
(2021) 08 SHI CK 0093
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 675 Of 2019

Narender Kumar	Vs	APPELLANT
Vice President (Works), M/S Himachal Exicom Communications Ltd		RESPONDENT

Date of Decision : 05-08-2021

Acts Referred:

Citation : (2021) 08 SHI CK 0093

Hon'ble Judges : Ravi Malimath, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Neel Kamal Sharma, Rahul Mahajan

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. Petitioner was a Senior Operator in the respondent-Company. After issuing charge sheet, holding inquiry and concluding the disciplinary

proceedings, his services were terminated by the respondent on 12.08.2004. Whether punishment of termination of petitioner's services was

commensurate with the charges levelled against him was the reference sent by the appropriate Government for adjudication to the learned Labour

Court. The reference was answered against the petitioner on 07.10.2015. Three years later, he invoked jurisdiction of this Court by way of instant writ

petition challenging the award.

2. The petitioner was working as Senior Operator with the respondent-Company. On 08.05.2004, respondent issued charge sheet to the petitioner. The

charges levelled against him in the charge sheet were on the basis of complaints of physical assault made by Hardev Thakur and of outrage of

modesty, made by Sushma Sharma co-workers of the petitioner. The petitioner responded to the charge sheet. Inquiry was conducted against him.

The inquiry officer held that charges were proved against the petitioner. After conclusion of the inquiry, show cause notice alongwith inquiry report

was issued to the petitioner on 31.07.2004. After considering the relevant documents, petitioner's services were terminated vide order dated

12.08.2004.

The petitioner's case before the learned Labour Court was that the inquiry was not conducted fairly. Principles of natural justice were not

complied with. The penalty imposed upon the petitioner was not commensurate to the charges levelled against him. The respondent pleaded that

petitioner's services were terminated on the basis of a proper inquiry held in accordance with law and in a fair manner.

After appreciating the respective contentions, learned Labour Court held that there was overwhelming evidence to conclude that the inquiry was

conducted in a fair and proper manner. It was also held that the punishment imposed upon the petitioner was commensurate to the charges levelled

against him. The award passed by the learned Labour Court has been challenged in this petition.

3. Learned counsel for the petitioner reiterated the stand taken by the petitioner before the learned Labour Court. Learned counsel submitted that

inquiry was not conducted in a fair manner and that penalty was not proportionate to the charges levelled against the petitioner. Learned counsel for

the respondent supported the order passed by the learned Labour Court.

4(i) Conduct of inquiry

It is settled legal position that while exercising the power of judicial review, the Court will not act as an appellate Court for re-appreciating the

evidence led in the departmental inquiry. The findings of fact recorded in the departmental inquiry are not to be interfered with except when the same

were based on no evidence or are absolutely perverse.

Considering plethora of previous judgments on the issue, Hon'ble Apex Court in (2020) 3 Supreme Court Cases 423, titled State of Karnataka and

another versus N. Gangaraj after noticing the facts of the case wherein Disciplinary Authority agreed with inquiry officer's findings about

delinquent police official being guilty of misconduct and imposed penalty of

dismissal, which was affirmed in appeal, observed that the Tribunal and the High Court could not have interfered with findings of facts recorded by re-appreciating the evidence as if they were the Appellate Authority. It was also observed that power of judicial review is confined to the decision making process and is not akin to the power of Appellate Authority. Power of Judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eyes of law. The Court in its power of Judicial review does not act as an appellate authority to re-appreciate evidence and to arrive at its own independent findings. It is only where the conclusion reached by disciplinary authority is perverse or suffers from patent error on face of record or based on no evidence at all that interference will be called for. Question of adequacy of evidence is not required to be gone into.

Interference with decision of Departmental Authority is permitted if such Authority had held the proceedings in violation of prescribed procedure or in violation of the principles of natural justice. The Honâ??ble apex Court further held as under :-

â??14. On the other hand learned counsel for the respondent relies upon the judgment reported as Allahabad Bank v. Krishna Narayan

Tewari (2017) 2 SCC 308, wherein this Court held that if the disciplinary authority records a finding that is not supported by any evidence

whatsoever or a finding which is unreasonably arrived at, the Writ Court could interfere with the finding of the disciplinary proceedings.

We do not find that even on touchstone of that test, the Tribunal or the High Court could interfere with the findings recorded by the

disciplinary authority. It is not the case of no evidence or that the findings are perverse. The finding that the respondent is guilty of

misconduct has been interfered with only on the ground that there are discrepancies in the evidence of the Department. The discrepancies

in the evidence will not make it a case of no evidence. The Inquiry Officer has appreciated the evidence and returned a finding that the

respondent is guilty of misconduct.

15. The disciplinary authority agreed with the findings of the enquiry officer and had passed an order of punishment. An appeal before the

State Government was also dismissed. Once the evidence has been accepted by

the departmental authority, in exercise of power of judicial review, the Tribunal or the High Court could not interfere with the findings of facts recorded by reappreciating evidence as if the Courts are the Appellate Authority. We may notice that the said judgment has not noticed larger bench judgments in State of A.P. Vs. S. Sree Rama Rao, AIR 1963 SC 1723 and B.C. Chaturvedi Vs. Union of India, (1995) 6 SCC 749 as mentioned above. Therefore, the orders passed by the Tribunal and the High Court suffer from patent illegality and thus cannot be sustained in law.

16. Accordingly, appeal is allowed and orders passed by the Tribunal and the High Court are set aside and the order of punishment imposed is restored.â??

