L.K. VERMA

v.

H.M.T. LTD. AND ANR.

JANUARY 31, 2006

[S.B. SINHA AND P.K. BALASUBRAMANYAN, JJ.]

Labour Law:

U.P. Factories (Safety Officers) Rules, 1984: Rules 8 and 14—Safety Officer—Misconduct—Suspension—Dismissal—Safety Officer using abusive language and threatening superior officer—Placed under suspension—Order challenged before Labour Commissioner—Meanwhile dismissal order passed—Appeal allowed—Writ petition by employer allowed by High Court—Held, order of suspension was not passed as a measure of penalty—Availability of alternative remedy not a bar to exercise judicial review—Verbal abuse is sufficient to inflict a punishment of dismissal—Constitution of India—Article 226—Alternative remedy—Maintainability of writ petition—Service Law—Misconduct—Suspension followed by dismissal.

Evidence—Things admitted need not be proved.

Appellant was working as a Safety Officer in the respondent Company. He was placed under suspension on the charge of misconduct. He filed an appeal before the Labour Commissioner under Rule 14 of the U.P. Factories (Safety Officers) Rules, 1984. Meanwhile the appellant was dismissed from service. The Labour Commissioner allowed the appeal. The writ petition filed by the employer was allowed by the High Court. Aggrieved, the employee filed the present appeal.

It was contended for the appellant that the action of the employer in initiating departmental proceedings against him was actuated by malice; that in view of the alternative remedy available to the respondent under Rule 14(3) of the Rules, the writ petition was not maintainable; that suspension being one of the punishments within the meaning of Rule 8 of the Rules, order of dismissal could not have not been passed for the same charge; and that, in any event, quantum of punishment was wholly disproportionate.

Dismissing the appeal, the Court

A HELD : 1. It cannot be said that the disciplinary proceedings were actuated by malice. Evidently, the disciplinary authority was not biased against the appellant nor any malice has been attributed to him. [965-E-F]

2.1. Though in terms of sub-rule (3) of Rule 14 of the U.P. Factories (Safety Officers) Rules, 1984 an appeal was maintainable before the State B Government, but availability of an alternative forum for redressal of grievances itself would not be a bar to exercise the power of judicial review vested in the High Court. Despite existence of an alternative remedy, a writ court may exercise its discretionary jurisdiction of judicial review *inter alia* in cases where the court or the tribunal lacks inherent jurisdiction or for C enforcement of a fundamental right or if there has been a violation of principle of natural justice or where vires of the act is in question. In such circumstances, the alternative remedy has been held not to operate as a bar. [965-G; 967-G-H]

Whirlpool Corporation v. *Registrar of Trade Marks, Mumbai and Ors.*, D [1998] 1 SCC 1; *Sanjana M Wig (Ms.)* v. *Hindustan Petroleum Corpn. Ltd.*, [2005] 8 SCC 242 and *State of H.P. and Ors.* v. *Gujarat Ambuja Cement Ltd. and Anr.*, [2005] 6 SCC 499, relied on.

2.2. The Labour Commissioner misdirected himself in passing the order by which he allowed the appeal preferred by the appellant. Whereas, on the E one hand, he noticed that appellant had stated that during the preliminary enquiry he made the utterances owing to tension in his mind, he opined that no evidence had been produced against him for which he has been dismissed from service. It is now well-settled that things admitted need not be proved. Once the appellant accepted that he made utterances which admittedly lack civility and he also threatened a superior officer, it was for him to show that F he later on felt remorse therefor. The Enquiry Officer came to the conclusion that both the Management and the witnesses corroborated each other's statements and although they had been cross-examined thoroughly, no contradiction was found in their statements in regard to the said charge. [966-F-H; 967-A-B]

G *Vice-Chairman, Kendriya Vidyalaya Sangathan and Anr.* v. *Girdharilal Yadav.*, [2004] 6 SCC 325, relied on.

