

## **Chairman & Md V.S.P. & Ors vs Goparaju Sri Prabhakara Hari Babu on 5 March, 2008**

**Equivalent citations: 2008 AIR SCW 2244, 2008 (5) SCC 569, 2008 LAB. I. C. 1769, 2008 (2) AIR JHAR R 901, AIR 2008 SC (SUPP) 1694, (2008) 117 FACLR 377, (2008) 2 SCT 426, (2008) 2 CURLR 338, (2008) 3 SERVLR 1, (2008) 2 GUJ LH 146, (2008) 2 ESC 214, (2008) 67 ALLINDCAS 259 (SC), (2008) 3 SERVLJ 424, (2008) 4 MAD LJ 116, (2008) 2 LAB LN 700, (2008) 4 SCALE 172**

**Author: S.B. Sinha**

**Bench: S.B. Sinha, V.S. Sirpurkar**

CASE NO.:

Appeal (civil) 1770 of 2008

PETITIONER:

Chairman & MD V.S.P. & Ors

RESPONDENT:

Goparaju Sri Prabhakara Hari Babu

DATE OF JUDGMENT: 05/03/2008

BENCH:

S.B. Sinha & V.S. Sirpurkar

JUDGMENT:

**J U D G M E N T** CIVIL APPEAL NO. 1770 OF 2008 (Arising out of SLP (C) No.19227 of 2005) S.B. Sinha, J.

1. Leave granted.

2. Respondent herein was appointed as a Technician (Mechanical) on 11.10.1989. He was placed on probation for a period of 12 months. During the period of probation, he was found to be absent for a period from 11.6.1990 to 27.6.1990. He was warned. A lenient view was taken. He was informed that recurrence of such act would be viewed seriously. Period of probation was extended as he was found to be irregular in attendance.

3. On 9.1.1991, he applied for leave on medical grounds. He failed to appear before the Chief Medical Officer of the petitioner despite having been asked in that behalf and as he failed to do so, his leave was not sanctioned. Despite the same, he sought another extension of leave upto 28.2.1991. He was asked to report immediately before the Chief Medical Officer. He was furthermore informed that

failure to comply therewith would result in refusal of leave. He did not report to the Chief Medical Officer.

4. A charge sheet was issued to him for absence without leave for a period of 53 days, namely 28.12.1990 to 28.2.1991. His explanation to the said charge sheet was found to be unsatisfactory. He was found guilty of continuous unauthorized absence by the Enquiry Officer in his report dated 18.6.1991. Respondent was called upon to join his duties as he continued to remain absent without sanctioned leave from 2.7.1991 to 11.7.1991. He again remained absent from 13.8.1991 to 30.8.1991. A departmental proceeding was again initiated against him and upon considering the enquiry report submitted in that behalf, yet again a lenient view was taken and a punishment of reduction of basic pay by one stage in terms of the Certified Standing Order was imposed by order dated 16.4.1992. Despite the same, he remained absent for a period of 99 days from April 1992 to September 1992. A disciplinary proceeding was initiated against him. He admitted the charges and promised to be regular in future. However, he was found guilty and a punishment of censure was imposed.

5. Yet again, on his remaining absent for the period of 20 days in April 1995 and from 1.5.1995 till the date of drawing of the charge-sheet, i.e. 30.5.1995, a disciplinary proceeding was initiated against him. He was asked to submit his explanation. The said charge sheet was served upon him on or about 9.6.1995.

6. In his show cause which was filed on 19.6.1995, the respondent stated:

"I have gone through the chargesheet dated 13.6.95 and understood the contents. It is true that I was absent to duties in the dates mentioned by you, however, I could not attend to duties during the above period due to the ill health of my mother who was in the village of Mukkillapadu, Nuzivedu Mandalam, Krishna District.

Sir, absenting from duties for these many days may be treated as a mistake on my part. I assure you through this letter that it will never be repeated again. I may be excused for this fault of mine and I may be given an opportunity."

