

\* **THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Writ Petition (Civil) No.19525/2005**

**Date of Decision : 05.5.2009**

**RAMU**

..... Petitioner  
Through : Mr.C.K.Sharma,  
Advocate.

Versus

**STATE OF DELHI (NCT) & ORS.**

..... Respondents  
Through : Mr.Arun Sakhija,  
Advocate for respondent Nos.2  
and 3.

**CORAM :  
HON'BLE MR. JUSTICE V.K. SHALI**

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not ?                               | YES |
| 3. | Whether the judgment should be reported in the Digest ?               | YES |

**V.K. SHALI, J. (Oral)**

1. The petitioner in the instant writ petition has challenged the order dated 05.3.2003 and the award dated 13.10.2003 passed by the learned Labour Court -I in ID No.481/1991 in case titled M/s Cypher Pharma Vs. Its Workman Sh.Ramu.

2. By virtue of the first order dated 5<sup>th</sup> March, 2003, the learned Labour Court had arrived at a finding of fact that the domestic enquiry which was conducted against the petitioner /workman on account of his alleged misconduct was fair and proper and it did not warrant any interference. The allegations

of the petitioner of bias or the fact that his explanation was not considered and was dismissed as being without any merit, were not accepted. The record of the Inquiry Officer showed that the explanation of the petitioner/workman was duly considered and the inquiry was fair and proper.

3. By virtue of the award dated 13.10.2003, the learned Labour Court had answered the reference made to it regarding the termination of his services as being illegal or unjustified by deciding the said reference against the petitioner. The learned Labour Court after examining the evidence and the stand of the respective sides came to a conclusion that the punishment of dismissal which was imposed on the petitioner was perfectly valid and legal.

4. The petitioner feeling aggrieved by the impugned order dated 05.3.2003 and the award dated 13.10.2003 has preferred the present writ petition.

5. I have heard the learned counsel for the parties and perused the record.

6. The main contention of the learned counsel for the petitioner is that the enquiry against the petitioner has not been fair and proper and accordingly, the order which has been handed down by the learned Labour Court on 05.3.2003 is not sustainable in the eyes of law.

7. This contention of the learned counsel for the petitioner was contested by the learned counsel for the respondent.

8. I do not agree with the submission of the learned counsel for the petitioner that the enquiry against the petitioner /workman was not fair and proper. The question as to whether the enquiry against the delinquent is fair and proper is essentially a question of fact which is to be adjudicated by the learned Labour Court. The learned Labour Court in the instant case has examined the record and come to a finding of fact that the enquiry was just fair and proper. Merely because this Court is a superior Court it cannot sit as a Court of appeal and arrive at a finding other than one which has been recorded by the learned Labour Court and substitute its own view for the view taken by the Labour Court. I do not find any merit in the submission made by counsel for the petitioner.

9. The second submission made by the learned counsel for the petitioner is to the effect that the punishment of dismissal which has been imposed on the petitioner by the respondent is grossly disproportionate to his proved misconduct. It was contended that the proved misconduct against the petitioner was using the uncultured language that ought not to be a ground for dismissal from services. It was also contended that the petitioner had rendered service of 23 years with the respondent /management which was totally unblemished and free from any stigma and therefore, this ought to have been taken into consideration while imposing the punishment on the petitioner/workman. The learned counsel for the petitioner has also placed reliance in order to buttress his arguments that the

punishment of dismissal imposed on the petitioner is disproportionate on the judgment on the Apex Court in case titled ***Rama Kant Misra Vs. State of Uttar Pradesh & Ors.*** (1982) 3 SCC 346, wherein the facts of the said case the use of the words indiscreet, indecent or threatening language to superior only once in the course of long unblemished service was held to be disproportionately excessive and set aside.

10. I have considered the submission made by the learned counsel for the petitioner and have gone through the said judgment. No doubt in the facts of the said case, the Apex Court has come to a conclusion that the use of the indiscreet and indecent language was not sufficient to result in dismissal. The punishment of dismissal was considered to be disproportionate but that is a judgment passed in 1982. In a recent past, there has been a trend of the Supreme Court in upholding even the order of removal and dismissal in cases where there is use of abusive and filthy language. The Court had observed that the use of such language against the superior Officer not only disturbs the discipline in the Organization but also undermines the authority of the superior officer. Reliance in this regard is placed on ***Ram Kishan Vs. Union of India*** 1996 AIR (SC) 255 and ***Mahindra & Mahindra Ltd. Vs. N.B.Narawade*** 2005 AIR (SC) 1993.

11. So far as the case in hand is concerned, the petitioner has been admittedly visited with the punishment of dismissal for using indiscreet, indecent, threatening or uncultured language.

This use of indiscreet and indecent language against the superior Officers disturbs the discipline of the Organization and if not curbed with a heavy hand is likely to give impetus to persons with such a proclivity to indulge in acts of such misconduct with impunity.

12. The learned Labour Court has also examined the question of quantum of punishment which has been imposed on the petitioner and found it not to be disproportionate. The learned Labour Court has placed reliance in this regard on the number of judgments, which are – ***Punjab Dairy Development Corp. Ltd. & Anr. Vs. Kala Singh*** AIR 1997 SC 3661 and ***Sri Gopalakrishna Mills Pvt. Ltd. Vs. Labour Court and Anr.*** AIR I JLL 425 1980 High Court, ***Madras as well as M/s Lastor Electric and Trading Co. Vs. Baldev Lal*** AIR 1975 SC 1892.

13. Once the question of quantum of punishment has been subjected to the judicial scrutiny by the learned Labour Court below and it has arrived at a finding of fact that the punishment of dismissal is not disproportionate. This Court cannot sit as a Court of Appeal and re-appreciate the submissions afresh and in the light of the facts then come to a finding contrary to what the Labour Court has held. Even assuming such a finding is arrived at by this Court, it cannot substitute its own views in place of the views of the Labour Court. This Court in exercise of power of judicial review can interfere with the quantum of punishment when it is *ex facie* grossly disproportionate to the proved misconduct. That is not the case in hand.

14. Apart from this, the petitioner has not been able to show any violation of principles of natural justice and illegality and perversity and violation of any rule or regulation which would warrant interference with the impugned judgment.

15. In the light of the aforesaid discussion, I am of the considered opinion that there is no merit in the present petition and accordingly it deserves to be dismissed.

16. At this stage, the counsel for the petitioner contended that even the cheque for a sum of Rs.2,818/- was sent by the respondent/Management as a notice period, this cheque has not been encashed and was sent back to the respondent. It is stated that the said amount may be released to the petitioner. The respondents are directed to release the amount of the last drawn wages of three month's salary at the time when he left the services along with interest @ 5% per annum on the aforesaid amount till date. It is directed that the aforesaid amount shall be released to the petitioner /workman within six weeks from today.

No order as to costs.

**V.K. SHALI, J.**

**MAY 05, 2009**

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