(1994) 09 BOM CK 0023

In the Bombay High Court

Case No : Writ Petition No. 1784 of 1990

Satish Chandra Mairh APPELLANT

Vs

Export Inspection Counsil and Others RESPONDENT

Date of Decision : 21-09-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 09 BOM CK 0023

Hon'ble Judges : S.M. Jhunjhunwala, J;M.L. Pendse, J

Bench : Division Bench

Judgement

M.L. Pendse, J.—By this petition filed under Article 226 of the Constitution, the petitioner is challenging legality of order dated August 11, 1989 passed by Director (Inspection and Quality Control) and Ex-Officio, Member Secretary, Export Inspection Council, removing the petitioner from service in exercise of powers conferred under rule 9(2) of the Export Inspection Agency Employee (Classification, Control and Appeal) Rules, 1978 : The order passed by the Disciplinary Authority was confirmed by the Special Secretary and Chairman, Export Inspection Council which is an Appellate Authority by order dated December 27, 1989. We are more than satisfied that the order of removal is extremely perverse and the facts to be set out hereinafter would demonstrate that the respondents were out to throw out the petitioner from service by any means.

2. The petitioner was appointed as Technical Officer by Export Inspection Council, a body created by Central Government with effect from August 2, 1976. In year 1980, the petitioner was charged with negligence in performing duties and in passing certain substandard goods. The charge-sheet served on September 29, 1980 led to an enquiry and suspension and the Enquiry Officer found that the charges were not proved. Ultimately, the enquiry was dropped on November 27, 1984. On July 8, 1985 the petitioner was again put under suspension. The Petitioner was served with memorandum dated November 4, 1987 to explain why

action should not be taken under Rule 11. The statement of article of charge served upon the petitioner recites that the petitioner was found on July 25, 1986 in possession of assets to the extent of Rs. 67,255/- disproportionate to his known source of income and thereby the petitioner exhibited lack of integrity and contravened provisions of Rule 3(1) (i) of the Central Civil Services (Conduct) Rules, 1964. The statement of imputation of misconduct supplied to the petitioner sets out that the petitioner during the period of service from August 2, 1976 to July 1986 had earned total income of Rs. 2,71,350/-. This income included that interest on fixed deposit receipts, recurring deposit and the income earned by the petitioner''s wife from stitching of the clothes. The statement then recites that the expenses on household and L. I. C. premium amounted to Rs. 1,07,270/-. The break-up of the expenses is Rs. 15,800/- towards L. I. C. premium and Rs. 91,470/- towards household expenses. The household expenses are estimated on the basis that the petitioner must have spent 60% of the income. The statement then recites that the likely saving of the petitioner should have been Rs. 1,64,080/- but the petitioner was found to be in possession of the assets to the tune of Rs. 2,31,335/-.

The petitioner filed his reply denying the charge and pointing out that the assumption of the respondents that 60% of the income was spent on the household expenses is without any foundation. The petitioner further pointed out that the respondents are bent upon removing him from service and therefore one after other enquiry is held against the petitioner. The reply filed by the petitioner did not satisfy the respondents and the Disciplinary Authority appointed Swaraj Banerjee as the Inquiring Authority.

3. Before the Inquiry Officer, it was claimed by the respondents that the petitioner''s wife had purchased a flat in November 1983 and the petitioner had shifted to that flat in May 1984 alongwith his family members. The respondents claimed that the intimation of the purchase of the flat was given on May 21, 1984 and the petitioner had not explained the sources from which the flat was purchased. The petitioner pointed out that the flat was purchased from the income of his wife and the amount possessed by her. The petitioner also pointed that the relations of his wife had gifted her small amount of Rs. 5,000/- to Rs. 10,000/- and the amount of Rs. 40,000/- was received by his wife from her mother Smt. Kalavatidevi. The total consideration for the purchase of the flat is not very large. In support of the claim that the petitioner''s wife had received small amounts as gift from her relations, several relations of the petitioner were examined and the Inquiry Officer came to the conclusion that the witnesses had requisite capacity to pay the amounts to the wife of the petitioner. The Inquiry Officer also noticed that the consideration paid for the flat was not very large. The Inquiry Officer held that though the petitioner had led evidence about the consideration being paid by his wife, it is possible that the evidence led by the petitioner may not be true. The Inquiry Officer also held that the amount of investment was not declared by the delinquent as established that the declaration was made long prior to the date of suspension. Indeed the

declaration was made by the delinquent on May 21, 1984 i.e. long prior to the submission of statement of imputation. As mentioned hereinabove, there is no reference whatsoever to the acquisition of the flat in the statement of imputation.

The Inquiry Officer, by report dated April 12, 1989 came to the conclusion that the charge against the delinquent was proved and the assets of the delinquent were disproportionate to the known source of income to the extent of Rs. 26,768/- and not to the extent of Rs. 67,255/- as set out in the charge-sheet. The report of the Inquiry Officer was accepted by the Disciplinary Authority and the punishment of removal from service was imposed. The appeal preferred by the delinquent before the Appellate Authority ended in dismissal without the Appellate Authority recording detailed reasons. The order of removal is under challenge in this petition.