7. A disciplinary proceeding was initiated, wherein again, he accepted his guilt whereupon the enquiry proceeding was closed stating :

"When asked whether he accepts or denied (sic) the charges as contained in the charge sheet No.WK/TPP/107613/95/2255 dated 5.6.1995, it is true that he has not attended duties during the period mentioned in the charge sheet i.e., thirty days in April 1995 and 30 days from 1.5.1995 to 30.5.1995 for the reasons mentioned in his explanation dated 19.6.95 submitted in reply to the above charge sheet. A photocopy of the above referred explanation has been produced by the CE in the enquiry. The same has been taken on record. The CW has stated that due to his mother's severe illness at his native place, he could not attend his duties as his presence was necessary there to attend his ailing mother. The CW further stated that the CE was facing financial problem as he has not declared his mother as his dependant due to

which he was facing lot of mental strain. The CE has stated that he accepted the charges voluntarily and without pressure from any side. In view of the voluntary admission of the charges, the enquiry is closed."

8. The disciplinary authority, upon consideration of the said enquiry report, found the respondent guilty of the said charges and an order of removal from service was passed by it on 9.7.1996, stating :

"I find from your personal records, that even after issue of the above three charge sheets dated 18.3.91, 22.9.92 and 5.6.95 and also after enquiries were conducted, there is no improvement in your attendance and I am constrained to observe that you are absenting from duty unauthorisedly without prior sanction of leave from duty unauthorisedly without prior sanction of leave from June 95 to July 96 as shown below. This was even after a commitment made by you that you will be regular in attending to duties and that an opportunity should be given to you to improve upon."

9. The said order is a detailed one. It was passed upon taking into consideration the entire service records, the period of absence of the respondent, the explanations offered by him, result of the enquiry proceedings as also the punishments imposed and the assurance and commitments made by him to improve himself. It was opined :

"This habitual absence from duty is an act of misconduct as per the Certified Standing Orders of the Company, which has become a part of your nature. As the charges established against you i.e. "Habitual Absence" from duty and continuous absence without prior sanction of leave is serious in nature and also as there is no improvement on your part, stringent punishment is warranted. Therefore, taking all the aspects into consideration, I am of the considered opinion that the punishment of "Removal from service of the Company" be imposed on you for your misconduct and accordingly. I, in exercise of the powers delegated to me, hereby impose on you the punishment of "Removal from the services of the Company" as per Clause No.28, 16 of the certified standing orders of the company with effect from 9.7.96 as a disciplinary measure.

This issues without prejudice to the right of the Company to recover any amount payable by you or due from you to the Company. Finally payment of amounts due to the Company will be made on receipt of Demand/No Demand certificates from the concerned authorities."

10. He filed a writ petition before the High Court of Andhra Pradesh and by an order dated 11.3.1997, the said writ petition was directed to be treated as an appeal. An opportunity of personal hearing was granted to him by the appellate authority and by an order dated 10.5.1997, the order of punishment imposed by the disciplinary authority was affirmed. He filed a review application which was also dismissed by order dated 6.8.1997.

11. He questioned the validity of the said orders by filing a writ application before the High Court. A learned Single Judge of the High Court dismissed the said writ application stating :

"During the enquiry it was found that the petitioner was absent in the years 1990, 1991, 1993, 1995 and 1996. The very charge itself is that the petitioner is habitual absentee from duty and his absence is continuous one without prior sanction, which is in violation of the standing orders of the respondents. Though the petitioner has filed an explanation, however, the same was found to be not satisfactory. Even taking into consideration the reasons shown at this stage, it cannot be said that the petitioner's continuous absence can be justified more so in view of the specific standing orders and also the obligation cast on him. Having regard to the findings as arrived at by the authorities at all levels about the continuous absence of the petitioner, it clearly shows that he is habitual in absence for which there cannot be any justification. In view of the same, except seeking indulgence, no other valid point has been raised by the petitioner to show any irregularity in the procedure adopted by the respondents and ultimately removing him from service. Thus, it has to be held that the finding as arrived at the removal of the petitioner from the services is perfectly justified."

