

STATE OF GUJARAT
v.
GAJANAND M. DALWADI (D) BY L.RS.

DECEMBER 14, 2007

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Service Law—Removal from service—On the charge of forgery of a licence—Punishment held not justified by State Civil Services Tribunal on the ground that delinquent officer forged the licence at the instance of a colleague—Single Judge of High Court setting aside the order of Tribunal—Division Bench of High Court upheld the order of Tribunal—On appeal, held: Interference with the quantum of punishment not justified—Forgery being a misconduct of grave magnitude, if proved, cannot be ignored on surmises and conjectures—Equity in such case has no role to play—Interference with the quantum of punishment ordinarily is not permissible, unless it is held to be wholly disproportionate to the imputation of charges—Equity.

Respondent (deceased delinquent officer) was employed in the department of Grant of Licence in the Regional Transport Office of the appellant-State. At the relevant time, he was serving in the Accounts Department. In the course of an inspection in the Licence Branch, authorities noticed several misconducts including grant of forged licence, committed by the respondent. After disciplinary proceedings, charges were proved against him and his removal from service was directed. Respondent filed an application before Gujarat Civil Services Tribunal. The same was allowed holding that he had issued the licence at the instance of another employee. Writ Petition filed by the State was allowed. In writ appeal, Division Bench of High Court upheld the order of the tribunal, holding that though the delinquent had acted designedly, he might not have understood the nature of work or manner of transacting it. Hence the present appeal.

Allowing the appeal, the Court

A HELD: 1. The Tribunal as also the Division Bench of the High
 Court, misdirected themselves in law, as they posed unto themselves
 wrong questions. Forgery of a licence is a serious charge. It cannot
 B be condoned only because it has been done at the instance of a
 colleague, even if it be so assumed. But in the instant case the
 employee concerned has denied that the licence was issued at his
 C instance. Misconduct, of such a magnitude, when proved, cannot be
 ignored on surmises and conjectures. Equity, in a case of this nature,
 would have no role to play. When a forgery is committed with a view
 to assist a person to make unlawful gain for himself or to cause
 D unlawful loss to another, the matter should be viewed
 seriously. [Paras 8, 9 and 10] [918-B-E]

2. Once, it was held that the delinquent had acted designedly,
 it could not have also been held that he might not have understood
 the nature of work or manner of transacting it, since it was not his
 D function as he had been working in the accounts. Finding of fact
 arrived at by the Enquiry Officer which was accepted by the Single
 Judge of High Court was that the issuance of licence, which it was
 not his job, was itself a misconduct. The Division Bench of the High
 E Court clearly overlooked the fact that it is the positive case of the
 State that the delinquent officer was working in the Licence
 Department prior to his transfer to the Accounts Department and,
 therefore, he knew about the modalities of grant of licence. An
 application for grant of licence must be processed having regard to
 the provisions of the Central Motor Vehicles Rules. Issuance of a
 F forged licence, having regard to Rules 14 and 16 of the Rules, is a
 serious matter, which could not have been ignored on the *ipse dixit*
 of the Tribunal. [Para 12] [918-G-H; 919-A-C]

3. The tribunal not being an appellate authority, its jurisdiction
 was also limited. It could not have ordinarily interfered with the
 G *quantum* of punishment unless it was held to be wholly
 disproportionate to the imputation of charges. If ordinarily in regard
 to the commission of the offence of forgery, an order of dismissal/
 removal is an appropriate punishment, the same could not have been
 sidetracked. [Para 10] [918-E-F]

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[SINHA, J.]

U.P.S.R.T.C. v. Ram Kishan Arora, (2007) 6 SCALE 721; *Ramesh Chandra Sharma v. Punjab National Bank and Anr.*, (2007) 8 SCALE 240 and *UCO Bank and Anr. v. Rajinder Lal Capoor*, [2007] 6 SCC 694, relied on. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2322 of 2006. B

From the final Judgment and Order dated 29.7.2004 of the High Court of Gujarat at Ahmedabad in Letters Patent Appeal No. 593 of 2004 in Special Civil Application No. 6283 of 2000.

