

VY
ITEM NO.12

COURT NO.2

SECTION XV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).24602/2013

(From the judgement and order dated 22/11/2011 in DBCSA No.187/1998 of The
HIGH COURT OF RAJASTHAN AT JAIPUR)

RAJ KAMAL AGRAWAL

Petitioner(s)

VERSUS

GANGANAGAR SUGAR MILLS LTD.& ORS.

Respondent(s)

(With office report)

Date: 06/12/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE C. NAGAPPAN

For Petitioner(s) Mr. Dinesh Kumar Garg, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.

This petition is directed against the judgment of the Division Bench of the Rajasthan High Court by which the special appeal filed by the petitioner was dismissed and the order passed by the learned Single Judge refusing to quash his dismissal from service was upheld.

The petitioner joined as Distillery Chemist on 28.5.1984 in the service of respondent No.1-Ganganagar Sugar Mills Ltd. After about nine months, his service was terminated vide order dated 11/14.2.1985. He challenged the same in SBCWP No.514 of 1986. The learned Single Judge of the High Court stayed the termination of the petitioner's service.

During the pendency of SBCWP No.514 of 1986, the petitioner absented from duty. Therefore, an application was made by respondent No.1 for permission to initiate disciplinary proceedings against him. The learned Single Judge allowed the application of respondent No.1. Thereafter, charge-sheet dated 13.1.1989 was served upon the petitioner on the allegations of absence from duty for various period between 22.7.1987 and 22.8.1988 and unsatisfactory performance.

The Enquiry Officer submitted report dated 4.8.1990 with the finding that the petitioner had absented from duty for 899 days. He also opined that the performance of the petitioner was wholly unsatisfactory. The Director In-charge of respondent No.1 ordered supply of a copy of the enquiry report to the petitioner so as to enable him to make representation against the findings recorded by the Enquiry Officer. The petitioner filed reply and pleaded that the finding of guilty recorded by the Enquiry Officer was not correct. The Disciplinary Authority considered the record of enquiry including the enquiry report, the reply of the petitioner and passed order dated 8.1.1991 whereby he dismissed the petitioner. The appeal filed by the petitioner was dismissed by the Senior Appointments Committee of respondent No.1. This was communicated to the petitioner vide letter dated 20/26.6.1991.

The petitioner challenged the order of punishment as well as the appellate order in Writ Petition No.4429 of 1991, which was dismissed by the learned Single Judge vide order dated 22.8.1997

along with Writ Petition No.514 of 1986 in which the petitioner had questioned the termination of his service vide order dated 11/14.2.1985.

In the Special Appeal filed by the petitioner against the order

of the learned Single Judge, the petitioner raised an altogether new point and challenged the rejection of his appeal on the ground that the Senior Appointments Committee of respondent No.1 will be deemed to be biased because it was presided over by Director In-charge, who had passed the order of punishment. He also pleaded that the order dismissing the departmental appeal was liable to be quashed because it did not contain reasons.

The Division Bench of the High Court negated all the grounds of challenge and upheld the order of the learned Single Judge by recording the following observations:

"Learned counsel for the appellant, in support of his submission, that disciplinary authority and the appellate authority were one and the same, referred para No. 13 of the writ petition and from the perusal of the same, we find that no specific averments and details in this regard have been given by him. We further find that this point was not argued on behalf of the appellant before learned Single Bench. Learned counsel for respondent has submitted that Disciplinary Authority in present case was Director Incharge of the Company, whereas appellate authority was Committee consisting of three members. In these circumstances, in absence of any specific averments and details in this regard particularly when this question relates to facts and further that this point was-not argued before Single Bench, we do not find any force in this submission.

So far as the submission with regard to order passed by the appellate authority that it is non-speaking order is concerned, we find that the order of appellate authority has not been placed on record. A copy of letter dated 20/26.6.1991 (Annex. 7) has been placed on record whereby appellant was informed that his appeal against the order of the Director General dated 8.1.1991 has been rejected by Senior Appointment Committee in its meeting held on 31.5.1991 vide Resolution No. 10. The order of Disciplinary Authority is well reasoned and speaking one. The reference of charges has been given. The appellate authority has considered the matter and letter dated 26.6.1991 (Annex. 7) has been placed on record whereby the petitioner / appellant was informed about the decision of his appeal. Learned counsel for the appellant submitted that order of the appellate authority has not been placed on record. In absence of any order of the appellate authority on record, it cannot be said that it is a speaking order or not. However, we are of the view that it is not necessary for the appellate authority to deal with each and every issue in detail particularly when it is affirming the order of the Disciplinary Authority. Therefore, we do not find any force in this submission also."

The Division Bench also rejected the petitioner's plea that the punishment of dismissal was disproportionate to the misconduct found proved by recording the following observations:

"Looking to the facts and circumstances of the case, we find that before serving charge-sheet upon the petitioner, on 13.1.1989, he remained on leave without any proper sanction, i.e. willful absence for a period of 101 days from 22.7.1987 to 30.10.1987, 69 days from 1.2.1988 to 9.4.1988, 21 days from 8.4.1988 to 18.5.1988 and 46 days from 6.6.1988 to 21.7.1988. It is relevant to mention that petitioner thereafter again remained absent for 662 days from 22.8.1988 to 14.6.1990. Thus, total days of willful absence come to 899 days. The inquiry officer, in its report, has recorded finding observed that the delinquent official remained willfully absent. He was - doing his business at Kanpur. This charge was found to be proved by the inquiry officer. The Disciplinary Authority accepted the report after affording an opportunity to the petitioner / appellant. The

order of the Disciplinary Authority has been affirmed' by the appellate authority. Learned counsel for the appellate has also not challenged the finding of the inquiry officer in this regard seriously and his main emphasis was only on disproportionate penalty. In these circumstances, we are of the view that the penalty of dismissal from service awarded in the present case is just and reasonable and no interference in the same is called for by this Court."

Shri D.K. Garg, learned counsel reiterated the grounds on which the petitioner had filed the Special Appeal before the Division Bench and argued that the High Court committed serious error by negating the petitioner's challenge to the order of the Appellate Authority on the ground that the Senior Appointments Committee will be deemed to be biased.

We have considered the submission of the learned counsel and carefully perused the record. Both the learned Single Judge and the Division Bench of the High Court found that regular departmental enquiry was held against the petitioner in consonance with the rules of natural justice and a finding was recorded that the petitioner was guilty of remaining absent from duty for 899 days. The Division Bench also held that the punishment imposed on the petitioner was commensurate with the misconduct found proved.

The petitioner's contention that the appellate order should have been quashed by the High Court because the Appellate Authority, i.e., the Senior Appointments Committee was headed by none other than the Disciplinary Authority sounds attractive, but does not deserve to be entertained.

For the reasons best known to him, the petitioner has not placed on record copy of SBCWP No.4429 of 1991 and without going through the same, it is not possible for this Court to ascertain whether he had prayed for quashing the appellate order on the ground of bias. However, from the order of the learned Single Judge this much is evident that no such contention was urged before him.

Before the Division Bench, the petitioner did raise this plea but could not persuade the learned Judges to entertain the new plea.

In our view, the reasons recorded by the High Court for refusing to nullify the order of punishment are legally correct and the judgment under challenge does not suffer from any legal infirmity requiring interference under Article 136 of the Constitution. The petitioner's challenge to the appellate order on the ground of bias was also rightly rejected by the Division Bench of the High Court because no such plea had been taken in the writ petition and also because no prejudice is shown to have been caused to the petitioner on account of the alleged violation of the rules of natural justice.

With the above observations, the special leave petition is dismissed.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Assistant Registrar