
(2010) 05 DEL CK 0145

In the Delhi High Court

Case No : Writ Petition (C) No. 5165 of 2008

Smt. Kanta Rani

APPELLANT

Vs

The District and Sessions Judge

RESPONDENT

Date of Decision : 21-05-2010

Acts Referred:

Citation : (2010) 05 DEL CK 0145

Hon'ble Judges : Valmiki J Mehta, J; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Sunita Rani Sharma, for the Appellant; Avnish Ahlawat and Nitesh Kumar, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, J.—Sh. M.R. Ghai and Smt. Kanta Rani, petitioner herein, were charged for financial irregularities detected during the period they worked as Readers in the Court of S.K. Gautam, MM, Tis Hazari Courts. Sh. M.R. Ghai was working as a Reader in that Court while the petitioner herein was posted as a Reader in place of Sh. M.R. Ghai vide office order dated 20.05.1998 and she joined duties with effect from 22.05.1998. Sh. M.C. Aggarwal, an Officer on Special Duty, on checking found various discrepancies in the accounts which resulted in further inquiry into the matter followed by issuance of Statement of Articles of Charges as the explanation given by the delinquent officials i.e. Sh. M.R. Ghai and the petitioner was not found satisfactory. It may be noticed that the petitioner claimed that the records were being managed by Sh. M.R. Ghai and whatever was available with him was taken over by her.

2. The Department led its evidence and the petitioner also led defence evidence though she did not herself step into the witness box.

3. Sh. S.K. Gautam, MM, was also examined as RW-5 and stated on oath that he had not instructed the petitioner to work under the supervision of Sh. M.R. Ghai as claimed by her. The petitioner and Sh. M.R. Ghai claimed that the original

records had been destroyed even though Sh. M.C. Aggarwal had checked the records. The Fine Register of the relevant period was summoned by the Inquiry Officer and it was found that the certain relevant pages had been deliberately removed therefrom. Sh. M.C. Aggarwal deposed to the audit done by him and the financial discrepancies found. One of the charges against the petitioner of not depositing a particular fine recovered was found proved and the Disciplinary Authority vide order dated 07.08.2006 imposed punishment of dismissal from service on Sh. M.R. Ghai, but insofar as the petitioner was concerned, penalty of compulsory retirement from service with immediate effect was imposed.

4. The petitioner aggrieved by this order preferred an appeal. Sh. M.R. Ghai also preferred an appeal and both theses appeals have been dismissed vide the impugned order dated 22.11.2007 of a learned Single Judge of this Court who was acting as an Appellate Authority. The Disciplinary Authority and the Appellate Authority have taken note of the financial irregularities found which amounted to lack of integrity.

5. The petitioner had been posted in place of Sh. M.R. Ghai and both of them apparently continued to work together in the same Court up to the date to which the last transaction forming part of the charge sheet relates. The Audit Report found that the amount received as fine had not been deposited with the Government account. In fact, there were a number of such discrepancies of non-deposit of fine with the Government account, which in all were numbering eleven (11). The discrepancies related to two periods - The first period being from 27.03.1998 to 13.05.1998 when Sh. M.R. Ghai alone was working as the Reader while the second period was from 22.05.1998 to 27.05.1998 when the petitioner had joined the posting as a Reader and both of them were working together. There were three transactions for the second period, out of which two were found duly accounted for and the Disciplinary Authority had given a finding of guilt only in respect of one transaction when a fine of Rs. 1,000/- had been imposed on 27.05.1998 but only Rs. 100/- was deposited with the Government account.

6. The aforesaid has to be appreciated in the background of the defence taken by the petitioner that the charge had not been handed over to her and that Sh. M.R. Ghai also continued to work as a Reader till 28.05.1998 and onwards. The entries are stated to have been made by Sh. M.R. Ghai who handed over the Running Register to her only for the period from 06.10.1998 to 17.11.1998. The finding arrived at by the Appellate Authority show that the Inquiry Officer had given full opportunity to the Delinquent Officers by putting each incriminating circumstance to the charged officer giving him/her an opportunity to explain the same. Insofar as the petitioner is concerned, she had joined her posting as a Reader in the Court of Sh. S.K. Gautam, MM (RW-5) on 22.05.1998 though Sh. M.R. Ghai continued to work at the same place despite his transfer. Since the Reader In-Charge is the officer responsible, the petitioner has been found guilty. The testimony of Sh. S.K. Gautam, MM (RW-5) however shows that Sh. M.R. Ghai

was retained and both of them i.e. Sh. M.R. Ghai and the petitioner worked together and not that the petitioner worked under Mr. M.R. Ghai.

