Rasiklal Vaghajibhai Patel

Vs

Ahmedabad Municipal Corporation and Another

Special Leave Petition (Civil) No. 5523 of 1984

(D. A. Desai, Ranganath Misra JJ)

14.01.1985

JUDGMENT

D. A. DESAI, J. -

1. Petitioner is shown to be guilty of suppression of a material fact which would weigh with any employer in giving him employment and therefore, the case of the petitioner does not merit consideration under Article 136 of the Constitution and his petition for special leave to appeal against the decision of a Division Bench of the Gujarat High Court in Special Application No. 4649 of 1981 dated November 28, 1983 must accordingly fail but this short epistle became a compelling necessity in view of the statement of law appearing in the judgment of the High Court which if permitted to go uncorrected, some innocent person may suffer in future. That is the only justification for this short order.

2. The petitioner on his application was recruited in the Sales Tax Department on September 30, 1950 and at the relevant time he was working as Sales Tax Inspector. By an order dated January 31, 1964 of the Commissioner of Sales Tax, Gujarat State, the petitioner who was at the relevant time working as Sales Tax Inspector was charged with misconduct of gross negligence and acted with gross impropriety in demanding illegal gratification, and as these charges were held proved, the Commissioner of Sales Tax imposed a penalty of removal from service. This is not in dispute and therefore it can be safely stated that the petitioner was removed from the service of the Sales Tax Department on account of the proved misconduct.

3. After being removed from the Sales Tax Department, the petitioner joined service in Bhakta Vallabh Dhola College, Ahmedabad ('college' for short) on May 15, 1964. While continuing his service with the college, the petitioner applied on January 13, 1968 for the post of Head-Clerk with Ahmedabad Municipal Corporation. The application had to be made in the prescribed form, Column No. 14 of which required the applicant to state whether the applicant had been removed from service and if so, reasons for removal and if the applicant had voluntarily left previous service, reasons for leaving the service should be stated. While answering this column, the petitioner stated that he had served in the Sales Tax Department from September 30, 1950 to January 31, 1964 and that he has resigned from service due to transfer. It thus appeared that the petitioner was of suppressio veri and suggestio falsi inasmuch as he the material fact that he was removed from service on the ground of proved misconduct and that he made a false suggestion that had voluntarily left service because of transfer. Ultimately when these facts came to light, he was charge-sheeted and removed from service. A petition to the Labour Court was rejected on the ground that the misconduct alleged against the petitioner is proved. His writ petition to the High Court proved unsuccessful. Hence he filed this petition for special leave.

4. The High Court while dismissing the petition held that even if the allegation of misconduct does not constitute misconduct amongst those enumerated in the relevant service regulations yet the employer can attribute what would otherwise per se be a misconduct though not enumerated and punish him for the same. This proposition appears to us to be startling because even though either under the Certified Standing Orders or service regulations, it is necessary employer to prescribe what would be the misconduct so that the workman/employee knows the pitfalls he should guard against. If after under-going the elaborate exercise of enumerating misconduct, it is left to the unbridled discretion of the employer to dub any conduct as misconduct, the workman will be on tenterhooks and he will be punished by ex post facto determination by the employer. It is a well-settled canon of penal jurisprudence - removal or dismissal from service on account of the misconduct constitutes penalty in law - that the workman sought to be charged for misconduct must have adequate advance notice of what action or what conduct would constitute misconduct. The legal proposition as stated by the High Court would have necessitated in-depth examination, but for a recent decision of this Court in Glaxo Laboratories v. Presiding Officer, Labour Court, Meerut ((1984) 1 SCR 230 : (1984) 1 SCC 1 : 1984 SCC (L&S) 42 : (1984) 1 LLJ 16 : 1983 Lab IC 1909 : (1984) 64 FJR 16) in which this Court specifically repelled an identical contention advanced by Mr Shanti Bhushan, learned counsel who appeared for the employer in that case observing as under :

> Relying on these observations, Mr Shanti Bhushan urged that this Court has in terms held that there can be some other misconduct not enumerated in the standing order and for which the employer may take appropriate action. This observation cannot be viewed divorced from the facts of the case. What stared in the fact of the Court in that case was that the employer had raised a technical objection ignoring the past history of litigation between the parties that application under Section 33-A was not maintainable. It is in this context that this Court observed that the previous action might have been the outcome of some misconduct not enumerated in the standing order. But the extracted observation cannot be elevated to a proposition of law that some misconduct neither defined nor enumerated and which may be believed by the employer to be misconduct ex post facto would expose the workman to a penalty. The law will have to move two centuries backward to accept such a construction.

