

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION No.27683 of 2005

S.P.S. Venkataraman S/o.S.P.Subbaiah Swamy
Aged 56 years, Occ: Former Junior Cotton Purchaser,
Cotton Corporation of India Limited,
Bombay, Branch at Adilabad,
Adilabad District.

....Petitioner

VERSUS

The Cotton Corporation of India Limited,
Air India Building, 12th Floor, Nariman Point,
P.B.No.11682, Bombay – 400 021, rep. by its
Chairman cum Managing Director,
Presently situated Administrative and Registered office
Kapas Bhavan, Plot No.3-A, Sector No.10,
CBD Belapur, Navi Mumbai – 400 614 and two others

... Respondents

DATE OF JUDGMENT PRONOUNCED:31.08.2023

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

J. SREENIVAS RAO, J

THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

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% Dated 31.08.2023

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! Counsel for Petitioner : Mr.Nazeer Khan

^ Counsel for Respondents : Mr.A.K.Jayaprakash Rao

< GIST:

> HEAD NOTE:

? CITATIONS:

1. (1983) 2 SCC 442
2. 1983 AIR 130
3. 1996 (30) SLR – 308
4. (1995) 6 SCC 157
5. AIR 1964 SC 364
6. 2019 SCC OnLineBom 6036

HON'BLE SRI JUSTICE J. SREENIVAS RAO**WRIT PETITION No.27683 OF 2005****ORDER:**

This writ petition is filed seeking writ of certiorari to quash the order of removal from service passed by respondent No.1 *vide* Proceedings No.CCI/VIG/ADB/1353/2005-06 dated 17.11.2005 and with a direction, deeming the petitioner had been continued in service and his service be treated on duty for all purposes.

2. Heard Sri D.Laxminarayana, learned counsel, representing Sri Nazeer Khan, learned counsel for the petitioner, and Sri A.K.Jayaprakash Rao, learned counsel for the respondents.

3. **The brief facts of the case are that:**

3.1. The petitioner was appointed as Junior Cotton Purchaser in the respondent Corporation on 03.12.1979 and he was entrusted with the work of Central Warehouse Corporation (CWC) Godown In-charge at Adilabad, pursuant to the orders dated 18.12.1990. The petitioner applied compensatory medical leave from 21.05.1991 to 09.06.1991 and the leave was granted by the respondent Corporation and he handed over the charge of CWC Godown to Sri D.L.Masali. While things stood thus, on 7/8.06.1991 a fire accident was taken place in CWC Godown

and 2351 FP Bales burnt to ashes out of the closing stock of 9861 FB Bales in Godown and the respondent Corporation incurred loss to an amount of Rs.72.13 lakhs and the respondent Corporation suspended the petitioner and three other officers from the services. Thereafter, the respondent Corporation appointed one Sri D.N.Daithakar as enquiry officer, invoking the Rule 25(2) of CCI, CBA Rules, 1975 (hereinafter called for brevity, 'the Rules'). The enquiry officer framed the charges and issued charge memo to the petitioner along with other three persons and after conducting enquiry he submitted enquiry report on 09.03.1994. The respondent Corporation issued notice by enclosing copy of the enquiry report directing the petitioner to submit his explanation why the punishment of removal from services should not be imposed against him. The petitioner submitted a detailed explanation on 25.03.1994 requesting the respondent Corporation to consider his representation and render justice by exonerating him from all the charges, as he has not committed any irregularity while discharging his duties. Respondent No.2/disciplinary authority passed the order dated 25.05.1994 by imposing the punishment removing the petitioner from services. Aggrieved by the said

order, the petitioner filed appeal before respondent No.1 and the same was dismissed on 25.07.1994. Thereafter, the petitioner approached this Court and filed W.P.No.16582 of 1994 and same was disposed of on 19.08.2005 by setting aside the order dated 25.07.1994 and respondent No.1 is directed to examine the matter with regard to discrimination in imposing punishment.

3.2. Thereafter respondent No.1 passed impugned order on 17.11.2005 confirming the removal order passed by the disciplinary authority dated 26.05.1994. Questioning the said orders, the petitioner filed the present writ petition.