Yashank Adhyaru and Hemantika Wahi for the Appellants. C

H.K. Puri for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Gajanand M. Dalwadi, since deceased (delinquent officer) was working in the Regional Transport Office under the Commissioner of Transport in the State of Gujarat. He had been working in the Department for Grant of Licence. At the relevant time, however, he was serving in the Accounts Department as a Summary Clerk. D

2. An inspection was conducted in the Licence Branch of the Regional Transport Office during the period 21.8.1995 to 13.9.1995. E

3. Several misconducts committed by the delinquent officer came to the notice of the authorities. It was found that a forged license was granted to one Narendra Kumar who had met with an accident although at the relevant point of time, he was possessing a valid driving licence. A chargesheet was issued against him. Upon holding a disciplinary proceeding, the enquiry officer submitted a Report on 6.12.1997 stating that the charges against him have been proved. The disciplinary authority directed his removal from service by an Order dated 26.10.1998. Aggrieved by the said Order imposing punishment upon him, he filed an application before the Gujarat Civil Services Tribunal. The said application was allowed holding that misconduct on his part, if any, was committed by him at the request of another clerk; viz. one Dudhrechia. It was further held; F G H

A “15. From the Department, it is submitted that Dudhrechia has denied entrusting the work to appellant but as stated above Dudhrechia would never admit and the submission of appellant gets credence that this is not an after thought in the appeal but it was put to the concerned clerk at the enquiry, at first in point of time.

B 16. Also the order is too harsh. The Disciplinary Authority must given reasons why it is proper to pass such orders. In the Discipline Appeals and Rules providing for major penalties step by step, the punishments are given with a view that penalty must be in consonance with the act complained or charges proved or the mis-conduct of the staff. The appellant is not a chip of dead wood that he must be removed. Also punishment such as harsh as this would also required (sic) to consider rising an employment in the state. Not that we want to protect dishonest or bad people but reasons must be given and satisfaction must be reached that this punishment is proper.”

4. A learned Single Judge of the High Court allowed the Writ Petition filed by the appellant holding that the delinquent had all the opportunities to reply to the chargesheet and take part in the disciplinary proceeding.

E The learned Single Judge held that the decision of the Tribunal resulted in miscarriage of justice warranting the Court’s intervention under the supervisory jurisdiction conferred upon the High Court under Article 227 of the Constitution of India stating;

F “It is evident that on the date when Driver Narendra Kumar met with the accident, he did not possess a valid driving licence. In the circumstances the owner of the vehicle Sugarmal Bherumal, could not have claimed insurance money for the damage caused to the vehicle. With a view to facilitating the insurance claim, the said Sagarmal Bherumal arranged for issuance of a duplicate licence in the name of driver-Narendra Kumar for the period covering the date of the accident. Indisputably, the duplicate licence was issued by the delinquent. Obviously, the duplicate licence was obtained by the owner Sagarmal Bherumal with an intention to defraud the insurance Company. The delinquent played an Important role in this fraudulent scheme by issuing duplicate licence. Indisputably, it

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[SINHA, J.]

was neither the function of the delinquent to issue such licence nor was it his defence that the said licence was issued by him at the request of the concerned Clerk Shri Dudhrejia or any other officer. Such defence was taken by the delinquent at a much later stage in the disciplinary inquiry, though unsuccessfully. A

