
(2000) 02 AP CK 0039
In the Andhra Pradesh High Court
Case No : WA No. 2059 of 1999

Ch. Sarayya

APPELLANT

Vs

Nizam Sugars Ltd., Hyd. and another

RESPONDENT

Date of Decision : 02-02-2000

Acts Referred:

Citation : (2000) 2 ALD 805 : (2000) 3 ALT 150 : (2000) 2 APLJ 451 : (2000) 85 FLR 893 : (2000) 2 LLJ 554

Hon'ble Judges : M.S. Liberhan, C.J; I. Venkatanarayana, J

Bench : Division Bench

Advocate : Mr. Nooty Rama Mohana Rao, for the Appellant; Mr. N. Vasudeva Reddy, SC for Nizam Sugars, Ltd., for the Respondent

Judgement

M.S. Liberhan, CJ

1. Imputing the judgment dated 22-9-1999 passed by a learned single Judge of this Court in Writ Petition No.19085 of 1999, the present writ appeal is filed.
2. The undisputed factual matrix in this writ appeal is that the respondents have removed the appellant herein from service for certain allegations of misconduct committed by him during his tenure of service. The appellant challenged the order of removal in Writ Petition No.8309 of 1994. By order dated 6-8-1997, the learned single Judge after appreciating various contentions advanced by the learned Counsel for the parties, allowed the writ petition in part and remitted the matter to the Disciplinary Authority (Sub-Committee of Directors) to consider the Enquiry Officer's Report and the explanation/comments of the writ petitioner in relation thereto and to pass appropriate orders thereon based on the material already on record after affording an opportunity of being heard to the writ petitioner. The impugned order of the Disciplinary Authority dated 1-12-1993 removing the petitioner from service and the consequential office order dated 30-12-1993 as also the order of the appellate authority (Board of Directors) dated 2-9-1994 affirming the order of the Disciplinary Authority were set aside by the learned single Judge. Till final orders are passed by the Disciplinary

Authority, status quo, as on the date of the order with regard to continuance of the writ petitioner in service was ordered to continue. It would be appropriate to extract in verbatim the operative portion of the order which reads thus:"

"....(a) The impugned order of the Disciplinary Authority dated 1-12-1993 removing the petitioner from service and the consequential office order dated 30-12-1993 as also the order of the appellate authority (Board of Directors) dated 2-9-1994 affirming the order of the Disciplinary Authority be and hereby set aside.

(b) The matter is remitted to the Disciplinary Authority (Sub-Committee of Directors) to consider the Enquiry Officer's Report and the explanation (comments) of the petitioner in relation thereto and to pass appropriate orders thereon based on the material already on record after affording an opportunity of being heard to the petitioner.

(c) Till final orders are passed by the Disciplinary Authority, the status quo as on today with regard to continuance of the petitioner in service shall continue.....".

3. In Writ Appeal No.942 of 1997 against the order dated 6-8-1997 in Writ Petition No.8309 of 1994 the Division Bench observed:

".....no interference in the impugned judgment is required insofar as the view expressed by the learned single Judge on the question - whether the Vice-Chairman and Managing Director is the disciplinary authority for all penalties including those for imposition of which penalties the Committee of Directors alone is competent, as well as on the question - whether the Committee of Directors, which has finally decided to impose the penalty of removal from service under Rule 4.7 of the Nizam Sugar Factory Limited Employees Discipline and Appeal Rules, is competent."

The Bench was of the further view that:

"When the rule aforementioned provides for imposition of penalty by the Board, action by the Committee of two members of the Board, when the Board consists of as many as seven members, in ordering for imposition of penalty of removal from service is bad in law and thus the matter, as ordered to be remitted to the Board for considering the report of the Enquiry Officer as well as comments/ explanations, if any, of the appellant in respect of the findings of the Enquiry Officer, is a proper and valid order."

4. On the question as to whether the appellant, who was permitted to retire from service during the pendency of the enquiry, could be punished, it was further observed:

"Remand, however, on the matter shall afford to the appellant opportunity to raise all contentions including the contentious issue whether the appellant, who was permitted to retire from service during the pendency of the enquiry, could be punished, unless there is any provision under which, even after retirement,

disciplinary proceedings could be continued post-retirement and decision could be taken to impose a major penalty. In other words, when the officer had already retired and contract of service had ceased to exist, could there be any further action for determining the said contract of service once again by way of penalty. We are satisfied that interference in the impugned order for the said reason is not necessary."

5. Reading of the judgment of the Division Bench in its pith and substance in the context of judgment of the learned single Judge dated 6-8-1997 in Writ Petition No.8309 of 1994 which was affirmed in the appeal, it is categorically inferable that the matter was remitted to the disciplinary authority to determine the question afresh after taking into consideration the explanation of the delinquent. No punishment was upheld by the learned single Judge to be continued by any authority. Though using astray phraseology at one or two places "the appellate authority", gives a confusing superficial impression that the case was remitted to the appellate authority or the findings of the disciplinary authority being affirmed, the same phraseology was not used in the latter part of the judgment though the learned single Judge specifically set aside the order of the disciplinary authority and remanded the case for fresh decision. Thus, in our considered view, one word or sentence in the judgment of the Bench cannot be read in isolation. Judgment has to be read as a whole. Words or phrases or sentence has to be read in the context, facts, text, and tenor of judgment resulting in passing of the operative order. Reading of the judgment carefully as a whole leaves us in no doubt that the matter was remitted by the teamed single Judge to the disciplinary authority that is the Board. The word "Board" was used may be loosely, in the context of the text in the judgment at relevant places which stands for disciplinary authority as well as the appellate authority too. As the judgment of the learned single Judge was upheld by the Division Bench and appeal therefrom was dismissed with no modification the matter was remitted to the Principal Disciplinary Authority who imposed the punishment. At the cost of repetition it may be observed that the punishment was set aside by the learned single Judge. There was no punishment that was surviving when the Principal Disciplinary Authority was directed to consider the case of the appellant afresh. The question of appellant having retired in the mean time and the consequences flowing therefrom were left open to be decided by the disciplinary authority inspite of retirement having taken place during the pendency of Us at the time of dismissal of appeal and affirmation of learned single Judge's order.