4. **Submissions of the respective counsel:**

4.1. Learned counsel for the petitioner contended that the petitioner has not committed any irregularity, illegality or misappropriation during his service. The petitioner applied compensatory medical leave from 21.05.1991 to 09.06.1991 and during the said leave period, a fire accident took place on 07/08.06.1991 and the petitioner is no way responsible to the said incident. The major charge levelled against the petitioner is that the petitioner has not taken any steps for reviewing and updating the Insurance Policies/advice. He submits that the petitioner is no way concerned in respect of reviewing/renewal of

insurance policy and for the coverage of insurance/renewal of insurance, it is the primary duty of the Centre In-charge not by the Godown in-charge. Admittedly, the petitioner is discharging his duties as Godown in-charge. The respondent Corporation, without initiating any proceedings against the Centre In-charge, shifted the entire burden against the petitioner, who is no way concerned with the renewal of insurance policy. He further contended that the respondent Corporation appointed D.N.Daithaker, retired Legal Advisor, as an enquiry officer contrary to the Rules. In such circumstances, the entire proceedings i.e., appointment of enquiry officer, conducting of enquiry and imposing penalty by the disciplinary authority, which was confirmed by the appellate authority, are contrary to law.

4.2. He further contended that the respondent Corporation levelled the very same charges against Sri D.L.Masali and the disciplinary authority imposed minor punishment against him and whereas respondent No.2 imposed major punishment against the petitioner i.e., removal from service, which is disproportionate and clear discrimination and also violation of Article 14 of the Constitution of India. He

further contended that the other two employees, who are higher officials than the petitioner, were alone responsible for not renewing the insurance policy, but the respondent Corporation imposed minor punishment of withholding of two annual grade increments with cumulative effect. As such, the punishment imposed by the disciplinary authority is disproportionate to the Rules, when there are several modes of punishment are available. Admittedly, the petitioner has not misappropriated any amounts and the incident which was occurred in the Godown is an act of god. The respondent Corporation imposed higher punishment against the petitioner and the same is contrary to law.

4.3. Learned counsel filed compendium of case laws numbering 20, but he relied upon to the Court to consider the below six judgments only and leave the remaining 14 judgments.

1. **Bhagat Ram v. State of Himachal Pradesh and others**¹
2. **D.S.Nakara and others v. Union of India**²
3. **Basti Ram v. Union of India and others**³
4. **Ram Kishan v. Union of India and others**⁴

¹ (1983) 2 SCC 442

² 1983 AIR 130

³ 1996 (30) SLR - 308

5. Union of India v. H.C. Goel⁵

4.4. Per contra, learned counsel appearing for the respondent Corporation submits that the respondent Corporation after following the Rules, issued charge sheet and appointed enquiry officer. During the course of enquiry, the enquiry officer has given all opportunities to the petitioner by duly following the principles of natural justice and submitted the enquiry report holding that the charges leveled against the petitioner are proved. The respondent Corporation furnished enquiry report through memorandum dated 09.03.1994 by giving an opportunity for making a representation against the findings of the enquiring officer and after considering his explanation dated 25.03.1994 and also after going through the records including enquiry report, disciplinary authority passed order on 26.05.1994 removing the petitioner from service by giving cogent reasons. Aggrieved by the same, petitioner filed appeal before the appellate authority and the said appeal was dismissed, *vide* order dated 25.07.1994. Thereafter, the petitioner filed W.P.No.16582 of 1994 and this Court while setting aside the removal order passed by respondent No.1 directed respondent No.1 to hear the appeal and pass

⁴ (1995) 6 SCC 157

⁵ AIR 1964 SC 364

appropriate orders.

4.5. Pursuant to the orders passed by this Court in W.P.No.16582 of 1994, respondent No.1 after considering the grounds of appeal and documents, passed order on 17.11.2005 confirming the order passed of the disciplinary authority by giving cogent reasons, and there is illegality or irregularity or error in the impugned order.

4.6. Learned counsel further contended that the petitioner has not questioned the order passed by the disciplinary authority dated 26.05.1994 and filed this writ petition only questioning the order of the appellate authority and writ petition filed by the petitioner is not maintainable under law.

5. Having considered the rival submissions made by the respective parties and after perusal of the material available on record, the following points arise for consideration:

1. Whether the impugned punishment order passed by the respondent Corporation removing the petitioner from service is in accordance with law?
2. Whether the petitioner is entitled the relief as sought in the writ petition?

POINTS 1 AND 2:

6. It is an undisputed fact that the petitioner is an employee of the respondent Corporation. The petitioner appointed as Junior Cotton Purchaser on 03.12.1979 and later he entrusted with the work of CWC Godown In-charge as per office order dated 18.12.1990. The petitioner while working as CWC Godown In-charge, Adilabad, and while he was on leave from 21.05.1991 to 09.06.1991 and during the said period, a fire accident was took place on 7/8.06.1991 and 2351 FP Bales were burnt in the said incident and the respondent Corporation incurred a huge loss of Rs.72.13 lakhs. The respondent Corporation initiated the disciplinary proceedings against the petitioner as well as other three employees by appointing an enquiry officer. The enquiry officer framed the following charges against four persons including the petitioner.

