
(2010) 04 OHC CK 0014
In the Orissa High Court

Sk. Ziaul Haque

APPELLANT

Vs

Chairman, IDCOL Cement and Others

RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

Citation : (2010) 110 CLT 110

Hon'ble Judges : B.N. Mahapatra, J;A.S. Naidu, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.S. Naidu, J.—The Industrial Development Corporation Ltd. (for short "IDCOL") was established under the Industries Department of Government of Orissa & Hira Cement was One of its Unit. After rigorous recruitment test, the Petitioner was selected & appointed as a Post Graduate Apprentice on 08.3.1968 & was posted at Hira Cement Ltd. In course of time he was allowed to continue as an Assistant & then on 15.9.1979 was promoted to the post of Assistant Sales Officer. Being satisfied with his performance the Management in July, 1989 promoted him to the post of Deputy Manager.

2. While matter stood thus, on 31.3.1993 the Hira Cement Works which was a Unit of IDCOL was transferred to the control of IDCOL Cement Ltd., commonly known as "ICL", by means of an agreement entered into inter se between IDCOL & ICL. Clause-2 of the said agreement deals with transfer of all personnel of Hira Cement Works to ICL. Clause-22 of the agreement specifies that the ICL agreed to employ all the workmen, staff & other personnel, who were on the regular rolls of Hira Cement Works as on 31.3.1993 subject to certain terms.

3. In the year 1996, the Petitioner was called upon to submit his explanation within 48 hours as to why disciplinary action should not be initiated against him for the shortcomings with regard to sales & sales operation leading to negligence of duty, disobedience of orders of the higher authority & causing financial loss to the Corporation. By the said letter, Annexure-I, the Petitioner was also placed

under suspen(sic). The Petitioner received the charges at about 5.20 P.M. on 26.11.1996 & prayed for at least one week's time to submit his explanation. He also prayed to allow him to peruse certain documents. According to the Petitioner, the list of documents basing upon which the charges were framed were neither disclosed nor supplied to him along with the charges & he requested the General Manager to furnish the list of documents so as to enable him to submit his show cause.

4. While matter stood thus, unfortunately, it is stated, the Petitioner received a telegram with regard to his wife's illness & was constrained to apply for leave & went to attend his wife. Thereafter, he extended the leave till 02.1.1997. Though the Petitioner prayed to supply him documents & grant him some more time to submit his explanation he was intimated by letter dtd. 10.4.1997"(Annexure-6) that an Enquiry Officer & Presiding Officer have been appointed. He was called upon to be present & participate in the enquiry from the date & time to be fixed by the Enquiring Officer. By letter dtd. 11.4.1997, the Enquiring Officer intimated the Petitioner to appear on 24.4.1997 in the Office of the Deputy General Manger & take part in the enquiry. After receiving the said letter the Petitioner intimated the Enquiring Officer that, the allegations & imputations levelled against him being not specific, the documents relying upon which such charges were framed, be supplied, so as to enable him to effectually defend himself. Unfortunately, the authorities did not pay any heed to such request, nor they paid the subsistence allowance to the Petitioner. Being aggrieved by such action, the Petitioner approached this Court in OJC No. 7057/1997. The said Writ application was disposed of on 3.7.1997 directing the concerned authorities to dispose of the representation in which the Petitioner had requested to supply documents before proceeding any further. This Court also directed the Opp. Parties to pay subsistence allowance in accordance with law. According to Learned Counsel, the Petitioner was constrained to move this Court once again, being aggrieved by the inaction of the authorities in complying with the direction issued by Order Dated 9.9.1997. This Court, after hearing Learned Counsel, directed that the subsistence allowance should be paid to the Petitioner as per Rules. Thereafter, the Petitioner was allowed to join & resume his duties w.e.f. 08.6.1998. The Petitioner submitted his explanation to the charges on 31.8.1998, inter alia, stating that all the charges were false & that he was not involved in commission of the alleged irregularities & prayed to drop the charges The explanation submitted by the Petitioner was not accepted & he was intimated that a departmental proceeding would be initiated to enquire into "he charges levelled against the Petitioner. The Enquiring Officer proceeded with the enquiry & submitted a report, copy of which was forwarded to the Petitioner on 15.2.2000, vide Annexure-11, & he was asked to submit his second show cause as to why he shall not be imposed the major punishment of dismissal. After receipt of the second show cause notice on 29.3.2000 the Petitioner submitted his show cause assailing the findings of the Enquiring Officer mainly on the ground that the same were contrary to the evidence & that the proposed punishment was not

commensurate to the gravity of the charges. Without taking into account the representation, the Disciplinary Authority, i.e. the Executive Director by his order dtd. 27.4.2000 imposed the punishment of dismissal, vide Annexure 13.

