
(2000) 04 DEL CK 0022

In the Delhi High Court

Case No : Civil Writ Petition No. 4883 of 1999

Deputy Commissioner of Police

APPELLANT

Vs

Ex. Constable Karan Singh and Another

RESPONDENT

Date of Decision : 18-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 5 AD 583 : (2000) 53 DRJ 627

Hon'ble Judges : R.S. Sodhi, J;A.D. Singh, J

Bench : Division Bench

Advocate : Mr. V.K. Shali and Mr. Anil Grover, for the Appellant; Mr. N.S. Dalal, for the Respondent

Judgement

R.S. Sodhi, J.—Petitioner is aggrieved of the judgment and order of the Central Administrative Tribunal, Principal Bench, New Delhi, (for short "the Tribunal") in O.A. No. 2117 of 1998 dated 8th April, 1999, whereby the Tribunal, following the judgment of Supreme Court in State of Punjab and Others Vs. Bakshish Singh, 1998 (7) J.T. 142 quashed the order of the disciplinary authority, as upheld by the appellate authority and the revisional authority, with the direction to reinstate respondent No. 1 forthwith within 2 months from the date of receipt of copy of the order as also pay 50 per cent of the permissible pay and allowances for intervening period.

2. Brief facts of the case are that respondent No. 1, a constable in Delhi Police was served with the charge-sheet to the effect that he absented himself from duty without seeking prior permission. A departmental inquiry was initiated which found him guilty of the charges whereupon the disciplinary authority, by order dated 24th September, 1990, directed removal of respondent No. 1 from service. It further directed that, "the absence period from 27.1.95 to 12.2.95 and 14.2.95 to the date of his removal from service is sanctioned as leave without pay". Aggrieved of the order of the disciplinary authority respondent No. 1 filed an appeal before the Additional Commissioner of Police, who by his order dated

16th July, 1997 dismissed the same. This order was then taken up in revision by way of petition in which respondent No.1 took up the plea that once the period of absence was regularised, no penalty could be imposed. This plea did not find favor with the revisional authority who rejected the revision by his order dated 6th August, 1998. Aggrieved of the order of dismissal of the revision petition, respondent No. 1 moved the Tribunal by way of an Original Application No. 2117 of 1998. The Tribunal by its order dated 8th April, 1999 observed that the only point argued before it related to regularisation of the period of absence and hence relying on the judgment in State of Punjab and others Vs. Bakshish Singh (supra) quashed the order under challenge while directing reinstatement with 50 per cent back wages. The petitioner being aggrieved of the order of the Tribunal dated 8th April, 1999 has challenged the same in this writ petition under Article 226 of the Constitution.

3. It is contented before us by the petitioner that the in hand is covered by the judgment of the Supreme Court in State of M. P. Vs. Harihar Gopal 1969 SLR 274 and that the Tribunal has wrongly based its decision on the case of State of Punjab & Ors. Vs. Bakshish Singh. It is contended that the regularisation of period of absence to "leave without pay" is merely by way of maintaining a correct record of service and is not intended to nullify the earlier order of dismissal.

4. In Harihar Gopal's case (supra) the Supreme Court, in no uncertain terms, held that :-

"The order granting leave was made after the order terminating employment and it was made only for the purpose of maintaining of correct record of the duration of service and adjustments of leave due to the respondent and for regularising his absence from duty. Our attention has not been invited to any rules governing the respondent's service conditions under which an order regularising the absence from duty subsequent to termination of employment has the effect of invalidating the termination" .

The Court further held:

"We are unable to hold that the authority after termination the employment of the respondent intended to pass an order invalidating the earlier order by sanctioning leave so that the respondent was to be deemed not to have remained absent from duty without leave duly granted ".

5. This judgment is by three Hon'ble Judges of the Supreme Court in contrast to the decision of two Judge Bench of the Supreme Court in Bakshish Singh's case (supra) and, Therefore, learned counsel for the petitioner submitted ought to be followed. As against this, learned counsel for respondent No. 1 submitted that the Tribunal was right in relying upon the judgment of the Supreme Court in State of Punjab & Ors. Vs. Bakshish Singh (supra) as it overruled its earlier judgment in Harihar Gopal's case. We have noted the submissions of the learned counsel and have carefully gone through the precedents cited.