It is quite possible that apart from the delinquent, there were other persons involved in the aforesaid fraudulent scheme and a further inquiry could have revealed the names of the other persons involved. However, merely because further inquiry was not made, the delinquent cannot be exonerated even though by evidence on record the charge against him has been proved. B
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As to the second charge, there is no denial by the delinquent that he had left certain licence numbers blank while issuing the licence numbers. He has not even explained why such blanks were maintained nor he has denied that the said blanks were maintained with an ulterior intention to issue bogus licence at a later date. In absence of even a bare denial, the charge has rightly been held to be proved by the disciplinary authority. The fact that no licence was issued in the said numbers at any point of time thereafter is of no consequence. D
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Even the third charge has been proved by the statement of the concerned persons i.e. Shri B.K. Chauhan and Shri N.P. Ptnei. It should also be noted that even in answer to the report of the inquiry officer, the delinquent has not made out any case based on the evidence on record. Even the said reply is evasive.” F

5. The Division Bench of the High Court, however, on an appeal preferred by the delinquent officer, allowed the said appeal holding;

“Yes, the deceased Gajanand Dalwadi should have been more careful while preparing the duplicate licence, *he may have acted designedly*. After all, he may not have understood the nature of work and manner of transacting it since it was not his function since he was working in the accounts. Therefore, the conclusions drawn by the Tribunal were justified and there could be no reason to upturn them.” G
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A (emphasis supplied)

6. Mr. Yashank Adhyaru, the learned senior counsel appearing on behalf of the appellant submitted that the approach of the Division Bench of the High Court is wholly erroneous and thus is liable to be set aside.

B 7. Mr. H.K. Puri, learned counsel appearing on behalf of the respondent, on the other hand, would support the judgment.

C 8. Forgery of a licence is a serious charge. It cannot be condoned only because it has been done at the instance of a colleague, even if it be so assumed. As noticed hereinbefore, even the employee concerned has denied that the licence was issued at his instance.

D 9. The learned Tribunal as also the Division Bench of the High Court, with respect, misdirected themselves in law, as they posed unto themselves wrong questions. Misconduct, of such a magnitude, when proved, cannot be ignored on surmises and conjectures. Equity, in a case of this nature, would have no role to play.

E 10. When a forgery is committed with a view to assist a person to make unlawful gain for himself or to cause unlawful loss to another, the matter should be viewed seriously. The Tribunal is not an appellate authority, its jurisdiction was also limited. It could not have ordinarily interfered with the *quantum* of punishment unless it was held to be wholly disproportionate to the imputation of charges. If ordinarily in regard to the commission of the offence of forgery, an Order of dismissal/removal is an appropriate punishment; as has been held in a large number of case, F the same could not have been sidetracked. See *U.P.S.R.T.C. v. Ram Kishan Arora*, (2007) 6 SCALE 721, *Ramesh Chandra Sharma v. Punjab National Bank and Anr.*, (2007) 8 SCALE240 and *UCO Bank and Anr. v. Rajinder Lal Capoor*, (2007) 6 SCC 694.

G 11. The approach of the learned Single Judge, in our opinion was the correct one.

H 12. Once, it was held that the delinquent had acted designedly, it could not have also been held that he might not have understood the nature of work or manner of transacting it, since it was not his function as he

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had been working in the accounts. Finding of fact arrived at by the Enquiry Officer which was accepted by the learned Single Judge, was that the issuance of licence, which it was not his job, was itself a misconduct. The Division Bench of the High Court clearly overlooked the fact that it is the positive case of the State that the delinquent officer was working in the Licence Department prior to his transfer to the Accounts Department and, therefore, he knew about the modalities of grant of licence. An application for grant of licence must be processed having regard to the provisions of the Central Motor Vehicles Rules. An application in Form 4 is required to be filed as envisaged under Rule 14. Only, upon proper scrutiny thereof, a licence could be granted in Form 6 as envisaged under Rule 16 of the Rules. Issuance of a forged licence, having regard to the said provisions, is a serious matter, which could not have been ignored on the *ipse dixit* of the Tribunal.

13. For the reasons aforementioned, the impugned Judgment cannot be sustained which is set aside accordingly. Appeal is allowed. No costs.

K.K.T.

Appeal allowed.