12. On an intra court appeal preferred thereagainst, a Division Bench of the said Court reversed the said judgment and order of the learned Single Judge, opining :

"In the absence of any consideration of the explanation, which goes to show that the appellant could not attend the duty because of the ill health of his mother, the action of the respondents would amount to violation of principles of natural justice. Further, it has to be observed that the appellate authority also has not considered the factum of submitting the explanation by the appellant and conducted an enquiry as if he had not submitted his explanation and that the action of the respondents in considering the action taken on the earlier charge is not acceptable. In the absence of any material before this Court that the appellant was continuously absent from duty from the last date of the issuance of the charge sheet in the year 1992 till 1995, he cannot be termed as habitual absentee and in view of the factum of his absence as was explained by him through his explanation dated 19.6.1995, which was not taken into consideration by the disciplinary authority as well as the appellate authority, it has to be held that the action of the respondents in terminating the services of the petitioner is in violation of principles of natural justice."

13. Mr. Venugopal, learned counsel appearing on behalf of the appellant, would submit that the High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration that while exercising the power of judicial review, its role was limited.

14. Mr. Rao, learned counsel appearing on behalf of the respondent, on the other hand, would support the judgment.

15. Indisputably, respondent was a habitual absentee. He in his explanation, in answer to the charge sheet pleaded guilty admitting the charges. In terms of Section 58 of the Indian Evidence Act, charges having been admitted were not required to be proved. It was on that premise that the enquiry proceeding was closed. Before the enquiry officer, he did not submit the explanation that his mother being ill. He, despite opportunities granted to report to duty, did not do it. He failed to explain even his prior conduct.

In *Sangramsinh P. Gaekwad & Ors. v. Shantadevi P. Gaekwad (Dead) through LRs & Ors.* 2005 (11) SCC 314, this Court noticing Section 58 of the Indian Evidence Act, held :

"214. In terms of the aforementioned provision, things admitted need not be proved. In view of the admission of Respondent 1 alone, the issue as regards allotment of 6475 shares should have been answered in favour of the appellants. The company petitioner at a much later stage could not be permitted to take a stand which was contrary to or inconsistent with the original pleadings nor could she be permitted to resile from her admissions contained therein."

It was observed that judicial admissions can be made the foundation of the rights of the parties.

16. A subsequent explanation before another authority, which had not been pleaded in the departmental proceedings, cannot by itself a ground to hold that the principles of natural justice had not been complied with in the disciplinary proceedings.

The jurisdiction of the High Court in this regard is rather limited. Its power to interfere with disciplinary matters is circumscribed by well known factors. It cannot set aside a well reasoned order only on sympathy or sentiments. [See *Maruti Udyod Ltd. v. Ram Lal and Others* [(2005) 2 SCC 638]; *State of Bihar & Ors. v. Amrendra Kumar Mishra* [2006 (9) SCALE 549]; *Regional Manager, SBI v. Mahatma Mishra* [2006 (11) SCALE 258]; *State of Karnataka v. Ameerbi & Ors.* [2006 (13) SCALE 319]; *State of M.P. and Ors. v. Sanjay Kumar Pathak and Ors.* [2007 (12) SCALE 72] and *Uttar Haryana Bijli Vitran Nigam Ltd. & Ors. v. Surji Devi* [CA No.576 of 2008 decided on 22.1.2008].

17. Once it is found that all the procedural requirements have been complied with, the Courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The Superior Courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved. {[See *Sangeroid Remedies Ltd. v. Union of India & Ors.* [(1999) 1 SCC 259]}. The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India also cannot, on the basis of sympathy or sentiment, overturn a legal order.

21. For the reasons aforementioned, impugned judgment cannot be sustained. It is set aside accordingly. Appeal is allowed. In the facts and circumstances of the case, however, there shall be no order as to costs.