
(2013) 03 UK CK 0063

In the Uttarakhand High Court

Case No : Writ Petition No. 108 (SB) of 2011

Krishan Kant Anand

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-03-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Immoral Traffic (Prevention) Act, 1956 — Section 6
Penal Code, 1860 (IPC) — Section 373, 376

Citation : (2013) LabIC 2403 : (2014) 1 UC 409

Hon'ble Judges : Barin Ghosh, C.J;Alok Singh, J

Bench : Division Bench

Advocate : Krishan Kant Anand, in Person, for the Appellant; U.K. Uniyal, Assisted by Shobhit Saharia, for the Respondent

Judgement

Alok Singh, J.—Petitioner, by invoking the jurisdiction of this Court under Article 226 of the Constitution of India, is assailing the order dated 14-10-2010 (Annexure No. 11 to the writ petition) passed by respondent No. 3 Chief General Manager (P) whereby petitioner was removed from service as well as order dated 09-03-2011 (Annexure No. 14 to the writ petition) passed by respondent No. 2 whereby appeal against the order dated 14-10-2010 was dismissed. Brief facts of the present case, inter alia, are that petitioner was working as Senior Engineer at Koteshwar Hydro Electric Project of THDC; an FIR was got registered against the petitioner for the offence punishable under Sections 373, 376, IPC and u/s 6 of the Immoral Trafficking (Prevention) Act, 1956 (for brevity "the Act") with police station Rishikesh, District Dehradun alleging that petitioner was found involved in obscene dance in room No. 107 of Hotel Uttaranchal, situated in Rishikesh, Dehradun and was arrested by the police; petitioner was placed under suspension vide order dated 05-08-2003 (Annexure No. 2 to the writ petition); suspension order was revoked vide order dated 22-03-2005 (Annexure No. 3 to the writ petition) stating that revocation of suspension order is being made without prejudice to the proceedings pending in the Court of Law; the revocation

order was subject to review or revision in accordance with the outcome of the proceedings pending against the petitioner in the Court of Law. After revocation of suspension order, petitioner raised claim for his due premonition; a memo of charges was served upon the petitioner vide memo dated 21-08-2008 (Annexure No. 4 to the petition) stating that involvement of petitioner in obscene dances with women, who were not the family members of the petitioner and registration of criminal case against him for the offences punishable under Sections 373,376, IPC and Section 6 of the Act, amounts to violation of provisions of Clause 5(5), 5(17) and 5(20) of the Conduct, Discipline and Appeal Rules of the Corporation. Further more, since the petitioner is guilty of the offence for involvement of moral turpitude, therefore, he has violated, Clause 5(17) and 5(20) of the Conduct, Discipline and Appeal Rules read with provisions of Rule 4(i) & (iii) of the CDA Rules, 1990; before the Enquiry Officer, a copy of the FIR, registered against the petitioner, was produced; Enquiry Officer vide enquiry report dated 23-02-2010 found the charges proved against the petitioner; a copy of the enquiry report was forwarded to the petitioner; having received the enquiry report, respondent No. 3 passed the impugned order removing the petitioner from service; thereafter, petitioner preferred an appeal before respondent No. 2, which too, was dismissed vide impugned order dated 09-03-2011 (Annexure No. 14 to the petition). Feeling aggrieved, petitioner has preferred the present petition.

2. Counter-affidavit has been filed by respondent Nos. 2 and 3, wherein, in a nutshell, it has been stated that action of the petitioner involving himself in obscene dance with women, who were not the members of his family, in a Hotel room and registration of FIR pursuant to the raid made by Rishikesh police and subsequent thereto, arrest of the petitioner and filing of charge-sheet by the police, would certainly amounts to moral turpitude and action of the petitioner was prejudicial and detrimental to the interest of the Corporation and the petitioner has made himself unbecoming of a public servant.

3. We have heard Mr. K.K. Anand, petitioner, in person and Mr. U.K. Uniyal, Sr. Advocate with Mr. Shobhit Saharia, for respondent Nos. 2 and 3 and have carefully perused the record.

4. Perusal of order dated 22-03-2005 (Annexure No. 3 to the petition) revoking the suspension order of the petitioner, would indicate that suspension of the petitioner was revoked subject to review and revision, in accordance with the outcome of the proceedings pending against the petitioner in the Court of Law.

5. It is an admitted fact that criminal case, registered against the petitioner has not reached to its logical end and is still pending. A perusal of the order dated 25-10-2010 passed by Additional Sessions Judge, Rishikesh would indicate that learned Sessions Judge has framed charge against the petitioner for the offence punishable u/s 373 /34, IPC and has not framed charge against the petitioner for the offence punishable u/s 376, IPC or for the offence punishable u/s 6 of the Act.

6. We find force in the contention of the petitioner that once suspension order was revoked subject to the outcome of the criminal case pending against him, therefore, Disciplinary Authority was not within its jurisdiction by issuing memo of charges vide order dated 21-08-2008 (Annexure No. 4 to the petition) without waiting for the outcome of the criminal case pending against the petitioner.

7. Rules 4 and 5 of the Conduct and Disciplinary Rules reads thus:

Rule 4. General

(1) Every employee of the Company shall at all times:--

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing, which is unbecoming of a public servant.

