

JAGDISH SINGH

v.

PUNJAB ENGINEERING COLLEGE & ORS.

(Civil Appeal No. 3565 of 2009)

MAY 14, 2009

[TARUN CHATTERJEE AND H.L. DATTU, JJ.]

Service Law – Misconduct – Dismissal – Propriety and proportionality of punishment – Appellant-employee dismissed for remaining absent for 15 days without obtaining permission from respondent-employer – Challenge to – Writ Petition – Dismissal affirmed by High Court – On appeal, held: Courts can interfere with punishment imposed by disciplinary authority, only when it is shockingly disproportionate to gravity of charges alleged and proved against a delinquent employee and not otherwise – The instant case was not a case of habitual absenteeism – Appellant gave explanation for his absence and for failing to apply and obtain leave from employer at the relevant time – Misconduct alleged definitely amounts to violation of discipline that is expected of an employee, but may not fit into category of gross violation of discipline – On facts, having regard to unblemished record of appellant in his long career, and the reasons for which he remained absent without obtaining permission, ends of justice would be met, if punishment imposed by disciplinary authority is modified to that of stoppage of two increments with cumulative effect – Further direction issued that appellant would not be entitled for any monetary benefits during the period he was out of service and that period would be counted only for purpose of his service benefits.

The appellant was working as a sweeper in respondent-college. He remained absent for 15 days

A without obtaining permission, whereupon departmental enquiry was initiated against him by the disciplinary authority of respondent-college.

B The appellant gave explanation that he absented himself to sort out matrimonial problems of his daughter and that he could not take prior permission for leave from his employer due to the mental agony, anguish, and anxiety that he was undergoing during the relevant time. The Inquiry Officer however found the appellant guilty and consequently the disciplinary authority dismissed the C appellant from service. The appellant filed writ petition challenging the correctness of the dismissal order which was dismissed by the High Court.

D In appeal to this Court, it was contended that the punishment imposed by the disciplinary authority was disproportionate to the gravity of the charges alleged against the appellant, especially, in view of the explanation offered by him for his unauthorized absence and lesser punishment would meet the ends of justice.

E Disposing of the appeal, the Court

F HELD: 1. The Courts and the Tribunals can interfere with the decision of the disciplinary authority, only when they are satisfied that the punishment imposed by the disciplinary authority is shockingly disproportionate to the gravity of the charges alleged and proved against a delinquent employee and not otherwise. [Para 8] [383-E-F]

G *V. Ramana v. A.P.S.R.T.C. and Ors. (2005) 7 SCC 338, relied on.*

Kerala Solvent Extractions Ltd. v. A. Unnikrishnan and Anr. (1994) 1 SCALE 631, referred to.

H 2.1. The instant case is not a case of habitual

absenteeism. The appellant seems to have a good track record from the date he joined service as a sweeper. In his long career of service, he remained absent for 15 days on four occasions in the month of February and March 2004. This was primarily due to sort out the problem of his daughter with her in-laws. The filial bondage and the emotional attachment might have come in his way to apply and obtain leave from the employer. The misconduct alleged definitely amounts to violation of discipline that is expected of an employee to maintain in the establishment, but may not fit into the category of gross violation of discipline. [Para 10] [385-A-C]

2.2. The order passed by the disciplinary authority and affirmed by the High Court is set aside. Taking the totality of the facts and circumstances of the case and having due regard to unblemished record of the appellant, and the reasons for which he remained absent without obtaining permission, the ends of justice would be met, if punishment imposed by the disciplinary authority is modified to that of stoppage of two increments with cumulative effect and it is further declared that he would not be entitled for any monetary benefits during the period he was out of service and that period would be counted only for the purpose of his service benefits. [Para 11] [385-D-F]

Case Law Reference:

(2005) 7 SCC 338 relied on Para 8

(1994) 1 SCALE 631 referred to Para 9

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3565 of 2009.

From the Judgment & Order dated 28.08.2007 of the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition

A No. 1993 of 2006.

R.S. Rana and S.S. Dahiya (Raj Singh Rana) for the Appellants.

Vimla Sinha (for Gopal Singh) for the Respondents.

B The Judgment of the Court was delivered by

H.L. DATTU, J. 1. Delay condoned. Leave granted.

