

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P. (C) No. 14237/2006

% Judgment reserved on : 15.01.2010
Judgment delivered on : 28.07.2010

BSES, Rajdhani Yamuna Power Ltd. Petitioner

Through: Mr. Sandeep Prabhakar
with Mr. Prerna Mehta and
Mr. Amit Kumar, Advs.

versus

Union of India & Ors. Respondent

Through: Mr. Sumit Kumar Singh
with Ms. Sonia Mathur, Advs. for R-1.
Mr. Anuj Aggarwal, Adv. for
Respondent/Workman.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes. |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J.

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1. By this petition filed under Article 226/227 of the

Constitution of India, the petitioner seeks quashing of the Award dated 17.12.2005 passed by the Labour Court X, Karkardooma Courts in ID No. 63/1998 whereby the reference was answered in favour of the respondent/workman.

2. Brief facts of the case relevant for deciding the present petition are that the respondent no.2 was in the employment of the Delhi Vidyut Board as a peon since 25.10.1978. He was involved in a criminal case and on 4.5.1993 was convicted u/s 148/302/323/149 IPC and was sentenced to undergo life imprisonment but was granted bail on 4.6.1993. Thereafter, respondent no.2 filed a criminal appeal before the Hon'ble High Court of Punjab and Haryana wherein the High Court held him guilty of offences u/s 323/149/148 IPC while the charge of Section 302 was dropped against him. On his release on bail in 1996, he again joined the DVB and worked till 17.4.1996, but was arrested again on 22.4.1996 to undergo imprisonment. On 30.9.1996, the services of the respondent no.2 were terminated on the grounds of moral turpitude, which order he challenged by raising an industrial dispute bearing ID No.63/1998 whereby vide order dated 17.12.2005 the Labour court ordered

reinstatement of the respondent no.2 with back wages and consequential benefits. Feeling aggrieved with the same the petitioner has preferred the present petition.

3. Mr. Sandeep Prabhakar, counsel for the petitioner submitted that the learned Labour Court failed to appreciate the fact that respondent No. 2 was not convicted for committing a petty offence but he was involved in the commission of a serious criminal offence, which resulted in the murder of one lady, namely, Premwati. Counsel further submitted that in fact respondent No. 2 was convicted under Sections 148/302/323/149 IPC and was sentenced to undergo life imprisonment by learned Trial Court and it is only in appeal preferred by him that Section 302 IPC was dropped against him and respondent No. 2 was held guilty for committing offences under Sections 323/149 IPC. The sentence of respondent No. 2 was also accordingly reduced by the Appellate Court and respondent No. 2 was directed to undergo rigorous imprisonment for a period of six months under Section 323/149 IPC and for the same period under Section 148 IPC with both the sentences to run concurrently. Counsel thus submitted that the

services of respondent No. 2 were rightly terminated as per Rule 10 (ii) of DESU (DMC) Service (C&A) Regulations, 1976, which envisage the removal or dismissal of an employee on the ground of his conduct which has ultimately to his conviction. Counsel for the petitioner further submitted that the acts committed by respondent No. 2 clearly constitute moral turpitude as the same disclosed the depravity in his conduct and behaviour. The contention of the counsel for the petitioner was that the learned Labour Court has narrowly interpreted the broad concept of “moral turpitude”, which is an expression used in legal and societal parlance to describe conduct, which is inherently base, vile, depraved or having any connection showing depravity in doing of any private or social duty, which the person owes to his fellow men or society in general.

Counsel for the petitioner further submitted that the labour Court has wrongly applied the judgment of ***Pawan Kumar vs State of Haryana & Ors. AIR 1996 SC 3300***, to the facts of the present case. The contention of the counsel for the petitioner was that in ***Pawan Kumar's case (supra)*** the employee was sentenced to pay a fine of Rs. 20/- after he had

admitted his guilt for committing an offence under Section 294 IPC and under no circumstances the facts of the said case can be equated with the facts involved in the present case. Counsel for the petitioner further submitted that even in case of a civil servant, the protection under Article 311(2) of the Constitution of India is not available to him as he can be removed from his services on the basis of his conduct which led to his conviction on a criminal charge. In support of his arguments counsel for the petitioner placed reliance on the following judgments:-