(2) Every employee of the Company holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all employees/workmen for the time being under his control and authority.

Rule 5. Misconduct

Without prejudice to the generality of the term "misconduct", the following acts of omission and commission shall be treated as misconduct and will make the concerned employee liable to disciplinary action:--

5. Acting in any manner prejudicial/detrimental to the interests of the Corporation/Company.

17. Commission of any act, which amounts to a criminal offence involving moral turpitude.

20. Commission of any act subversive of discipline or of good behaviour.

8. A perusal of Rule 4(i) (iii) along with Rules 5(5), 5(17), 5(20) would suggest that action of an employee prejudicial or detrimental to the interest of the Corporation or commission of any act which amounts to criminal offence involving moral turpitude or commission of any act subversive of discipline or of good behaviour, shall amount to misconduct and that misconduct can be resulted in a major penalty as provided under Rule 26 of the CDA Rules.

9. Undisputedly, Enquiry Officer as well as the Disciplinary Authority had proceeded against the petitioner only on the basis of contents of FIR. Neither any independent witness was examined nor any other evidence was placed on record either before the enquiry officer or before the Disciplinary Authority to suggest that in fact, petitioner was involved in the offence, which amounts to moral turpitude or which can be said to be prejudicial or detrimental to the interest of the Corporation or which has made the petitioner unbecoming of a public servant.

10. Hon''ble Apex Court in Roop Singh Negi Vs. Punjab National Bank and

Others, , in paras 14, 23 (10, 17 of AIR) has held as under:--

14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

11. In view of the dictum of Hon"ble Apex Court, it is, thus, clear that contents of FIR cannot be treated as evidence and the Disciplinary Authority must satisfy himself on the basis of evidence or material brought on record that guilt of the employee is proved. The decision of the Disciplinary Authority must be arrived at, on some evidence, which is legally admissible.

12. Hon"ble Apex Court in the case of The State of Gujarat and Another Vs. Suryakant Chunilal Shah, in paragraph 27 has held as under:

27. The whole exercise described above would, therefore, indicate that although there was no material on the basis of which a reasonable opinion could be formed that the respondent had outlived his utility as a Govt. Servant or that he had lost his efficiency and had become a dead wood, he was compulsorily retired merely because of his involvement in two criminal case pertaining to the grant of permits in favour of take and bogus institutions. The involvement of a person in a criminal case does not mean that he is guilty. He is still to be tried in a Court of Law and the truth has to be found out ultimately by the court where the

prosecution is ultimately conducted. But before that stage is reached, it would be highly improper to deprive a person of his livelihood merely on the basis of his involvement. We may, however, hasten to add that mere involvement in a criminal case would constitute relevant material for compulsory retirement or not would depend upon the circumstances of each case and the nature of offence allegedly committed by the employee.

13. Thus, in our firm opinion, as per the dictum of Hon''ble Apex Court, involvement of an employee in a criminal case does not mean that he is guilty. He is to be tried in a Court of Law and truth has to be found out, ultimately, by the Court of Law where the prosecution is ultimately, conducted. But before that stage is reached, it would be highly improper to deprive a person of his livelihood merely on the basis of his involvement.

14. We would like to clarify that in the present case, the Disciplinary proceedings were initiated against the petitioner only because the police has registered an FIR against the petitioner under Sections 373, 376, IPC and Section 6 of the Act. It is not disputed that learned Sessions Judge has not framed any charge against the petitioner for the offence punishable u/s 376 IPC or u/s 6 of the Act. Not only this, as observed herein above, order dated 22-03-2005 (Annexure No. 3 to the petition) whereby by the suspension order was revoked clearly indicates that the order is subject to review or revision, in accordance with the outcome of the proceedings pending against the petitioner in the Court of Law, therefore, in our firm opinion, Authorities should have waited for the conclusion of the trial and should not act, in haste, to form an opinion that petitioner''s guilt is proved.

15. Mr. U.K. Uniyal, Sr. Advocate for the respondent Nos. 2 and 3 has pointed out that earlier also petitioner''s conduct was not above board, therefore, appellate authority was well within jurisdiction while considering the earlier charges against the petitioner while dismissing the appeal.

16. We are unable to agree with this argument, solely on the ground that previous conduct of the petitioner does not find place in the memo of charges and petitioner was not given any opportunity to meet with those charges. Removal of the petitioner by the appellate authority on the grounds, which are neither here nor there, is totally unjustified and arbitrary. On the perusal of the record, we are unable to find out any evidence or material against the petitioner, which could prove the involvement of petitioner in the offence amounting to moral turpitude. Therefore, in our firm opinion, impugned orders don''t sustain in the eyes of law. Writ petition is allowed. Impugned orders dated 14-10-2010 and 09-03-2011 passed by respondent Nos. 3 and 2 respectively are hereby quashed. Respondent Nos. 2 and 3 are directed to reinstate the petitioner forthwith with all consequential benefits. However, respondents shall be at liberty to initiate proceedings against the petitioner, if petitioner is ultimately convicted by the competent court of law, for the offence amounting to moral turpitude, in the pending criminal case.