

(2003) 09 MAD CK 0142
In the Madras High Court
Case No : Writ Petition No. 31862 of 2002

R. Govindarajan

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 09 MAD CK 0142

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : S.G.R. Swaminathan, for the Appellant; P. Renganatha Reddy for King and Partridge, for the Respondent

Judgement

P.K. Misra, J.—Heard the learned counsel appearing for both parties.

2. In this writ petition, the petitioner has challenged the order dated 26.9.2001, confirming the order of the Disciplinary Authority dated 25.04.2001 in a disciplinary proceeding. After considering the findings in the Departmental enquiry, the Disciplinary Authority came to the following conclusion:

"The charges levelled against Shri Govindarajan and established during the course of enquiry proceedings are serious enough to warrant major penalty. However, taking into consideration his past service, his young age and in order to give him an opportunity to correct himself I am inclined to take a lenient view and accordingly imposing upon him a punishment of stoppage of two increments with cumulative effect. Accordingly, Shri Govindarajan shall not be eligible for the annual increment falling due on 1st January, 2002 and 1st January, 2003. Shri Govindarajan is also transferred laterally to Vadalur Depot. He should report to Depot In-charge, Vadalur Depot within seven days of receipt of this order".

3. Thereafter the appeal was rejected by the Appellate Authority. The Appellate Authority agreed with the conclusion of the Disciplinary Authority and confirmed the punishment.

4. Learned counsel for the petitioner has submitted that at the enquiry, out of three charges, the first charge relating to habitual neglect of work has not been accepted by the Enquiry Officer and yet the Disciplinary Authority, while considering the matter has come to the conclusion that all the charges have been proved against the petitioner, even though the charge relating to habitual neglect in the duty is not accepted. It is submitted that this erroneous approach has vitiated the order of the disciplinary Authority. It has been further contended that the other charge relating to "engaging in unauthorised private trade or personal work" within the premises of the establishment during working hours without previous permission of the Competent Authority is relatable to the activity of the petitioner in filing writ petitions on behalf of the Contract Labourers and this taking up of the matter of Contract Labourers should not have been viewed as a misconduct. The first submission of the learned counsel for the petitioner that the disciplinary authority has erroneously assumed that all the charges have been proved appears to be correct. Similarly the activity of the petitioner in pursuing some legal remedy on behalf of the co-workers or contract labourers should not have been viewed seriously by the Department. However, even assuming that all charges are not proved or the seriousness of the charges is diluted, the fact remains that the other charge relating to holding of meetings in the Corporation Office without specific permission of the Corporation Authorities, can be said to have been established and it cannot be said that there was no misconduct. Keeping in view the nature of such alleged conduct, on the previous date of hearing, I had called upon the counsel for the respondents to obtain instructions regarding the punishment imposed on the petitioner. Learned counsel appearing for the respondents, on instructions, says that in order to give a quietus to the matter, the punishment imposed may be suitably modified and instead of the punishment of stoppage of two increments with cumulative effect, the punishment may be modified as stoppage of two increments without cumulative effect. Even though learned counsel for the petitioner has some reservation on this aspect, I feel, keeping in view the facts and circumstances of the case, such modified punishment would meet the ends of justice.

5. Learned counsel for the petitioner further submitted that apart from imposing the punishment of stoppage of two increments, the Department had also imposed a punishment of transfer. It has been submitted by him with some justification, that the order of transfer cannot be issued as a matter of punishment. For the aforesaid purpose, he has relied upon a decision of this Court dated 30-04-2003 in W.P.No.11777 of 2002. On the basis of such submission, there cannot be any doubt that the transfer order should not have been issued as a matter of punishment. To that extent such order was vulnerable. However, learned counsel for the respondents has submitted that in the meantime there has been subsequent change of events and the petitioner after being posted at Cuddalore, was subsequently posted in a Higher Grade (M-10) at Gummidipoondi. He has submitted that in view of such subsequent developments, there is no necessity to quash the order of transfer, as the same

has been superseded subsequently. The latter submission of the counsel for the respondents is reasonable.

6. However, I find that the petitioner is a handicapped person and the order of the Commissioner for persons with Disabilities dated 25.04.2001 contains the following direction:

"Considering the material available on record and taking overall circumstances in view, the respondent is directed to post the complainant to one of the places offered, if the complainant so desires. The Respondent is further directed to transfer him to Chennai immediately on availability of a vacancy considering his disability."

7. Keeping in view the fact that the petitioner is a handicapped person, it is expected that such direction of the Chief Commissioner for Persons with Disabilities should be borne in mind and may be implemented as expeditiously as possible.

8. With the above direction the writ petition is disposed of. No costs.

9. Before parting with the case, I place on record my appreciation for the fair manner of submissions of the learned counsel for both parties.