

M.M.DAS, J.

W.P.(C) NO.14563 OF 2007 (Decided on 20.01.2011)

P. AREYA REDDY

..... Petitioner.

.Vrs.

P.O., LABOUR COURT,BBSR & ANR.

..... Opp.Parties.

CONSTITUTION OF INDIA, 1950 – ART.311 (2).

For Petitioner - M/s. Braja Kishore Sahoo & K.C.Sahoo.

For Opp.parties - None

M.M. DAS, J. The petitioner in this writ petition calls in question the award dated 29.6.2007 passed by the Presiding Officer, Labour Court, Bhubaneswar in I.D. Case No. 3 of 2003.

2. The facts, which are relevant , are as follows:-

The petitioner was an employee under the opp. party no. 1. He was employed as a helper on 8.2.1979. He declared his marital status as married and disclosed the name of his wife as P. Arnapurna Reddy at the time of joining in the service which has been duly entered in the Service Book as well as in the Group Insurance. Later, a complaint was filed by one P. Sharma alleging herself to be the married wife of the petitioner-workman. The opposite party-management by letter dated 09.10.1990 charge-sheeted the workman framing various charges against him, which are as follows:-

(i) furnishing wrong information at the time of entry into Govt. service.

(ii) involving yourself in Bigamous marriage as a Govt. servant.

(iii) violation of Govt. servant conduct rules.

3. The petitioner was called upon to explain within 15 days from the date of receipt of the said charges as to why disciplinary action shall not be taken against him. The petitioner submitted an explanation stating that the statements given by him in his joining report as well as in the Group Insurance Scheme Nomination Form are not inconsistent. He denied the charges levelled against him and stated that he is an illiterate person for which, he preferred to serve as an attendant in the office. He also asserted that P. Arnapurna is his married wife, whose name has been reflected in the official correspondence and denied the claim of the complainant P. Sharma further submitting that said P. Sharma is trying to take revenge against him, as said P. Sharma stays with one P. Purushottam, a mechanic, in the said office. Subsequently, an Enquiring Officer was appointed, who enquired the disciplinary proceeding. In his report, it is reflected that the petitioner by his letter dated 20.08.1990 intimated the office that Smt. P. Sharma left her before the year 1975 and as per the decision of the "Caste Committee" held on

13.07.1975 in his village, he had given a cultivable land of Ac 1.00 along with some house-hold land to her and thereafter he married Smt. P. Arnapurna. The Enquiring Officer came to the conclusion that there was a Misc. Case relating to demand of interim maintenance filed by said P. Sharma in which, the interim maintenance was awarded, which was confirmed by this Court in a Civil Revision. However, the main case for maintenance is still pending. The Enquiring Officer therefore, concluded that although at the time of joining in the Govt. service, the petitioner was not living with P. Sharma and their relationship as husband and wife did cease on the basis of the decision of the "Caste Committee" on 13.07.1975, but in the eye of law, they are to be treated as husband and wife and in fact, it is clear that the petitioner involved himself in bigamous marriage and furnished wrong information at the time of his entering into the Govt. service. Therefore, both the charges are held to be proved against him.

4. The disciplinary authority basing on the enquiry report, gave his finding as follows: -

"Went through the report of the E.O. The charges against Sri Reddy have been duly established. He has served employment by furnishing wrong information to this office. In view of this, he is compulsorily retired from service".

Accordingly, a letter was issued to the petitioner retiring him compulsorily from service from the date of issuance of the letter, i.e., 07.03.1992. Against the said order of the compulsory retirement, the petitioner initiated the industrial dispute, which was ultimately referred to the Labour Court, the reference being, (i) "whether the action of the management of the Director of Text Book Production & Marketing, Bhubaneswar leading to termination of services of Sri P. Areya Reddy by way of compulsory retirement, as punitive measure w.e.f. 07.03.1992 is legal and/or justified ? and, (ii) If not, to what relief Sri Reddy is entitled to ?"

