
(2019) 12 CAL CK 0054

In the Calcutta High Court

Case No : C. Appeal From Order (FMA) No. 471 Of 2019, Tender Of Mand Appl
(MAT) No. 1462 Of 2018

Mecon Limited

APPELLANT

Vs

Buddha Prasad Pal & Ors

RESPONDENT

Date of Decision : 12-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 12 CAL CK 0054

Hon'ble Judges : I. P. Mukerji, J;Md. Nizamuddin, J

Bench : Division Bench

Advocate : Manas Kumar Kundu, Bandhu Brata Bhula, Syamal Kumar Das, A.B.
Roy, Smita Pal, Debarati Bag

Final Decision : Dismissed

Judgement

I. P. Mukerji, J

A very short issue arises in this appeal.

The respondent No.1 writ petitioner was (the respondent) handed down a punishment in disciplinary proceedings. It was removal from service.

He alleged in the instant writ filed in this court [WP No. 11308(W) of 2010] (Shri Buddha Prasad Pal Vs. Mecon Limited and Ors.) inter alia that the punishment was disproportionate. The learned judge by the impugned judgment and order dated 3rd September, 2018 held that it was so and substituted this punishment with one of compulsory retirement from service. If this impugned judgment and order is implemented, the respondent would be entitled to leave encashment benefit. On removal of service this benefit is not given. It should be stated that except leave encashment, other benefits were released in favour of the respondent.

The respondent has not preferred any cross-objection against this order. He is

deemed to have accepted it. Only the employer, Mecon Limited has come up in appeal.

Therefore, the only question which arises in this appeal is whether the learned judge exercised his discretion correctly in imposing the punishment of compulsory retirement instead of removal from service as against the respondent?

It appears from the impugned judgment that the learned judge exercised his discretion after taking into account the admission of the respondent that there was shortfall in the cash in his custody. The learned judge also noted that the enquiry officer had entered the finding that the respondent was negligent in handling it. On that basis he held that the punishment awarded to him was disproportionate.

This exercise of discretion by the learned Judge was based on facts.

It is quite well established that in the absence of gross misconduct in the prosecution of disciplinary proceedings or perversity or grave illegality in the process or in the order, in the exercise of its writ jurisdiction or in exercise of its appellate jurisdiction over writ matters the court will not sit as a court of appeal over the disciplinary proceedings. More importantly, in its appellate jurisdiction over writ matters, the court will not ordinarily interfere with the findings of facts made by the court below unless the above vitiating factors are present.

Although learned counsel for the appellant Mr. Kundu tried to go into the details of the subject matter of the enquiry against the respondent and attempted to establish before this court that he was guilty of "embezzlement of funds", in my opinion, this court should not venture to assess the value of his submissions, for the reason that we are not sitting as a court of appeal. The enquiry officer has come to a finding, on the admission of the respondent that there was shortfall in the fund. On that basis and on the basis of his enquiry he recorded a finding that the respondent was negligent in handling cash. The above vitiating factors are absent, in my opinion.

In those circumstances this court cannot interfere with those findings of facts made by the learned single judge.

The next question is whether the learned judge fell into error by substituting the sentence imposed by the disciplinary authority with one made by him?

The significant argument made by Mr. Kundu was that although the learned single judge had the discretion to declare that the punishment was disproportionate, he had no jurisdiction to reduce the punishment but ought to have remitted the matter to the disciplinary authority to reduce the punishment in accordance to his observations.

In Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) & Anr. Vs. Rajendra Singh reported in (2013) 12 SCC 372, cited by learned

counsel, the Supreme Court remarked in paragraph 13, 14, 15 and 19 as follows:

"13. Indubitably, the well ingrained principle of law is that it is the Disciplinary Authority, or the Appellate Authority in appeal, which is to decide the nature of punishment to be given to a delinquent employee keeping in view the seriousness of the misconduct committed by such an employee. Courts cannot assume and usurp the function of the Disciplinary Authority. In the matter of Apparel Export Promotion Council vs. - A.K.Chopra, this principle was explained in the following manner: (SCC p773, para 22)

"22The High Court in our opinion fell in error in interfering with the punishment, which could be lawfully imposed by the departmental authorities on the respondent for his proven misconduct.The High Court should not have substituted its own discretion for that the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and did not warrant any interference by the High Court. The entire approach of the High Court has been faulty. The impugned order of the High Court cannot be sustained on this ground alone."

14. Yet again, in the case of State of Meghalaya & Ors. Vs. Mecken Singh N.Marak, this Court reiterated the law by stating: (SCC pp.587-85, paras 14 and 17)

"14. In the matter of imposition of sentence, the scope of interference is very limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever have been indicated to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

17. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition of penalty. The High Court in this case has not only interfered with the punishment imposed by the disciplinary authority in a routine manner but overstepped its jurisdiction by directing the appellate authority to impose any other punishment short of removal. By fettering the discretion of the appellate authority to impose appropriate punishment for serious misconducts committed

by the respondent, the High Court totally misdirected itself while exercising jurisdiction under Article 226. Judged in this background the conclusion of the Division Bench of the High Court cannot be regarded as proper at all. The High Court has interfered with the punishment imposed by the competent authority in a casual manner and, therefore, the appeal will have to be accepted."

