

(1973) 08 SHI CK 0012

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No"s. 37 and 38 of 1971

Shri Jit Ram

APPELLANT

Vs

The Executive Engineer etc.

RESPONDENT

Date of Decision : 29-08-1973

Acts Referred:

Constitution of India, 1950 — Article 19

Citation : (1973) 2 ILR HP 777

Hon'ble Judges : R.S. Pathak, C.J.;H.C.P. Tripathi, J

Bench : Division Bench

Advocate : H.S. Thakur, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—This and the connected special appeal have been directed against the judgment and order of a learned single Judge of this Court dismissing two writ petitions filed by the Appellant.

2. The Appellant, Jit Ram, was appointed Beldar in the Beas Sutlej Link Project, Sundernagar on September 23, 1964 by the Executive Engineer in April,1966 he was promoted to the post of Mechine, and according to the Appellant the promotion was made by the Superintending Engineer on January 22,1969, the Appellant is said to have delivered a speech near the Recreation Hall situated in the Beas Sutlej Link Colony. The contents of the speech were conveyed to the Project authorities, and on February 5, 1969 the Executive Engineer made an order suspending the Appellant pending an enquiry into certain chargers framed with respect to the speech made by the Appellant. A statement of the chargers was served on the Appellant, and he submitted his reply. The Appellant then filed a writ petition (Civil Writ Petition No. 22 of 1969) challenging the validity of the order of suspension and of the enquiry proceedings. It appears that the Appellant appeared in the enquiry proceeding on two dates and thereafter walked out of the proceeding. The Enquiry Officer completed the enquiry and submitted his

report, and thereupon a notice was served on the Appellant to show cause against his dismissal from service. Upon that Appellant filed a second writ petition (Civil Writ Petition No.13 of 1970). By that writ petition he challenged the validity of the "show cause" notice served on him. The two writ petitions were heard and dismissed by D.B. Lal, J. and hence the present appeals.

3. Learned Counsel for the Appellant has raised four contentions before us.

4. The first contention is that the allegations on the basis of which charges have been framed do not make out the charges and therefore the entire proceedings are vitiated. It appears that in the speech delivered by him the Appellant referred to certain officers of the Project in language which was insulting and derogatory. The Allotment Secretary was described as a good-for-nothing, and the Executive Engineer as "mad" and fit to be sent to the lunatic asylum. It was also stated that the Executive Engineer came to duty drunk. The Appellant was charged with making defamatory and false allegations against the officers of the Project with a view to lowering them in the esteem and respect of the workmen and therefore of having committed an act subversive of discipline. He was also charged with making a speech contrary to the standards of good conduct. The Appellant submitted his reply taking his stand on the right of freedom of speech and of association guaranteed by Article 19 of the Constitution, alleging that he was being victimised for participating in trade union activities.

5. It is not disputed that the Appellant was charged with mis-conduct. The Industrial Employment (Standing Orders) Central Rules, 1946 contain a body of Model Standing Orders, and paragraph 14 thereof reads:

14. Disciplinary Action For Misconduct:

....

....

(3) The following acts and omissions shall be treated as mis-conduct:

....

....

(h) riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline....

Certified Standing Orders have also been framed under the statute, but they need not be referred to as they were admittedly not in force on the relevant date. It is contended that as the speech was made outside the Recreation Hall inside the Beas Sutlej Link Colony there was no misconduct. According to the case of the Appellant, a charge of misconduct could have been framed only if the speech amounted to riotous or disorderly behaviour or an act subversive of discipline committed during working hours at the establishment and, it is said, the place where the speech was made cannot be said to constitute a part of the

establishment. It seems to us unnecessary to express any opinion on that point. In our opinion, paragraph 14(3)(h) of the Model Standing Orders falls into two parts--(a) riotous or disorderly behaviour during working hours at the establishment, and (b) any act subversive of discipline. While riotous or disorderly behaviour can constitute misconduct under this provision only if committed during working hours at the establishment, an act subversive of discipline can be treated as misconduct even if committed outside working hours and outside the establishment. The misconduct of subverting discipline extends in point of time and place beyond those limits which make riotous or disorderly behaviour misconduct. It is not confined in point of place to the establishment nor in point of time to working hours at the establishment. In the present case, it cannot be disputed that the speech was made to the workmen. And, according to the Appellant himself, he is also a member of the Working Committee of the Beas Sutlej Link Workers' Union. In the circumstances, a speech made by the Appellant in which derogatory and insulting remarks are made about superior officers is likely to lower discipline in the labour force and to weaken its respect for those officers. Learned Counsel for the Appellant says that if the speech was defamatory of the officers, they have a right in civil and criminal action. That may be so insofar as it affects them personally. We are concerned here with its effect on the discipline prevailing in the organisation, and viewed from that stand point it cannot be doubted that the allegations would make out a case of misconduct. At this stage, we may point out that we are not concerned here with the truth of the allegations; we are concerned merely with the question whether the allegations can be said to constitute misconduct. In our opinion, they do. The first contention on behalf of the Appellant is rejected.

6. The second contention is that the order of suspension and the enquiry proceedings are invalid because the Executive Engineer passed the order and directed the proceedings. The Appellant says that the Superintending Engineer appointed him to the post of Mechanic and he alone was competent to exercise power in the matter. The allegation of the Appellant that he was appointed by the Superintending Engineer is met by the counter-allegation of the Respondents that the appointment was made by the Executive Engineer. The order of appointment has not been filed by the Appellant. The material on the record is wholly insufficient for determining this issue. The burden lies upon the Appellant to prove that he was appointed by the Superintending Engineer, and as the burden has not been discharged the contention must fail.

7. The third contention is that the order of suspension and the enquiry proceedings as well as the notice to show cause against dismissal are vitiated by malafides. The only allegation is that the superior officers held an animus against the Appellant because he was a member of the Trade Union. Nothing more has been urged before us. In our opinion, the material is not sufficient to show that the Respondents have been motivated by malafides.

8. The last contention is that the enquiry was not properly conducted because

the Executive Engineer represented the Project authorities in the enquiry and was a witness therein, and as he was superior in rank to the enquiry officer his influence dominated the judgment of the enquiry officer. This contention, we think, is also not warranted. Even if the enquiry officer was subordinate in rank, it cannot be said that his judgment would be necessarily influenced thereby against the Appellant.

9. No other point is pressed before us. Both these appeals fail and are dismissed, but in the circumstances there is no order as to costs.