(2001) 07 AP CK 0058

Andhra Pradesh High Court

Case No: Writ Petition No. 10769 of 2000

ESI Corporation, Hyd.	APPELLANT
Vs	
G. Venugopal and Another	RESPONDENT

Date of Decision: July 19, 2001

Acts Referred:

- Central Civil Services (Conduct) Rules, 1964 - Rule 15
- Employees State Insurance Act, 1948 - Section 1(5), 2(12)
- Employees State Insurance Corporation (Staff and Conditions of Service) Regulations, 1959 - Regulation 23

Citation: (2001) 6 ALD 422 : (2002) 92 FLR 448 : (2002) 3 LLJ 352

Hon'ble Judges: S.B. Sinha, C.J; V.V.S. Rao, J

Bench: Division Bench

Advocate: B.G. Ravindra Reddy, for the Appellant; D. Ravishankar Rao, for the Respondent

Final Decision: Allowed

Judgement

V.V.S. Rao, J.

This writ petition is filed seeking judicial review of the order dated 12-4-2000, passed by the Central Administrative Tribunal, Hyderabad Bench (hereinafter called the Tribunal), in OA No. 367 of 1999. By the said order, the Tribunal set aside the order of punishment dated 27-4-1998, Passed by the Petitioner, whereby and whereunder respondent No. 1 was reverted from the post of UDC Cashier to the post of LDC, and it was further ordered that after a period of five years from the date of the said order, respondent No. 1 be restored to the post of UDC/UDC Cashier, subject to condition that he shall not regain his original seniority, gained in the higher post, prior to the imposition of punishment.

2. The factual matrix in brief is as follows. The respondent No. 1 was appointed as LDC in the ESI Corporation (hereinafter called ''the corporation. He was promoted to the post of UDC Cashier. During the year 1991, while he was working at Hindupur as

UDC Cashier, it was alleged that he rendered part time/consultancy services to M/s. Gajmuk Security Bureau, Hindupur, which is "an employer", registered with the Corporation under the ESI Corporation Act. Respondent No. 1 was, therefore, issued a charge memo dated 31-1-99, with the following charges:

Sri. G. Venugopal, LDC, Regional Office, Hyderabad, while he was working as UDC Cashier at Local Office, Hindupur, in the year 1990 and 1991 engaged himself in rendering part-time/ consultancy services to one M/s. Gajmuk Security Bureau, Hindupur, which is covered under the ESI Act, under Code No. 53-5857-101.

Sri. G. Venugopal, being a public servant while in the services of the ESI Corporation, is prohibited, as per the Conduct Rules applicable to indulge himself in such acts.

Sri. G. Venugopal, by such of his acts exhibited lack of integrity and committed misconduct which are on becoming of a Corporation employee and thereby violated the provisions under Rule 15 of CCS (conduct) Rules, 1964 read with Regulation 23 of ESI Corporation (Staff and Conditions of Service) Regulations, 1959, as amended.

3. During enquiry, the defence of respondent No. 1 was that he has not violated any conduct rules, and that he was under bona fide belief that he could render service to the said registered employer. In support of his defence respondent No. 1 placed reliance on Form C-11. The said form deals with implementation of ESI Act and Registration of Employees, employers and factories/establishments u/s 2(12) and Section 1(5) of the ESI Act. The said document is a form of notice, to be issued to registered employers as and when the Act is made applicable to such employers. In the last paragraph of the said notice it is mentioned that the Corporation officials would render all necessary and possible assistance to registered employers in discharging their duties and obligations under the ESI Act, 1948. Respondent No. 1, therefore, contended that by rendering assistance to the employer in question, he has not violated any conduct rules.

4. After the enquiry report was submitted, the disciplinary authority came to the conclusion that as per Rule 15 of CCS (Conduct) Rules, 1964 (hereinafter called ''the Rules''), read with Regulation 23 of ESI Corporation (Staff and Conditions of Service) Regulations 1959 (hereinafter called ''the Regulations''), respondent No. 1 has committed misconduct, and accordingly imposed punishment. Against the said order, respondent No. 1 filed appeal before the ESI Corporation, and the same was dismissed confirming the punishment imposed on respondent No. 1 by the disciplinary authority.