7. Having heard learned Counsel for the parties, we find that there can be really be no dispute about the finding against the petitioner in respect of one of the charges out of the three charges in question i.e. of deposit of only Rs. 100/- with the Government account as against fine imposed of Rs. 1,000/-. This has, however, to be appreciated in the background of the conduct of the previous Reader Sh. M.R. Ghai against whom various irregularities were found. Two of the amounts in question detected as un-deposited were found to have actually been deposited by the petitioner. Thus, the delinquency of the petitioner is only in respect of one of the fine amounts. We find no reason why Sh. M.R. Ghai ought to have continued to work alongside the petitioner but for a direction by Sh. S.K. Gautam, MM (RW-5). This was possibly to facilitate the transition but the fact remains that both Sh. M.R. Ghai and the petitioner continued to handle accounts. The charges found against Sh. M.R. Ghai have resulted in penalty of dismissal from service while the punishment of only compulsory retirement has been imposed on the petitioner.

8. Learned Counsel for the petitioner emphasized that the petitioner had a blemishless career of 26 years and the confusion had arisen because there were two persons doing the same job and the other person was found to be delinquent in respect of the various amounts collected as fine though not deposited with the Government account. The lack of care on the part of the petitioner thus must be considered within that parameter.

9. We cannot lose sight of the fact that the Trial Courts are loaded with work. The supporting staff is equally burdened. If the person from whom you are taking over charge, and who continues to work with you, has been involved in a continuous process of falsification of some accounts, the possibility of mistake is even greater. It has already been noticed above that the auditor detected the problem in respect of two periods of close proximity and the first period was when Sh. M.R. Ghai alone was working as a Reader. There were only three transactions for the subsequent period when both Sh. M.R. Ghai and the petitioner were working and in respect of two of the transactions, fine amounts were found to have actually been deposited with the Government account. The controversy thus revolves around only one fine amount of Rs. 1,000/- in respect of which only an amount of Rs. 100/- had been deposited with the Government account. The testimony of Sh. S.K. Gautam, MM (RW-5) shows that though he has not supported the petitioner on the issue of her working under Sh. M.R. Ghai, he has stated that both of them were working together. Thus, while the petitioner had taken over charge as a Reader, Sh. M.R. Ghai also continued to perform the duty simultaneously.

10. If we consider the aforesaid aspect, we find that it can at best be labeled only as a case of negligence and carelessness on the part of the petitioner arising from the factum of her having assumed duty. If this be so, the punishment of

compulsory retirement in the background of blemishless career of 26 years seems to be excessively harsh, shocking the conscience of this Court. We draw strength from the observations made by the Supreme Court in *Dev Singh Vs. Punjab Tourism Development Corporation Ltd. and Another*, where an official file had been misplaced and in the absence of any ulterior motive, the punishment of dismissal from service was held to shock the judicial conscience of the Court and was replaced with punishment of withholding one increment including stoppage of efficiency bar in substitution of punishment of dismissal from service awarded by the Disciplinary Authority with a further rider that the appellant therein would not be entitled to any backwages for the period of suspension. The Supreme Court being mindful of the scope for interference in an appeal against the punishment imposed by the Disciplinary Authority observed as under:

6. A perusal of the above judgments clearly shows that a court sitting in appeal against a punishment imposed in the disciplinary proceedings will not normally substitute its own conclusion on penalty, however, if the punishment imposed by the disciplinary authority or the appellant authority shocks the conscience of the court, then the court would appropriately mould the relief either by directing the disciplinary/appropriate authority to reconsider the penalty imposed or to shorten the litigation it may make an exception in rare cases and impose appropriate punishment with cogent reasons in support thereof. It is also clear from the above noted judgments of this Court, if the punishment imposed by the disciplinary authority is totally disproportionate to the misconduct proved against the delinquent officer, then the court would interfere in such a case.

11. Learned Counsel for the respondent of course canvassed before us that the retirement benefits of the petitioner have been protected by imposition of penalty of compulsory retirement as against dismissal from service. However, the punishment awarded to the petitioner seems to us to be too harsh and in the given facts of the case and the background discussed above, we are inclined to follow the course of action as adopted by the Supreme Court in *Dev Singh v. Punjab Tourism Development Corporation Ltd. and Anr's case* (supra) in substituting the order of compulsory retirement in respect of the petitioner with an order of withholding of one increment including stoppage of efficiency bar. We further direct that the petitioner will not be entitled to any backwages other than the suspension allowance, if any, already paid to her till the formal order is issued by the competent authority re-instating the petitioner in service subject to the condition that the petitioner rejoins the service.

12. Needful be done by the competent authority within one month from the date of communication of the order.

13. The writ petition stands allowed in the aforesaid terms leaving the parties to bear their own costs.