M/S Indian Oil Corporation Ltd vs Rajendra D. Harmalkar on 21 April, 2022

Author: M. R. Shah

Bench: B.V. Nagarathna, M. R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2911 OF 2022

M/s Indian Oil Corporation Ltd. ..Appellant

Versus

Shri Rajendra D. Harmalkar ..Respondent

JUDGMENT

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 29.06.2015 passed by the High Court of Judicature at Bombay at Goa in Writ Petition No.660 of 2013 by which the High Court has partly allowed the said writ petition preferred by the respondent herein (hereinafter referred to as the "original writ petitioner") directing the petitioner herein to reinstate the original writ petitioner without any back wages and other benefits by substituting the punishment of dismissal imposed by the Disciplinary Authority, the employer – Indian Oil Corporation Ltd. has preferred the present appeal.

2. The facts leading to the present appeal in a nutshell are as under:

> That the respondent herein original writ petitioner was initially appointed in the year 1982 as a casual employee. He moved an application seeking the position of Refueling Helper, wherein under the heading of qualifications, he mentioned that he has passed Secondary School Leaving Certificate (hereinafter referred to as "SSLC") in April, 1986 from Karnataka Secondary Education Board. That he was thereafter appointed as Helper as per the regularization policy regularizing the casual employees, inter alia, subject to the contents prescribed in the application form for

employment being correct. At that stage also the original writ petitioner submitted SSLC of Karnataka Board bearing No.206271 dated 19.05.1986.

2.1 In the year 2003, the Chief Vigilance Officer of the Corporation received a complaint that the original writ petitioner had secured his job as Re-fueling Helper by submitting a false and forged SSLC. Similar complaint was also made to the police authorities also.

2.2 Despite repetitive requests and follow up by the authorities, original writ petitioner did not submit the original SSLC Certificate. On the contrary, the original writ petitioner sent a communication wherein it was mentioned that the original SSLC has been misplaced. Thereafter the Manager, ER advised original writ petitioner to obtain a duplicate copy of the original SSLC and to submit the same to the Manager, ER. However, he continued evading submission of the original certificate or even the Duplicate SSLC from Karnataka Board.

2.3 The Manager, ER thereafter requested the authorities of the Secondary Board to check up their records and confirm whether they had issued any marks certificate carrying details available on the photocopy of the SSLC marks sheet issued by them. In response to the same, the Board informed the authority that "as per the record, SSLC statement of marks for the year March, 1986 bearing Registration No.206271 relate to one Agrahar Jayant S/o Satyanarayana A.L. DOB – 15.02.1968 and does not belong to Rajendra Dattaram Harmalkar S/o Datta Ram Harmalkar, DOB – 08.12.1962".

2.4 In the above circumstances, a departmental enquiry was initiated against the original writ petitioner. The original writ petitioner was served with the charge-sheet containing two charges which read as under:

"1. Wilful insubordination or disobedience whether or not in combination with another, of any lawful and reasonable order of a superior.

2. Giving false information regarding one's age, father's name, qualifications or previous service at the time of employment." 2.5 The original writ petitioner replied to the charge-sheet. The Inquiry Officer held that both the aforesaid charges were proved and proposed the punishment of dismissal. After giving an opportunity to the original writ petitioner on having agreed with the findings of the Inquiry Officer, and after taking into consideration the gravity of the acts of misconduct proved, the Disciplinary Authority imposed the punishment of dismissal from services. The appeal preferred by the original writ petitioner came to be dismissed.

2.6 At this stage it is required to be noted that the original writ petitioner was also prosecuted by the Criminal Court, however the learned Trial Court acquitted him by giving benefit of doubt mainly on the ground that the original SSLC was not brought

on record.

