
(2012) 06 CHH CK 0036
In the Chhattisgarh High Court
Case No : Writ Appeal No. 220 of 2011

Bhagat Singh Yadav

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 13-06-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Penal Code, 1860 (IPC) — Section 323, 325, 34, 504

Citation : (2012) 3 CG.L.R.W. 339 : (2012) 4 MPHT 64

Hon'ble Judges : I.M. Quddusi, J;Gulam Minhajuddin, J

Bench : Full Bench

Advocate : Vinod Deshmukh, for the Appellant; Vinay Harit, Dy. Advocate General for the State, for the Respondent

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—This writ appeal has been filed against the order dated 1-4-2011 passed by learned Single Judge in W.P.S. No. 1504/2008. Brief facts of the case are that the writ appellant was appointed as Constable in the 22nd Battalion of Chhattisgarh Armed Forces but removed from service vide order dated 27-4-1998 by the Commandant, 22nd Battalion, Mana, Raipur on the ground that he had concealed the material fact in his Character Verification Column No. 12 that Criminal Case No. 61/1997 u/s 325 of the IPC was registered against him, against which he filed Writ Petition No. 13521/2003, which was disposed of on 20th July, 2005 with the observation having regard to the contention of learned Counsel for the writ appellant that the writ appellant was not even aware about the pendency of the criminal case against him nor he was arrested by the Police till the date when he submitted Character Verification Form which was submitted on 14-11-1997. The writ appellant was informed about the fact when the charge-sheet was submitted by issuing summons to him. Further, the Court observed that on perusal of Annexure R-3, dated 29-12-1998, it is gathered that the departmental appeal of the present writ appellant is dismissed without assigning any reason much less than any cogent reason. The Additional

Director General of Police (ADGP) while deciding the departmental appeal was enjoying quasi-judicial power and if that is the position, the view of that Court was that he was duty bound to assign cogent reasons while deciding the same and, therefore, the order passed in departmental appeal was set aside with a direction to re-decide the same considering the case of the present writ appellant sympathetically for the simple reason that the charge-sheet for the offence punishable under Sections 323/34, 325/34 and 504, IPC was submitted in which the petitioner was acquitted. The stand of the petitioner may also be taken into consideration that on the date when the petitioner submitted Character Certificate Verification Form, he was not aware of the filing of the charge-sheet. While deciding the departmental appeal all these facts may be considered and necessary order may be passed. Thereafter, the departmental appeal was allowed vide order dated 24-8-2006 by the Additional Director General of Police, Raipur but he was denied the salary on the basis of "No Work No Pay" while reinstating him in service.

2. Against the denial of arrears of salary/wages, the writ appellant preferred a writ petition before the learned Single Judge, which was registered as W.P.S. No. 1504/2008 but the same was dismissed vide order dated 1-4-2011, hence the instant writ appeal.

3. Before proceeding further, it is to be noticed that the writ appellant was removed from service on the ground that he had concealed the fact that a criminal case was registered against him, in the Character Verification Form. The High Court of Madhya Pradesh had already observed that he had no knowledge about the registration of the case against him when he filled up the Character Verification Form but the fact remains that no Departmental Enquiry was conducted before issuing the order of removal from service.

4. Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 provides the penalties as well as the procedure for imposing penalties. Rule 10(a) thereof is relevant, which is quoted as under:-

10. Penalties.- The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant namely:-

Minor Penalties-

(i) *** **

(ii) *** **

(iii) *** **

Major Penalties-

*** **

*** **

(viii) Removal from service which shall not be a disqualification for future

employment under the Government.

5. Rule 14 (1) is also relevant, which is as under:-

14. Procedure for imposing major penalties.- (1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 10 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

6. Therefore, no order imposing any penalties specified in clauses (v) to (ix) of Rule 10 could be imposed without holding any enquiry.

7. The writ appellant cannot be said to be at fault as he was willing and ready to perform his duties but it was the authority concerned who did not allow him due to the order of removal passed against him. Therefore, we have to see as to what is the position to deny his arrears of salary/wages in such circumstances.

8. In the case of Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, , Hon"ble the Apex Court has considered the cases right from Parshotam Lal Dhingra Vs. Union of India (UOI), , The State of Orissa and Another Vs. Ram Narayan Das, Samsheer Singh Vs. State of Punjab and Another, , Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, State of Punjab and Another Vs. Shri Sukh Raj Bahadur, and A.G. Benjamin Vs. Union of India, (1967) 1 LLJ 718 (SC). It has been held in Dipti Prakash Banerjee's case (supra), that the finding arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular Departmental Enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. If however, enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would be only a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.

9. Learned Deputy Advocate General appearing for the State has relied upon case law laid down by Hon"ble Apex Court in the case of State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, , in which it has been held that a temporary Government servant has no right to hold the post and his services can be terminated at any time in accordance with relevant Service Rules and terms of contract of service.

