

Jamil Ahmed Qureshi

Vs

Municipal Council Katangi and Others

Criminal Appeal No. 180 of 1989

(S.R. Pandian, K. Jayachandra Reddy JJ)

07.11.1990

ORDER

1. Heard counsel for considerable time and also perused the three judgments cited before us by the learned counsel for the appellant in support of his submissions, namely, L.W. Middleton v. Harry Playfair [AIR 1925 Cal 87], District Council, Amraoti v. Vithal Vinayak Bapat [AIR 1941 Nag 125] and Lal Audhiraj v. State of M.P. [AIR 1967 MP 284] for the proposition that once a master has condoned any misconduct on the part of his servant which would have otherwise justified dismissal or imposition of a fine, he cannot after such condonation go back upon his election to condone and claim a right to dismiss the servant or impose a fine or any other punishment in respect of the offence which has been condoned. Admittedly, in the present case the appellant has been convicted for an offence under Section 377 IPC and sentenced to undergo rigorous imprisonment for a period of 1 1/2 years and this was before he joined the service on February 24, 1967. According to the learned counsel though his conviction has been brought to the notice of his employer even on September 15, 1971, and subsequently by the report of a police officer on April 1, 1974, no action was taken but he was dismissed from service on receipt of a further complaint on March 2, 1982, and, therefore, it must be construed that the employer elected to continue the appellant in service by waiving or condoning the appellant's misconduct and hence he cannot go back upon his election and claim a right to dismiss him in respect of the offence condoned.

2. First, this contention has not been agitated before the High Court. Secondly, even holding that there is no legal bar for urging this contention before us, we are not able to accede with the submission that the employer had either waived or condoned the misconduct of the appellant. Thirdly, the magnitude of the crime involving the moral turpitude of a very low order, as pointed out by the High Court, does not warrant any interference with the impugned judgment. The decisions cited by the learned counsel cannot be availed of by the appellants since the facts in all those cases are quite distinguishable

3. The facts in L.W. Middleton case [AIR 1925 Cal 87] disclose that the respondent, Playfair who was appointed as the Manager of the Sonapur Tea Estate in Kamrup of which the appellant (defendant in the suit) was the proprietor filed a suit for recovery of arrears of salary and commission and for damages for breach of contract, the terms of which were embodied in a document dated July 11, 1918. It seems that on October 12, 1919, a notice was sent by Middleton to Playfair stating "I send you this notice to terminate our agreement in six months from today". On September 1, 1920, Playfair instituted the suit. It was pleaded in a suit that if a master on discovering his servant guilty of misconduct which would justify a dismissal, yet elects to continue him in his service he cannot at any subsequent time dismiss him on account of that which he has waived or condoned. Having regard to those facts and circumstances of the case, it was held that the

master cannot at any subsequent time dismiss the servant on discovering that his servant has been guilty misconduct, yet elects him to continue in his service.

4. In District Council, Amraoti case [AIR 1941 Nag 125] the facts are that the plaintiff therein had abused the office bearers of the Local Board and the District Council. The nature of the offence was not set forth. The plaintiff who was suspended submitted his explanation. Thereafter, the plaintiff was ordered to rejoin his duties. While so, another complaint was made against him in respect of another matter in respect of which the plaintiff was degraded down to a salary of Rs. 15 a month and that if he did not accept the same, his service should be dispensed with. Subsequently, the School Board and the District Council passed a resolution that the period of suspension should be treated as suspension period without allowance. It was under those circumstances that the learned Judge having regard to the contention raised in that case on the basis of the above facts held that once a master has condoned any misconduct, he cannot after condonation go back upon his election to condone and claim a right to impose a punishment.

5. In Lal Audhiraj case [AIR 1967 MP 284], the facts are that the applicant which holding the post of Range Officer, was charged for negligence in discharging his duties in respect of which a charge-sheet was served on him asking to show cause why he should not be dismissed from service or awarded one of the punishments detailed in Rule (1) para 3 of Part I, Sr. No. 13 of the Book Circular of the Madhya Pradesh Government. The petitioner gave his reply on March 4, 1954 denying the allegation of negligence. Nothing happened thereafter till April 15, 1963. Meanwhile, the petitioner was promoted in 1956 to the post of Assistant Conservator of Forest. After his promotion, he continued to get the increments in the pay scale of Assistance Conservator of Forests and was allowed to cross efficiency bar from February 4, 1961. Then he was also confirmed to the said post from April 1, 1958. While so on April 15, 1963, a notice was again issued to the petitioner asking him to show cause why his two increments in his scale of pay should not be withheld for the very negligence which formed the subject matter of the notice issued to him on January 27, 1954. This was challenged by the petitioner. In view of the above facts, it has been held that a master cannot go back and award any punishment for any misconduct which he has condoned.

6. The fact that the appellant has been convicted for an offence under Section 377 IPC even earlier to his joining the service is not in dispute, indeed there can be none. As noted by the High Court, Rule 4 of the Municipal Officers and Servants' Recruitment Rules, framed under Section 9 of the C.P. and Berar Municipalities Act, 1922 and published under Notification No. 2898-5202-M-13 dated April 22, 1942 provided that no candidate should be employed as officer or servant of a Municipal Committee if he had been convicted for an offence which, in the opinion of the State Government, involved moral turpitude. Therefore, the appellant who has been convicted for an offence involving moral turpitude was ineligible for being appointed in the service of the Municipality. According to the High Court, there is no record to show that the appellant while seeking appointment had apprised the authorities of his having been so convicted. Hence these three decisions relied upon to buttress the plea of the appellant cannot be availed of. However, in our considered opinion, the impugned judgment does not suffer from perversity or any legal infirmity warranting an interference.

7. In the result, the appeal is dismissed.

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