But it is not necessary to go so far because in Salem Erode Electricity Distribution Co. Ltd. v. Salem Erode Electricity Distribution Co. Ltd. Employees Union ((1966) 2 SCR 498 : AIR 1966 SC 808 : (1966) 1 LLJ 443 : 28 FJR 237), this Court in terms held that the object underlying the Act was to introduce uniformity of terms and conditions of employment in respect of workmen belonging to the same category and discharging the same or similar work under an industrial establishment, and that these terms and conditions of industrial employment should be well-established and should be known to employees before they accept the employment. If such is the object, no vague undefined notion about any act, may be innocuous, which from the employer's point of view may be misconduct but not provided for in the standing order for which a penalty can be imposed, cannot be incorporated in the standing orders. From certainty of conditions of employment, we would have to return to the days of hire and fire which reverse movement is hardly justified. In this connection, we may also refer to Western India Match Company Ltd. v. Workmen ((1974) 1 SCR 434 : (1974) 3 SCC 330 : 1973 SCC (L&S) 531 : (1973) 44 FJR 245) in which this Court held that any condition of service if inconsistent with certified standing orders, the same would not prevail and the certified standing orders would have precedence over all such agreements. There is really one interesting observation in this which deserves noticing. Says the Court : [SCC para 10, p. 334 : SCC (L&S) p. 536]

In the sunny days of the market economy theory people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workman. Such a bargain, they took it for granted, would secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the unity of this law. But the experience of the working of this law over a long period has belied their faith.

Lastly we may refer to Workmen of Lakheri Cement Works Ltd. v. Associated Cement Companies Ltd. ((1970) 20 FLR 243 : (1969) 2 SCWR 237 : 38 FJR 342) This Court repelled the contention that the Act must prescribe the minimum which has to be prescribed in an industrial establishment, but it does not exclude the extension otherwise. Relying upon the earlier decision of this Court in Rohtak Hissar District Electricity Supply Co. Ltd. v. State of U.P. ((1966) 2 SCR 863 : AIR 1966 SC 1471 : (1966 2 LLJ 330 : 29 FJR 76) the Court held that everything which is required to be prescribed with precision and no argument can be entertained that something not prescribed can yet be taken into account as varying what is prescribed. In short it cannot be left to the vagaries of management to say ex post facto that some acts of omission or commission nowhere found to be enumerated in the relevant standing order is none-the-less a misconduct not strictly falling within the enumerated misconduct in the relevant standing order but yet a misconduct for the purpose of imposing a penalty. Accordingly, the catenation of Mr Shanti Bhushan that some other act of misconduct which would per se be an act of misconduct though not enumerated in S.O. 22 can be punished under S.O. 23 must be rejected.

It is thus well-settled that unless either in the Certified Standing Order or in the service regulations an act or omission is prescribed as misconduct, it is not open to the employer to fish out some conduct as misconduct and punish the workman even though the alleged misconduct would not be comprehended in any of the enumerated misconducts.

5. The High Court fell into error when it observed that :

> The conduct of the petitioner in suppressing the material facts and misrepresenting his past on the material aspect cannot be said to be a good conduct. On the contrary it is unbecoming of him that he should have deliberately suppressed the material fact and tried to obtain employment by deceiving the Municipal Corporation. It is clearly a misconduct.

After thus holding that the suppressio veri and suggestio falsi would constitute misconduct, the High Court held even if it does not fall in any of the enumerated misconducts, yet for the purpose of service regulation, it would nonetheless be a misconduct punishable as such. We are unable to accept this view or law and it has to be rejected.

6. Having clearly rested the legal position, we reject this special leave petition.

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