

(2009) 07 CAL CK 0092

Calcutta High Court

Case No: F.M.A. No. 2528 of 2005

Damodar Valley Corporation and
others

APPELLANT

Vs

Smt. Ballari Sarkar

RESPONDENT

Date of Decision: July 28, 2009

Acts Referred:

- Income Tax Act, 1961 - Section 263

Citation: (2009) 123 FLR 484

Hon'ble Judges: Pranab Kumar Chattopadhyay, J; Kishore Kumar Prasad, J

Bench: Division Bench

Advocate: P.K. Mullick, Mrs. Indrani Chakraborty, Subimal Mukherjee and Pradyot Kumar Das, for the Appellant; Biswaroop Bhattacharya and Arjun Ray Mukherjee, for the Respondent

Final Decision: Dismissed

Judgement

Pranab Kumar Chattopadhyay, J.

In the present case, the writ petitioner was offered appointment in the post of Management Trainee of Damodar Valley Corporation on 18th August, 1989 and pursuant to the said offer, writ petitioner joined as Trainee on 7th September, 1989.

2. On 17th July, 1996, the Disciplinary Authority of the respondent/writ petitioner issued the charge-sheet alleging that the at the time of making application for the post of Management Trainee, said respondent/writ petitioner did not disclose that she was lacking requisite qualifications for the said post.

3. Being aggrieved by the aforesaid charge-sheet issued by the Disciplinary Authority for initiating disciplinary action, respondent/writ petitioner filed the writ petition which was finally disposed of by the learned Single Judge by the judgment and order under appeal.

4. It has been submitted on behalf of the appellant-Corporation that only the charge-sheet was issued calling upon the respondent/writ petitioner to reply to the breach of the Damodar Valley Corporation Service (Conduct) Regulations, 1955 as specifically mentioned in the said charge-sheet. Mr. Mullick, learned Senior Counsel representing the appellant-Corporation submitted that filing of the writ petition challenging the charge-sheet is neither desirable nor permissible in law and on that ground alone, the writ petition should have been rejected. Mr. Mullick referred to and relied on a decision of the Division Bench of this Court in the case of [Brooke Bond Lipton India Ltd. Vs. Commissioner of Income Tax and Others,](#)

5. We, however, fail to understand how the principles of law laid down in the aforesaid judgment can be of any help to the appellants herein. In the aforesaid case, the appellant initially sought time from the Commissioner of income tax to submit reply to the show-cause notice on the ground that sometime was needed for collecting necessary information and data. After time was granted, the appellant admittedly, sent a detailed reply to the show-cause notice and without waiting for the outcome of the proceedings filed the writ petition. The facts of the aforesaid case are completely different and under the income tax Act, assessee had opportunity to explain his case upon receipt of a mere show-cause notice. Issuance of a charge-sheet to an employee alleging misconduct without any valid reason or reasonable basis cannot be equated with the show-cause notice issued to an assessee u/s 263 of the income tax Act for submitting an explanation why a Commissioner, of income tax will not exercise the powers available to him in terms of the said Section 263 of the income tax Act.

6. The aforesaid decision cited by Mr. Mullick, in our opinion, has no manner of application to the facts of the present case.

7. The learned Senior Counsel representing the appellant-Corporation submitted that the respondent/writ petitioner did not have the requisite qualifications for the job i.e. Management Trainee. Mr. Mullick, learned Senior Counsel for the appellant-corporation further submitted that the advertisement dated 9th January, 1988 required job qualification as, inter alia, "2 years full time Diploma in Labour and Social Welfare" whereas the respondent/writ petitioner had one year Diploma.

8. Going through the records of this case, we find that the writ petitioner very fairly disclosed her qualifications and never made any misrepresentation to the employer namely, appellant-Damodar Valley Corporation.

9. There is no dispute that the respondent/writ petitioner made an application for appointment to the post of Management Trainee in the Damodar Valley Corporation in prescribed form and manner in response to the advertisement published at the instance of the appellant-Corporation in the English News Daily "The Statesman" on 4th February, 1988. The writ petitioner duly disclosed her actual qualifications and experience for the said post and it has not even been alleged by the

appellant-Corporation that the said respondent/writ petitioner suppressed anything before the Corporation regarding her qualifications and experience.