C 2. This is an appeal by special leave against the judgment and order of the High Court of Punjab and Haryana in Civil Writ Petition No.1993 of 2006 dated 28.08.2007, wherein and whereunder, the High Court has dismissed the writ petition by affirming the order passed by the disciplinary authority of the respondent college.

D 3. The facts in brief are as under:-

E The appellant was working as a Sweeper in the Respondent-Punjab Engineering College. He remained absent unauthorizedly for the period from 11.02.2004 to 13.02.2004, 17.02.2004 to 20.02.2004, 05.03.2004 to 09.03.2004 and 23.03.2004 to 26.03.2004. The departmental enquiry was initiated by the disciplinary authority of the college by issuing a charge memo containing the allegation of unauthorized absence and an inquiry officer was appointed to enquire into the charges alleged. In reply to the charge memo and also before the inquiry officer, the plea of the workman was that in order to save matrimonial life of his daughter due to indifferent attitude of her in-laws, he had no other go but to absent himself on different dates during the month of February and March, 2004 and further he could not take prior permission from the employer due to mental agony, anguish, and the anxiety that he was undergoing during the relevant time.

H 4. The inquiry officer after holding the enquiry has submitted his enquiry report wherein, he has opined, that, the workman is guilty of the charges alleged in the charge memo.

The disciplinary authority of the respondent-college, after receipt of the report of the inquiry officer has accepted the report and has passed an order dated 30.09.2004, imposing a major penalty of dismissal from service.

5. The appellant had called in question the correctness or otherwise of the order passed by disciplinary authority of the respondent-college by filing civil writ petition before the High Court. The Court by its order dated 28.08.2007 has dismissed the writ petition.

6. At the time of hearing of the appeal, the only contention canvassed before us by the learned counsel for the appellant was that, the punishment imposed by the disciplinary authority is disproportionate to the gravity of the charges alleged against the appellant, especially, in view of the explanation offered by the appellant for his unauthorized absence for a few days in the month of February and March 2004 and lesser punishment would meet the ends of justice.

7. Per contra, learned counsel for the respondent, submitted, that, unauthorized absence is a serious misconduct and the said charge being proved against the employee, the disciplinary authority was justified in imposing a major penalty of dismissal from service.

8. The Courts and the Tribunals can interfere with the decision of the disciplinary authority, only when they are satisfied that the punishment imposed by the disciplinary authority is shockingly disproportionate to the gravity of the charges alleged and proved against a delinquent employee and not otherwise. Reference can be made to the decision of this Court in the case of *V. Ramana Vs. A.P.S.R.T.C. and Ors.* (2005) 7 SCC 338, wherein it is stated:

"The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the

A Court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury* case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

B To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course, if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."

C 9. The other principle that requires to be kept in view, is the observation made by this Court in *Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan and Anr.* (1994 (1) SCALE 631, wherein it is stated:

F "In recent times, there is an increasing evidence of this, perhaps well meant but wholly unsustainable tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the

legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability."

10. The instant case is not a case of habitual absenteeism. The appellant seems to have a good track record from the date he joined service as a sweeper. In his long career of service, he remained absent for 15 days on four occasions in the month of February and March 2004. This was primarily due to sort out the problem of his daughter with her in-laws. The filial bondage and the emotional attachment might have come in his way to apply and obtain leave from the employer. The misconduct that is alleged, in our view, would definitely amounts to violation of discipline that is expected of an employee to maintain in the establishment, but may not fit into the category of gross violation of discipline. We hasten to add if it were to be habitual absenteeism, we would not have ventured to entertain this appeal.

11. In the result, we allow the appeal and set aside the order passed by the disciplinary authority dated 30.09.2004 and affirmed by the High Court vide its order dated 28.08.2007. Taking the totality of the facts and circumstances of the case and having due regard to unblemished record of the appellant, and the reasons for which he remained absent without obtaining permission, the ends of justice would be met, if punishment imposed by the disciplinary authority is modified to that of stoppage of two increments with cumulative effect and further declare that he would not entitled for any monetary benefits during the period he was out of service and that period would be counted only for the purpose of his service benefits. We direct the disciplinary authority to issue appropriate orders in this regard within one month from the date of production of certified copy of this Court's order by either of the parties.

12. The appeal is accordingly disposed of. However, there will be no order as to costs.