Mandal Revenue Officer, Bellamkonda, which is to the effect that the photograph of the respondent was shown to the villagers of Chityal in the presence of the Sub Inspector of Police, G. Konduru P.S. and they identified him to be Tulsiram Naik, S/o Ramsingh of Sugali caste, a resident of Chityal Village, Bellamkonda Mandal, and that he is not Veeramalla Srinivasa Rao, S/o Govindaiah. The father of the respondent is also said to have been examined. Thus, before the Enquiry Officer not only the person, by name, Veeramalla Srinivasa Rao, S/o Govindaiah, appeared as M.W.I, but also filed the testimonials, marked as Exs. 1 to 13. The report of the Mandal Revenue Officer, to the effect that the respondent, who got the employment in the Corporation, is Bhukya Tulsiram Naik and not Srinivasa Rao, was also filed.

19. Whatever may have been the difficulty for the respondent in attending before the Enquiry Officer, at least, when the findings recorded against him were made known to him through a show-cause-notice issued by the disciplinary authority, he ought to have taken necessary steps. He has chosen to remain ex parte on that occasion also. He just spent away the time by sending telegrams seeking time and he did not submit any explanation at all. He repeated the theory of hospitalization in May, 2003 and, ultimately, invited the order of dismissal.

20. Principles of natural justice have their own sacrosanct and importance in the

administrative law. The underlying theme is that no person shall be subjected to any disadvantage, nor his rights shall be taken away, unless an opportunity of being heard is given. Further niceties of this principle apart, the violation thereof can be complained of, if only the concerned authority proceeded to visit a citizen with civil consequences, without conducting enquiry or without giving an opportunity of being heard. Once notice of hearing was issued and requests for adjournments were acceded to, an employee, who was determined not to participate in the enquiry cannot complain of violation of principles of natural justice. If the principle is stretched that long, the administration has to depend upon the mercy of a delinquent. The Enquiry Officer must eagerly wait for his appearance, and even if he does not turn up on the dates informed to him, he has to curse himself and wait for the employee to show the favour of his appearance. Even the most liberal approach does not permit of such a bewildering situation.

21. We have carefully examined as to what weighed with the learned Single Judge to direct a de novo enquiry, when the respondent was determined not to face the enquiry. The relevant portion reads.

"Both sides advanced further submissions and relied upon decisions. The basic thread of the claim of the petitioner is that proper enquiry was not conducted against him and opportunities were not accorded to him while the respondents contend that the petitioner chose to remain ex parte. Consequently, it is clear that the petitioner either did not have proper opportunities or did not utilize proper opportunities accorded to him. In this background, in view of the peculiarly nature of the allegations that the petitioner is not whom he claims to be, it would be appropriate to direct fresh enquiry by according opportunity to the petitioner to participate in the enquiry. Where the petitioner remained ex parte before the Enquiry Officer, I am not inclined to direct the respondents to pay subsistence allowance from the date of the dismissal order till today. However, as I propose to order fresh enquiry, it would be appropriate to direct the Disciplinary Authority to pay subsistence allowance to the petitioner calculating from today till the disposal of the fresh enquiry, subject to the condition that the petitioner cooperates with the enquiry."

From this, it is evident that the Learned Single Judge himself was convinced that it is the respondent, who remained ex parte. Once a person has remained ex parte, he cannot complain of denial of opportunity, much less, violation of the principles of natural justice. Setting aside the order of dismissal, on such grounds, would amount to putting premium on the irresponsible and chalcant conduct of an employee, who is already facing charges. If permitted such a course would reduce the disciplinary proceedings to the level of mockery and make them to depend upon the mercy of the employees, who are already facing the allegations of misconduct. We find it difficult to approve the order of the learned Single Judge.

22. The Writ Appeal is, accordingly, allowed and as a result, the Writ Petition

shall stand dismissed. There shall be no order as to costs.

23. The miscellaneous petitions filed in the writ appeal shall stand disposed of.