4. Shri Chandrachud, learned counsel appearing on behalf of the delinquent, submitted that the entire inquiry was a force and the framing of the charge against the delinquent was nothing but an act of vendetta by the superior authorities. The learned counsel urged that the respondents were bent upon throwing out the petitioner from service and sustained efforts were made from year 1980 onwards. The learned counsel highlighted the fact that the inquiry started from year 1980 and the charges were dropped in year 1984. Immediately the petitioner was put under suspension for about two years. The order of suspension was revoked only to pass a fresh order of suspension and then to frame the charge which had led to the removal. We find considerable merit in the submission of the learned counsel. The plain reading of the charge makes it clear that the respondents are proceedings on the assumption that the petitioner must have spent an amount of 60% of the income towards the household expenses. It is difficult to appreciate from where the respondents came to such conclusion. Before the Inquiry Officer, the respondents examined A. G. Karve and the witness deposed that there are no documents or rule or guidelines to arrive at the percentage of household expenses of the employee out of his income. Shri Karve claimed that he had decided that the delinquent must have spent 60% of the income on household, on the strength of his experience as a Senior Officer and by taking into consideration what should be the expenses for a family consisting of five members. It is obvious that the delinquent cannot be charge-sheeted on the basis of such arbitrary decision of an officer. It hardly requires to be stated that the quantum of expenses vary from family to family and depends upon several circumstances. It is not permissible to apply rule of thumb and proceed on the assumption that the family with five members is bound to spend 60% of the income towards the household expenses. The expenses depend upon the number of children, male and female, the education undertaken by them, the ailment if any suffered by any member of the family and a host of other considerations. It is impossible to imagine how the Government employee can be charged for having disproportionate assets only on the basis of the arbitrary decision by an Officer of the respondents that the expenses incurred must be 60% of the income. In our judgment, the charge itself is perverse and holding in

inquiry in such charge was totally illegal. We are more than satisfied that the respondents had framed the charge without any application of mind or only with the intention to throw out the delinquent. As the charge itself was perverse, the consequent inquiry is equally perverse. We have gone through the report of the Inquiry Officer and we have no hesitation in concluding that the findings are contrary to the evidence on record. After holding that the wife of the petitioner had relations who were in a position to give small amounts as gift and the flat was purchased by the petitioner''s wife for a consideration which is not excessive, it is impossible to hold that the delinquent was guilty on the ground that the intimation about the acquisition of flat was given beyond the stipulated time. The petitioner''s wife applied for a flat in November 1978 and possession was obtained in November 1983 and the petitioner shifted to the flat in May 1984 and gave intimation on May 21, 1984. In these circumstances, we are unable to appreciate how the Inquiry Officer could have found the delinquent guilty of the charge levelled. It is interesting to note that the Inquiry Officer found that the income of the delinquent was disproportionate only to the extent of Rs. 26,768/- when the charge was that it was disproportionate to the extent of Rs. 67,255/-. It hardly requires to be stated that it is not permissible to comb the income of a Government employee with a small needle to find out whether the saving does not tally squarely to the income earned. The whole process undertaken by the respondents is totally illegal and was only with a view to harass the petitioner. In these circumstances, it is necessary to quash the order passed by the Disciplinary Authority and confirmed by the Appellate Authority.

5. Before parting with the judgment, it is necessary to make reference to what transpired yesterday in the Court. Before hearing commenced, we enquired from the learned counsel as to whether it is possible to amicably settle the dispute. Shri Desai, learned counsel appearing for the respondents, took instructions from I. P. Yadav, Deputy Director of respondent No. 1 and stated that the respondents are ready and willing to reinstate the petitioner in service provided the petitioner shall not insist on payment of back-wages. The learned counsel stated on instructions that the respondents would impose minor penalty of withholding one increment. Shri Chandrachud, after taking instructions from the petitioner, initially agreed to the course suggested by the respondents. The parties thereupon prepared the consent terms. The petitioner was desirous of having an assurance that the respondent will not take any further action during the course of his service. The Court adjourned for the day at that stage. To-day, Shri Desai states that his Officer informs him that the respondents are not inclined to accept the offer made yesterday and the petition should be heard on merits. We enquired from the learned counsel as to what had transpired overnight and the counsel states that the Officer informs that he has received instructions from Delhi.

We have grave doubt about the claim made by the Officer. In fact, the consent terms would have been signed and the order would have been passed yesterday itself only if the petitioner had not insisted on the assurance. At no stage, the

Officer even remotely suggested that the consent terms require approval from Delhi. We have our own doubts as to whether the Officer is acting honestly and had given bonafide instructions to the counsel for the respondents. We are referring to this aspect in the judgment because we entirely disapprove the action of the Officer. The Officer claims to be a Senior Officer holding a post of Deputy Director and we disapprove the conduct of the Officer in misleading the Court.

6. Accordingly, petition succeeds and order dated August 11, 1989 passed by the Disciplinary Authority and the order dated December 27, 1989 passed by the Appellate Authority are quashed and the respondents are directed to forthwith reinstate the petitioner in service with full back-wages and continuity of service. The period of suspension shall be treated as period on duty and the petitioner shall be paid all the emoluments due, within a period of one month from today. The respondents shall pay the costs to the petitioner.

