
(2000) 07 P&H CK 0183
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 6071 of 2000

Municipal Corporation, Ludhiana

APPELLANT

Vs

Surinder Kumar and Another

RESPONDENT

Date of Decision : 14-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 11A

Punjab Civil Services (Punishment and Appeal) Rules, 1970 — Rule 19, 19(2), 4, 5

Citation : (2000) 2 ILR (P&H) 481

Hon'ble Judges : G.S. Singhvi, J;Bakhshish Kaur, J

Bench : Division Bench

Advocate : H.S. Bakhshi, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—Whether in exercise of his power as appellate authority under Rule 19(2) of the Punjab Civil Services (Punishment and Appeals) Rules, 1970 (for short, "the Rules"), the Commissioner, Patiala Division, Patiala (Respondent No. 2) could modify the order of punishment passed by the disciplinary authority i.e. the Commissioner, Municipal Corporation, Ludhiana is the question which arises for determination in this petition filed by Municipal Corporation, Ludhiana for quashing of the order dated 21st April, 1999.

2. A perusal of the record shows that Respondent No. 1 Surinder Kumar was employed as Mali-cum-Beldar in the Horticulture Department of the Municipal Corporation, Ludhiana. By an order dated 29th March, 1994, the Superintendent Personnel suspended him on the allegation of negligence in the performance of duty and misbehaviour with his superiors. After two months, he was served with memo dated 27th May, 1994 issued under the signatures of Commissioner, Municipal Corporation, Ludhiana for initiation of departmental enquiry on the charges of absence from duty on 26th February, 1994 and 25th March, 1994 and threatening and abusing the S.D.O. (Horticulture). The enquiry officer appointed

by the disciplinary authority submitted report dated 21st April, 1995 holding Respondent No. 1 guilty of the charges. He also recommended that the delinquent may be dealt with severely. After issuing show cause notice dated 22nd May, 1995, the disciplinary authority passed order dated 5th July, 1995 dismissing him from service. The appeal filed by Respondent No. 1 was partly allowed by Respondent No. 2 who modified the penalty of dismissal by directing that Respondent No. 1 shall stand reverted to the lower rank in the time scale of pay and the period between the date of dismissal and the date of the appellate order shall be treated as leave of the kind due.

3. Learned Counsel for the Petitioner argued that Respondent No. 2 did not have the jurisdiction to interfere with the well reasoned order of punishment passed by the Commissioner, Municipal Corporation, Ludhiana and, therefore, the impugned order should be declared as nullity. He then argued that the view taken by Respondent No. 2 on the quantum of punishment awarded by the Commissioner, Municipal Corporation, Ludhiana should be declared as erroneous and perverse because the said Respondent totally overlooked the fact that Respondent No. 1 had been found guilty of gross indiscipline and insubordination. In support of his arguments, Shri Bakhshi relied on the decision of the Supreme Court in U.P. State Road Transport Corporation Vs. Subhash Chandra Sharma and Others, .

4. In our opinion, the arguments of the learned Counsel are devoid of substance and the writ petition deserves to be dismissed. Rule 19 of the Punjab Civil Services (Punishment and Appeal Rules), 1970 (for short, "the Rules") which delineates the power of the appellate authority to deal with and decide an appeal filed against the order of punishment reads as under:

19, Consider of appeal (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 4 and having regard to the circumstances of the case, the order of suspension . is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 5 or enhancing any penalty imposed under the said rule, the appellate authority shall consider--

(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice;

(b) whether the findings of the punishing authority are warranted by the evidence on the record; and

(c) whether, the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders--

- (i) confirming, enhancing, reducing or setting aside the penalty; or
- (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

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5. A reading" of the rule quoted above shows that before passing an order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the punishing authority for fresh consideration, the appellate authority has to consider whether the procedure laid down in the rules has been complied with, and if not, whether such noncompliance has resulted in the failure of justice and whether the findings recorded by the, punishing authority are supported by the evidence available on the record. It is also required to consider whether the penalty imposed upon the delinquent is adequate, inadequate or severe. In other words, the appellate authority is not only required to consider the issue relating to compliance of the procedural requirements but also examine the findings recorded by the disciplinary authority on the merits of the charges and the justification of the penalty awarded by such authority. In view of this analysis of Rule 19(2), the argument of Shri Bakshi that Respondent No. 2 did not have the jurisdiction to go into the merits of the punishment imposed by the disciplinary authority cannot but be held as misconceived and deserves to be rejected.

6. The other argument of the learned Counsel that the punishment awarded by the disciplinary authority was commensurate with the gravity of the charges found proved against Respondent No. 1 and, therefore, Respondent No. 2 could not have substituted it with a lesser penalty sounds attractive but lacks merit and deserves to be rejected. A perusal of the record shows that Respondent No. 1 was dismissed on the allegation of having threatened and abused his superior. However, while imposing the extreme penalty of dismissal from service, the Commissioner, Municipal Corporation, Ludhiana completely over looked the length of service rendered by Respondent No. 1 and his past service record. As against this, Respondent No. 2 adverted to this aspect of the matter and observed that in the past Respondent No. 1 had not been found guilty of such delinquency and

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by a writ of certiorari." However, sufficiency or adequacy of the evidence relied upon by the inferior Court or Tribunal or the quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, the mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari.

