
(2012) 10 DEL CK 0381
In the Delhi High Court
Case No : Writ Petition (C) 4846 of 2012

H.S. Madan

APPELLANT

Vs

Indian Trade Promotion Organisation and Others

RESPONDENT

Date of Decision : 19-10-2012

Acts Referred:

Citation : (2013) LabIC 201

Hon'ble Judges : Siddharth Mridul, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Shekhar Kumar, for the Appellant; V.K. Rao with Mr. Abushya Kumar and Ms. Neha Bhargava, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—This writ petition is directed against the order dated 23.07.2012 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, in TA No. 14/2012. As pointed out in an order dated 13.08.2012 the only question which arises for consideration is whether the charge sheet served upon the petitioner was done prior to his retirement or not? According to the Learned Counsel for the petitioner, he had retired in the "afternoon" of 31.03.2005 and that the charge sheet which was served upon him at 8.40 p.m. on that date was after he had retired. According to the Learned Counsel for the petitioner, the word "afternoon" refers to the period between 12 noon and evening and does not, in any event, extend beyond the office hours, that is, 5 p.m. It was thus contended by the Learned Counsel for the petitioner that the charge sheet had been served upon the petitioner after he had retired and therefore the same was illegal and was liable to be quashed. All proceedings pursuant thereto were, according to the Learned Counsel for the petitioner, also liable to be quashed.

2. On the other hand, the Learned Counsel for the respondent submitted that the word "afternoon" meant the entire period between 12 noon till midnight. As such, the petitioner had not retired till midnight on 31.03.2005 and since the charge sheet was served upon the petitioner at 8.40 p.m. on 31.03.2005, it had

been served when the petitioner had not retired, that is, when he was still in service. Consequently, it was submitted, the charge sheet and the entire departmental proceedings thereafter were valid and legal.

3. Before we consider the rival contentions of the parties it would be necessary to set out the background facts. The petitioner was working as the Chief Architect with the Indian Trade Promotion Organisation (ITPO). On his attaining the age of superannuation he was to retire from service in the "afternoon" of 31.03.2005. On 31.03.2005 a relieving order was issued by the Deputy Manager Administration of ITPO stating that -

Consequent upon his attaining age of superannuation sh. H.S. Madan, Chief Architect, stands relieved from the services of ITPO with effect from 31.03.2005 (AN).

4. On the same date, as pointed out above, a charge sheet was served upon the petitioner at 8.40 p.m.

5. The petitioner submitted a representation on 07.04.2005 protesting against the issuance of the charge sheet which, according to him, had been served upon him after he had retired. He submitted another representation dated 09.05.2005 on similar lines. In these representations he had raised the issue of the charge sheet/memo having been served upon him after he had retired. This was based on the premise that the word "afternoon" ended with office hours of that date and did not extend till midnight. Another plea was taken in the representation with regard to non-supply of certain documents.

6. The respondent replied to the said representation by a letter dated 30.05.2005 but that reply only addressed the issue of non-supply of documents and was silent on the main issue that the charge sheet had been served upon the petitioner after he had retired. As a result, the petitioner submitted another representation dated 10.08.2005.

7. There was no response to that representation. Instead, on 21.12.2005, the respondent appointed the Commissioner of Departmental Inquiries as the Inquiry Officer. Shortly, thereafter, the petitioner submitted another representation on 28.12.2005 which was responded to by the respondent by a letter dated 18.01.2006 claiming that the rules pertaining to disciplinary proceedings clearly apply to the petitioner and that the disciplinary proceedings could be continued as they had been instituted against him before his retirement. A representation was also made to the Inquiry Officer on 27.02.2006 requesting him not to proceed with the departmental inquiry. There is some more correspondence between the petitioner and the respondent on similar lines. Ultimately, as the respondent continued with the departmental proceeding, the petitioner filed a writ petition before this Court which was transferred to the Tribunal by an order dated 19.03.2012. The same was re-numbered as TA No. 14/2012 and has been disposed of by the Tribunal by virtue of the impugned order dated 23.07.2012.