6. Bakshish Singh's case arose from a suit filed before the Sub-Judge, Jalandhar, for a declaration to the effect that the order dated 11th January, 1990 passed by the Inspector General of Police, PAP, Jalandhar Cantt, by virtue of which his revision petition was rejected and the order dated 6th January, 1989 passed by the DIG PAP (Admn.) Jalandhar Cantt., and the order dated 1. 6. 1988 passed by the Commandant, 80th Bn. PAP, Jalandhar Cantt., dismissing him from service were confirmed, were illegal.

7. The suit was decreed and, in appeal, the Additional District Judge, Jalandhar, by his order dated 15th January, 1996 took note of the various judgments as also the judgment of the Supreme Court in Harihar Gopal's case (supra). The decision of the Supreme Court in Harihar Gopal's case was distinguished by the Additional District Judge on the ground that the order regularising leave without pay was made after terminating the employment and that it was made only for the purpose of maintaining correct record of duration of service. It needs to be highlighted that the order granting leave was made subsequent to the order terminating the employment. Both the orders were passed separately and not rolled into one. In other words it was not a case of a composite order. In Bakshish Singh's case, however, the District Judge while concurring with the view of the trial court found on the facts of that case that the absence of the official was regularised by the administrative authority and the charge of absence from duty did not survive. In spite of having arrived at the conclusion that the charge of absence from duty did not survive, the District Judge proceeded to consider the question whether or not absence of the official from duty was a misconduct of gravest kind so as to warrant the maximum penalty of dismissal from service or was it a bare misconduct for which lesser punishment would be appropriate. The District Judge having found that it was not a case of misconduct of gravest kind remanded the case to the punishing authority for passing a fresh order of punishment. Aggrieved by the order of the first appellate court, the State of Punjab moved the High Court by way of a Regular Second Appeal No. 1555 of 1996. The High Court, by its judgment and order dated 21st August, 1996, dismissed the Regular Second Appeal of the State of Punjab without a speaking order. This led the State of Punjab to move the Supreme Court under Article 136 of the Constitution which came to be disposed of by the Supreme Court as Appeal No. 4212 of 1997. The Supreme Court, taking note of the findings of the fact arrived at by the trial court and the lower appellate court, namely, that the charge of absence from duty did not survive, went on to hold that the lower appellate court was not right in remanding the matter to the punishing authority. The Supreme Court also noted that the trial court had returned a finding of fact that proper opportunity of hearing was not given and signatures were obtained under duress during the departmental proceedings which findings were neither adverted to nor disputed by the first appellate court. It appears to us that in view of the aforesaid findings fact the Supreme Court held that there was no occasion to remand the matter to the punishing authority for passing a fresh order of punishment. In this regard the Supreme Court

observed as follows:-

"It will thus be seen that the trial court as also the lower appellate court both had recorded the findings that the period of absence from duty having been regularised and covered into leave without pay, the charge of absence from duty did not survive. Once it was found as a fact that the charge of unauthorised absence from duty did not survive, we fail to appreciate how the lower appellate court could remand the matter back to the punishing authority for passing a fresh order of punishment. In the face of these findings especially the finding of the trial court that proper opportunity of hearing was not given and the signatures of the respondent were obtained under duress during the departmental proceedings which have not been set aside by lower appellate court, we are of the view that there was no occasion to remand the case back to the punishing authority merely for passing a fresh order of punishment."

8. Therefore, it is clear that in Bakshish Singh's case (supra) the Supreme Court was dealing with the question whether it was open to the first appellate court to remit the matter to the punishing authority in view of findings of fact arrived at by the trial court and not disturbed by the appellate court. The Supreme Court was not dealing with a proposition of law already settled by Harihar Gopal's case and has not overruled the same. To say the least the Supreme Court could not in Bakshish Singh's case be understood to have done so without adverting to its earlier decision in Harihar Gopal's case. On a further argument raised by the State of Punjab before the Supreme Court in Bakshish Singh's case that the respondent had not filed any cross appeal and, Therefore, the order of remand passed by the lower appellate court for a fresh order of punishment need not be interfered with, particularly , as that order had been upheld by the High Court which has summarily dismissed the second appeal filed by the State of Punjab and if, Therefore, the Supreme Court intervenes in the matter, even in exercise of its power under Article 142 of the Constitution of India, the same would be without jurisdiction, it held as follows:-