2.7 Feeling aggrieved and dissatisfied with the order of dismissal passed by the Disciplinary Authority confirmed by the Appellate Authority, the original writ petitioner preferred the writ petition before the High Court. It was the case on behalf of the original writ petitioner that he admitted the alleged guilt of misconduct on the assurance of a lenient view being taken by the authorities. It was also argued that there was no minimum educational qualification and age limit (minimum or maximum) prescribed to secure the job or even for the promotion. It was submitted that therefore in such circumstances, it cannot be said that he had submitted a false and forged certificate with an attempt to secure the job or promotion. That the certificate was produced only for the purpose of record and there was no dishonest intention to grab the job or promotion. It was also urged that the Criminal Court had acquitted him and that he had a good service record and that the first charge of insubordination is not established. The High Court framed only one point for determination, namely, whether the punishment imposed upon the petitioner is grossly disproportionate to the misconduct committed by the petitioner. By the impugned judgment and order the High Court observed and held that the punishment imposed upon the original writ petitioner was grossly disproportionate to the misconduct and interfered with the order of punishment imposed by the Disciplinary Authority by observing that the respondent was assured that on admission of his guilt a lenient view may be taken while imposing the punishment. The High Court also observed that the petitioner is out of service from the year 2006 and as the counsel for the petitioner had made a statement that he will forgive his back wages and promotion, by the impugned judgment and order the High Court allowed the said writ petitioner and the directed the appellant to reinstate the original writ petitioner from the date of dismissal from service in the post of Refueling Helper, however without any back wages or benefits.

2.8 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court allowing the writ petitioner and interfering with the order of punishment imposed by the Disciplinary Authority, the Indian Oil Corporation – employer – Disciplinary Authority has preferred the present appeal.

3. Shri Rajiv Shukla, learned counsel appearing on behalf of the appellant had vehemently submitted that in the facts and circumstances of the case the High Court has committed a grave error in interfering with the order of punishment imposed by the Disciplinary Authority pursuant to the charge of giving false information regarding his father's name, his qualification by producing a fake and false SSLC was held to be proved. It is contended that the High Court materially erred in observing that the punishment of dismissal imposed by the Disciplinary Authority on the proved misconduct was disproportionate to the misconduct established and proved.

3.1 It is urged that when an employee has produced a false and forged SSLC of the Education Board the same can be said to be a grave misconduct and therefore the Disciplinary Authority was justified in imposing the punishment of dismissal. 3.2 It is further submitted by learned counsel for the appellant that the grounds on which the High Court interfered with the punishment imposed by the Disciplinary Authority namely that original writ petitioner:☐

(i) has admitted the guilt on an assurance that a lenient view shall be taken while imposing the punishment;

(ii) has been acquitted by the Criminal Court; and

(iii) that no minimum qualification or age limit was prescribed for getting the job or promotion and that he had a good service record, are all irrelevant and/or not germane.

3.3 It is submitted that the High Court has not properly appreciated the fact that the Criminal Court acquitted the original writ petitioner by giving him a benefit of doubt and there was no honorable acquittal.

3.4 It is contended that it is immaterial, whether, there was a minimum qualification or age limit prescribed for the job or promotion or not and therefore there was no intention to secure the job by producing the fake/forged certificate. It is submitted that it is a case of TRUST and therefore when the Disciplinary Authority/employer loses the Confidence and TRUST in such an employee who submitted a forged/fake certificate, the High Court ought not to have interfered with the order of punishment imposed by the Disciplinary Authority.

3.5 Relying upon the decision of this Court in the case of Om Kumar v. Union of India, (2001) 2 SCC 386; Union of India v. G. Ganayutham, (1997) 7 SCC 463; Union of India v. Dwarka Prasad Tiwari, (2006) 10 SCC 388; and Union of India v. Diler Singh, (2016) 13 SCC 71, it is submitted that while interfering with the order of punishment imposed by the Disciplinary Authority the High Court has exceeded in its jurisdiction while exercising its powers under Article 226 of the Constitution of India. It is submitted that as per the settled position of law unless there is a procedural irregularity in conducting the disciplinary proceedings and/or the punishment imposed is shockingly disproportionate to the proved misconduct, then and then only, the High Court can exercise powers under Article 226 of the Constitution of India and interfere with the order of punishment imposed by the Disciplinary Authority.

3.6 It is further submitted that even denying the back wages on the concession given by the employee cannot be said to be a sufficient punishment imposed. It is submitted that in the present case as such during the interregnum period the respondent original writ petitioner was working with the petroleum unit of Reliance Industries as a driver for the period between 2006 to 2017. Therefore, denying the back wages and promotion by the High Court by the impugned judgment and order cannot be said to be any punishment at all. 3.7 Making the above submissions and relying upon the above decisions, it is prayed to allow the present appeal.

4. The instant appeal is vehemently opposed by Ms. Suruchi Suri, learned counsel appearing on behalf of the respondent. 4.1 It is submitted by Ms. Suri, learned counsel appearing on behalf of the respondent – original writ petitioner that in the present case the respondent – original writ petitioner did produce the fake/forged SSLC. However, the same had no relevance for securing the job as there was no minimum qualification or age limit prescribed for getting the job or promotion. It is submitted that the same was produced only for the purpose of record. 4.2 Further, the original writ petitioner admitted his guilt of producing the fake/forge certificate on an assurance that a lenient view would be taken at the time of imposing the punishment.

4.3 It is submitted that even the respondent – original writ petitioner has been acquitted by the Criminal Court for the offences punishable under Sections 468 and 471 IPC regarding the said SSLC produced by him.

4.4 It is further urged that even the respondent had an unblemished and good service record. Therefore, considering the aforesaid overall facts and circumstances, when the High Court has interfered with the order of punishment imposed by the Disciplinary Authority and has ordered reinstatement without any back wages and promotion, the same is not required to be interfered with by this Court in exercise of powers under Article 136 of the Constitution of India.

4.5 Making the above submissions it is prayed to dismiss the present appeal.

5. Heard learned counsel for the respective parties.

6. By the impugned judgment and order, the High Court, in exercise of powers under Article 226 of the Constitution of India, has interfered with the order of punishment imposed by the Disciplinary Authority and has ordered reinstatement without back wages and other benefits by observing that order of punishment of dismissal from the service imposed by the Disciplinary Authority is disproportionate to the misconduct proved.

Therefore, the short question which is posed for consideration by this Court is, whether, in the facts and circumstances of the case the High Court is justified in interfering with the conscious decision taken by the Disciplinary Authority while imposing the punishment of dismissal from service, in exercise of powers under Article 226 of the Constitution of India.

7. On the question of judicial review and interference of the courts in matters of disciplinary proceedings and on the test of proportionality, a few decisions of this Court are required to be referred to:

> i) In the case of Om Kumar (supra), this Court, after considering the Wednesbury principles and the doctrine of proportionality, has observed and held that the question of the quantum of punishment in disciplinary matters is primarily for the disciplinary authority to order and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well□known principles known as

'Wednesbury principles'.

In the Wednesbury case, (1948) 1 KB 223, it was said that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. Lord Greene further said that interference was not permissible unless one or the other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered, or the decision was one which no reasonable person could have taken.

ii) In the case of B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749, in paragraph 18, this Court observed and held as under:

> "18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

> iii) In the case of Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) v. Rajendra Singh, (2013) 12 SCC 372, in paragraph 19, it was observed and held as under:

> "19. The principles discussed above can be summed up and summarised as follows:

> 19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.

> 19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

> 19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

> 19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.
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> 19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co□delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co□delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co□delinquent are equally placed.

However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge□sheet in the two cases. If the co□ delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable." 7.1 In the present case, the original writ petitioner was dismissed from service by the Disciplinary Authority for producing the fabricated/fake/forged SSLC. Producing the false/fake certificate is a grave misconduct. The question is one of a TRUST. How can an employee who has produced a fake and forged marksheet/certificate, that too, at the initial stage of appointment be trusted by the employer? Whether such a certificate was material or not and/or had any bearing on the employment or not is immaterial. The question is not of having an intention or mens rea. The question is producing the fake/forged certificate. Therefore, in our view, the Disciplinary Authority was justified in imposing the punishment of dismissal from service.

7.2 It was a case on behalf of the petitioner – original writ petitioner before the High Court that he pleaded guilty and admitted that he had submitted a forged and fake certificate on the assurance that lesser punishment will be imposed. However, except the bald statement, there is no further evidence on the same. Nothing has been mentioned on record as to who gave him such an assurance.

7.3 Even otherwise the conduct on the part of the original writ petitioner is required to be considered.

As observed hereinabove, prior to the issuance of the chargesheet and after the complaint was received by the Vigilance Officer, there were repetitive requests and follow up by the authorities requesting the original writ petitioner to produce the original SSLC. Initially the original writ petitioner did not even respond to the said requests. Thereafter, he came up with a case that the original SSLC was misplaced. He was then called upon to obtain a duplicate copy of the SSLC and to submit the same to the Manager, ER. However, he continued to evade obtaining the duplicate certificate from Karnataka Board. Only thereafter the Manager, ER directly contacted the authorities of the Board and requested the Education Board to check up from their records and only thereafter it was revealed that the SSLC produced by the original petitioner was forged and fake and belonged

to or related to some another student and it did not belong to the original writ petitioner. This shows the malafide intention on the part of the original writ petitioner. 7.4 Now, so far as the submission on behalf of the original writ petitioner that he was acquitted by the Criminal Court for the offences punishable under Sections 468 and 471 IPC in respect of the same certificate is concerned, the said contention is neither here nor there and is of no assistance to the original writ petitioner. Apart from the fact that he was acquitted by the Criminal Court by giving benefit of doubt and there was no honourable acquittal, in the present case before the Disciplinary Authority the original writ petitioner as such admitted that he produced the fake and forged certificate. Therefore, once there was an admission on the part of the respondent – original writ petitioner, thereafter whether he has been acquitted by the Criminal Court is immaterial.

7.5 Even from the impugned judgment and order passed by the High Court it does not appear that any specific reasoning was given by the High Court on how the punishment imposed by the Disciplinary Authority could be said to be shockingly disproportionate to the misconduct proved. As per the settled position of law, unless and until it is found that the punishment imposed by the Disciplinary Authority is shockingly disproportionate and/or there is procedural irregularity in conducting the inquiry, the High Court would not be justified in interfering with the order of punishment imposed by the Disciplinary Authority which as such is a prerogative of the Disciplinary Authority as observed hereinabove. 7.6 From the impugned judgment and order passed by the High Court, it appears that the High Court has denied the back wages and other benefits and has ordered reinstatement on a concession given by the learned counsel on behalf of the original writ petitioner. However, it is required to be noted that for the period between 2006 to 2017 i.e. during the pendency of the writ petition the respondent was working in the Petroleum Division of Reliance Industries. Therefore, he was aware that even otherwise he is not entitled to the back wages for the aforesaid period. Therefore, the concession given on behalf of the original writ petitioner as such cannot be said to be a real concession. In any case in the facts and circumstances of the case and for the reasons stated above and considering the charge and misconduct of producing the fake and false SSLC Certificate proved, when a conscious decision was taken by the Disciplinary Authority to dismiss him from service, the same could not have been interfered with by the High Court in exercise of powers under Article 226 of the Constitution of India. The High Court has exceeded in its jurisdiction in interfering with the order of punishment imposed by the Disciplinary Authority while exercising its powers under Article 226 of the Constitution of India.

8. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court in interfering with the order of punishment imposed by the Disciplinary Authority of dismissing the original writ petitioner from service and ordering reinstatement without back wages and other benefits is hereby quashed and set aside. The order passed by the Disciplinary Authority dismissing the original writ petitioner from service on the misconduct proved is hereby restored.

The present appeal is accordingly allowed. In the facts and circumstances of the case, there shall be no order as to costs.

.....J. (M. R. SHAH) .....J. (B.V. NAGARATHNA) New Delhi, April 21, 2022.