8. The only point for adjudication before the Tribunal was as to whether the tenure of the employment of the petitioner came to an end at the close of the office hours or it continued till the midnight of 31.03.2005. The Tribunal, after referring to a Division Bench decision of this Court in *Union of India v M.L. Punshi* and another: W.P.(C) No. 2885/2000 decided on 19.07.2010 and the Supreme Court decision in the case of *U.P. State Sugar Corporation Ltd. and Others Vs. Kamal Swaroop Tondon*, , came to the following conclusion:-

10. In the conspectus of the discussion made hereinabove, and also keeping in view the proposition of law as has been enunciated and interpreted in the above two cases, we are unable to persuade ourselves to agree with the submission made on behalf of the petitioner/applicant that the charge-sheet was served upon him after his retirement. Adhering to the interpretation made in both the above case laws, we are of the view that the tenure of the employment of the applicant did not come to an end after office hours e.e. 1700 hours (5 PM). It continued till midnight of 31.3.2005. The impugned charge-sheet was concededly served upon him at 8.40 PM before the end of the midnight of 31.3.2005. In view of the law laid down in *Union of India Vs. K.V. Jankiraman*, etc. etc., , the departmental inquiry has to be deemed to have started/resorted the moment charge memo/charge-sheet is issued/served. As the impugned charge-sheet was served before the retirement of the applicant as said above, the respondents can proceed with the inquiry to bring it to a logical conclusion in accordance with the aforesaid relevant rules. Thus, the sole point for adjudication before us is decided against the respondents. Finally, therefore, this TA deserves to be and is accordingly dismissed. No order as to costs.

In other words, the Tribunal concluded that the word "afternoon" meant the period beginning from 12 noon and ending at midnight on the same day. The Tribunal was of the opinion that as the charge sheet was served upon him at 8.40 p.m. (i.e., prior to midnight), the same was served upon him prior to his retirement and, therefore, was valid and legal. Consequently, the Tribunal dismissed the petitioner's application.

9. The Learned Counsel for the petitioner referred to Fundamental Rule 56(a) which reads as under:-

F.R. 56 (a)- Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.

In the context of the said Fundamental Rule 56 (a), the Learned Counsel submitted that the word "afternoon" refers to the period of time commencing at 12 noon and ending at 5 p.m., that is, the close of office hours. It was contended that the charge sheet having been served upon the petitioner at 8.40 p.m. was bad in law as, by that time, the relationship of master and servant between the respondent and the petitioner had come to an end.

10. The Learned Counsel for the petitioner submitted that the interpretation

sought to be given by the respondent and accepted by the Tribunal would make the rule redundant and would defy the intent and purpose behind the said FR 56 (a). It was also submitted that the Supreme Court had, in a number of decisions, held that it is a cardinal principal of interpretation that words used in a statute are first to be understood in a natural, ordinary or popular sense and that phrases are to be construed according to the plain grammatical meaning unless it leads to some absurdity. Reliance was placed on the Supreme Court decision in the case of U.P. State Agro Industrial Corporation Ltd. Vs. Kisan Upbhokta Parishad and Others, , wherein the Supreme Court had observed as under:-

11. No doubt the word "implement" can have several dictionary meanings. However, in interpretation it is well settled that ordinarily the meaning of the word or expression in common parlance or in common use should be accepted, unless the statute or order in which it is used has defined it with a specific meaning. There is no definition of the word "implements" in the G.O. of the State Government dated 20-11-1996.

14. The reason behind this principle is that language is a tool of communication between human beings, and hence that meaning should be given to a word which helps communication between people. If the speaker of a word uses it in one sense but the hearer understands it in another sense, there will be a communication gap. Hence that meaning should be attributed to a word which everyone would understand as it has acquired a special meaning in common parlance.

According to the Learned Counsel for the petitioner the word "afternoon" has to be construed according to its ordinary, popular and simple grammatical meaning which, according to him, meant the period beginning at 12 noon and ending with the office hours of that date.

11. We notice that the Tribunal had placed reliance on the Division Bench decision of this Court in the case of M.L. Punshi (supra). That case, however, was decided on an entirely different set of circumstances and would be distinguishable, and, in this, we agree with the Learned Counsel for the petitioner. In M.L. Punshi (supra), what was being considered was whether the O.M. dated 14.07.1995 would be applicable to the petitioner therein who had retired on 31.03.2005. The said O.M. had been made applicable to Central Government employees who "retire or die on or after 1.4.95". The Division Bench was construing the expression "retire or die" and not the word "afternoon", which is in issue in the present case. However, it indirectly referred to the word "afternoon" inasmuch as it approved the opinion of the Full Bench of the Tribunal wherein that expression had been referred to. We may point out that the view taken by the Division Bench in that decision in M.L. Punshi (supra) was at variance with the view taken by the Bombay High Court, Nagpur Bench, in the case of Union of India, Delhi and Others v. Venkatram Rajagopalan: W.P (C) 138/2000 and other connected matters decided on 29.02.2012. It was also at variance with the decision of the High Court of Karnataka in the case of Union of

