

(2016) 09 P&H CK 0213

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P No. 27315 of 2013 (O&M)

K.T. Kokne

APPELLANT

Vs

Haryana State Federation Of
Consumers Cooperative
Wholesale Stores Ltd.

RESPONDENT

Date of Decision: Sept. 7, 2016

Citation: (2017) 1 SCT 528

Hon'ble Judges: Tejinder Singh Dhindsa, J.

Bench: Single Bench

Advocate: Dheeraj Chawla for Ms. Aman Sibia, Advocates, for the Petitioner; Amit Jaiswal, Advocate, for the Respondent

Final Decision: Allowed

Judgement

Tejinder Singh Dhindsa, J. - The petitioner who was serving as District Manager under the Haryana State Federation of Consumers Co-operative Wholesale Stores Limited (CONFED) has filed the instant petition assailing the order dated 27.01.2010 (Annexure P-3) passed by the Managing Director, in terms of which a punishment of stoppage of two increments without cumulative effect was imposed. Further challenge is to the order dated 24.12.2010 (Annexure P-5), whereby the Board of Director of CONFED has rejected the appeal preferred by the petitioner.

2. Learned counsel for the petitioner would submit that while serving as District Manager at District Office, Panchkula, the petitioner was issued a Show Cause Notice dated 05.12.2008, alleging that the petitioner had remained negligent in the performance of his duties and failed to comply with the instructions issued by the head office and as such, imposition of one of the minor punishments, under the Staff Service Rules of the Haryana State Federation of Consumers Cooperative Wholesale Stores Limited, 1975 (hereinafter referred to as "Staff Service Rules"), had been contemplated. The petitioner submitted his reply on 14.01.2009. After submission of his response to the Show Cause Notice, the impugned order dated

27.01.2010 (Annexure P-3), inflicting punishment of stoppage of two increments without cumulative effect, has been passed. Such punishment stands affirmed even by the Appellate Authority.

3. The submission raised by learned counsel appearing for the petitioner is two fold: firstly, it is contended that the Show Cause Notice had been issued contemplating the imposition of a minor punishment, but by virtue of the impugned order, a punishment of stoppage of two increments without cumulative effect has been passed and which under the Staff Service Rules is listed as major punishment and on such short ground alone, the impugned order cannot sustain. The second claim raised is that no regular inquiry was conducted prior to passing of the impugned order and as such, there has been negation of the principles of natural justice.

4. Per contra, learned counsel appearing for the respondent- CONFED has adverted to the written statement filed and submits that it was only a clerical mistake in the Show Cause Notice as regards reference to Rule 26.4 of the Staff Service Rules for imposition of minor punishment and such error has also crept into the impugned order of punishment. Learned counsel for respondent-CONFED contends that Show Cause Notice clearly noticed that it was on account of negligence in performance of the duties and for not complying with the head office instructions, which would be covered under Rule 26.1 governing "gross misconduct" and for which the punishments are enumerated in Rule 26.3 of the Staff Service Rules and which include withholding of annual increments. It is sought to be contended that merely on account of a clerical mistake and mentioning of the wrong provision, the action of CONFED cannot be said to be illegal.

5. Learned counsel for the parties have been heard at length and the pleadings on record have been perused.

6. It is by now well settled that the power to impose punishment upon an employee, is within the discretion of the employer and ordinarily the Courts do not interfere unless it is found that either the inquiry proceedings or punishment is vitiated because of non-observance of the relevant rules and regulations or principles of natural justice or denial of reasonable opportunity of defending etc or that the punishment is totally disproportionate to the proved misconduct of the employee.

7. The short question that arises for consideration in this case is, whether in the context of applicable rules and regulations the punishment of stoppage of two increments without cumulative effect is a major punishment and if so, the order of punishment is vitiated on any of the grounds noted above, warranting interference by this Court ?

8. The relevant Rules governing the imposition of major and minor punishments upon CONFED employees are the Staff Service Rules.

9. Rule 26 governs the acts of omissions, constituting gross and minor misconduct, penalties for misconduct, imposition of punishment, suspension, appeal, complaints and deductions.

Rule 26.1 defines "gross misconduct" and includes various acts and omissions or commissions on the part of an employee.

Rule 26.2 defines minor misconduct and sets out various acts and omissions on the part of an employee which would be construed as minor misconduct.

Rule 26.3 spells out the penalties that may be awarded to an employee found guilty of "gross misconduct".

Rule 26.4 contains the list of punishments that can be awarded to an employee found guilty of a minor misconduct.

Rules 26.1, 26.2, 26.3 and 26.4 of the Staff Service Rules would be relevant to the issue at hand and are reproduced as under :-

"26.1 The expression "Gross misconduct" shall include any or all the following acts of omissions or commissions on the part of an employee:

a) Dishonesty, fraud, misappropriation, embezzlement or misappropriation of the funds of the Federation or any of its constituents or committing any offence under I.P.C. in relation to the Federation and its constituents.

b) Engaging in any trade or business outside the scope of his duties except with the permissions of the Federation.

c) Unauthorized disclosures of information regarding the affairs of the Federation to any of its customers or any other persons concerned with the business of the Federation which is confidential or the disclosure of which is likely to be prejudicial to the interest of the Federation.

d) Wilful damage or attempt to cause damage to the property of the Federation or any of its customers.

e) Drunkenness or riotous or disorderly or indecent behaviours.

f) Wilful insubordination or disobedience of any lawful and reasonable orders of a superior or misbehaviour with any employee of the Federation.

g) Habitual doing of any act which amounts to 'Minor misconduct' as defined below :-

"Habitual means a course of action taken or persisted in notwithstanding that at least on three previous occasion's censure or warning have been administered or an adverse remark has been entered against him.

h) Wilful slowing down in performance of work.