10. The terms of service rules are already mentioned in the C.G. Civil Services (Classification, Control & Appeal) Rules, 1966 apart from other rules which have already been discussed above and, therefore, removal from service of a person

without holding an enquiry is bad according to those rules. In view of the proposition, the law laid down in Kaushal Kishore Shukla (supra), is distinguishable on facts of the instant case. The order of removal from service was not stigmatic in nature.

11. Learned Deputy Advocate General further submitted that the services of the writ appellant was governed by General Conditions of Services Rules, 1961. Of course, his services were governed by those rules but while removing from service, the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 could not have been ignored.

12. Even in-clauses (1) and (2) of Article 311, it has been mentioned that no person who is a member of a civil service of the Union or an All India Service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. No such person, as aforesaid, shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

13. Learned Deputy Advocate General has further relied upon the case of Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, , in which Hon"ble the Apex Court has held in Paragraphs 10 and 21 as under:-

10. Since "Dhingra is the Magna Carta of the Indian Civil servant, although it has spawned diverse judicial trends, difficult to be disciplined into one single, simple, practical formula applicable to termination of probation of freshers and of the services of temporary employees, we have though it best to refer to the facts of Dhingra case to understand what exactly was meant when the Court said: (AIR p. 49, 82)

It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the including factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla, C.J., has said in Shrinivas Ganesh Vs. Union of India, , wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But, even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must

be complied with.

20. As observed by Alagiriswami, J., in *S.P. Vasudeva Vs. State of Haryana*, SCC, at p. 240:- (SCC Para 5)

After all, no Government servant, a probationer or temporary will be discharged or reverted, arbitrarily, without any rhyme or reason. If the reason is to be fathomed in all cases of discharges or revision, it will be difficult to distinguish as to which action is discharge or reversion simpliciter and which is by way of punishment. The whole position in law is rather confusing.

14. Unfortunately, it is a case where the writ appellant was removed from service without conducting Departmental Enquiry on the ground which was not the cause for termination. Apparently, the ground has been mentioned regarding misconduct as mentioned above, therefore, the proposition of law of the case of *Pavendra Narayan Verma* (supra), is also not applicable in the instant case.

15. With regard to arrears of salary, Hon"ble the Apex Court in the case of *The Commissioner, Karnataka Housing Board Vs. C. Muddaiah*, , has held that even in absence of statutory provision, normal rule is "no work no pay". In appropriate cases, however, a Court of law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the person was willing to work but he was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the authority to grant him all benefits considering "as if he had worked". It therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a Court of law and if such directions are issued by a Court, the authority can ignore them even if they had been finally confirmed by the Apex Court of the country, (as has been done in that case).

16. Further, Hon"ble the Apex Court in the case of *Somesh Tiwari Vs. Union of India (UOI) and Others*, has held in Paragraphs 22, 23 and 24 which are reproduced as under:-

22. The High Court while exercising its jurisdiction under Article 226 of the Constitution of India must consider the facts of each case. Mechanical application of the normal rule "no work no pay" may in a case of this nature, be found to be wholly unjust. No absolute proposition of law in this behalf can be laid down.

23. This Court in *Karnataka Housing Board Vs. C. Muddaiah*, laid down the law thus:- (SCC pp. 700-01, Paras 33, 34).

33. The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party the Court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may however, be cases where on the facts and in the circumstances, the Court may issue necessary directions in the larger interest of justice keeping in view the principles of justice equity and good conscience. Take

a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a Court of law. The Court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The Court, in the circumstances, directs the authority to extend all benefits which he would have obtained had he not been illegally deprived of them. It is open to the authorities in such case to urge that as he had not worked (but held to be illegally deprived), he would not be granted benefits ? Upholding of such a plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged.

34. We are conscious and mindful that even in absence of statutory provision, normal rule is "no work no pay". In appropriate cases, however, a Court of law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in a given case, may hold that the person was willing to work but he was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the authority to grant him all benefits considering "as if he had worked". It therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a Court of law and if such directions are issued by a Court, the authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant Board, therefore, has no substance and must be rejected.

(Emphasis in original)

24. We, keeping in view the fact, that on the one hand the appellant did not join his posting at Ahmedabad, although no order of stay was passed and on the other wholly unwarranted and reprehensible conduct on the part of the authorities of the respondents, are of the opinion that interest of justice would be subserved if during the period from 28-12-2005 till his joining his post at Bhopal, the appellant is treated to be on leave and the respondents are directed to pass an appropriate order invoking the leave rules applicable in this behalf. It is ordered accordingly.

17. In the case of Union of India Vs. K.V. Jankiraman, etc. etc., , Hon"ble the Apex Court has laid down in Paragraph 25 that the normal rule of "no work no pay" is not applicable to cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. The same is reproduced as under:-

25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept

away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17 (1) will also be inapplicable to such cases.

18. Therefore, we allow this appeal and set aside the impugned order passed by learned Single Judge as well as the part of the impugned order by which the writ appellant has been denied the arrears of salary from the date of his removal from service upto the date of his reinstatement with a direction that he shall be entitled to get all arrears of salary and shall be treated for the period as spent on duty but subject to condition that he was not gainfully employed elsewhere during that period. No order as to costs.