10. As a matter of fact, the respondent/writ petitioner was allowed to appear at the preliminary written examination after proper verification of the original certificates in support of her age, education, experience etc. The writ petitioner duly appeared in the said preliminary written examination and was declared successful.

11. Thereafter, on 22nd July, 1989 respondent/writ petitioner appeared at the interview when the Deputy Director Personnel (R&T) of the appellant-Corporation scrutinised all her original certificate. The said original certificates were also produced before the members of the interview board by the respondent/writ petitioner at the time of interview. The Selection committee recommended the respondent/writ petitioner for appointment along with 19 other candidates.

12. The Additional Director (Personnel) of the appellant-corporation issued offer of appointment to the respondent/writ petitioner under Memo dated 18th August, 1989. The respondent /writ petitioner was also required to bring certificates /documents in original at the time of joining the training course and the said writ petitioner duly complied with the same.

13. The Deputy Director of Personnel (H&T) of the appellant-corporation by the written communication dated September 1, 1990 called upon the writ petitioner to appear for an interview which was arranged for confirmation of the Management Trainees for appointment in Damodar Valley Corporation. The respondent/writ petitioner appeared at the said interview on 17th September, 1990 and was duly selected for appointment.

14. The respondent/writ petitioner at no stage made any misrepresentation or suppressed any information with regard to her academic qualifications, experience etc. After appointment of the writ petitioner as the Management Trainee, it was found that the writ petitioner had completed only one year Diploma course in Management although in terms of the advertisement two years course was required to be completed.

15. There is a clause in the advertisement to the effect that the Corporation reserves the right to modify the qualification and experience and the Corporation decision will be final and binding. Mr. Mullick, learned Senior Counsel of the appellant-Corporation, however, submitted that in the instant case, the appellant-Corporation never relaxed or modified the requisite qualifications and experience of the respondent/writ petitioner and thus, the lack of eligibility for the job of the said writ petitioner continued. Mr. Mullick referred to and relied on a decision of the Supreme Court in the case of [District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and Another Vs. M. Tripura Sundari Devi, \).](#)

16. From the records, we, however, find that the writ petitioner's case was referred to the General Manager of the appellant-corporation.

17. Scrutinising the records learned Single Judge found that on 5th October, 1990, the General Manager of the Appellant-Corporation opined that the respondent/writ petitioner did not mislead the Corporation and she was duly appointed by the Corporation with full knowledge about her educational qualifications. The specific findings of the learned Single Judge in this regard have been recorded in the judgment under appeal as hereunder:

On 5.10.90 the General Manager opined that since the petitioner had not misled the Corporation at the time of applying for the management trainees course and that she was duly appointed by the management with full knowledge of her educational qualification, it would not be proper to terminate her service.....

18. The learned Single Judge also found that the writ petitioner's case was thereafter placed before the Chairman of the appellant-Corporation and the said Chairman being the head of the appellant-Corporation approved the aforesaid proposal of the General Manager.

19. Whether the Chairman approved the aforesaid proposal of the General Manager on behalf of the appellant-Corporation being the Chief of the organisation or the aforesaid action of the Chairman was ratified subsequently by the Board of the Corporation is not expected to be known to the respondent/writ petitioner. However, it is not in dispute that after approval of the aforesaid proposal of the General Manager by the Chairman of the appellant-Corporation, respondent/writ petitioner was confirmed by the competent authority of the appellant-Corporation and was also posted as Business Officer of the said Corporation. Subsequently, the said respondent/writ petitioner was promoted to the post of Assistant Secretary of the said corporation.

20. In the aforesaid circumstances, it can be said that the decision of the corporation in respect of the respondent/writ petitioner was duly implemented and no objection was raised for a considerable period by any authority of the appellant-Corporation.

21. Mr. Bhattacharya, learned Counsel representing the respondent/writ petitioner submitted that the said writ petitioner had never misled the authorities of the appellant-Corporation in order to get appointment.