- i) Gambling or betting in the premises of the Federation.
- j) Doing any act prejudicial to the interest of the Federation or gross negligence or negligence involving or likely to involve the Federation in serious loss or losses exceeding Rs. 100/-.
- k) Giving or taking a bribe or illegal gratification from a customer or any employee of the Federation.
- l) Taking part or canvassing or otherwise interfering or using his influence in any election to the Board, any Committee or the Subject:- Committee or the Directors.
- m) Punishment from a court of law for any offence involving moral turpitude.
- n) Abatement or instigation of any of the acts or commissions above mentioned.
- o) Absence without leave or overstaying sanctioned leave without sufficient grounds.
- p) Neglect of work, negligence in performing duties or habitual negligence.
- q) Breach of any rule of business of the Federation.
- r) Holding or attending any meeting in the premises of the Federation without the permissions of the Managing Director/General Manager.
- s) No employees shall take part in politics or in any political demonstration or stand for election to a legislature or local authority or be a member of political party.

(Approved by RCS vide letter No. 13/2/83/CS-I dated 18.10.89)

26.2 The "expression" minor misconduct shall include any of the following acts of omission on the part of any employee.

- a) Unpunctual or irregular attendance.
- b) Committing nuisance in the premises of the Federation
- c) Entering or leaving the premises of the Federation except by the entrance provided for the purpose.
- d) Collecting money within the premises of the Federation without previous permission of the Managing Director or except as allowed by any rule of law for the time being in force.
- e) Canvassing for union membership or collection of Union dues or subscriptions within the premises of the Federation without the previous permission of the Managing Director or except in accordance with the provisions of any rule of law for the time being in force.

26.3 Penalties for misconduct:

An employee found guilty of gross misconduct may be awarded any one or more of the following punishments apart from the recovery of actual loss or damage caused by him to the Federation.

(i) Depriving from payment of bonus.

(ii) Withholding of annual increments.

(i) Barring of promotion to the higher-grade post for a specific period.

(ii) Reversion to a lower grade post.

(iii) Suspension (Deleted by RCS vide letter No. 21/9/88/CS-I dated 23.8.89).

(iv) Dismissal.

(v) Fine not exceeding Rs. 250/-.

(vi) Termination of service.

26.4 An employee found guilty of minor misconduct may be awarded any one of the following punishments according to the gravity of his misconduct:

a) Be warned or censure.

b) Have his increments stopped for a period of not longer than six months.

c) Be fined (where a fine is imposed, it shall not exceed 1/3 of the monthly wages of the employee).

10. There would be no difficulty in accepting the argument raised by learned counsel for the respondent-CONFED that a mere clerical mistake contained in the Show Cause Notice or the final order imposing the punishment, cannot be made a basis to invalidate the same. It is not the caption of an order but the contents thereof which are relevant.

11. Concededly, the petitioner had been called upon to show cause for being negligent in performance of his duties. This was an alleged act of omission which squarely falls within the ambit of Rule 26.1(p) and amounts to "gross misconduct".

12. Withholding of annual increments is one of the punishments that may be awarded upon an employee found guilty of gross misconduct under Rule 26.3. There is a clear distinction drawn under the Staff Service Regulations in as much as under Rule 26.4, one of the punishments that may be imposed upon an employee found guilty of minor misconduct, is stoppage of an increment for a period of not longer than six months. What clearly emerges is that the punishment of withholding of annual increments even without cumulative effect, is a major punishment covered under Rule 26.3 of the Staff Service Regulations. Major punishment cannot be imposed upon an employee without holding a regular departmental inquiry. Concededly in the present case, it was only upon serving a notice and having elicited

response, that the impugned order of major punishment has been passed. A regular inquiry in consonance with the principles of natural justice was not conducted. The impugned order as such cannot sustain.

13. For the reasons recorded above, the impugned orders dated 27.01.2010 (Annexure P-3), imposing punishment of stoppage of two increments without cumulative effect, as also the order dated 24.12.2010 (Annexure P-5) rejecting the appeal of the petitioner, are quashed and set-aside. The respondent-CONFED is directed to release the financial benefits upon restoring the two increments, as also consequentially revise the retiral benefits payable to the petitioner, within a period of two months from the date of receipt of certified copy of this order.

14. There is yet another aspect which requires to be dealt with. Under normal circumstances, this Court would have left the option open to the employer to hold an inquiry and to proceed further in accordance with law. However, in the circumstances of the present case, such liberty is expressly being denied. Such view is being taken for the reason that the petitioner stands retired w.e.f 30.04.2012 upon attaining the age of superannuation. That apart, the Show Cause Notice dated 05.12.2008 was for negligence in performance of the duties and not adhering to the instructions of the head office in relation to certain recovery targets having not been achieved. The petitioner had submitted a response dated 14.01.2009 to the Show Cause Notice that the alleged recovery targets were pending since last 15 years and as such, the petitioner in isolation cannot be saddled with the entire liability and be held responsible for the inaction of his predecessors. The allegations against the petitioner were not of misappropriation or embezzlement of funds. Integrity of the officer had not been doubted. Under such peculiar circumstances and at this stage of his life i.e four years post-retirement, it would be unjustified for any inquiry to be permitted to be initiated. It is so held.

15. The writ petition is allowed in the aforesaid terms.