2.3. In any event, once a writ petition has been entertained and determined on merits, the appellate court, except in rare cases, would not interfere therewith only on the ground of existence of alternative remedy. H [968-B]

Kanak (Smt.) and Anr. **v.** *U.P. Avas Evam Vikas Parishad and Ors.*, **[2003] 7 SCC 693, relied on.** A

3.1. Suspension is of three kinds. An order of suspension may be passed by way of punishment in terms of the conduct rules. It can also be passed by the employer in exercise of its inherent power in the sense that he may not take any work from the delinquent officer but in that event, the entire salary is required to be paid; an order of suspension can also be passed, if such a provision exists in the rule laying down that in place of the full salary, the delinquent officer shall be paid only the subsistence allowance specified therein. [967-C-D] B

3.2. The appellant admittedly received the subsistence allowance offered to him without any demur whatsoever. The order of suspension was not passed as a measure of penalty in terms of Rule 8 of the Rules, and, therefore, the findings of the Commissioner that the said rule will be applicable must be held to be incorrect. [967-D-E] C

4.1. As regards the contention that quantum of punishment is disproportionate to the charge, suffice it to say that verbal abuse has been held to be sufficient for inflicting a punishment of dismissal. [968-C] D

Mahindra and Mahindra Ltd. **v.** *N.N. Narawade etc.*, **JT (2005) 2 SC 583 = [2005] 3 SCC 134;** *Muriadih Colliery* **v.** *Bihar Colliery Kamgar Union*, **[2005] 3 SCC 331;** *Hombe Gowda Edn. Trust & Anr. s. State of Karnataka & Ors.*, **(2005) 10 SCALE 307 and** *State of Rajasthan & Anr.* **v.** *Mohammed Ayub Naz*, **(2006) 1 SCALE 79, relied on.** E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 881 of 2006. F

From the Judgment and Order dated 27.08.2004 of the Uttaranchal High Court in Civil Writ Petition No. 2730 (M/S) of 2001.

Ashok Desai, Anuvrat Sharma, Ms. Pundir and M.P. Shorawala for the Appellant. G

Sunil Gupta, Vinay Garg, Vivek Vishnoi, Prantap Kalra, Mrs. Deepam Garg, Pradeep Misra and Manoj Misra for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted. H

A The Appellant was employed by the Respondent herein as a Safety Officer. On an allegation that he had committed acts of misconduct, he was placed under suspension. He preferred an appeal before the Labour Commissioner in terms of Rule 14 of the U.P. Factories (Safety Officers) Rules, 1984 (for short "the Rules").

B A writ petition was filed by him which was disposed of directing that the appeal preferred by him against the order of suspension be disposed of by the Labour Commissioner within the period specified therein. On completion of enquiry, a show cause notice was issued to him on 8.01.1998 as to why punishment of dismissal be not awarded.

C In the meanwhile, the Labour Commissioner issued notice to the Respondent directing it to appear on 2.4.1998. A prayer for adjournment made by the Respondent herein that the matter be posted after 15.4.1998 as the officers were busy in relation to closing of financial year, was refused. 9.4.1998 was the date fixed for hearing of the parties which was a holiday. The memo D of appeal was also not furnished to the Respondent. In the meanwhile, upon considering the show cause filed by the Appellant, herein, he was dismissed from service by an order dated 21.02.1998. The Labor Commissioner by reason of an order dated 12th April, 1998 allowed the appeal preferred by the Appellant, herein against the order of suspension dated 20th May, 1996. Being aggrieved by and dissatisfied therewith the Respondent filed a writ petition before the E Uttaranchal High Court which by reason of the impugned judgment and order has been allowed.

Mr. Ashok Desai, learned senior counsel appearing on behalf of the Appellant raised the following contentions:

F (i) The action of the Respondent in initiating a departmental proceeding against the Appellant was actuated by malice as a criminal case came to be registered against the Management at his instance.

(ii) Suspension being one of punishments within the meaning of G Rule 8 of the Rules, the impugned order of dismissal could not have been passed for commission of the same offence.

(iii) In view of the alternative remedy available to the Respondent as they could prefer an appeal against the order passed by the Labour Commissioner in terms of sub-rule (3) of Rule 14 of the H Rules, the writ petition was not maintainable.