1. *J. Jaishankar vs Government of India & Anr. 1996 SCC (L&S) 1372;*
2. *Pawan Kumar vs State of Haryana & Anr. AIR 1996 SC 3300;*
3. *Karam Singh vs State of Punjab & Anr. 1996 SCC (L&S) 668.*
4. Refuting the said submissions of counsel for the petitioner, counsel for the respondent at the outset submitted that this Court while exercising power under Article 226 of the Constitution of India would not re-appreciate the findings of facts arrived at by the Tribunal as no illegality or infirmity in it

has been pointed out by the petitioner. Counsel for the respondent further submitted that respondent No. 2 was ultimately convicted for committing an offence under Section 323/149 IPC and so far as the offence under Section 302 IPC is concerned, he was let off and, therefore, it cannot be said by any stretch of imagination that respondent No. 2 was guilty of committing any serious or heinous crime. Counsel for the respondent No. 2 further submitted that the learned Labour Court rightly placed reliance on the judgment of the Apex Court in ***Pawan Kumar's case (Supra)*** as in both the cases i.e. one before the Apex Court and in the present case the offence involved is a petty offence. Counsel for respondent No. 2 also submitted that one can be involved in the commission of such a petty offence under many circumstances and some times one suffers conviction for diverse reasons and, therefore, to award punishment of termination to such a person would not only be harsh, but would be doing serious injustice to an employee. Counsel thus submitted that the offence committed by respondent No. 2 does not constitute an offence amounting to moral turpitude and the same was nowhere connected with

the duties of respondent No. 2 or occurred at the office premises during the course of his duties. In support of his arguments counsel for the respondent placed reliance on the following judgments:-

1. *State of M.P. & Ors. vs. Hazarilal* 2008-II-LLJ-715 (SC)
2. *Glaxo Laboratories (I) Limited vs. Labour Court, Meerut & Ors.* 1984 (I) LLJ 16. (SC)
3. *Karam Singh vs State of Punjab & Anr.* 1996 LAB. I.C. 1272. (SC)
4. *State of West Bengal & Ors. Vs. Ram Nagina Dubey* 1992 (64) FLR 272. (Cal HC)
5. *Bhagwati Prasad Tiwari Vs. Regional Manager, Bank of Baroda, Branch Manager, Bank of Baroda & Ors.* W.P. No. 41636/98 (Allahabad HC)
6. *Krishnankutty Vs. Senior Supt. Of Post Offices, Ernakulam & Ors.* 1976 (I) LLJ 175. (Kerala HC).
7. *On-Dot Couriers and Cargo Ltd. vs Anand Singh Rawat* W.P.(C) No. 4197/2008 (Delhi High Court).

5. I have heard learned counsel for the parties at considerable length and gone through the records.

6. The petitioner management has approached this Court feeling aggrieved by the order passed by the learned Labour Court thereby directing the reinstatement of the respondent workman with continuity of service and other consequential benefits but without grant of any backwages. The core issue raised by the counsel for the petitioner is that the acts committed by respondent No. 2 which led to his conviction under Sections 323/148/149 IPC constituted moral turpitude and, therefore, he was rightly dismissed from his service by the petitioner management under Regulations 10(ii) of the DESU (DMC) Service (C&A) Regulations, 1976 read with Section 95 of the DMC Act, 1957.

7. The expression “moral turpitude” is not defined anywhere. Whether an offence involves moral delinquency is a question of fact depending on the public morals of the time; common sense of community and context and purpose for which the character of offence is to be determined. In common parlance ‘moral

turpitude' means baseness of character. *Concise Oxford Dictionary* defines 'moral' as 'concerned with goodness or badness of character or disposition or with distinction between right and wrong..... virtuous in general conduct; 'Turpitude' means "baseness, depravity, wickedness". Thus any act which is contrary to good morals from society's point of view will come within the ambit of 'moral turpitude'. Dealing with the term 'moral turpitude' the High Court of Punjab & Haryana in the case of ***Durga Singh vs. State of Punjab, AIR 1957 Punjab 97***, held as under :--

"The term "moral turpitude" is rather vague one and it may have different meanings in different contexts. The term has generally been taken to mean to be a conduct contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellow-man or to society in general. It has never been held that gravity of punishment is to be considered in determining whether the misconduct involves moral turpitude or not."

It would be thus evident that the expression "moral turpitude" encompasses an act of immorality, dishonesty or is a conduct which is inherently base, vile, depraved or having any connection showing depravity in doing of any private or social

duty, which a person owes to his fellow man or to the society in general and the act of killing a person is normally attributed to a feeling of hurt or revenge; an act of personal vendetta.

8. As per the counsel for the petitioner since respondent No. 2 was convicted and sentenced for a period of six months and his act of taking law in his own hands in inflicting lathi blows on Premvati clearly shows that the case of the respondent No. 2 is covered under Regulations 10(ii) of the DESU (DMC) Service (C&A) Regulations, 1976 read with Section 95 of the DMC Act, 1957, which permits the employer to dismiss an employee whose conduct led to his conviction on a criminal charge and also for the commission of such offence involving moral turpitude punishable under the Indian Penal Code. However, the learned Labour Court set aside the dismissal of the respondent workman based on the decision of the Hon'ble Apex Court in ***Pawan Kumar vs State of Haryana & Ors.(supra)***. The learned Labour Court also found that it would be a case of causing great injustice to the workman who has worked with the management for about 18 years and to terminate his services only for the reason that he was involved or convicted for a minor

offence under Section 323/149 IPC that too for an incident which never occurred in the office premises or in the office hours.