In the instant case, the petitionerâ??s plea that inquiry was not conducted in accordance with law or that the principles of natural justice were infringed, is not supported by the evidence. The petitioner while appearing in the witness box as PW-1 admitted that he was issued mis-conduct letter and suspension letter on 12.04.2004 with respect to a complaint of assault alleged against him by his co-worker Hardev Thakur. He has also admitted that on 08.05.2004, a charge sheet was issued to him levelling charges of assault on co-worker Hardev Thakur and charges of outraging modesty on co-worker Sushma Sharma. Petitioner admitted joining the inquiry proceedings. He has also admitted that the inquiry procedure was explained to him by the inquiry officer. He has also admitted that he was told by the management of his entitlement to be assisted by any co-worker as per standing order. He has cross examined the management witnesses. He has also signed the inquiry proceedings. He has admitted having not made any complaint that inquiry officer was biased or conducting inquiry in violation of principles of natural justice. He has also admitted that copy of inquiry report was supplied to him. Petitioner has admitted having received a second show cause notice issued on 31.07.2004 after conclusion of the inquiry.

With the assistance of learned counsel for the parties, we have gone through the inquiry report. A perusal of this report makes it evident that the petitioner was allowed to cross examine the management witnesses and that inquiry was conducted in a fair manner. The inquiry officer (IO) has also stepped into the witness box as RW-2 before the learned Labour Court. The I.O.

deposed that the inquiry was conducted in accordance with law after associating the petitioner. The entire mode and manner of conducting the inquiry was elaborated by this witness. He also stated that inquiry proceedings were duly signed by the petitioner. Copies of statements of witnesses were supplied to the petitioner. Inquiry was conducted as per procedure and law. The Personnel Officer of the respondent also stepped into the witness box as RW-1 and stated that the charge sheet issued by the respondent was duly received by the petitioner wherein charges of intimidation and threatening the co-worker, indulging in riotous, disordering behavior and indulging in eve-teasing and outraging the modesty of a female employee were leveled against the petitioner.

In view of the evidence produced by the parties, it can be safely concluded that the inquiry against the petitioner was conducted in accordance with law. The principles of natural justice were followed while conducting the inquiry. The petitioner was associated with the inquiry proceedings. He was given due opportunity to lead evidence and to cross examine the witnesses of the management. Learned counsel for the petitioner could not point out infraction of any rule or procedure or law in conduct of the inquiry. Therefore, we concur with the award passed by the learned Labour Court that the inquiry conducted against the petitioner was held in accordance with law.

4(ii) Punishment imposed upon the petitioner.

Learned counsel for the petitioner next contended that even assuming the petitioner to be guilty of the charges leveled against him, then also, the punishment of termination from service imposed upon him is not proportionate to the charges.

The sexual harassment of a woman at workplace has been held to be a violation of fundamental right to gender equality and right of life and liberty.

Elucidating it, the apex Court held that there can be no compromise with such violation.

Reference in this regard can be made to (1999) 1 SCC 759 Apparel Export Promotion Council Vs. A.K. Chopra, wherein it was held as under :-

“26. There is no gainsaying that each incident of sexual harassment, at the place of work, results in violation of the Fundamental Right

to Gender Equality and the Right to Life and Liberty the two most precious Fundamental Rights guaranteed by the Constitution of India. As

early as in 1993 at the ILO Seminar held at Manila, it was recognized that sexual harassment of woman at the work place was a form of

gender discrimination against woman. In our opinion, the contents of the fundamental rights guaranteed in our Constitution are of

sufficient amplitude to encompass all facets of gender equality, including prevention of sexual harassment and abuse and the courts are

under a constitutional obligation to protect and preserve those fundamental rights. That sexual harassment of a female at the place of work

is incompatible with the dignity and honour of a female and needs to be eliminated and that there can be no compromise with such

violations, admits of no debate x x x x x x x x x x x x x x x x .â??

In M.P. Electricity Board Vs. Jagdish Chandra Sharma, (2005) 3 SCC 401, it has been held by the apex Court that where an employee assaulted and

injured his superior officer at the work place, in the presence of other employees, the act amounted to breach of indiscipline in the organization and in

such case the punishment of dismissal cannot be termed unduly harsh or disproportionate. The relevant para of the judgment reads as follows :-

â??9. x x x x x x x x x x Obviously this idea is more relevant in considering the working of an organization like the employer herein or an

industrial undertaking. Obedience to authority in a workplace is not slavery. It is not violative of one's natural rights. It is essential for the

prosperity of the organization as well as that of its employees. When in such a situation, a punishment of termination is awarded for hitting

and injuring a superior officer supervising the work of the employee, with no extenuating circumstance established, it cannot be said to be

not justified. It cannot certainly be termed unduly harsh or disproportionate. The Labour Court and the High Court in this case totally

misdirected themselves while exercising their jurisdiction. The Industrial Court made the correct approach and came to the right

conclusion.â??

5. No procedural infirmity or irregularity in the conduct of disciplinary proceedings has been brought to our notice. The inquiry proceedings held

against the petitioner proved him to be guilty of assaulting his male co-worker. He was also proved to have outraged the modesty of a woman co-

worker. The FIR in this regard though was not lodged, presumably due to

reluctance on part of the female victim. Petitioner having been held guilty of outraging the modesty of a female co-worker and physically assaulting a male co-worker had made himself liable for stringent punishment. Petitioner was guilty of gross mis-conduct. He had also breached discipline. Punishment of termination of services in the proved facts of the case cannot be said to be unduly harsh or disproportionate to the charges proved against him. The award passed by the learned Labour Court is well reasoned and does not call for any interference.

Finding no merit in this writ petition, the same is dismissed alongwith pending applications, if any.