5. Learned Labour Court after hearing the dispute, on analyzing the materials available on record, came to the conclusion that it can never be said that the enquiry conducted by the Enquiring Officer was in any way unfair or violative of principles of natural justice. Considering the facts on record, the learned Labour Court held that there is no force in the evidence of the workman that the enquiry into the charges against him was improper or unfair in any way. He, therefore, answered the reference by holding that the action of the management of the Director, Text Book Production & Marketing, Bhubaneswar leading to termination of service of Sri P. Areya Reddy by way of compulsory retirement with effect from 07.03.1992 is legal and justified and the workman is not entitled to any relief whatsoever.

6. Mr. Sahoo, learned counsel for the petitioner submits that since the petitioner joined in service in the year 1979 by which time, as per his caste custom, he was separated from Smt. P. Sharma and as per the decision of the community, he gave Smt. Sharma Ac. 1.00 of land with some homestead property, he on a bona fide belief that his marriage with P. Sharma should dissolve and he can get married again, he got married to P. Arnapurna. This being a prior act, the action of the petitioner in disclosing the name of P. Arnapurna as his legally married wife cannot be held to be a wrong information. He secondly submitted that even assuming that under law, there was no separation between the petitioner and Smt. P. Sharma, it cannot be said that the petitioner after entering into Government service was involved in a bigamous marriage. Therefore,

technically, it can only be said that the petitioner gave a wrong information at the time of joining in service. In view of such facts, Mr. Sahoo submits that the punishment imposed, i.e., termination by way of compulsory retirement is disproportionate to the charges levelled against the petitioner. He relied upon the decision in the case of **Dibakar Moharana v. State of Orissa and others**, 2010 (2) OJR 124 in support of his contention. In the said case, a Division bench of this Court was considering the punishment imposed on the writ petitioner by the learned District Judge, Cuttack in a disciplinary proceeding initiated against him, who was a 4th grade employee, i.e., a Peon and was appointed on 29.7.1976 in the court of the learned S.D.J.M., Cuttack. Being satisfied that his conduct, sincerity and obedience with regard to discharge of his duties, he was promoted and worked as Library Attendant in the court of the learned District Judge, Cuttack with effect from 3.11.1984 up to 30.9.2004. There were no adverse entries against the petitioner in the said case. When the matter stood thus on 30.9.2004, as per Rule 12 of the O.C.S. (CCA) Rules, 1962, the learned District Judge passed the order of suspension and initiated a departmental proceeding against the petitioner in the said writ petition. Charges were framed against him that (1) while posted as Library Attendant, he incurred a housing loan under the Flood loan scheme from the Union Bank of India, Main Branch, Cuttack without prior sanction of the authority and made unauthorized borrowing (ii) he forged the signature and seal of his drawing and Disbursing Officer, i.e., the Registrar, Civil Courts, Cuttack in the loan application form, salary certificate and forwarding letter and mis-represented the Union Bank of India regarding salary and wrongfully and fraudulently obtained the loan, amounting to gross misconduct on the part of a Government Servant (iii) he furnished a fake salary certificate for the month of July, 2004 with the loan application to the Bank which was not his actual salary and thereby he cheated the bank with false representation and thus acted against the interest and reputation of the authority. He acted immorally and dishonestly and cannot be trusted by the employer.

7. While enquiry was being conducted, he was reinstated with effect from 15.7.2005 after revocation of the order of suspension and he was posted as Duftary in the court of the learned Civil Judge (Sr. Division), Jajpur. The E.O. in his report held that the petitioner was guilty of the offences charged and recommended minor penalty of withholding of three periodical increments with cumulative effect and not to assign him with any responsible post in future. Upon such enquiry report, notice was issued to the petitioner to show cause as to why a major penalty like dismissal or removal from service should not be imposed on him for his misconduct. Ultimately, he was served with an order of dismissal from service by the learned District Judge.

8. The petitioner filed an appeal before the Appeal Committee of this Court and the appeal Committee confirmed the penalty imposed by the Disciplinary Authority against which the said writ petition was filed.