8. In Shaikh Mohammad Umarsaheb v. Kadalaskar Hasham Karimsab and Ors. (2), their Lordships of the Supreme Court, while dealing with the power of the

High Court under Article 226 to reappraise the evidence produced before the trial Judge, held as under:

Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. When the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227.

9. In *Jitendra Singh Rathore v. Shri Badiyanath Ayurved Bhawan Ltd. and Anr.* (3), a two Judges Bench of the Supreme Court dealt with the scope of certiorari jurisdiction of the High Court qua the award passed by the Tribunal under the Act and held as under:

The High Court is undisputably entitled to scrutinise the orders of the subordinate tribunals within the well accepted limitations and, therefore, it could in an appropriate case quash the award of the Tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. The High Court is not entitled to exercise the powers of the Tribunal and substitute an award in place of the one made by the Tribunal as in the case of an appeal where it lies to it

10. In *R.S. Saini v. State of Punjab and Ors.* (4), the Supreme Court upheld the order passed by this Court dismissing the writ petition filed against the order of the Petitioner's removal from the office of the President of Municipal Committee. Some of the observations made in that decision, which are worth noticing are as under:

The Court while exercising writ jurisdiction will not reverse a (sic) of the enquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the enquiring authority, it is not the function of the Court to review the evidence and to arrive at its own independent finding. The enquiring authority is the sole Judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings.

11. If the impugned order is examined in the light of the above noted principles, we do not find any difficulty in holding that by modifying the punishment imposed by the disciplinary authority, the appellate authority, i.e., Respondent No. 2 did not commit any jurisdictional error or other illegality from which it can be inferred that the impugned order suffers from an error of law. The decision of the Supreme Court relied upon by Shri Bakhshi relates to the interpretation of the scope of power vested in the Labour Court/Industrial Tribunal u/s 11-A of the Industrial Disputes Act, 1947 (for short, "the Act"). That section reads as under:

11-A. Powers of Labour Court, Tribunals and National Tribunals to give

appropriate relief in case of discharge or dismissal of workmen-where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal as the case may be, is satisfied that the order of discharge Or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this Section the Labour Court, Tribunal or National Tribunal, as the case may be, shall; rely only on the material on record and shall not take any fresh evidence in relation to the matter.

12. In" paragraph 8 of the judgment, their Lordships of the Supreme Court noted that the Labour Court has the discretion to substitute the punishment or dismissal or discharge awarded by the employer by way of reinstatement and then proceeded to observe as under:

The Labour Court, while upholding the third charge against the Respondent nevertheless interfered with the order of the Appellant removing the Respondent from the service. The charge against the Respondent was that he, in drunken state, along with a conductor went to the Assistant Cashier in the cash room of the Appellant and demanded money from the Assistant Cashier. When the Assistant Cashier refused, the Respondent abused him and threatened to assault him. It was certainly a serious charge of misconduct against the Respondent. In such circumstances, the Labour Court was not justified in interfering with the order of removal of Respondent from the service when the charge against him stood proved.. Rather we find that the discretion exercised by the Labour Court in the circumstances of the present case was capricious and arbitrary and certainly not justified. It could not be said that the punishment awarded to the Respondent was in any way "shockingly disproportionate" to the nature of the charge found proved against him. In our opinion, the High Court failed to exercise its jurisdiction under Article 226 of the Constitution and did not correct the erroneous order of the Labour Court which, if allowed to stand, would certainly result in miscarriage of justice.

13. In paragraph 6 of that decision, reference has also been made to the three other decisions of the Supreme Court including a judgment of three judges Bench in B.C. Chaturvedi Vs. Union of India and others, . in which two of the three Judges reviewed the judicial precedents on the subject and then held as under:

A review of the above legal position would establish that the disciplinary authority and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline.

They are invested with the discretion to impose appropriate punishment keeping in view of the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

14. In our opinion, the observations made in U.P. State Road Transport Corporation's case (supra) in the context of Section 11-A of the Act cannot be invoked for nullifying the impugned order passed under Rule 19(2) of the Rules, the plain language of which confers statutory discretion upon the appellate authority to confirm, enhance or set aside the penalty imposed by the disciplinary authority. The language of Section 11-A of the Act is not *pari materia* with Rule 19(2) of the Rules and, therefore, the restrictions which have been read as implicit in exercise of power by the Labour Court/Industrial Tribunal cannot be imposed on the power vested in the appellate authority under Rule 19(2). That apart, the observations made in B.C. Chaturvedi's case (supra) show that the power of the appellate authority is coextensive with that of the disciplinary authority and, therefore, it can alter or reduce the punishment awarded by the disciplinary authority. This, in our opinion, is sufficient to negate the argument of the learned Counsel that as an appellate authority, Respondent No. 2 could not have reduced the punishment imposed by the disciplinary authority.

15. For the reasons mentioned above, the writ petition is dismissed.