(iv) In any event, the quantum of punishment is wholly disproportionate to the charges of misconduct. A

Mr. Sunil Gupta, learned senior counsel appearing on behalf of the Respondent, on the other hand, would submit that:

(i) as the factum of misconduct was not questioned by the Respondent, the order of punishment cannot be said to be illegal. B

(ii) whereas suspension by way of punishment is provided for in the Rules, the conduct rules framed by the company provides for suspension during pendency of a departmental proceeding and having regard to the fact that the Appellant herein accepted the subsistence allowance without any demur whatsoever, he now cannot turn round and contend that the order of suspension could have been passed only in terms of the Rules. C

The Appellant was appointed as a welfare officer. The terms and conditions of his services indisputably were governed by the Rules framed in terms of Section 40-B of the Factories Act, 1948. Rules 4, 5 and 8 of the Rules which are relevant for our purpose read as under: D

"4. *Pay, allowances and other benefits*—The scale of pay, allowances and other benefits such as Leave, Provident Fund, Bonus, Gratuity, Medical facilities, Residence, etc., to be granted to the Safety Officer and other conditions of their service shall be the same as those of other officers of corresponding status in the factory. E

5. *Status*—The Chief Safety Officer or the Safety Officer in the case of factories where only one Safety Officer is required to be appointed shall be given the status of a departmental head or a senior executive in the factory and he shall work directly under control of the Chief Executive of the factory. Every other Safety Officer shall be given appropriate status corresponding the status of an officer holding a position next below other departmental heads in the factory. F G

8. *Punishment.*—The occupier of the factory may impose upon any Safety Officer any one or more of the following penalties, namely

(i) suspension;

(ii) removal or dismissal from service; H

A (iii) reduction in rank;

(iv) withholding of increment (including stoppage of an efficiency bar);

(v) censure; and

B (vi) warning;

Provided that no order imposing any such penalty on a Safety Officer shall be made except after an enquiry in which he has been informed of charges against him and given a reasonable opportunity of being heard in respect of such charges and where it is proposed, after such C enquiry, to impose on him any such penalty until he has been given a reasonable opportunity of making representation against the penalty proposed, but only on the basis of the evidence adduced or any other material being used against him during such enquiry."

It is also not in dispute that the Respondent, herein had framed HMT D Limited Conduct, Discipline & Appeal Rules which came into force on and from 27.6.1988. Rule 23 provides for discipline and appeal regulations and disciplinary action procedure. Regulation 23.1.6 reads, thus:

"23.1 MISCONDUCT:

E Without prejudice to the generality of the term 'Misconduct' the following acts of omission and commission shall be treated as 'Misconduct':

*** *** ***

F 23.1.6. Drunkenness, riotous or disorderly or indecent behaviour in the premises of the Company or outside the premises, where there is a nexus between employment and such commission and/ or where such behaviour is likely to affect the image of the Company."

Rule 23.3 provides for suspension pending enquiry. Rule 23.3.2 provides G that an employee under suspension shall be entitled to subsistence allowance.

Indisputably, the Appellant herein was chargesheeted on 20th May, 1996 on the following charges:

"1. You have file a writ petition No. 10684 of 1996 in the Hon'ble High Court at Allahabad against Labour Secretary, U.P., other Government H

Officials and HMT in which you have filed an affidavit on oath on 28.02.1996 at 10.30 A.M. in front of Oath Commissioner, Allahabad and on this date not only card is punched showing you to be present in the factory but you have also marked yourself present in the attendance register maintained by you.

2. On 18.05.1996 at about 4.00 P.M. when you were questioned by MHR in presence of PMR regarding the above, you got agitated during the prima-facie enquiry and abused MHR in filthy language and said that all these things were being done at the behest of Mr. Kaul, GTM. You also threatened MHR with dire consequences.

3. On perusal of your records, it also appears that you pursued a full-time course in Post Diploma in Industrial Safety in 1985-86 from Regional Labour Institute, Kanpur and showed the same period in your experience with Indian Telephone Industries Limited, Raebareli, at the time of filling in your application from the employment."

In the departmental proceedings, the Appellant, herein did not deny or dispute that he had used indecent language and also abused the officer.