5. Aggrieved by the said order, respondent No. 1 approached the Tribunal by filing OA No. 367 of 1999. Before the Tribunal, respondent No. 1 raised only one contention that by writing challans and extending consultancy services to Gajmuk Security Bureau, he has not committed any misconduct. The Tribunal on consideration of the submission of respondent No. 1 with reference to the contentions raised before it, came to the conclusion that the conduct of respondent

No. 1 in writing challans and extending consultancy services to Gajmuk Security Bureau, does not amount to misconduct, and it accordingly allowed the OA, and directed the Corporation to restore respondent No. 1 to the post of UDC Cashier, within three months.

6. Sri B.G. Ravinder Reddy, learned Standing Counsel appearing on behalf of the Corporation submits as per Rule 15 of the Rules read with Regulation 23 of the Regulations, a government servant shall not engage himself directly or indirectly in trade or business or undertake any employment and since respondent No. 1 was writing challans and extending consultancy services to M/s.Gajmuk Security Bureau, his conduct is per se misconduct, attracting the aforementioned provisions. He would further submit that para 9 of Form C-11, upon which the Tribunal placed reliance, does not mitigate the misconduct alleged against respondent No. 1, which is in gross violation of Rule 15 of the Rules.

7. Sri. D.Ravi Shankar Rao, learned counsel appearing on behalf of respondent No. 1 submits that in the absence of any clear instructions not to assist registered employers in filling up challans and other forms, it is always open to any employee to help the registered employers in filling up the challans and other forms, and such rendering of assistances does not amount to undertaking of part-time employment by an employee.

8. The short question that falls for consideration by this Court is whether the conduct of respondent No. 1 in assisting/ helping M/s. Gajmuk Security Bureau, Hindupur, in filling up challans and other forms, would amount to misconduct, falling within the meaning of Rule 15 of the Rules read with Regulation 23 of the Regulations?

9. The aforementioned question involves consideration of the effect of Para 9 of Form C-l 1 and interpretation of Rule 15 of the rules. The said para reads:

The Corporation officials would be pleased to render all necessary and possible assistance to you in discharging your duties and obligations under the ESI Act, 1948, and I am confident of and prompt and timely compliance with the provisions of the ESI Act and Regulations on your part.

10. Rendering possible assistance by the Corporation officials to registered employers in discharging their duties and obligations under the ESI Act can never mean that an employee can render part-time/consultancy service to a registered employer. In the instant case, it is not denied by respondent No. 1 that he gave consultancy service to M/s.Gajmuk Security Bureau with regard to their obligations and duties under the ESI Act. The same, however, does not help respondent No. 1 purge misconduct alleged against him. Further to our mind, as contended by the Corporation, before the Tribunal the term "officials" in para 9 of Form C-11 can only mean the officials like the Head of the Office/Manager of the Office, and not LDCs and UDC in the Office. If the term "officials" is to be interpreted as including every

official like LDC, UDC and UDC Cashier, the same would throw the administration of the Corporation into pell-mell for there are bound to be divergent opinions and views, which might confuse the registered employers.

11. Further, various Rules/Regulations/ Circulars issued by the Corporation from time to time can only be in the knowledge of the Manager of the Office, and not any LDC/UDC/UDC Cashier. Generally, LDCs/ UDCs may be well conversant with the subject assigned to them at the relevant time, but they are not expected to know all the office procedures and binding executive instructions. We are, therefore, convinced that para 9 cannot be used as defence by respondent No. 1 who admittedly, at the relevant time, was working as UDC Cashier and was assisting M/s. Gajmuk Security Bureau, which is a registered employer, in filling up challans and other forms by extending consultancy service.

12. Rule 15 of the Rules, which is made applicable by virtue of Regulation 23 of the Regulations reads. No Government servant shall except with the previous sanction of the Government, engage directly or indirectly in trade or business or undertake any employment.

