Rasiklal Vaghajibhai Patel vs Ahmedabad Municipal Corporation And ... on 14 January, 1985

Equivalent citations: 1985 AIR 504, 1985 SCR (2) 556, AIR 1985 SUPREME COURT 504, 1985 LAB. I. C. 729, 1985 (1) SERVLJ 180, 1985 (2) 26 GUJLR 1094, (1985) 2 GUJ LR 1094, (1985) IJR 203 (SC), 1985 BLJR 140, 1985 UJ (SC) 508, 1985 SCC (L&S) 392, (1985) 1 LAB LN 602, (1985) 1 SERVLR 573, (1985) 66 FJR 225, (1985) GUJ LH 511, (1985) 50 FACLR 201, (1985) 1 LABLJ 527, 1985 (2) SCC 35, (1985) 1 SCWR 306, (1985) 2 CURLR 65

Author: D.A. Desai

Bench: D.A. Desai, Misra Rangnath

PETITIONER:
RASIKLAL VAGHAJIBHAI PATEL

Vs.

RESPONDENT:
AHMEDABAD MUNICIPAL CORPORATION AND ANOTHER

DATE OF JUDGMENT14/01/1985

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
MISRA RANGNATH

CITATION:
1985 AIR 504 1985 SCR (2) 556
1985 SCC (2) 35 1985 SCALE (1)101

ACT:
Labour Law-Misconduct-Whether suppression of material fact regarding prior dismissal the time of obtaining fresh employment Constitutes "misconduct "-Whether Standing Orders or Service Regulation, should enumerate an act or omission as "misconduct" -Effect of non-prescribing the acts of "misconduct" in the Standing Order/Service Regulations.

HEADNOTE:
The petitioner applied for the post of Head Clerk

with Ahmedabad Municipal Corporation in a prescribed form which contained a column requiring the applicant to state whether he had been removed from service and, if so, reasons for such removal. The petitioner, who had earlier been removed from service of the Sales Tax Department on the ground of proved misconduct, made a false suggestion that he had voluntarily left service because of transfer. Ultimately, when these facts came to light, he was charge-sheeted and removed from service. The Labour Court rejected his petition against removal from service on the ground that the misconduct alleged against him is proved. Thereupon, he filed a writ petition in the High Court. The High Court while dismissing his petition held that even if the allegation of misconduct does not constitute misconduct amongst those enumerated in the relevant service regulations yet the employer can attribute what would otherwise per se be a misconduct though not enumerated and punish him for the same.

Dismissing the petition by the petitioner,

^

HELD: (1) It is a well-settled canon of penal jurisprudence that removal or dismissal from service on account of the misconduct constitutes penalty in law and therefore the workman sought to be charged for misconduct must have adequate advance notice of what action or what conduct would constitute misconduct. Therefore, under, the Certified Standing Orders or service regulations, it is necessary for the employer to prescribe what would be the misconduct so that the workman/employee knows the pitfall he should guard against. But, if after undergoing the elaborate exercise of enumerating misconduct, it is left to the unbridled discretion of the employer to dub any conduct as misconduct, the workman will be on tenterhooks and he will be punished by ex post facto determination by the employer. Therefore, it cannot be left to the vagaries of management to say ex post facto

557

that some acts of omission or commission nowhere found to be enumerated in A the relevant standing order is none-the-less a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty. [559C-E; B-C; 561C and D]

Glaxo Laboratories v. The Presiding Officer Labour Court Meerut & Ors. [1984] 1 SCR 230 followed.

Salem Erode Electricity Distribution Co. Ltd v. Salem Erode Electricity Distribution Co. Ltd. Employees Union [1966] 2 SCR 498, Western India Match Company Lid. v. Workman [1974] SCR 434, Workmen of Lakheri Cement Works Ltd. v. Associated Cement Companies Ltd. 1970 20. Indian Factories & Labour Reports 243 & Rohtak Hissar District Electricity Supply Co. Ltd. v. State of Utter Pradesh & Ors. [1966] 2 SCR 863 referred to.

(2) It is thus well-settled that unless either in the Certified Standing Order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconduct. [561E]

(3) In the instant case, the petitioner is shown to be guilty of suppression of a material fact which would weigh with any employer in giving him employment and therefore, the case of the petitioner does not merit consideration under Art. 136 of the Constitution and his petition for special leave to appeal must accordingly fail. The High Court was right in holding that the suppresio veri and suggestion falsi would constitute misconduct. But, the finding of the High Court that even if the misconduct does not fall in any of the enumerated misconducts, yet for the purpose of service regulation, it would none-the-less be a misconduct punishable as such is not the correct view of law and it has to be rejected.

[557H; 561H; 562 A, B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 5523 of 1984.

From the Judgment and Order dated 28th November, 1983 of the High Court of Gujarat in Special Civil Application No. 4649 OF 1981.

Vimal Dave for the Petitioner.

The Judgment of the Court was delivered by DESAI, J. Petitioner is shown to be guilty of suppression of a material fact which would weigh with any employer in giving him employment and therefore, the case of the petitioner does not merit consideration under Art. 136 of the Constitution and his petition for special leave to appeal against the decision of a Division Bench Of the Gujarat High Court in Special Application No 4649 of 1981 dated November 28,1983 must accordingly fail but this short epistle became a compelling necessity in view of the statement of law appearing in the judgment of the High Court which if permitted to go uncorrected, some innocent person may suffer in future. That is the only justification for this short order.

The petitioner on his application was recruited in the Sales Tax Department on September 30, 1950 and at the relevant time he was working as Sales Tax Inspector. By an order dated January, 31 1964 of the Commissioner of Sales Tax, Gujarat State, the petitioner who was at the relevant time working as Sales Tax Inspector was charged with misconduct of gross negligence and acted with gross impropriety in demanding illegal gratification, and as these charges were held proved, the Commissioner of Sales Tax imposed a penalty of removal from service. This is not in dispute and

therefore it can be safely stated that the petitioner was removed from the service of the Sales Tax Department on account of the proved misconduct.

After being removed from the Sales Tax Department, the petitioner joined service in Bhakta Vallabh Dhola College, Ahmedabad ('college' for short) on May 15, 1964. While continuing his service with the college, the petitioner applied on January 13, 1968 for the post of Head-Clerk with Ahmedabad Municipal Corporation. The application had to be made in the prescribed form, Column No. 14 of which required the applicant to state whether the applicant had been removed from service and if so, reasons for removal and if the applicant had voluntarily left previous service, reasons for leaving the service should be stated. While answering this column, the petitioner stated that he had served in the Sales Tax Department from September 30, 1950 to January 31,1964 and that he has resigned from service due to transfer. It thus appeared that the petitioner was guilty of suppressio veri and suggestio false inasmuch as he suppressed the material fact that he was removed from service on the ground of proved misconduct and that he made a false suggestion that he had voluntarily left service because of transfer. Ultimately when these facts came to light, he was charge-sheeted and removed from service. A petition to the Labour Court was rejected on the ground that the misconduct alleged against the petitioner is proved. His writ petition to the High Court proved unsuccessful. Hence he filed this petition for special leave.

The High Court while dismissing the petition held that even if A the allegation of misconduct does not constitute misconduct amongst those enumerated in the relevant service regulations yet the employer can attribute what would otherwise per se be a misconduct though not enumerated and punish him for the same. This proposition appears to us to be startling because even though either under the Certified Standing Orders or service regulations, it is necessary for the employer to prescribe what would be the misconduct so that the workman/employee knows the pitfall he should guard against. If after undergoing the elaborate exercise of enumerating misconduct, it is left to the unbridled discretion of the employer to dub any conduct as misconduct, the workman will be on tenterhooks and he will be punished by ex post facto determination by the employer. It is a well-settled canon of penal jurisprudence-removal or dismissal from service on account of the misconduct constitutes penalty in law-that the workmen sought to be charged for misconduct must have adequate advance notice of what section or what conduct would constitute misconduct. The legal proposition as stated by the High Court would have necessitated in depth examination, but for a recent decision of this Court in Glaxo Laboratories v. The Presiding Officer, Labour Court Meerut & Ors.(1) in which this Court specifically repelled an identical contention advanced by Mr. Shanti Bhushan, learned counsel who appeared for the employer in that case observing as under:

> "Relying on these observations, Mr. Shanti Bhushan urged that this Court has in terms held that there can be some other misconduct not enumerated in the standing order and for which the employer may take appropriate action. This observation cannot be viewed divorced from the facts of the case. What started in the face of the court in that case was that the employer had raised a technical objection ignoring the past history of litigation between the parties that application under Sec. 33A was not maintain able. It is in this context that this Court observed that the previous action might have been the outcome of some misconduct not enumerated in the standing

> order. But the extracted observation cannot be elevated to a proposition of law that some misconduct neither defined nor enumerated and which may be believed by the employer to be misconduct ex post facto would expose the workman to a (1) [1984]1 S.C.R. 230.

penalty. The law will have to move two centuries back ward to accept such a construction. But it is not necessary to go so far because in Salem Erode Electricity Distribution Co. Ltd. v. Salem Erode Electricity Distribution Co. Ltd. Employees Union,(1) this Court in terms held that the object underlying the Act was to introduce uniformity of terms and conditions of employment in respect of workmen belonging to the same category and discharging the same or similar work under an industrial establishment, and that these terms and conditions of industrial employment should be well-established and should be known to employees before they accept the employment. If such is the object, no vague undefined notion about any act, may be innocuous, which from the employer's point of view may be misconduct but not provided for in the standing order for which a penalty can be imposed, cannot be incorporated in the standing orders. From certainty of conditions of employment, we would have to return to the days of hire and fire which reverse movement is hardly justified. In this connection. we may also refer to Western India Match Company Ltd v.Workmen(2) in which this Court held that any condition of service if inconsistent with certified standing orders, the same could not prevail and the certified standing orders would have precedence over all such agreements. There is really one interesting observation in this which deserves noticing Says the Court:

> "In the sunny days of the market economy theory people sincerely believed that the economy law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workman Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the verity of this law. But the experience of the working of this law over a long period has belief their faith."

Lastly we may refer to Workmen of Lakheri Cement Works (1) [1966] 2 S.C.R. 498.

(2) [1974] 1 S.C.R. 434.

Ltd. Associated Cement Companies Ltd(1) This Court repelled the contention that the Act must prescribe the minimum which has to be prescribed in an industrial establishment, but it does not exclude the extension other wise. Relying upon the earlier decision of this Court in Rohtak Hissar District Electricity Supply Co. Ltd. v. State of Uttar Pradesh & Ors(2) the Court held that everything which is required to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is none-the-less a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty. Accordingly, the contention of Mr. Shanti

Bhusan that some other act of misconduct which would per se be an act of misconduct though not enumerated in S.O. 22 can be punished under S.O. 23 must be rejected. It is thus well-settled that unless either in the Certified Standing Order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconduct.

The High Court fell into error when is observed that:

> "The conduct of the petitioner in suppressing the material facts and misrepresenting his past on the material aspect cannot be said to be a good conduct. On the contrary it is unbecoming of him that he should have deliberately suppressed the material fact and tried to obtain employment by deceiving the Municipal Corporation. It is clearly a misconduct "

After thus holding that the suppressio very and suggestio false would constitute misconduct, the High Court held even if it (1) [1970] 20 Indian Factories & Labour Reports, 243. (2) [1966] 2 S.C.R. 863.

does not fall in any of the enumerated misconducts, yet for the purpose of service regulation, it would none-the-less be a misconduct punishable as such. We are unable to accept this view of law and it has to be rejected.

Having clearly restated the legal position, we reject this special leave petition.

M.L.A. Appeal dismissed.