India v. Sri Y.N. R Rao: W.P. (C) No. 18186/2003, decided on 08.12.2003 as also the decision of the Madras High Court in the case of Moses Govindanarayanan and others v. Secretary, Finance Department and others: W.P. (C) No. 13209/2003 and other connected matters decided on 21.03.2012. We may also point out that the SLP preferred against the decision of this Court in M.L. Punshi (supra) was dismissed by the Supreme Court on 07.03.2011, but it was specifically noted as under:

The SLP is dismissed on facts.

This would imply that the Supreme Court refrained from making any observation on the legal issues and merits and to that extent it may be considered that the legal aspects of M.L. Punshi (supra) have been left open before the Supreme Court. Anyhow, that does not alter the position either way because we have already noted that the decision of the Division Bench in M.L. Punshi (supra) is distinguishable and is on an entirely different issue.

12. The Tribunal had also placed reliance on (and, so, too, the Learned Counsel for the respondent) the decision of the Supreme Court in the Kamal Swaroop Tondon (supra). In that case we notice that the issue was with regard to the initiation and continuation of disciplinary proceedings, which is also the issue before us. The Supreme Court noted that the respondent No. 1 therein had retired on 31.01.2000. Prior to that a show cause notice had been issued to him on 13.01.2000 and a reply had been submitted by him on 15.01.2000. However, it was decided to hold a departmental inquiry and consequently a regular show cause notice was issued to the respondent No. 1 therein at 6.40 p.m. on 31.01.2000. It may be noted that this show cause notice had been served upon the respondent No. 1 after office hours, though on the same date the respondent retired. In this factual backdrop, the question had arisen as to whether the proceeding had been validly initiated and continued. The Supreme Court held as under:-

13. The Learned Counsel for the appellant is right when he submitted that show-cause notice was issued to the respondent employee on 13-1-2000 when he was very much in service. The respondent submitted his explanation on 15-1-2000 which was not found to be satisfactory. A regular show-cause notice was, therefore, issued by the Corporation on 31-1-2000 and was served upon the respondent employee on the same day. The notice was also sent by registered post which was received by the employee on 11-2-2000. But it is clear from the documents that show-cause notice was issued and replied. A regular show-cause notice as to departmental inquiry was also served upon the respondent employee on the last day of his service which was 31-1-2000. In our opinion, therefore, it could not be said that the proceedings had been initiated against the respondent employee after he retired from service.

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34. It is, therefore, clear that so far as minor penalty is concerned, it is not

necessary for the Corporation to follow detailed and lengthy procedure laid down for imposition of major penalties. In the instance case, the proceedings had been initiated by the appellant Corporation against the respondent employee for recovery of pecuniary loss caused to the Corporation by negligence on his part. The proceedings, hence, could be instituted by issuing notice which was done on 13-1-2000. The said action, therefore, could not have been held bad or without power, authority or jurisdiction on the part of the Corporation. As we have already observed earlier, even regular show-cause notice was served on 31-1-2000 which was also during the employment of the respondent. The High Court, in our view, was wrong in quashing the proceedings and setting aside orders dated 24-3-2001 and 26-4-2005. The impugned order of the High Court, therefore, deserves to be set aside.

(underlining added)

It is obvious from the above observations and findings of the Supreme Court that the show cause notice issued at 6.45 p.m., that is, after office hours was regarded as valid and legal. We have already pointed out that all government servants are to retire from service (except as otherwise provided in the Fundamental Rules) in the "afternoon" of the last date of the month in which they attain the age of 60 years. The Supreme Court, in the backdrop of this Fundamental Rule, held the show cause notice issued at 6.40 p.m. to be valid and legal.

13. It is, therefore, clear that the Supreme Court decision in the case of Kamal Swaroop Tondon (supra) is certainly in favour of the respondent and against the petitioner.

14. We may also note the dictionary meaning of "afternoon". In Stroud's "Judicial Dictionary of Words and Phrases", 4th Edition, the word "afternoon" has been described as under:-

AFTERNOON. "The usual hours of the morning and afternoon divine service," in the form of an alehouse licence given in Alehouse Act 1828 (c.61), Schedule C, refers to those hours as commonly understood, and, as regards afternoon, they mean from 3 p.m. to about 5 p.m., and are not extended by a usual evening service in the parish church (R. v. Knapp, 22 L.J.M.C. 139); there Erle J. said, "Afternoon" has two senses. It may mean the whole time from noon to midnight, or it may mean the earlier part of that time, as distinguished from the evening.

(underlining added)

In the Oxford English dictionary, published in 1933, the word "afternoon" has been described as under:-

Afternoon, orig. a phrase; the time from mid-day to evening. Formerly preceded by at, now in the, during the; and as a date on.

According to Black's Law dictionary, 6th Edition, the word "afternoon" means as

under:-

Afternoon. May mean the whole time from noon to midnight, or it may mean the earlier part of that time as distinguished from evening, or may mean that part of day between noon and evening.

Prem's Judicial Dictionary has this to say:-

Afternoon- This word has two senses. It may mean the whole time from noon to midnight; or it may mean the earlier part of the time, as distinguished from the event. When used in a statute its meaning must be determined by the context and the circumstances of the subject matter (Reg. v. Knapp. 2 Ei. & B1. 451) (1853) 2 B 447 (451). In 9 Geo. 4. C. 61, sch. C., the expression "afternoon divine service" means, the earlier part of the time from noon to midnight as distinguished from the evening. R. v. Knapp. 22 L.J.M.C. 139.

In Words and Phrases, Legally Defined, the word "afternoon" has been dealt with in a similar manner:-

AFTER NOON

Afternoon has two senses. It may mean the whole time from noon to midnight; or it may mean the earlier part of that time as distinguished from the evening; R v Knapp (1853) 2 E & B 447, 451, per Erie J

United States- "Afternoon" means the period of a day between noon and midnight... (uniform Commercial Code 1978, s 4-104 (1) (b)).

Finally, in Bouvier's Law Dictionary, 8th Edition, the word "afternoon" has been described as under:-

The word has two senses. It may mean the whole time from noon to midnight, or it may mean the earlier part of that time, as distinguished from the evening; where an act forbidding innkeepers to have their houses open on Sunday during the usual hours of afternoon divine Service was taken in the latter sense.

15. From the above, it is apparent that in the majority of dictionaries the word "afternoon" has been described as having two senses. First of all, it may mean the whole time from noon to midnight or it may mean the earlier part of that time as distinguished from the evening. In most of these dictionaries there is reference to the old decision of R v Knapp. The question for the opinion of the court in that case was :-

Whether the Divine service in the parish church of Newport Pagnell, which commenced at 6 o'clock p.m. and terminated about 8 p.m. on Sunday the 7th of November aforesaid, was an afternoon Divine service within the meaning of the aforementioned statute?

The answer was given in the negative. Erle J. observed as under:-

The word "afternoon" has two senses. It may mean the whole time from noon to

midnight; or it may mean the earlier part of that time as distinguished from the evening. I think that in this Act it is used in the latter sense, and that the intention of the Legislature was to prohibit the opening of the public houses during the usual hour of Divine service in the afternoon, if there was one in the church. In New port Pagnell Divine service in the afternoon was in the workhouse.

It is obvious from the above that the word "afternoon" can be used in two senses. It may mean the time from noon to midnight or it may mean the time from noon till evening sets in. It is also clear that the meaning to be adopted would be the one based on the context it is used in. In this regard, we are of the view that the word "afternoon" has been used in FR 56 (a) in the sense that it refers to the period of time from noon to mid night. The only other sense in which it may have been used would have been the period from noon to evening and there is no indication that this is a sense in which it was used. We may also point out that evening does not mean the end of the office hours which has an entirely different meaning. Thus, going by the common understanding of the word "afternoon" and the contextual interpretation to be given to that word as used in FR 56(a), we are of the view that it refers to the period of time commencing at 12 noon and ending at 12 midnight.

16. That being the position, the petitioner cannot be taken to have retired prior to the midnight of 31.03.2005 and, consequently, the charge sheet having been served on him at 8.40 p.m. on 31.03.2005 cannot be regarded as having been served upon him after retirement. He had received the charge sheet, in our view, before his retirement. As a result, the issuance of the charge sheet was valid and the disciplinary proceedings pursuant thereto were legal and valid. The writ petition has no merit. The same is dismissed with no orders as to costs.