6. After remittal of the case of the appellant, he was removed from service by the appellate authority alone i.e., without there being any order of disciplinary authority. In the Writ Petition No.19085 of 1999, order of removal was again impugned.

7. The learned single Judge by his order dated 22nd September, 1999, while observing that the evidence cannot be reappreciated, etc., came to the conclusion that the matter be remitted to the Board, impugned order cannot be

allowed to be assailed on the ground that the matter was not decided by the disciplinary authority since there is a specific direction by the Bench in the order dated 9th August, 1997, in Writ Appeal No.942 of 1997 to the effect that the matter should be decided by the Board which is also an appellate authority. Consequently, the writ petition was dismissed.

8. We have heard the learned Counsel for the parties. Learned Counsel for the appellant contends that the appellant, in the course of events, having retired, the relationship of master and servant came to an end and that there are no provisions in the relevant Rules to impose punishment of removal from service of an employee after his retirement. There was no specific order that was in existence keeping the appellant in service for the purpose of holding disciplinary proceedings after the case was remitted to the disciplinary authority. He relied upon the law declared by the Supreme Court reported in *State Bank of India Vs. A.N. Gupta and Others*, , in support of the contention that the appellant cannot be removed from service when he is allowed to retire. No other point has been urged.

9. The contentions of the learned Counsel for the parties revolves round the question whether the case was remitted to the principal disciplinary authority to decide afresh or to the appellate authority to decide the appeal while sustaining the order of the principal disciplinary authority against which the appeal was preferred by the appellant; whether on the date of the decision in the alleged appeal by the appellate authority the order of the disciplinary authority was merged and was set aside in Writ Petition No.8309 of 1994 decided on 6-8-1997.

10. In our considered view, as already observed by us earlier, reading of the judgment of the learned single Judge as well as the Division Bench, we are in no doubt that no other inference is possible except to accept the conclusion that the case was remitted to the Principal Disciplinary Authority after setting aside the punishment of removal. Since the order of removal was set aside and there no appeal survived, the question of pendency of the appeal before the appellate authority did not arise. In the earlier part of the judgment, we have already extracted in verbatim the order of the learned single Judge affirmed by the Division Bench, directing the disciplinary authority to decide the case afresh. Thus, our conclusion that the matter was remitted to the disciplinary authority finds support from the same. Though, at one or two places reference has been made to the appellate authority, the terminology used or expressed loosely by the word "Board" was not meant for the purpose of Board being appellate authority, though it involved Board's authority both for the purposes of Principal Disciplinary Authority as well as the appellate authority. Reading both the judgments i.e., learned single Judge's and in appeal, in pith and substance as already observed, we are of the opinion that the punishment of removal was set aside and the matter was remitted to the disciplinary authority to decide it afresh after taking into consideration the explanation, etc. In the meanwhile, the circumstance of the appellant having attained the age of superannuation

intervened, the effect of which was left open to be considered by the disciplinary authority as observed by Division Bench, referred in earlier part of the judgment. The appellant ceased to be an employee of the respondent during the pendency of the disciplinary proceedings as there is no specific or implied order either by the disciplinary authority or by the employer keeping the delinquent in service for the purposes of disciplinary proceeding. Nothing has been pointed out to us by the learned Counsel for the respondent showing that there are any statutory Rules or Regulations to the effect that even after the superannuation, the disciplinary proceedings for awarding a punishment of removal from service can continue or relationship of master and servant continues solely on the ground that they were initiated earlier to age of superannuation. Pendency of disciplinary proceeding does neither eclipse the age of superannuation nor stop the retirement which is a natural corollary thereby bring to an end one's service and relationship of master and servant.

11. Thus, in the totality of the facts and circumstances of the case, we are of the considered view that the delinquent having already retired, relationship of master and servant between him and the employer has come to an end. No statutory or regulatory provisions either in the standing orders or in the Rules have been brought to our notice showing that for removal of a retiree from service after his retirement, the relationship of master and servant is kept alive. Retirement brings about the cease of relationship of master and servant automatically by efflux of time, on attaining the age of superannuation. No penalty of removal from service can be imposed after retirement unless is statutorily provided for. Thus, the penalty of removal of the appellant from service cannot be sustained.

12. Having regard to the observations made above, the appeal is allowed in the above terms. The order of the learned single Judge is set aside. The respondent is directed to settle the retiral benefits of the appellant within 90 days. However, it is made clear that the respondent will be at liberty to recover loss, if any, caused by the appellant during his service from his retiral benefits in accordance with the Rules. There shall be no order as to costs.