13. Rule 15 of the Rules does not admit of two interpretations. Its language is simple, lucid, clear and unambiguous that any government servant, who engages directly or indirectly in trade or business or undertakes any employment without the previous sanction of the Government would be committing misconduct. It is not the case of respondent No. 1 that he has obtained previous sanction from the Government or the competent authority for filling up challans and other forms of a registered employer. The conduct of respondent No. 1 is therefore, certainly misconduct, and the Tribunal, in our considered opinion, has erred in coming to the conclusion otherwise.

14. In GLAXO LABORATORIES v. PRESIDING OFFICER, LABOUR COURT, 1983 Lab. IC 1909, the Supreme Court laid down the test of "casual connection" between the misconduct and the employee, to be applied where doubt arises as to whether conduct alleged is misconduct. One of us, (V.V.S. Rao, J) in Ch. Ramakoteswar Rao Vs. General Manager, APSRTC, Hyderabad and others, , in para 15 held:

In Glaxo Laboratories case (1 supra) the question was whether the misconduct alleged in the charge-sheet against the workman taking the allegations to be true would squarely fall within Clauses 10, 16 and 30 of Standing Order 22 of Glaxo industries Limited. Having regard to the language of the relevant clauses of Standing Order 22, the Supreme Court ruled that numerous acts of misconduct such as drunkenness, fighting, indecent or disorderly behaviour, use of abusive language etc., are not per se misconduct and that each of them must have correlation to the time or place where it is committed. The acts of misconduct are punishable under relevant Standing Orders if committed within the premises of the establishment or in the vicinity thereof. The appellant in that case placed reliance on the judgment of

the Supreme Court in Mulchandani Electrical and Mulchandani Electrical and Radio Industries Ltd. Vs. The Workmen, , in support of the contention that some other act of misconduct, which would per se be an act of misconduct, though not enumerated in the relevant Standing Order is punishable under the penal clause. The Supreme Court distinguished Mulchandani''s case having regard to the language of Standing Order 24(1) of the Mulchandani Industry and observed that what constitutes ''establishment'' or ''vicinity'' or ''misconduct'' would depend on the facts and circumstances of each case and the language of the relevant provision. The Supreme Court further observed that if a workman is involved in a riot or indulge in fighting somewhere far away from the premises of the establishment, it has no casual connection with his performance of duty in the industrial establishment in which he is employed.

15. Whether the unruly conduct of the workman has casual connection between the misconduct and employment or not, is the proper test to be applied in a case where doubt arises as to whether the conduct alleged against an employee is misconduct.

16. In the result, for the aforesaid reasons, we allow the writ petition, set aside the impugned order dated 12-4-2000, passed by the Tribunal in OA No. 367 of 1999. In the facts and circumstances of the case, there shall be no order as to costs.

S.B. Sinha, C.J.

17. Although I agree with the opinion of my esteemed brother V.V.S. Rao, J., I would like to add a few words of mine.

18. The learned Tribunal proceeded on the basis, presumably, having regard to the decisions in A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., and Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, . But, one of us - S.B. Sinha, CJ, - had the occasion to consider the same in some depth in PROBODH KUMAR BHOWMICK v. UNIVERSITY OF CALCUTTA 1994 (ii) LLJ 456 and distinguished A.L. KALRA and GLAXO LABORATORIES cases (supra) stating that they "could not be treated as precedent on the point that the employer in no circumstances can proceed against its employee in absence of rule defining and/or specifying misconduct." It was held:

It is beyond anybody''s comprehension that although an employee might have committed a serious misconduct like defalcation, theft, misbehaviour with a lady or similar other matter, he cannot be punished. Recently this Court has come across a case when a Reader of the University has been punished for sexually exploiting a lady research student. Misconduct is a generic term of which the instances of misconduct as may be specified by the employer are their species..... Misconduct, inter alia, envisages breach of discipline, although it would not be possible to lay down ejdiaustively as to what would constitute conduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally."