9. This Court in the said case, taking into consideration the nature of dereliction in duty and the charges and on scrutinizing the materials on record found that since two views are possible, the view which is in favour of the delinquent –petitioner should have been taken and a minor penalty instead of major penalty like dismissal from service should have been imposed by the Disciplinary Authority. Taking such a view and further noting the nature of penalties provided in the rules and referring to the case of **B.C. Chaturvedi v. Union of India and others**, AIR 1996 SC. 484 wherein the Supreme

Court laid down that the disciplinary authority as well as the appellate authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct and the High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty, unless the punishment imposed shocks to conscience of the High Court/Tribunal, in which event, it can appropriately mould the relief either directing the disciplinary/appellate authority to consider 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 or otherwise sent back the matter to the disciplinary authority to reconsider the matter and award some lesser punishment as per law.

10. The question of interference with the quantum of punishment has been considered by the Supreme Court in a number of judgments and it has been held that, if the punishment awarded, is disproportionate to the gravity of the misconduct, it would be arbitrary and violative of the mandate of Article – 14 of the Constitution.

(See **Bhagat Ram V. State of H.P. & Ors.**, AIR 1983 SC 454, **Ranjit Thakur V. Union of India & Ors.**, AIR 1987 SC 2386 and **S.K. Giri V. Home Secretary, Ministry of Home Affairs & Ors.**, 1995 Suppl. (3) SCC 519).

11. In the case of **V. Ramana V. A.P.S.R.T.C. & Ors.** (2005) 7 SCC 338, the Supreme Court, with regard to the above question compared the Indian Law with the English Law on judicial review and placing reliance on several previous judgments concluded that every administrative order should be rational and reasonable and the orders should not suffer from any arbitrariness. The scope of judicial review, as to the quantum of punishment, is permissible only, if it is found that it does not commensurate with the gravity of charges and, if, the Court comes to the conclusion that the quantum of punishment is shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. Thus, therefore, in the normal course, if the punishment imposed is shockingly disproportionate, it is open to the Court to direct the disciplinary authority to reconsider the penalty imposed or to shorten the litigation in exceptional cases, the Court itself can impose appropriate punishment by recording cogent reasons.

12. Considering the facts of the present case in the light of the above cited judgments, it would be clear that the action of the petitioner in declaring the name of his wife P. Arnapurna Reddy at the time of entering into service was based on bona fide belief that his marital status with his first wife P. Sharma has come to an end as per their caste-custom and thereafter, as he got married to P. Arnapurna Reddy, he disclosed her name, as his legally married wife. Question of committing bigamy after entering into the Government service did not arise at all in the facts of the present case. At best applying the provisions of the Hindu Marriage Act as the parties are Hindus, it can be said that without dissolution of the first marriage of the petitioner as per law, his second marriage with P. Arnapurna Reddy is invalid. But the finding of the Enquiring Officer, upon which, the disciplinary authority dismissed the petitioner that the charges framed with regard to giving wrong information at the time of entering into service and undergoing bigamous marriage, cannot be sustained. The information, as given by the petitioner, appears to be on a bona fide belief. Therefore, the only charge, which can be said to have been proved, was with regard to violation of Government Servant Conduct Rules on a technical ground that the petitioner's first marriage was not legally dissolved but he mentioned the name of his second wife as his legally married wife at the time of joining

the service. Hence, the punishment imposed leading to termination of service of the petitioner by way of compulsory retirement with effect from 07.03.1992 shocks the conscience of this Court. The said punishment is clearly disproportionate and it does not commensurate with the alleged misconduct.

13. This Court, therefore, in order to shorten the litigation, without sending the matter back to the disciplinary authority, directs that the award passed by the Labour Court be modified to the extent that the order of termination of service of the petitioner by way of compulsory retirement, which has been confirmed in the award, is set-aside and the petitioner is imposed with a minor penalty of stoppage of three increments with cumulative effect.

14. The petitioner, who was a fourth grade employee, being out of service with effect from 07.03.1992, shall be reinstated in service with immediate effect. However, the petitioner in lieu of back wages, shall be paid a consolidated amount of Rs.50,000/- (Rupees fifty thousand) as compensation. The above order shall be complied with immediately on communication of the same to the opposite party no.2.

15. With the aforesaid modification in the award, the writ application stands partly allowed. No costs.

Writ petition partly allowed.