15. As is clear from the above that the Judicial Review of the quantum of punishment is available with a very limited scope. It is only when the penalty imposed appears to be shocking disproportionate to the nature of misconduct that the Courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/Appellate Authority to take a decision afresh and it is not for the court to substitute its decision by prescribing the quantum of punishment.

19. The principles discussed above can be summed up and summarized as follows:

19.1 When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities;

19.2 The Courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority;

19.3 Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the Court;

19.4 Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The Court by itself cannot mandate as to what should be the penalty in such a case.

19.5 The only exception to the principle stated in para (d) above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct was identical or the co- delinquent was foisted with more serious charges. This would be on the Doctrine of Equality when it is found that the concerned employee and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge sheet in the two cases. If co-delinquent accepts the charges, indicating remorse with unqualified apology lesser punishment to him would be justifiable."

In Chief Executive Officer, Krishna District Cooperative Central Bank Limited &

Anr. Vs. K. Hanumantha Rao & Anr. reported in (2017) 2 SCC 528, also cited by Mr. Kundu, the highest Court reiterated the same principle in paragraph 7.3:

"7.3 - The impugned order is also faulted for the reason that it is not the function of the High Court to impose a particular punishment even in those cases where it was found that penalty awarded by the employer is shockingly disproportionate. In such a case, the matter could, at the best, be remanded to the disciplinary authority for imposition of lesser punishment leaving it to such authority to consider as to which lesser penalty needs to be inflicted upon the delinquent employee. No doubt, the administrative authority has to exercise its powers reasonably. However, the doctrine that powers must be exercised reasonably has to be reconciled with the doctrine that the Court must not usurp the discretion of the public authority. The Court must strive to apply an objective standard which leaves to the deciding authority the full range of choice."

However two decisions of the Supreme Court cited by Mr. Das, learned counsel for the respondent go the other way. In Girish Bhushan Goyal Vs. BHEL and Anr. reported in (2014) 1 SCC 82, a major punishment of dismissal from service was handed down to the employee of Bharat Heavy Electricals Ltd. (BHEL). The Supreme Court noted that the nature of charges levelled against the appellant was omission to perform duty or negligence in the performance of his duty. It held the punishment to be disproportionate. It set aside the order of dismissal and substituted it with the punishment of deduction of one year's increment from the entitlement of the employee. Learned counsel submitted that in this judgment the Supreme Court had substituted a punishment which it thought fit and proper, without remitting it to the disciplinary authority.

In Surendra Prasad Shukla Vs. State of Jharkhand and Ors. reported in (2011) 8 SCC 536, a police constable was charged with involvement in the theft of a motor car and held guilty. The Supreme Court found the punishment of dismissal from service as shockingly disproportionate and reduced the punishment from dismissal to compulsory retirement.

An order of the same nature was made by the Supreme Court in S.K. Giri Vs. Home Secretary, Ministry of Home Affairs and Ors. reported in 1995 Supp (3) SCC 519 holding the punishment of removal from service as "severe and disproportionate". It set aside the same and ordered reinstatement of the employee stating that it was disentitled to arrears of salary from the date of removal upto 31st December, 1994.

All the above decisions that the court should not substitute its own punishment by itself directing a substituted punishment were made by two judges' benches of the Supreme Court. Although these cases were neither cited nor discussed in the impugned judgment I find on reading the judgment that it is in consonance with one of the two divergent ratios. Thus, it cannot be said that the learned Judge exercised his discretion improperly.

Moreover, I am of the view that while scrutinising the punishment imposed on an

employee in a disciplinary proceeding, if the court finds that it is disproportionate and only one of the other punishments prescribed in the rules can be awarded to the employee, and no other, it is pointless to remit the matter to the authority to make a fresh order of punishment. Elucidating on this point, I say that suppose the court is of the view that instead of dismissal from service the employee should be given the punishment of compulsory retirement, it should award the punishment itself. Leaving it to the disciplinary authority (which might in its constitution be different from the one which awarded the punishment) would mean giving it a long rope enabling it to impose a far lighter sentence like letting off the employee with a warning, or censure which the court would not desire or support.

Taking all these factors into account, I am of the opinion that the learned judge was right in substituting the punishment he thought was fit and proper in place of the punishment awarded by the disciplinary authority.

We find no infirmity in the impugned judgment and order dated 3rd September, 2018.

The appeal (MAT 1462 of 2018) is dismissed. All interim orders in appeal are vacated. No order as to costs.

Certified photocopy of this judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree,