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ITEM NO.103 Court No.7 SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 2841 OF 2007

FOOD CORPORATION OF INDIA & ANR. Appellant (s)

VERSUS

MAYADHAR PRODHAN Respondent(s)

Date: 01/08/2013 This Appeal was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE VIKRAMAJIT SEN

For Appellant(s) Mr. Ajit Pudussery,Adv.
MS. Joanne Poddussery, Adv.
Mr. K.Vijayan, Adv.
Mr. M.Chaander SHekhar, Adv.

For Respondent(s) Mr. Pijush K.roy, Adv.
MS. Kakali Roy, adv.
Mr.Sunil Kumar Verma,Adv.

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

The appeal is allowed in terms of the signed order.

|(Shashi Sareen) | |(Veena Khera) |
|Court Master | |Court Master |

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 2841 OF 2007

|FOOD CORPORATION OF INDIA AND ANR. |...| Appellant(s) |

| Versus |

|MAYADHAR PRODHAN |...| Respondent(s) |

O R D E R

This appeal arises out of an order dated 22.11.2006 passed by a

Division Bench of the High Court of Calcutta whereby an order passed by a learned Single of that court directing the disciplinary authority to reconsider the quantum of punishment imposed upon the respondent has been affirmed with the observation that award of a minor punishment would meet the ends of justice.

The respondent was working as Assistant Manager (D) in the appellant Corporation and posted at Adra in the District of Bankura, West Bengal. He was charged with commission of misconduct in that he was alleged to have recommended for payment to the labour contractor a false labour bill for a sum of ' 1,07,656.56 for the period 1.4.1996 to 10.4.1996 suggesting that 1012 labourers had been engaged during the said period for loading and unloading in the depot under his charge and control. An inquiry conducted into the said allegation culminated in a report by the inquiry officer holding that the charge framed against the respondent was proved. The disciplinary authority accepted the said finding and passed an order of dismissal of the respondent from service.

Aggrieved by the order of his dismissal, the respondent filed an appeal before the prescribed appellate authority who reappraised the evidence adduced at the inquiry and affirmed not only the finding of guilt recorded by the inquiry officer but also the punishment of dismissal from service imposed upon the respondent by the Disciplinary Authority.

The respondent then approached the High Court of Calcutta in Writ Petition No. 12479 of 1999 inter alia contending that he had been coerced by the labour contractor into certifying the false bill in question and that no sooner the respondent had got an opportunity, he had informed the District Manager of the Food Corporation of India at Bankura about the said fact and requested him not process the bill. It was also contended that the order of dismissal passed by the disciplinary authority and affirmed by the appellate authority was vitiated for want of of a second show cause notice which according to the respondent was essential for any such order to be legally valid. A Single Judge of the High Court who heard the writ petition did not interfere with the finding of fact recorded by the inquiry officer, the disciplinary authority or the appellate authority insofar as the charge framed against the

respondent was held to have been proved, but came to the conclusion that the order of dismissal passed against the respondent was rendered unsustainable for want of a second show cause notice. The learned Single Judge accordingly allowed the writ petition quashed the order passed by the disciplinary authority and that passed by the appellate authority and remitted the matter back to the disciplinary authority for reconsideration after issuing a second show cause notice. The Single Judge was of the opinion that the quantum of punishment was also an aspect which in the facts and circumstances of the case required to be considered by the competent authority.

Aggrieved by the order passed by the learned Single Judge, the appellant-FCI filed MAT No. 1925 of 2002 before the Division Bench of the High Court which appeal has been partly allowed by the Division Bench in terms of the order impugned before us. The High Court has by that order reversed the view taken by the learned Single Judge to the extent, it found the issue of a second show cause notice essential for a valid order of dismissal against the respondent. The High Court all the same held that the punishment of dismissal from service was in the facts and circumstances much too harsh to be legally valid and sustainable. The High Court has on that basis affirmed the view taken by the Single Judge with the observation that the disciplinary authority could impose a minor punishment upon the respondent. The present appeal as noticed earlier calls in question the correctness of that order.

We have heard learned counsel for the parties at some length who have taken us through the orders passed by the disciplinary authority, appellate authority as also those passed by the learned Single Judge and the Division Bench of the High Court. The fact that

the inquiry officer had found the charge framed against the respondent proved is not in dispute nor is it disputed that there was sufficient basis for the inquiry officer to record that finding. Learned counsel for the respondent no doubt made a feeble attempt to argue that the finding was opposed to the weight of evidence on record but in our opinion the finding recorded by the inquiry officer and affirmed by the appellate authority are perfectly justified in the facts and circumstances of the case especially when the respondent had not been able to make his version that he had been coerced to certify the bills by the labour contractor good. There is no explanation much less a cogent one for the failure of the respondent to have immediately informed the District Manager or any other higher officer about the alleged coercion and the false certification which the labour contractor is said to have extracted from him under threat. It is a common ground that the first intimation which the respondent sent to the District Manager at Bankur on 27.04.1996 was actually received by the District Manager on 07.05.1996 even when Bankura and Adra are just about 60 kilometres apart from each other. The respondent's version that he had informed the District Manager at Bankura over

telephone about the incident is also not supported by any material on record. The respondent had no explanation to offer for his failure to examine the District Manager who alone could say whether any telephonic intimation had been given to him by the respondent about the alleged false certification of the bill under coercion. No police report regarding the alleged fabrication under coercion of a false labour bill was lodged by the respondent either nor is any explanation forthcoming for his failure to do so. In the totality of these circumstances and keeping in view the admitted position that the bill certified by the respondent was false inasmuch as no work of loading or unloading of food grains had been admittedly done between 1.4.1996 to 10.4.1996 during which time the depot was shut down because of an on going labour problem, the inquiry officer and the appellate authority were justified in holding that the charge framed against the appellant was fully proved.

The only other question that remains to be considered and which was argued before us by learned counsel for the respondent at some length was whether the punishment of dismissal imposed upon the respondent was disproportionate to the nature and gravity of the misconduct proved against him. It was submitted that the respondent had no criminal antecedents nor was he involved in any earlier act of misconduct. The disciplinary authority therefore ought to have taken a lenient view in the matter. The High Court has found favour with that line of reasoning. We regret to say

that the High Court was not justified in interfering with the quantum of punishment imposed upon the respondent. We say so because the legal position as to the scope of interference by a writ court with the quantum of punishment is fairly well settled by a long line of decisions of this court. A Writ Court does not sit as an Appellate Court to determine the quantum of reasonableness of the punishment awarded to or deserved by a delinquent. It is only if the punishment awarded is so outrageously disproportionate to the gravity of the misconduct that it shocks the conscience of the writ court that the latter may step in to correct the aberration. Having said that we do not consider the present to be one such case. For the misconduct committed by the respondent the punishment of dismissal could not be said to be totally disproportionate or an outrageous defiance of logic. The fact that the respondent held a position of trust which required him to be both honest and diligent in the discharge of his duties while certifying the bills for payment needs no emphasis. It is also clear that but for the time consuming process involved in the making of the payment, the contractor could have drawn the amount covered by the bills even without having done any work whatsoever and simply on the basis of a false certificate issued by the respondent. In that view of the matter, therefore, and having regard to the fact that the respondent had worked just for about four years as Assistant

Manager of the Depot, the dismissal ordered by the disciplinary authority and consequent forfeiture of his past service and service benefits does not appear to be a punishment that can be said to be so unreasonable or disproportion as to be treated arbitrary calling for interference from a writ court.

In the result, we allow this appeal, set aside the order passed by the learned Single Judge and that passed by the Division Bench of the High Court and dismiss the writ petition filed by the respondent. The parties are left to bear their own costs.

.....J.
(T.S.THAKUR)

.....J.
(VIKRAMAJIT SEN)

New Delhi,
August 1, 2013