



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Spl. Appl. Writ No. 38/2023

1. The Bharat Petroleum Corporation Ltd., Regional Office Noida, Through Dgm (Hrs), North, A-5 And 6, Sector 1, Noida (U.p.)
2. The Deputy General Manager (Hr Services), North, A-5 And 6, Sector 1, Noida (U.p.).

-----Appellants

Versus

Gyan Chand S/o Shri Bhagirathji, Aged About 42 Years, By Caste Khatik, Resident Of Kalal Colony, Gali No. 10, Inside Naguri Gate, Jodhpur.

-----Respondent

For Appellant(s) : Mr. Nishant Bora.

For Respondent(s) : Dr. Harish Purohit.

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE RAJENDRA PRAKASH SONI**

Judgment

Reportable

Reserved on 03/01/2024

Pronounced on 23/01/2024

Per Dr. Pushpendra Singh Bhati, J:

1. This Special Appeal has been preferred under Rule 134 of the Rajasthan High Court Ordinance, 1952 against the order dated 05.12.2022 passed by the learned Single Judge of this Hon'ble Court in S.B. Civil Writ Petition No.180/2004 (Gyan Chand Vs. The Bharat Petroleum Corporation Ltd. & Anr.), whereby the writ petition preferred by the respondent (*hereinafter referred to as 'writ petitioner'*) was disposed of, while remanding the matter back to the appellant-Corporation with a direction to reconsider the same on the aspect of punishment of dismissal imposed upon the writ petitioner.



2. As per the pleaded facts, the writ petitioner was appointed as a Watchman (Grade-II) with the appellant-Corporation vide order dated 12.01.1987, however, was served a charge-sheet in the year 2002 with the allegation of submitting a forged Transfer Certificate at the time of appointment; accordingly, an enquiry was conducted against the writ petitioner and as per the enquiry report dated 20.05.2003, the writ petitioner was found guilty of misconduct, and resultantly, dismissed from service vide order dated 27.11.2003.

2.1. Thereafter, the writ petitioner preferred the aforementioned writ petition before this Hon'ble Court, which was disposed of vide the impugned order dated 05.12.2022 passed by the learned Single Judge of this Hon'ble Court, as mentioned above. Thus, being aggrieved of the same, the appellant-Corporation has preferred the present special appeal.

3. Learned counsel for the appellant-Corporation submitted that it is not a disputed fact that the writ petitioner had provided a forged document at the time of recruitment process and on the basis of the same had proved himself to have the required education qualification for the post of Watchman, due to which he was hired for the said post in the appellant-Corporation, which was nothing but an act of breach of trust.

3.1. It was further submitted that the appellant-Corporation had received a self contended note from C.B.I. against the writ petitioner, and after conducting an indepth enquiry into the matter, giving proper opportunity of hearing to the writ petitioner and taking statements of the concerned witnesses, it was found



that the Transfer Certificate of Class VII so submitted by the writ petitioner was a forged document, and such conduct on part of the writ petitioner was considered a grave misconduct, only whereupon, the decision of dismissal from service was taken by the appellant-Corporation against the writ petitioner.

3.2. It was also submitted that even the leaned Single Bench of this Hon'ble Court itself had upheld the enquiry report and held that there was no requirement to interfere with the findings of the enquiry officer, and yet had proceeded to remand the matter back to concerned authority to once again decide the matter on the aspect of punishment, which was not justified in the eye of law.

3.3. It was further submitted that apart from the above, the impugned remand order is also contrary to the precedent law laid down by the Hon'ble Apex court in the case of **Indian Oil Corporation Ltd. v. Rajendra D. Harmalkar (Civil Appeal No. 2911 of 2022, decided by the Hon'ble Apex Court on 21.04.2022)**.

3.4. Learned counsel has also placed reliance on the judgment rendered in the case of **Deputy Commissioner, KVS & Ors. v. J. Hussain (Civil Appeal No. 8948 of 2013, decided by the Hon'ble Apex Court on 04.10.2013)**.

4. On the other hand learned counsel for the respondent/writ petitioner opposed the submissions made on behalf of the appellant-Corporation.

4.1. It was submitted that the Deputy General Manager of the of the Corporation had passed the dismissal order dated 27.11.2023 solely on the basis of the enquiry officer's report wherein the





Enquiry Officer himself was not clear regarding the school from which the requisite information was to be called for, thus the conclusion in question itself cannot be said to have been arrived at after due application of mind.

4.2. It was further submitted that the writ petitioner had rendered almost 17 years of dedicated services to the appellant-Corporation by the time he was served a charge-sheet and even the learned Single Bench of this Hon'ble Court had taken the same into consideration while passing the impugned order.

4.3. It was further submitted that the learned Single Bench had rightly relied upon the doctrine of proportionality in light of the judgments rendered by the Hon'ble Apex Court in the case of ***Ranjit Thakur v. Union of India (1987) 4 SCC 611*** and by the Hon'ble Telangana High Court in the case of ***Vuduri Venkatesh v. Chief Manager, Central Bank of India, (Writ Petition Nos. 32889 of 2017*** and other connected matters) *decided on 04.09.2019.*

5. Heard learned counsel for the parties as well as perused the record of the case alongwith the judgments cited at the Bar.

