
(1986) 04 KAR CK 0009
In the Karnataka High Court
Case No : W.A. No. 617 of 1986

N.G.E.F.

APPELLANT

Vs

Poonacha

RESPONDENT

Date of Decision : 08-04-1986

Acts Referred:

Citation : (1986) ILR (Kar) 3205

Hon'ble Judges : Jagannatha Shetty, Acting C.J.;Venkatesh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jagannatha Shetty, Ag. C.J.

1. This appeal comes up for preliminary hearing. Ordinarily, while disposing of Writ Appeals either by admitting or by rejecting at the stage of preliminary hearing, this Court does not give any reason. But out of deference to the Counsel who argued the matter at length, we may briefly indicate our reasons.

2. C. K. Poonacha, the respondent, was one of the six Security Superintendents in the appellant-NGEF which is a factory employing about 6000 workmen including officers. The factory had a scheme for encouraging Family Planning and as per that scheme an employee or his spouse undergoing sterilisation operation would get Rs. 1,500/- as medical reimbursement and Rs. 200/- as incentive - in all Rs. 1,700/-Liberty was given to the employees or their spouses to undergo tubectomy or vasectomy operation, as the case may be, in any Nursing Home or by any doctor ; but they had to produce the certificate of the doctor stating that they had undergone sterilisation operation.

The Security Superintendents were directed to verify and peruse the records pertaining to the sterilisations. They have been given instructions in the following terms :--

"1. The verifying officers should peruse the records maintained in the Nursing

Home. Question the doctor who has actually conducted the tubectomy or treated the patient. If the concerned doctor is not available at least his name should be noted in the report.

2. The nature of the records perused by the verifying officers should be noted.

3. Whether there is facility for conducting tubectomy in the Nursing Home and whether there are wards for in-patients etc. should be noted in the report."

About 220 employees produced medical certificates stating that their wives have undergone tubectomy operations, and all those certificates have been given by Dr. H. S. Hegde of Jalajakshi Nursing Home, Bangalore. Out of those 220 cases, the respondent has verified 51 cases and submitted his reports.

3. Subsequently it was discovered that the certificates issued by Dr. H. S. Hegde of Jalajakshi Nursing Home were not genuine and they were issued without conducting any operation. Taking a serious view of the matter, the management filed criminal complaints and also initiated departmental proceedings against all the 220 employees. During the enquiry, the employees admitted that they had obtained bogus certificates from the said doctor. They also agreed to refund the money paid to them. Accordingly, the management recovered the amounts and dropped the proceedings and consequently all the 220 employees are continuing in service.

4. The management, however, initiated departmental enquiry against the six Security Superintendents on several charges. Holding them guilty of all the charges, they were dismissed from service. Thereafter, as a result of some agreement between the management and five Security Superintendents the latter tendered their resignations which were accepted by the management. They were then given employment certificates with payment of gratuity calculating the same on the basis of notional retirement.

5. The respondent did not bargain for any such concession, but stood firm. He challenged the order of dismissal in Writ Petition No. 9167/85. His contention in the Writ Petition was that he had acted in accordance with the instructions given to him by the management and he did not commit any misconduct. According to him, he visited Jalajakshi Nursing Home, questioned Dr. H.S. Hegde about the operations he has conducted, verified the records maintained by him, and on the basis of the information furnished to him he had reported the same to the management. He was not in a position to do anything more in the circumstances since the doctor himself had given the certificates which were produced by the concerned employees.

The learned single Judge, on an appraisal of the entire material on record, has come to the conclusion that the respondent did all that he could do in the circumstances although he could have been more careful. He might at best be stated to be negligent or careless, but, for that carelessness the penalty of dismissal from service was wholly disproportionate. The Learned Judge has

further held that when 220 employees who admittedly committed fraud in collusion with the doctor could be found fit to continue in service, it would be unjust and discriminatory to dismiss the respondent who had no control over the doctor or the said employees.

6. In this appeal, Sri. Sundaraswamy, Learned Counsel for the management, urged that this Court has no jurisdiction to reappreciate the evidence recorded in the domestic enquiry. He also urged that on the basis of the finding recorded by the Learned Judge that the respondent had acted carelessly in the discharge of his duties, the order of dismissal of the respondent ought to have been sustained.

7. We gave our anxious consideration to the questions raised. It is not correct to state that the Learned Judge has exceeded in his jurisdiction in re-appreciating the material on record. Regard being had to the charges framed and the evidence recorded in the domestic enquiry, the finding of guilt recorded by the Enquiry Officer is wholly unsustainable. The charges framed against the respondent are :-

"Standing Order 20(3)

:

Fraud or dishonesty.