9. No doubt the petitioner was initially convicted for committing an offence under Section 148/302/323/149 IPC but later on in the appeal before the Punjab & Haryana High Court, the order of conviction against petitioner under Section 302 IPC was set aside and it held him guilty for committing offence under Section 323/149/148 IPC. In the order passed by the Hon'ble Punjab and Haryana High Court, it was clearly observed that respondent No. 2 was not even present and he along with other accused entered the scene of occurrence later in time. It was also observed that respondent No. 2 did not entertain any common intention with the main accused but was liable to be punished for their individual acts. Based on the said findings, the order of conviction and sentence against respondent No. 2 under Section 302 IPC was set aside and for his individual acts along with others he was held guilty under Section 323/149/148 IPC.

10. The question that arises is that with the reduction of the said sentence, whether respondent No. 2 goes out of the

purview of Regulations 10(ii) of the DESU (DMC) Service (C&A) Regulations, 1976 read with Section 95 of the DMC Act, 1957 or he can still be removed from his service taking his conviction under Sections 323/149/148 IPC as a case of moral turpitude under the Indian Penal Code. It is not in dispute that the said order of dismissal was passed by the management only after the reduction of his sentence by the High Court of Punjab and Haryana and not at the time when he was committed by the Sessions Court under Section 302 IPC. In **Pawan Kumar (supra)**, the services of the employee were terminated as while in service he was held for summary trial under Section 294 IPC by the Trial Court whereupon a fine of Rs. 20/- was imposed on him after having admitted his guilt. The Apex Court after defining the term moral turpitude came to the conclusion that the conviction of the appellant under Section 294 IPC on its own would not involve moral turpitude depriving him the opportunity to serve the State. No doubt the instant case is not near to the facts of the case of **Pawan Kumar** as the respondent has suffered a sentence of six months period after being held guilty for committing offence under Sections 323/149/148 IPC. But the

facts of the instant case would be more nearer to a decision of the Apex Court in the case of **State of M.P. & ors vs Hazarilal (2008) 3 SCC 273** wherein the employee was facing prosecution under Section 323 read with Section 34 IPC and was sentenced to undergo one month simple imprisonment, but in the appeal his sentence was reduced to a fine of Rs. 500/-. In this case also Rule 19 of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, which is identical to the aforesaid Regulations 10(ii) of the DESU (DMC) Service (C&A) Regulations, 1976 read with Section 95 of the DMC Act, 1957 was invoked and the Hon'ble Apex Court held as under:-

"7. By reason of the said provision, thus, "the disciplinary authority has been empowered to consider the circumstances of the case where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge", but the same would not mean that irrespective of the nature of the case in which he was involved or the punishment which has been imposed upon him, an order of dismissal must be passed. Such a construction, in our opinion, is not warranted.

8. An authority which is conferred with a statutory discretionary power is bound to take into consideration all the attending facts and circumstances of the case before imposing an order of punishment. While exercising such power, the disciplinary authority must act reasonably and fairly. Respondent occupied the lowest rank of the cadre. He was merely a contingency peon. Continuation of his service in the department would not bring a bad name to the State. He was not convicted for any act involving moral turpitude. He was not punished for any heinous offence."

11. It would be thus evident that the Apex Court clearly held that the statutory discretionary power like any other power, before taking any decision to dismiss or remove the employee, has to be exercised fairly, justly and reasonably. In the facts of the present case also the petitioner before passing the order of dismissal against respondent No.2, did not take care of the fact that ultimately respondent No. 2 was held guilty for committing offence under Sections 323/148/149 and the incident in which respondent No. 2 was found involved has taken place in his native village among his own family members.

12. Right to impose penalty or take action for misconduct carries with it a duty to act justly. Punishment cannot be disproportionate to the act done. Therefore, it would not be just to the respondent to deprive him of his employment for a petty offence. Also in the analogy of the discussion of the Apex Court in case of ***State of M.P. & Ors. Vs. Hazari Lal (Supra)*** it would be clear that the offence u/s 323/148/149 IPC on the part of the respondent cannot be brought within the ambit of moral turpitude.

13. Hence, in the light of the above discussion, there is

no merit in the present petition and the same is hereby dismissed.

July 28, 2010

KAILASH GAMBHIR,J