6. This Court observes that the writ petitioner had been appointed as a Watchman in the appellant-Corporation on 12.01.1987 and was required to submit application form alongwith certain other documents one of which being Transfer Certificate amongst others, however, the writ petitioner during the recruitment process had provided a forged document in the form of Transfer Certificate of Class VII, and subsequently, the charge-sheet was served upon him in the year 2002, and accordingly,





enquiry proceedings were conducted against the writ petitioner; an Enquiry Report was submitted, in pursuance of which, the writ petitioner was dismissed from service by the order dated 27.11.2023. The writ petitioner approached this Hon'ble Court and though the Enquiry Report was upheld but the matter was remanded back to the Deputy General Manager to reconsider the punishment vide the impugned order.

7. This Court further observes that an interim order dated 01.06.2023 is operating in favour of the appellant-Corporation; relevant portion whereof is reproduced as hereunder:

"5. **Admit.** Issue notice. As the sole respondent is represented by Dr. Harish Purohit, no need to issue fresh notice.

6. Heard on stay application.

7. During pendency of the appeal, effect and operation of the order dated 05.12.2022 passed by the learned Single Judge shall remain stayed.

8. Stay Application No.1426/2023 stands disposed of.

9. Looking to the nature of the controversy and as it is submitted that the respondent has attained the age of superannuation, list the appeal for hearing in the month of August, 2023.

10. Office is directed to reflect the name of Dr. Harish Purohit, as counsel appearing for the respondents in the cause list instead as counsel appearing for the appellants."

8. This Court also observes that the learned Single Bench of this Hon'ble Court, while passing the impugned order, has upheld the findings recorded by the enquiry officer, after due analysis thereof. For ready reference, the relevant portions of the impugned order passed by the learned Single Bench are reproduced as hereunder:





"A perusal of the inquiry report dated 20.05.2003 makes it clear that the Inquiry Officer has reached to a specific conclusion that the transfer certificate was a forged one. The Headmaster of the school at that point of time was even produced before the Inquiry Officer and he specifically deposed that the transfer certificate is false. He even deposed that there was no admission registered in the name of Shri Gyan Chand S/o Shri Bhagirath in the school records on 01.07.1968, the date mentioned in the transfer certificate. Moreover, it is also clear on record that the petitioner was granted ample opportunities to lead evidence in defence but he did not do so. Admittedly, he was even granted the opportunity to cross-examine the witnesses which also he did not avail of.

In the opinion of this Court, the complete dispute in the present matter was pertaining to the transfer certificate of the petitioner, meaning thereby, whether the petitioner was qualified as mentioned in the transfer certificate. Had the petitioner been qualified as mentioned in the transfer certificate, he could have produced some other relevant document to the purpose, for example, any marklist or any other certificate at the relevant time to prove the said fact. However, he did not do so and neither did he produce any witness to substantiate his averment. Therefore, the findings as reached by the Inquiry Officer cannot be interfered with as the same are based on evidence beyond reasonable doubt."

9. This Court further observes that apart from the due analysis of the enquiry report made by the learned Single Bench, as reflected in the aforequoted portion of the impugned order, this Court has also made due appreciation of the contents and findings of the enquiry report and finds no legal infirmity in the said conclusions arrived at by the enquiry officer, and on that count



alone, this Court is in agreement with the view of the learned Single Bench in upholding the enquiry report.

10. This Court further observes that the writ petitioner was issued a chargesheet dated 15.02.2002 wherein with the charge leveled against him was in accordance with the prescriptions of the Certified Standing Orders governing the field as also in the application form, which stipulates that in case any incorrect information for securing the employment is furnished at the time of submission of the application form, will make the applicant liable to immediate disqualification/dismissal without notice.

11. This Court is conscious of the judgment rendered by the Hon'ble Apex Court in the case of **Rajendra D. Harmalkar (supra)**, relevant portion whereof is reproduced as hereunder:

"28. On the question of judicial review and interference of the courts in matters of disciplinary proceedings and on the test of proportionality, a few decisions of this Court are required to be referred to:

i) In the case of Om Kumar (supra), this Court, after considering the Wednesbury principles and the doctrine of proportionality, has observed and held that the question of the quantum of punishment in disciplinary matters is primarily for the disciplinary authority to order and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as 'Wednesbury principles'.

In the Wednesbury case, [1948] 1 K.B. 223, it was said that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. Lord Greene further said that interference was not permissible unless one or the



other of the following conditions was satisfied, namely, the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered, or the decision was one which no reasonable person could have taken.

ii) In the case of *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749, in paragraph 18, this Court observed and held as under:

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

iii) In the case of *Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) v. Rajendra Singh*, (2013) 12 SCC 372, in paragraph 19, it was observed and held as under:

"19. The principles discussed above can be summed up and summarised as follows:

19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.