The contention of Mr. Desai that the disciplinary proceedings were actuated by malice cannot be accepted for more than one reason. As noticed hereinbefore, the Appellant himself accepted that he was in tense mood while attending the *prima facie* enquiry. The Enquiry Officer while holding the Appellant guilty of misconduct in respect of Charge No. 2 exonerated him in respect of Charges No. 1 and 3. Had the action of the Management and the disciplinary authority were actuated by malice, the Appellant would not have been exonerated on two very serious charges. Furthermore, when a charge has been proved, the question of exonerating the Appellant on the ground of purported malice on the part of the Management does not arise. Evidently, the disciplinary authority was not biased against the Appellant nor any malice has been attributed to him. The contention is rejected.

It is true that in terms of sub-rule (3) of Rule 14 of the Rules an appeal was maintainable before the State Government. But it is well settled, availability of an alternative forum for redressal of grievances itself may not be sufficient to come to a conclusion that the power of judicial review vested in the High Court is not to be exercised.

The Respondents herein filed the writ petition *inter alia* on the ground

A that the Labour Commissioner did not give enough opportunity to them to place their case. From the order dated 12th April, 1998 passed by the Labour Commissioner, it appears, he allowed the appeal preferred by the Appellant, herein *inter alia* on the ground :

B (i) "...Dismissal from service during the pendency of Appeal against suspension of the petitioner/ appellant is against the set rulings & norms, which indicates the *malafide* intention of the management against petitioner/ appellant

C (ii) "...Vide letter dated 29.10.1997 of the General Technical Manager of the factory informed the petitioner/ appellant that all the charges against him found proved, but no further disciplinary action will be taken during the pendency of writ petition against suspension in the Hon'ble High Court but vide letter 08.01.1998, the Director Personal and occupier Sh. R.A Sharma informed the petitioner/ appellant about proving only one charge & seeking defence/ clarification about so-called "show cause notice" and vide letter 21.02.1998, dismissing the service of the petitioner/ appellant due to unsatisfactory defence, found against each others verdict and malafidely included"

D

(iii) "...No evidence has been produced against petitioner/ appellant against the charge for which he has been dismissed from services. The management of the factory has suspended the petitioner/ appellant and thereafter dismissed from services in violation of the provisions of the Factories Act, 1948 and the UP Factories (Safety Officer) Rules 1984 framed thereunder. Therefore, both the acts of the management of suspension and dismissal found against the rules and also against the evidences produced"

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The Labour Commissioner, in our considered opinion, misdirected himself in passing the said order. Whereas, on the one hand, he noticed that the Appellant, herein had stated that during the preliminary enquiry he made those utterances owing to tension in his mind, he opined that no evidence had been produced against him for which he has been dismissed from service. It is now well-settled that things admitted need not be proved. [See *Vice-Chairman, Kendriya Vidyalaya Sangathan and Anr.* v. *Girdharilal Yadav*, [2004] 6 SCC 325]

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Once the Appellant accepted that he made utterances which admittedly lack civility and he also threatened a superior officer, it was for him to show

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that he later on felt remorse therefor. If he was under tension, he, at a later stage, could have at least tendered an apology. He did not do so. Furthermore, before the Enquiry Officer, the witnesses were examined for proving the said charges. The officer concerned, namely, Shri Sinha had also submitted a report mentioning the incident of misbehaviour of the Appellant on 18.5.1996. The Enquiry Officer came to the conclusion that both the Management and the witnesses corroborated each other's statements and although they had been cross-examined thoroughly, no contradiction was found in their statements in regard to the said charge.

Suspension is of three kinds. An order of suspension may be passed by way of punishment in terms of the conduct rules. An order of suspension can also be passed by the employer in exercise of its inherent power in the sense that he may not take any work from the delinquent officer but in that event, the entire salary is required to be paid. An order of suspension can also be passed, if such a provision exist in the rule laying down that in place of the full salary, the delinquent officer shall be paid only the subsistence allowance specified therein.

The Appellant herein admittedly obtained the subsistence allowance offered to him without any demur whatsoever. The order of suspension was not passed as a measure of penalty within the meaning of the Rules. Rightly or wrongly, the Respondent invoked Rule 23.3 of HMT Limited Conduct, Discipline & Appeal Rules. The Appellant did not raise any question about the applicability of the said rule, although such a contention could have been raised.

In view of the fact that the order of suspension was not passed in terms of Rule 8 of the Rules, the findings of the Commissioner that the said rule will be applicable must be held to be incorrect.