5. The Petitioner challenged the order of punishment by preferring an appeal before the Chairman. The Chairman by Order Dated 9.8.2000 (Annexure-15) dismissed the appeal observing as follows:

The Chairman, IDCOL Cement Limited & the Appellate authority has carefully gone through your representation, report of enquiry along with all the proceedings & exhibits. After considering all the materials on record including the findings of the Enquiry Officer & your points raised in your representation to the 2nd show cause notice & the appeal, the Chairman, IDCOL Cement Ltd. & the Appellate authority does not find any merit in the appeal &, therefore, has decided not to set aside, modify or reduce the punishment of dismissal already awarded by the disciplinary authority. Accordingly, your appeal has been rejected.

6. The said order is assailed in this Writ Petition mainly on the ground that (1) the authorities were determined to impose the punishment of dismissal as would be evident from the conduct of the Enquiry Officer (ii) all the relevant documents basing upon which charges were framed were not supplied to the Petitioner (iii) adequate opportunity was not granted to the Petitioner to defend himself (iv) the punishment imposed is grossly disproportionate to the charges & (v) the Appellate authority did not consider any of the submissions made by the Petitioner & by a bald order confirmed the order of punishment.

7. After receiving notice, a counter affidavit has been filed by the Opp. Parties 1 to 3 mainly taking the stand that the Writ Petition is not maintainable. It is stated that the Petitioner was an employee of ICL, thereafter known as BCL & presently as "Associate Cement Company Ltd." (for short "ACC"). The ACC having not been impleaded as a party to the Writ Petition, no effectual order can be passed. It is further averred in the counter affidavit that the Petitioner has already attained the age of superannuation on 31.12.2000 & as such relief of reinstatement is no longer available. It is stated that on the said ground alone, the Writ Petition is liable to be dismissed.

8. The averments made in the counter affidavit are strongly repudiated by Learned Counsel for the Petitioner in the rejoinder affidavit. Drawing attention to the order of appointment, the Petitioner submitted that he was appointed by IDCOL & IDCOL promoted him to the post of Deputy General Manager. While serving under the IDCOL a Departmental Proceeding was initiated & an Officer of the IDCOL was appointed as an Enquiry Officer. The appeal filed by the Petitioner was entertained by the Chairman of IDCOL. Thus, for all acts & purposes the Petitioner was an employee of the IDCOL & the submissions made before this Court that in the absence of ACCC the Writ Petition is not tenable, inasmuch as the Petitioner has no grievance against the ACCC.

9. Relying upon a Judgment of this Court in the case of IDC, Officers Association

and Ors. v. State of Orissa and Ors. passed in OJC No. 6325/1993 Mr. Mishra, Learned Senior Advocate, submitted that transfer of the service of the Petitioner to the new company without his consent was an act of arbitrariness & unreasonableness & such unilateral decision was also not tenable in the eye of law. It appears that the said Judgment was assailed before the Supreme Court, but the SLP was dismissed. Thus, according to Mr. Mishra, IDCOL was his appointing authority & IDCOL has imposed the penalty.

10. Heard Learned Counsel for the parties at length & perused the materials available. It is specifically alleged by the Petitioner that enough opportunity was not granted to him to defend himself in the disciplinary proceeding inasmuch as neither the documents basing upon which charges were framed were supplied to him, nor he was granted opportunity to defend himself. This aspect of the case was not considered by the Chairman, IDCOL, who was the Appellate authority. The order of the Appellate authority quoted (supra) would clearly reveal that the said authority has not discussed the facts & law & dismissed the appeal by a cryptic order. It is the settled legal proposition that if the Enquiring Officer has recorded the finding of fact & such finding is disputed, the Appellate authority should examine the points raised & considered as to whether the decision taken was factually correct or not. In absence of such finding the Appellate order cannot be sustained. The controversy involves disputed questions of fact which cannot be decided under the Writ jurisdiction.

11. In view of the aforesaid facts & circumstances, this Court feels that ends of justice & equity will be better served if the order passed by the Appellate authority, vide Annexure-15, is set aside & the matter is remitted back to the Appellate authority for de novo disposal of the appeal after giving adequate opportunity to all the parties, & we direct accordingly.

12. In view of the fact that the Petitioner has already retired from service on attaining the age of superannuation, the authorities shall do well to dispose of the appeal as expeditiously as possible preferably within a period of 4 months from the date of communication of this order.

The Writ Petition is accordingly allowed.

B. N. Mahapatra, J.

13. I agree.

14. Writ Petition allowed