-do-

20(11)

:

Any act subversive of discipline.

-do-

20(22)

:

Deliberately making false statement before a superior knowing to be false.

-do-

20(39)

:

Neglect of duty including carelessness.

-do-

20(45)

:

Abetment of any misconduct.

We have perused the evidence produced in the domestic enquiry. There is nothing in that evidence to implicate the respondent in any of the above charges. Yet, the Enquiry Officer found him guilty of all the charges. That finding is wholly without any basis. The learned Judge was therefore justified in appreciating the evidence on record and coming to his own conclusion, since the finding recorded by the Enquiry Officer is perverse.

8. Sri. Sundaraswamy very fairly submitted that there is no evidence adduced by the management to indicate that the respondent was either a party or privy to the fraud committed by 220 employees in collusion with the doctor. He also submitted that there was no corrupt motive on the part of the respondent in submitting his reports. He however urged that the finding recorded by the learned Judge as to carelessness of the respondent in submitting the reports would have been itself sufficient to sustain the sack order of the respondent.

We may say a few words on the said conclusion of the learned Single Judge. No doubt, the respondent has not stated in his verification report about the facility available for conducting tubectomy in the said Nursing Home and about the wards for in-patients But can that be considered as carelessness on his part? We think not. In the written statement filed before the Enquiry Officer, the respondent, has, inter alia, stated :

"I once again humbly submit that I have strictly followed the instructions issued vide Memo dated 12-2-84. I also used to get instructions from SO and DSO that I should visit the said Nursing Home and after verifying the records should submit report accordingly. In all the cases referred to me I have performed my duty promptly with a great personal risk like road accidents enroute while using own vehicle i.e. after duty hours. The reports given by me in all the cases were specifically as per the records of the said Nursing Home and as per the certificates issued by Dr. H. S. Hegde. Whenever I had visited the Nursing Home, I had seen beds and at times with in-patients. Here it may be mentioned that one of the COD's mother was admitted in the said Nursing Home for about ten days for treatment and Sri Anthony Peter who had verified the case had seen the patient (mother of the COD) as an in-patient there.

Prior to the present case i.e. before the period considered for the present number of cases, there were cases of tubectomy operations done in the said Nursing Home and the bills from the same Nursing Home were accepted and amounts paid to the employees. In some of those cases, I had verified the case and my reports submitted which were accepted as correct."

It appears that in the building in which Dr. Hegde's Clinic was located, there were a number of name boards of other medical men of various and varied disciplines. The observation of the Learned Single Judge that the respondent was careless in the discharge of his duties, therefore, will have to be considered against this background. The duty of the respondent to verify the medical reports was not confined to the precincts of the factory. He was required to go out and

verify with the third parties over whom he has had no control. He is not a police officer with investigation powers. His enquiry into the case was limited only to questioning the doctor, observing the premises and verifying the records maintained by the doctor. He is not even required to accompany the employees for sterilisation, nor he is required to be present at the time of operation. The employees who have undergone sterilisation are also not required to report to him. The respondent, however, upon interrogating the doctor, verifying the records maintained by the doctor and observing the building in which there were several other clinics, had submitted his reports to the management. He is a lay man. He is not credited with the knowledge about the facilities required for vasectomy/ tubectomy operation. We cannot, therefore, possibly say that he has acted carelessly in the discharge of his duties. At best, we may state that the omission to mention in his reports about the availability or non-availability of facilities for conducting tubectomy may be an act of indiscretion and nothing more than that.

9. As to the conclusion of learned Judge that the sack order of the respondent was arbitrary and unsustainable. We cannot but agree with him. The management has continued in service 220 employees who have perpetrated the fraud. It has dismissed the respondent on a flimsy ground. It is indeed whimsical. The respondent has been made to pay the price for the sin committed by 220 employees.

10. Sri. Sundaraswamy finally submitted that the reinstatement of the respondent should not be ordered since the management has lost confidence in him. It is true that ordinarily Courts will not order reinstatement of a workman in whom the Management has lost confidence. But, we fail to understand the rationale behind the submission made. The respondent was not found fault in the discharge of his duties as a Security Superintendent in the premises of the factory. He had been entrusted with some additional work which was required to be done outside the factory and that too after the duty hours. Even in regard to that work, he was not specially qualified. We could have appreciated the submission of the learned Counsel if the respondent had been a party to the grand design of 220 employees who have perpetrated the fraud on the management and cheated the management by drawing Rs. 1700/- each. There is no such evidence against the respondent. The management therefore has no basis to contend that it has lost confidence in the respondent who has done his duty to the extent possible. We therefore reject this submission also.

11. In the result, the appeal is dismissed.