The High Court in exercise of its jurisdiction under Article 226 of the Constitution, in a given case although may not entertain a writ petition *inter alia* on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. Despite existence of an alternative remedy, a writ court may exercise its discretionary jurisdiction of judicial review *inter alia* in cases where the court or the tribunal lacks inherent jurisdiction or for enforcement of a fundamental right or if there has been a violation of a principle of natural justice or where vires of the act is in question. In the aforementioned circumstances, the alternative remedy has been held not to operate as a bar. [See *Whirlpool Corporation* v. *Registrar*

A *of Trade Marks, Mumbai and Ors.*, [1998] 1 SCC 1, *Sanjana M. Wig (Ms.)* v. *Hindustan Petroleum Corpn. Ltd.*, [2005] 8 SCC 242, *State of H.P. and Ors.* v. *Gujarat Ambuja Cement Ltd. and Anr.*, [2005] 6 SCC 499].

In any event, once a writ petition has been entertained and determined on merit of the matter, the appellate court, except in rare cases, would not B interfere therewith only on the ground of existence of alternative remedy. [See *Kanak (Smt.) and Anr.* v. *U.P. Avas Evam Vikas Parishad and Ors.*, [2003] 7 SCC 693]. We, therefore, do not see any justification to hold that the High Court wrongly entertained the writ petition filed by the Respondent.

C So far as the contention as regard quantum of punishment is concerned, suffice it to say that verbal abuse has been held to be sufficient for inflicting a punishment of dismissal.

Mahindra and Mahindra Ltd. v. *N.N. Narawade etc.*, JT (2005) 2 SC 583 : [2005] 3 SCC 134 is a case wherein the misconduct against the delinquent D was 'verbal abuse'. This Court held :

"It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman E concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to F the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by G way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment. As noticed hereinabove at least in two of the cases cited before us i.e. *Orissa Cement Ltd.* and *New Shorrock Mills* this Court held: "Punishment of dismissal for using of abusive language cannot be held to be disproportionate." In this case all the forums below have held that the language used by the workman H was filthy. We too are of the opinion that the language used by the

workman is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to hereinabove." A

In *Muriadih Colliery* v. *Bihar Colliery Kamgar Union,* [2005] 3 SCC 331], this Court, *inter alia*, following *Mahindra and Mahindra* (supra) held: B

"It is well-established principle in law that in a given circumstance it is open to the Industrial Tribunal acting under Section 11-A of the Industrial Disputes Act, 1947 has the jurisdiction to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the Tribunal decides to interfere with such punishment it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment. In the instant case it is the finding of the Tribunal which is not disturbed by the writ courts that the two workmen involved in this appeal along with the others formed themselves into an unlawful assembly, armed with deadly weapons, went to the office of the General Manager and assaulted him and his colleagues causing them injuries. The injuries suffered by the General Manager were caused by lathi on the head. The fact that the victim did not die is not a mitigating circumstance to reduce the sentence of dismissal." C D E

These questions recently came up for consideration in *Hombe Gowda Edn. Trust & Anr.* v. *State of Karnataka & Ors.,* (2005) 10 SCALE 307], upon considering a large number of cases, this Court held:

"Indiscipline in an educational institution should not be tolerated. Only because the Principal of the Institution had not been proceeded against, the same by itself cannot be a ground for not exercising the discretionary jurisdiction by us. It may or may not be that the Management was selectively vindictive but no Management can ignore a serious lapse on the part of a teacher whose conduct should be an example to the pupils. F G

This Court has come a long way from its earlier view points. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach of the industrial relation wherein only the interest of the workmen was sought to be protected with the H

A avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed that how discipline at the workplaces/industrial undertaking received a set back. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of Article 141 of the Constitution of India, as noticed in the decisions noticed supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to that of this court was bound to follow the decisions of this Court which are applicable to the fact of the present case in question. The Tribunal can neither ignore the ratio laid down by this Court nor refuse to follow the same."

[See also *State of Rajasthan & Anr.* v. *Mohammed Ayub Naz,* (2006) 1 SCALE 79).

For the reasons aforementioned, we are of the opinion that no case is made out for interfering with the impugned judgment. The appeal, thus, fails and is dismissed. No costs.

R.P. Appeal dismissed.