19.2. *The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.*

19.3. *Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.*

19.4. *Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.*

19.5. *The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable.”*

34. *Even from the impugned judgment and order passed by the High Court it does not appear that any specific reasoning was given by the High Court on how the punishment imposed by the Disciplinary Authority could be said to be shockingly disproportionate to the misconduct proved. As*





per the settled position of law, unless and until it is found that the punishment imposed by the Disciplinary Authority is shockingly disproportionate and/or there is procedural irregularity in conducting the inquiry, the High Court would not be justified in interfering with the order of punishment imposed by the Disciplinary Authority which as such is a prerogative of the Disciplinary Authority as observed hereinabove.

35. From the impugned judgment and order passed by the High Court, it appears that the High Court has denied the back wages and other benefits and has ordered reinstatement on a concession given by the learned counsel on behalf of the original writ petitioner. However, it is required to be noted that for the period between 2006 to 2017 i.e. during the pendency of the writ petition the respondent was working in the Petroleum Division of Reliance Industries. Therefore, he was aware that even otherwise he is not entitled to the back wages for the aforesaid period. Therefore, the concession given on behalf of the original writ petitioner as such cannot be said to be a real concession. **In any case in the facts and circumstances of the case and for the reasons stated above and considering the charge and misconduct of producing the fake and false SSLC Certificate proved, when a conscious decision was taken by the Disciplinary Authority to dismiss him from service, the same could not have been interfered with by the High Court in exercise of powers under Article 226 of the Constitution of India.** The High Court has exceeded in its jurisdiction in interfering with the order of punishment imposed by the Disciplinary Authority while exercising its powers under Article 226 of the Constitution of India.”

12. This Court also observes that doctrine of proportionality, as relied upon by the learned Single Bench, in view of the above-mentioned precedent law of **Indian Oil Corporation Ltd. v. Rajendra D. Harmalkar (supra)**, shall not be applicable in the



present case as at the very inception of acquiring the said employment for the post in question with the appellant-Corporation the writ petitioner had submitted a forged Transfer Certificate and the same is not in dispute as per the conclusion arrived at by the Enquiry Officer after due enquiry process and examination of witnesses. After a perusal of the Enquiry Report, this Court observes that there exists no lacuna or benefit of doubt that could tilt in favour of the respondent as the problem exists at the very root level in the present matter, whereby the very basis upon which employment for the aforesaid post was sought for was on the basis of a forged document, and thus, under no condition, such action on part of the writ petitioner can warrant any lenient view or be looked away from.

13. In addition, the relationship between an employer and an employee is that of trust and mutual respect and in all such relationships, employers repose trust in their employees' working to the effect that the said work upon being entrusted would be done with due honesty and dedication, while the employee trusts the employer in the manner that the employer shall always keep the best interests and welfare of the employee in mind; however, when such employment has been sought on the basis of certain fake document / misrepresentation, then the very foundation of such relationship gets deteriorated. Thus, in the present case, the length of service of the petitioner could, in no manner, rectify the fact that a forged Transfer Certificate was produced at the time of document verification in order to secure the post in question.



14. The act of securing employment in lieu of the forged document goes to the root of the employment as the qualification in regard to which it has been proved beyond reasonable doubt that the same is a forged document, cannot be ignored at any stage. The writ petitioner was paid his dues for 17 years which was salary for the duties discharged and thereafter now once it has been established that the document in question is completely forged beyond reasonable doubt so much so that even the Head of the concerned educational institution has deposed before the Enquiry Officer and has given a statement that the document in question is totally forged and did not have any existence.

15. The doctrine of proportionality can be invoked when there are multiple steps/gradings through which we may see the bracket of the parameter of the legality, and thus, it has to operate within the realms of law where the quantum of punishment can be reduced in accordance with law, while keeping into due consideration certain relevant factors, including the factual matrix of the case and the length of service.

15.1. This Court is not in the slightest of the doubt that doctrine of proportionality has been invoked time and again in cases where the long tenure creates harsh conditions for the employees but at the same time this court is constrained to note that the doctrine of proportionality cannot be invoked in cases where the root of the employment itself is based upon a forged document. The very eligibility of the person is at stake since the employee has obtained such employment by fraud, and therefore, no amount of long tenure can create any sympathy in the minds of this Court.





The fraud is a clear exception even to the limitation law. Once the umbilical cord of the employment is cut from the threshold, the survival of the employment, in the given perspective, may be at reduced parameters of employment, would not be justified.

16. Thus, in light of the aforesaid observations and looking into the factual matrix of the present case, this Court is of the opinion that there arises no reason to interfere with the quantum of the impugned punishment so imposed by the concerned Disciplinary Authority.

17. Consequently, the present petition is **allowed** while quashing the impugned order dated 05.12.2022.

(RAJENDRA PRAKASH SONI),J (DR. PUSHPENDRA SINGH BHATI),J

SKant/-