22. From the records we also find that the respondent/writ petitioner very fairly disclosed her qualifications and produced all original certificates in support of the qualifications on several occasions and at various stages which were duly examined always by the competent officer/authority of the appellant-Corporation.

23. Therefore, in view of the aforesaid factual background it cannot be said that the respondent/writ petitioner did not disclose that she was not having the requisite qualifications as has been mentioned in the charge-sheet issued to the said writ

petitioner. Furthermore, it can also be held considering the facts of the present case that the appellant-Corporation had really relaxed the requisite qualifications in order to accommodate the respondent/writ petitioner in the organisation. The aforesaid decision cited on behalf of the appellants in the case of District Collector, Vizianagaram (supra) has no manner of application in the facts of the present case.

24. Mr. Bhattacharya also submitted that the appellant-Corporation never made any allegation of fraud or misrepresentation against the respondent/writ petitioner and, therefore, the Disciplinary Authority had no occasion to issue any charge-sheet against the said respondent/writ petitioner. Mr. Bhattacharya referred to and relied on a decision of the Supreme Court in the case of [M.S. Mudhol and Another Vs. S.D. Halegkar and Others](#), . In Paragraph 6 of the aforesaid judgment, Supreme Court observed:

6. Since we find that it was the default on the part of the 2nd respondent. Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, in spite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be inequitable to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same.

25. The principles of law laid down in the aforesaid judgment, in our opinion, squarely applies to the facts of the present case.

26. The learned Counsel of the respondent/writ petitioner submitted that initiation of disciplinary proceedings against the writ petitioner is not at all warranted in the facts of the present case since the said writ petitioner never committed any misconduct.

27. Let us now consider whether the alleged act of the respondent/writ petitioner on the basis whereof charge-sheet was issued constituted any misconduct. In order to allege any misconduct against anyone, mala fide intention has to be established.

28. In the case of [Council of the Institute of Chartered Accountants of India Vs. Somnath Basu](#), , Division Bench of this Court observed:

61. Misconduct arises from ill-motive and mere acts of negligence, innocent mistake or errors of judgment do not constitute the misconduct. Even if there is any negligence in performance of duties or errors of judgment in discharging of such

duties, the same cannot constitute misconduct unless ill-motive in the aforesaid acts are established.

29. The writ petitioner not only disclosed her actual qualifications in the prescribed application form but also produced her original certificates before the authorities of the appellant-corporation for repeated verifications.

30. In view of the aforesaid disclosure of the actual qualifications and production of the original certificates by the respondent/writ petitioner, it cannot be said that the said respondent/writ petitioner committed any misconduct. Therefore, in the facts of the present case, we hold that the acts and conduct of the respondent/writ petitioner do not constitute any misconduct and in the absence of any misconduct, no charge-sheet can be issued.

31. Scrutinising the records we also find that the writ petitioner was not only confirmed in the post by the competent authority of the Appellant-corporation but subsequently she was granted promotion.

32. It has been argued on behalf of the respondent /writ petitioner that the appellant-Corporation by granting promotion to the said writ petitioner has virtually condoned the deficiencies and/or shortcomings of the writ petitioner, if there had been anything at all. The learned Counsel of respondent/writ petitioner referred to and relied on the following decisions in support of the aforesaid contentions:

(1) R.K. Gupta v. Coal India Ltd. and others 1992 (2) CHN 130 (Paragraphs 20 & 21),

(2) [The State of Punjab Vs. Dewan Chuni Lal,](#)

(3) Collector of Customs v. Rebati Mohan Chatterjee 1976 CHN 792.

33. Following the law laid down by the Supreme Court as well as by this Court in the aforesaid judgments, we hold that promotion wipes out all past alleged misconduct. The Disciplinary Authority, in the present case was not justified in issuing the charge-sheet against the respondent/writ petitioner alleging misconduct even after granting promotion.

