

SMT. JUSTICE T. RAJANI

WRIT PETITION No.8993 OF 2012

ORDER:

This writ petition is filed seeking to declare the office order dated 21.04.2010 passed by the 3rd respondent in dismissing the petitioner from service and confirmed by the 2nd respondent and 1st respondent vide office orders dated 09.06.2010 and 19.11.2010 respectively, as illegal and arbitrary.

2. Heard learned counsel for the petitioner. None appears for the respondents.

3. The learned counsel for the petitioner submits that the petitioner is working as a Record clerk, Branch Office II, United Insurance Company Limited, Nellore. He was prosecuted for an offence under Section 3(1)(ix) of the Scheduled Castes and Scheduled tribes (Prevention of Atrocities) Act, 1989, by the Court of Special Judge for Trial of offences under the SCs & STs (POA) Act-cum-V Additional District and Sessions Judge, Nellore. The trial Court convicted him and imposed a sentence of rigorous imprisonment of one year and a fine of Rs.1000/- in default to undergo simple imprisonment for one month. The petitioner filed Criminal Appeal No.947 of 2009 before this Court against the said judgment. It is stated that this Court stayed the sentence but not the conviction.

4. The Chief Regional Manager of the Company, 3rd respondent herein passed office order, dated 21.04.2010 dismissing the petitioner from service, on the basis of the conviction and sentence suffered by him, without there being any departmental enquiry.

5. The learned counsel draws the attention of this Court to the order dated 16.08.2011 in W.P.No.14774 of 2011, wherein, in the similar circumstances, this Court allowed the writ petition and set aside the impugned order of dismissal and directed the 2nd respondent therein to

issue show cause notice to the petitioner, indicating the punishment, which he proposes to impose against him. This Court, while passing the said order has taken into consideration Rules 25 to 27 of the General Insurance (Conduct, Discipline and Appeal) Rules, which prescribe a detailed procedure to be followed before any punishment is imposed against an employee. The Court also noted the contention of the learned counsel for the respondents that such a requirement is exempted under Rule 30 in certain instances including the instances, where an employee is convicted by a Court on a criminal charge. Having taken the said contention into consideration, this Court framed two questions for consideration:

1. Whether the relevant rules have been applied to the facts; and
2. Whether the Rules have been followed in their letter and spirit, before the punishment of dismissal was imposed against the petitioner.

This Court, on the first question, on considering the detailed submissions that were made to the effect that the Rules followed by the respondents are not applicable because they were not framed in accordance with the provisions of the Act, held that the Rules were framed in accordance with the provisions of the Act and the procedural requirements were complied with. It also noted that it is not essential to delve into the matter in detail, because the petitioner is not able to demonstrate that the plea raised by the respondents in the counter-affidavit is nor correct. As regards the second question, this Court considered Rule 30 and held as follows:

This Rule enables the competent authority to skip the procedure under Rules 25 and 26, in case of major penalty and Rule 27, in case of minor penalty, if the action is proposed under Clauses (i) to (iv). Here itself, it is necessary to mention that the procedure for imposition of major penalty involves three stages viz., (a) issuance of charge sheet, (b) conducting of a domestic enquiry by appointing an enquiry officer, if the charges are denied and (c) ascertaining the version of employee as to imposition of punishment, depending upon the findings of the enquiry officer. All the three requirements can be ignored, where the action is proposed is under Clauses (ii), (iii) and (iv). Where however the punishment is sought to be imposed by invoking Clause (i), a different situation arises. Since the conviction is ordered by a criminal Court, the necessity to issue a charge sheet much less to appoint an enquiry officer may not arise. At the stage of imposition of punishment, an amount of fairness is required to be exhibited. The provision does not differentiate the offences of which the employees are convicted. The Rules takes in its fold all the convictions, be it the one for petty traffic offence or the one for the gruesome murder. Law does not permit of bundling all of them together in the context of the consequences that flow from them. Unless an objective approach is adopted, it is quite possible, if not permissible, for a competent authority to impose the most serious punishment of dismissal, even for a traffic offence. Further, Rule 30 does not specify the nature of punishment that can be imposed. It is left to the discretion of the authority. In a given case, the competent authority may complete the ordeal by imposing a minor punishment, even where the employee is found guilty of a serious offence. Therefore, the principle of proportionality gets attracted here. The punishment, which the authority imposes on the basis of conviction of an employee, must be commensurate with the gravity of the offence. This can be effectively ensured, if only the employee is put on notice and his version is taken into account. In a given case, the employee may demonstrate that the conviction ordered is for an offence, which is totally unrelated to his duties and functions in the office or that the proposed punishment is totally disproportionate to the conviction and sentence imposed against him. No harm would be done to the organization, if notice is given in such cases. Hardly any problem arises where the situations covered by Clauses (ii), (iii) and (iv) are to be dealt with. Issuance of notice in cases arising under Clause (i) may help them in arriving at a just and proper conclusion; in the interest of the organization. It is a different matter that in a given case, the competent authority may not agree with the explanation offered by the employee. However, the

reasons furnished by him for not agreeing with the version of the employee would be subject to judicial review and the Court would be in a better position to analyze as to what weighed with the competent authority, in coming to a particular conclusion.”

6. Hence, in view of the above, the writ petition is allowed and the impugned order is set aside. The 3rd respondent shall issue show cause notice to the petitioner, indicating the punishment, which he proposes to impose against him. It shall be open to the petitioner to submit explanation within 15 days from the date of receipt of the notice. The 2nd respondent shall pass appropriate orders thereon within four weeks from the date of receipt of the explanation, duly indicating the reasons in support of his conclusion. Till such time, the petitioner shall be deemed to be under suspension. No costs.

7. As a sequel, miscellaneous petitions pending consideration if any in the writ petition shall stand closed.

T.RAJANI, J

Date: 04.12.2019

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