

SUPREME COURT OF INDIA

Air India Ltd.

Versus

M. Yogeshwar Raj

(D.P. Wadhwa and Ruma Pal, JJ.)

Civil Appeal No. 3113 of 2000 (Arising out of SLP(C) No. 1477/2000) D/d. 2.5.2000.

JUDGMENT

Ruma Pal, J.

The appeal has been preferred from the order of the High Court of Bombay dated 18th September 1999 by which the High Court issued a rule and granted interim relief on the writ application filed by the respondent.

3. The subject matter of challenge in the writ application was a show cause notice dated 30th August, 1999 issued by the appellant to the writ petitioner. The impugned show cause notice followed an earlier show cause notice (referred to as the "first notice") issued to the respondent by the appellant on 29.12.1998. It was alleged in the first notice that the respondent had been given appointment by the appellant in 1976 on the basis of his claim that he belonged to a schedule tribe against a post reserved for Schedule Caste/Schedule Tribe. A caste certificate had been submitted by the respondent at the time of his appointment which had been issued by the Tutor, Department of Pathology, Institute of Medical Sciences, Osmania Medical College, Hyderabad and attested by the Tahsildar, Hyderabad and attested by the Tahsildar, Hyderabad Urban Taluk without the signature of the concerned Tahsildar. As the caste certificate was not in the prescribed form from the competent authority, the respondent had been called upon by the appellant to submit a proper certificate. Pursuant to this, a caste certificate dated 4th February, 1998 had been submitted by the respondent. It was alleged in the first notice that the caste certificate so produced was a forged document. It was further stated in the first notice that the appellant was a prima facie of the view that it could not repose "any more confidence in any manner" on the respondent and that the appellant was prima facie of the view, having regard to nature of duty discharged by the appellant, that the respondent was not a person who could be retained in service. The respondent was charged with breach of clause 19(2) (viii) of the Certified Standing Orders. The respondent was accordingly called upon to submit an explanation in writing within three days from the date of communication of the first notice failing which further disciplinary action would be initiated against him in accordance with the Certified Standing Orders.

4. By letters dated 2nd January, 1999 and 25th January, 1999, the respondent asked for extension of time to submit his written submissions. It was granted by the appellant. On 1st February, 1999 the appellant asked the respondent to submit his explanation within days from the communication of that letter. No explanation was submitted by the respondent.

5. The Inquiry Proceedings were commenced on 12th February, 1999 to inquire into the charges framed against the respondent under the first notice. Witnesses were examined and an inquiry report

was submitted on 29.4.1999. The Inquiry Committee came to the conclusion that the cast certificate dated 4th February, 1998 had turned out to be a bogus certificate. It was however noted that the original caste certificate submitted by the respondent in 1976 had been affirmed by a certificate issued from the office of the Collector, Hyderabad on 11.3.1999. The Inquiry Committee was of the View :

"Merely securing a wrong or false certificate, by itself does not amount to a misconduct. The certificate may be false due to ignorance or incompetence and therefore a wrong or false certificate does not necessarily create delinquency on pray of the person who produces it."

Accordingly, the inquiry committee found the respondent not guilty of the charges framed.

6. It was in this background that the show cause notice impugned by the respondent before the High Court was issued by the Disciplinary Authority. In substance, the notice stated that the caste certificate dated 4.2.1998 had been found to be forged. As far as the caste certificate dated 11.3.1999 was concerned it was stated that the address mentioned in the Collector's certificate had not been mentioned as the respondent's place of residence in any of his records with the appellant. It was also stated that the Collector's letter did not refer to the caste certificate dated 4.2.1998 and that if the 1976 certificate was genuine, it was to be explained why the bogus caste certificate dated 4.2.1998 was produced. According to the notice, the Inquiry Committee had not dealt with these details in its report. The Disciplinary Authority concluded by saying :

"In view of the above prima facie I am of the view that acts of misconduct levelled against you vide chargesheet referred to above has been established and tend to hold you guilty of the acts of misconduct and however before coming to such conclusions, I hereby give you an opportunity to submitting your say as to why you should not be held guilty of the above charges within 3 days of communicating of this letter to you. In case you fail to submit any satisfactory explanation within the stipulated period of time. I propose to award you the punishment of dismissal from the services of the Company without retirement benefits in full as per Clause No. 20(i) of the Certified Standing Orders applicable to you."

7. Clearly, the Disciplinary Authority was yet to make up his mind as to the guilt of the respondent.

8. According to the appellants, the challenge to the proceedings was premature and the High Court should not have entertained the writ application as disputed questions of fact were involved. However, we do not wish to deal with this aspect of the matter as the High Court by the order under appeal has issued a Rule Nisi and it will be open to the appellants to raise this and other contentions in their answer to the Rule. We are not aware as to the reason why the High Court was persuaded to issue a Rule Nisi, but in its further observations, "Prima facie, we are satisfied that the petitioner belongs to the Schedule Caste/Schedule Tribe" and also grant of an interim order staying the proceedings before the Disciplinary Authority were erroneous.

9. It appears from a copy of the writ petition that the respondent has not questioned the jurisdiction of the Disciplinary Authority to issue the impugned Show Cause Notice. The two issues of the respondent's caste and whether he had adequately explained the production of the bogus certificate of 4.10.98 are yet to be decided by the Disciplinary Authority. Both the issues are primarily issue of fact. The High Court should not have preempted a factual decision of the disciplinary authority on the issues. Nor should the High Court have stayed the proceedings on a prima facie finding on the subject matter of enquiry particularly when the competence of the Disciplinary Authority was not in

doubt.

10. The respondent's reliance on the decision of *Sur Enamel and Stamping Works (P) Ltd. v. Their Workmen 1964(3) SCR 616* and *State of Haryana v. Om Prakash, Constable 1990 (Supp) SCC 282* is misplaced. In both cases, orders of dismissal had already been passed. Furthermore the orders of dismissal had been passed on proceedings which were not the subject matter of the charge and of which the employee had not been put on notice. In the case before us, apart from the fact that no final order has been passed by the Disciplinary Authority, the substance of the impugned notice in no way differs from that of the first notice.

11. The third decision noted by the respondent viz. *State of Madhya Pradesh v. Bani Singh, 1990 (Supp) SCC 738* is also inappropriate. The decision (sic) to disciplinary proceedings initiated in respect of incidents which had taken place 12 years earlier. It was said:

"..... The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977, there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 year to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage."

12. Here the disciplinary proceedings were initiated against the respondent because of the production of a bogus certificate dated 4.10.1998. The disciplinary proceedings were initiated on 29.12.98. There was no delay. Besides the respondent participated in the enquiry without protest.

13. We, therefore, allow the appeal and set aside the order dated 18th September 1999 in so far as it stayed the operation of the show cause notice dated 30th August 1999 as well as the finding relating to the caste of the respondent. There will be no order as to costs.