"Applying the above principles to the instant case, it will be noticed that the trial court recorded a categorical finding of fact that a proper opportunity of hearing was not afforded to the respondent in the departmental proceedings and that his signatures on certain papers during those proceedings were obtained under duress, was not controverted as the State of Punjab had led no evidence in defense. The trial court also recorded a finding that unauthorised absence from duty without leave having been regularised by treating the period of absence as "leave without pay", the charge of misconduct did not survive. It was with this finding that the suit was decreed. The lower appellate court affirmed the finding that since the period of unauthorised absence from duty without leave was regularised the charge did not survive, but it did not say a word about the finding relating to the opportunity of hearing in the department proceedings. Since those findings were not specifically set aside and the lower appellate court was silent about them, the same shall be treated as having been affirmed. In the face of

these findings, it was not open to the lower appellate court to remand the case to the punishing authority for passing a fresh order of punishment. The High Court, before which the second appeal was filed by the State of Punjab, did not advert itself to this inconsistency as it dismissed the appeal summarily, which indirectly reflects that it allowed an inconsistent judgment to pass through its scrutiny. It is in these circumstances that we, in exercise of our power of doing complete justice between the parties, finally decide the appeal and the whole case by providing as follows....

The Court finally passed the following directions:-

"(a) the appeal is allowed; (b) the judgment dated 15th January, 1996 passed by the lower appellate court, in so far it purports to remand the case to the punishing authority as also the judgment of the High Court dated 21. 8. 1996 are set aside; (c) the judgment and decree passed by the trial court is upheld. "

9. From the operative part of the judgment it appears that the appeal of the State was allowed even though the reasoning is otherwise. Further, the earlier judgment of the Supreme Court in Harihar Gopal's case was not placed before the Court nor was its attention drawn to the question of law decided by it, namely, that merely by regularising the absence from duty subsequent to termination of employment did not have the effect of invalidating termination. Moreover, the case of Bakshish Singh has been decided on its own fact situation. The judgment of the Supreme Court lays emphasis on the findings arrived at by the trial court on which the suit was decreed, namely, that proper opportunity of hearing was not afforded to the respondent in the departmental proceedings that his signatures on certain papers during those proceedings were obtained under duress and that the charge of absence from duty did not survive were not set aside by the first appellate court. In view of the findings of fact arrived at by the courts below, the Supreme Court held that the first appellate court could not have remanded the case to the punishing authority for passing of a fresh order on punishment. We do not find anything in the judgment of Bakshish Singh's case (supra) which expressly or by implication overrules the judgment in Harihar Gopal's case . To our mind, Harihar Gopal's case (supra) still holds the field. The distinction sought to be drawn to the effect that the order regularising the absence from duty as "leave without pay" is not a separate order, as was in the case of Harihar Gopal, cannot be accepted. It does not stand to reason that the Supreme Court in Harihar Gopal's case has upheld the termination order only because the order of regularising leave was passed subsequently. A reading of the judgment does not give such an impression. The dicta laid down by the Supreme Court is unambiguous and still holds the field, namely, that it is open to the punishing authority to direct the record keeper to complete the service record by treating the period of absence as one without pay.

10. The Supreme Court in Harihar Gopal's case cannot be said to have laid down the law to the effect that the dismissal order is protected only because it has been made on a different sheet of paper, although by the same authority and on

the same date.

11. The judgment of the Supreme Court in Bakshish Singh's case is per incuriam and does not over rule nor differentiate the judgment in Harihar Gopal's case. In this view of the matter, we are of the opinion that the order of termination does not suffer from any illegality and that the regularisation of leave without pay is only for purposes of maintaining correct record of service which does not interfere with nor obliterate the order of dismissal from service.

12. The order of the Tribunal dated 8th April, 1999 in O. A. No. 2117 of 1998 is set aside. The writ petition is allowed and the Rule made absolute. No order as to costs.