- (a) obtain due acknowledgment of receipts of Fully Pressed Cotton bales deposited in CWC godowns, Adilabad, for safe storage thereof;
- (b) maintain stock register in respect of FP Bales stored in the CWC Godowns, Adilabad;
- (c) Maintain Insurance Register in respect of FP Bales stored in the CWC Godowns, Adilabad;

- (d) Cover FP Bales with adequate insurance and review the position with regard to insurance coverage from day-to-day. Further, he failed to confirm to the directions that insurance cover for such stocks should be on the basis of market prices plus 10%.

7. The enquiry officer after conducting enquiry submitted a report stating that the petitioner while discharging his duties as Godown In-charge he has not taken steps to renew the insurance policy and due to the same insurance policy had lapsed and the respondent Corporation is sustained huge financial losses and not able to make a claim. Pursuant to the said enquiry report, respondent Corporation issued notice to the petitioner why the proposed punishment of removal from service should not be imposed. The petitioner submitted his explanation/objections to the said enquiry report and requested the authority not to impose punishment of removal from service. The disciplinary authority not satisfied with the said explanation imposed punishment removing the petitioner from services by its order dated 25.05.1994 and the said order was confirmed by the appellate authority.

8. The specific contention of learned counsel for the petitioner is that in respect of very same charges, the respondent Corporation imposed minor punishment against other employees, whereas they

imposed major punishment against the petitioner for removal from the services, which is clear discrimination and amounts to violation of Article 14 of the Constitution of India.

9. It is very much relevant to mention here that the petitioner raised very same ground in earlier Writ Petition No.16582 of 1994 and this Court while disposing of the said case dated 17.11.2005 specifically directed appellate authority-respondent No.1 to examine the matter with regard to discrimination in imposing punishment against the petitioner. The operative portion of the said order reads as follows:

I, therefore, consider it appropriate to set aside the order passed by the appellate authority dated 25.07.1994, direct the 1st respondent (appellate authority) to examine the matter with regard to discrimination in punishment, in the context of the punishment imposed on the petitioner vis-à-vis the punishment imposed on Sri N.Thiruvankataswamy and Sri D.L.Masali for similar, if not identical, charges and to consider, having regard to the punishment imposed on N.Thiruvankataswamy and D.L.Masali, as to whether the punishment imposed by the disciplinary authority on the petitioner herein required interference or not. This exercise shall be completed by the appellate authority, after providing the petitioner a reasonable opportunity of being heard, within a period of three months from the date of receipt of a copy of this order. Needless to state that the punishment imposed on the petitioner by the disciplinary authority shall be subject to any order that shall be passed in this regard by the appellate authority.

10. Pursuant to the above said order, respondent No.1 after considering the case of the petitioner and after examining the records once again passed the impugned order on 17.11.2005 confirming the order of the disciplinary authority by upholding the punishment of 'removal from service'.

11. In **Bhagat Ram's** case (1 *Supra*), the Hon'ble Apex Court held that disciplinary proceedings must be fair, ensuring equal opportunities and proportional penalties for all individuals. It stressed the importance of maintaining uniformity and avoiding disproportionate punishments, in line with constitutional rights.

12. In **D.S. Nakara & Others** (2 *supra*), the Hon'ble Apex Court upheld the principle of Article 14 of the Constitution of India which ensures fairness and equality of treatment, where equals are treated differently without any reasonable basis.

13. In **Basti Ram v. Union of India and others** (3 *supra*), the Allahabad High Court held in paragraph Nos.25 and 26 that since a minor punishment was imposed, in similar set of circumstance, rather, in the same offence in which petitioner is involved and punishment of dismissal from service awarded to the petitioner is not commensurate to the charge of misconduct and it is clear violation of fundamental rights and set aside

the impugned order on the ground of 'hostile discrimination'.

14. In **Ram Kishan** (4 *supra*) the Hon'ble Apex Court by observing that the imposition of punishment of dismissal from service was harsh and disproportionate to the gravity of charge, hence modified the punishment of imposition of stoppage of two increments with cumulative effect and the same is an appropriate punishment.

15. In the above said judgments, the Hon'ble Apex Court has specifically held that imposition of different punishments against the individuals for the same offence is disproportionate and amounts to violation of Article 14 of the Constitution of India. In the case on hand, the respondent Corporation has imposed major punishment of removal from service.