19. Samaraditya Pal in his Book "Law relating to Public Service", noticed a contrary decision of a learned single Judge, of the Bombay High Court in Abdulla A. Latifshah Vs. Bombay Port Trust and Others, and at page 717 of the treatise, it was observed:

In view of Sinha, J, of the Calcutta High Court discloses a pragmatic approach based on robust commonsense'' and is to be preferred to the Bombay view. The Calcutta view also finds support in principle from a subsequent three Judge Bench Judgment of the Supreme Court B.C. Chaturvedi Vs. Union of India and others, where the possession of disproportionate assets, not satisfactorily accounted for, was held TO AMOUNT TO A MISCONDUCT AMENABLE TO DISCIPLINARY ACTION ALTHOUGH IT WAS NOT AN ENUMERATED MISCONDUCT UNDER THE conduct Rules. And more recently, relying upon the phrase "for good and sufficient reason" which often occurs in the rules, the Supreme Court has held in Secretary to Government and Others Vs. A.C.J. Britto, , that non-specified conduct may also amount to misconduct i.e., the misconduct need not be enumerated in the rules.

Intemperate language used hi reply to a charge-sheet may also amount to misconduct (SYED KHADER MOHIUDDIN v THE CHAIRMAN, TAMIL NADU PSC, (1997) II LLJ (Mad.) (DB)

Misconduct may be committed outside the place of work e.g where a bank employee having consumed liquor was in a state of undress and created an ugly scene in public. (THIRUMANGALAM CO-OPERATIVE URBAN BANK LTD. v. ASSISTANT COMMISSIONER OF LABOUR, MADURAI, 1992 (6) SLR 145). But mere passive participation in an illegal strike will amount to misconduct. Changunabai Chanoo Palkar Vs. Khatau Makanji Mills Ltd. and others, .

20. In State Bank of India and others Vs. T.J. Paul, , the Apex Court held that an act prejudicial to the interest of the bank would include an act, which is likely to cause loss e.g. improper and unauthorized sanction of loan, although no loss has actually been suffered.

21. In Government of A.P. Vs. P. Posetty, , it has been held that allegations of illegal detention of certain persons in police custody, their torture etc. by police officer for corrupt motives would amount to misconduct.

22. Wrongful claim of allowance, wilful absence from duty and sexual harassment in working place have been held to be misconduct. (See Director General Indian Council of Medical Research and Others Vs. Dr. Anil Kumar Ghosh and Another, , Union of India and Others Vs. Shri B. Dev, and Apparel Export Promotion Council Vs. A.K. Chopra, .

23. We may also notice that in N.G. Dastane Vs. Shrikant S. Shivde and Another, , THOMAS, J, speaking for a three Judge Bench noticed the dictionary meaning of ''misconduct'' and ''professional misconduct'' and held:

Advocate abusing the process of Court is guilty of misconduct. When witnesses are present in Court for examination the advocate concerned has a duty to see that their examination is conducted. We remind that witnesses who come to the Court, on being called by the Court, do so as they have no other option, and such witnesses are also responsible citizens who have other work to attend for eking out livelihood. They cannot be treated as less respectable to be told to come again and again just to suit the convenience of the advocate concerned. If the advocate has any unavoidable inconvenience it is his duty to make other arrangements for examining the witnesses who is present in Court. Seeking adjournments for postponing the examination of witnesses who are present in Court even without making other arrangements for examining such witnesses is a dereliction of advocate''s duty to the Court, as that would cause much harassment and hardship to the witnesses. Such dereliction if repeated would amount to misconduct of the advocate concerned. Legal profession must be purified from such abuses of the Court procedures. Tactics of filibuster, if adopted by an advocate, is also professional misconduct.

24. In State of Punjab and Others Vs. Ram Singh Ex. Constable, , the Apex Court held:

Thus it could be seen that the word ''misconduct'' though not capable of precise definition, its reflection receive its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character, its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. The police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effect in the maintenance of law and order.