34. In the charge-sheet issued to the respondent/writ petitioner it has been alleged that the said respondent/writ petitioner had shown lack of integrity as enjoined under Regulation 3 of DVC Service (Conduct) Regulations, 1955 by not disclosing the requisite qualifications for the post in question. The learned Counsel representing the respondent/writ petitioner submitted that the provisions of the aforesaid DVC Service (Conduct) Regulations, 1955 could not have any manner of application at the time when the respondent/writ petitioner submitted the application form for the post of Management Trainee. The alleged non-disclosure of the requisite qualifications on the part of the respondent/writ petitioner took place at the time of submission of application for the post in question i.e. before appointment to the said post. According to the learned Counsel of the respondent/writ petitioner,

Regulation 3 of DVC Service (Conduct) Regulations, 1955 could not be violated at the instance of the respondent/writ petitioner before joining the post in question as has been erroneously mentioned in the charge sheet by the Disciplinary Authority.

35. We find substance in the aforesaid contentions of the learned Counsel of the respondent/writ petitioner.

36. In the present case, the charge-sheet was issued on 17th July, 1996 in respect of the events of 1989 i.e. after lapse of more than 7 years.

37. The delay in issuing the charge-sheet and initiation of the disciplinary proceedings in respect of the respondent/writ petitioner has not been explained. The disciplinary proceedings should be conducted immediately after commission of the alleged irregularities or soon after discovering the same. The disciplinary proceedings cannot be initiated after lapse of considerable period as sought to have been done in the present case.

38. No satisfactory explanation for the inordinate delay in issuing the charge memo has been given and, therefore, disciplinary proceedings are liable to be quashed on the aforesaid ground of unexplained delay in issuing the charge-sheet.

39. In the case of [The State of Madhya Pradesh Vs. Bani Singh and another](#), Supreme Court held "that the disciplinary proceedings are liable to be quashed if no satisfactory explanation has been given for the inordinate delay in issuing the charge-sheet.

40. The Secretary of the appellant-Corporation by issuing the charge-sheet to the respondent/writ petitioner after a lapse of more than 7 years has not only upset the decision of the Chief of the organisation namely, the Chairman of the appellant-corporation who condoned the deficiency of the respondent/writ petitioner by approving the specific proposal of the General Manager of the Corporation in respect of the said writ petitioner but also refused to take note of the most relevant factor that the said respondent/writ petitioner was granted promotion by the competent authority of the appellant-Corporation in the meantime as a result whereof the deficiency/shortcomings, if there be any, in respect of the writ petitioner had been impliedly condoned.

41. The Secretary of the appellant-Corporation being the subordinate officer had no authority to upset and/or ignore the decision of the Chairman who is superior authority. Moreover, by granting promotion, appellant-Corporation had impliedly condoned all the deficiencies of the respondent/writ petitioner. In any event, the Chairman of the said Corporation at the very inception specifically condoned the shortcomings of the writ petitioner in respect of her qualification by approving the proposal of the General Manager.

42. Admittedly, the respondent/writ petitioner has now worked for nearly 20 years and on three occasions (once prior to initiation of the proceedings and twice after

the delivery of the judgment) she has been promoted. Therefore, her ineligibility, if any, has been deemed to have been condoned and the respondent/writ petitioner cannot in any manner be blamed for any wrong whatsoever.

43. For the aforementioned reasons, we hold that the charge framed against the writ petitioner is without any, basis and devoid of any merit.

44. While deciding a similar case on identical grounds another Division Bench of this Court in the case of Rudra Pratap Singh v. Damodar Valley Corporation and others (W.P. No. 30312 (W) of 1997) affirmed the ratio of the decision of the learned Single Judge in the following manner:

.....In that view of the matter we are in total agreement with the ratio of the decision rendered in the case of Ballari Sarkar and further are of the view that ratio of decision of the said case would come heavily in support of the present petitioner.....""

45. Appellant-Corporation unfortunately did not grant relief to the respondent writ petitioner by withdrawing the present appeal upon reviewing its earlier decision even though the aforesaid earlier judgment of the Division Bench of this Court reached finality since the same was not altered/upset by the Apex Court.

46. For the reasons discussed hereinabove, we affirm the judgment and order under appeal passed by the learned Single Judge and dismiss this appeal as we do not find any merit in the same.

47. In the facts of the present case, there will be no order as to costs.

48. Let urgent Xerox certified copy of this judgment, if applied for, be given to the learned Advocates of the parties on usual undertaking.

KISHORE KUMAR PRASAD, J.

49. I agree.