16. The Hon'ble Apex Court in **Satyendra Singh Gurjar v. Union of India**⁶ held that:

18. In the context of the thrust of the submission on behalf of the petitioner that there was no element of *mensrea* in the act of the petitioner of issuing out of charge order and, thus, it would not amount to misconduct, it may be advantageous to make a reference to the judgment of the Supreme Court in the case of *Union of India v. J. Ahmed*². The Supreme Court adverted to the general connotation of the term 'misconduct', especially in the context of disciplinary proceedings. The

⁶ 2019 SCC OnLineBom 6036

observations of the Court in paragraphs 10 to 12 are instructive. They read as under:

“**10.** It would be appropriate at this stage to ascertain what generally constitutes misconduct, especially in the context of disciplinary proceedings entailing penalty.

11. Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pierce v. Foster* ([L.R.] 17 Q.B. 536). A disregard of an essential condition of the contract of service may constitute misconduct [see *Laws v. London Chronicle (Indicator Newspapers)*, [1959] 1 WLR 698]. This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional Superintendent, Central Railway, Nagpur Division, Nagpur* (61 Bom LR 1596), and *Satubha K. Vaghela v. MoosaRaza* (10 Guj LR 23). The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

“Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct”.

In industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in *Utkal Machinery Ltd. v. Workmen, Miss Shanti Patnaik* [(1966) 2 SCR 434], in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In *S. GovindaMenon v. Union of India* [(1967) 2 SCR 566], the manner in which a member of the service discharged his quasi judicial

function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by this Court in *P.H. Kalyani v. Air France, Calcutta* [(1964) 2 SCR 104], wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationary train causing headlong collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil

[see *Navinchandra Shakerchand Shah v. Manager, Ahmedabad Co-op. Department Stores Ltd.* [(1978 19 Guj LR)]. But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty.

12. The High Court was of the opinion that misconduct in the context of disciplinary proceeding means misbehaviour involving some form of guilty mind or mensrea. We find it difficult to subscribe to this view because gross or habitual negligence in performance of duty may not involve mensrea but may still constitute misconduct for disciplinary proceedings.”

(emphasis supplied)

17. In the above judgment the Hon’ble Apex Court held that mere negligence do not constitute misconduct. In the case on hand, when the fire accident occurred on 7/8.06.1991, the petitioner is on leave from 21.05.1991 to 09.06.1991 and the said incident is an act of god and he has not committed any misappropriation or any other misconduct.

18. Insofar as the other judgment relied upon by the learned counsel for the petitioner in **H.C. Goel** (5 *supra*), wherein, the Hon’ble Apex Court held that the High Court can enquire whether the dismissal order is based on no evidence and *malafide* exercise power need not to be shown to prove that the order is based on no evidence. It is further held that a public servant can seek a writ of

certiorari, if the government's dismissal conclusion lacks evidence. In the case on hand, the enquiry officer has given all opportunities to the petitioner to defend his case during the course of enquiry and submitted report by duly following principles of natural justice and the disciplinary authority also given notice to the petitioner before imposing punishment order. Hence, the above judgment relied upon by the learned counsel is not applicable to the facts and circumstances of the case.

19. It is also relevant to mention here that the petitioner has rendered 14 years of service in the respondent organization without any adverse remarks and by virtue of the impugned order, the petitioner is foregoing all service benefits. Similarly, the respondent Corporation also sustained huge financial losses due to dereliction of duties on the part of the petitioner and other employees for not informing about the expiry of insurance policies and not taking steps to renew the insurance policy. During pendency of the writ petition, the petitioner has attained the age of superannuation. However, the punishment imposed by the respondent Corporation removing the petitioner from service appears to be highly excessive and disproportionate and it needs to be modified.

20. Having regard to the facts and circumstances of the case and the

principle laid down by the Hon'ble Apex Court as mentioned supra and also to meet the ends of the justice, the impugned order dated 17.11.2005 passed by respondent No.1, confirming the order dated 25.05.1994 passed by respondent No.2 imposing the punishment of removal from service is liable to be set aside and accordingly set aside and the petitioner is entitled to all the service benefits from the date of termination to the date of his superannuation with 50% of back wages only.

21. For the foregoing reasons, the writ petition is allowed in part and the respondents are directed to pay all service benefits to the petitioner from date of termination till the date of his superannuation, with 50% back wages within a period of three (3) months from the date of receipt of a copy of this order. No costs.

Miscellaneous applications, if any pending, shall stand closed.

J. SREENIVAS RAO, J

Date : 31.08.2023

L.R. Copy to be marked – Yes

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