
(2001) 08 SC CK 0100

In the Supreme Court Of India

Case No : Civil Appeal No. 5673 of 2001 (Arising Out of SLP (C) No. 3760 of 2001)

District Judge, Bahraich and Another

APPELLANT

Vs

Munijar Prasad

RESPONDENT

Date of Decision : 24-08-2001

Acts Referred:

Uttar Pradesh Subordinate Court Staff (Punishment and Appeal) Rules, 1976 — Rule 7

Citation : AIR 2002 SC 141 : (2001) AIRSCW 4714 : (2002) 94 DLT 465 : (2001) 9 JT 416 : (2001) 8 SCALE 22 : (2002) 1 SCC 482 : (2001) 8 Supreme 168

Hon'ble Judges : A. S. Anand, C.J.; R. C. Lahoti, J.; P. Venkatarama Reddi, J

Bench : Full Bench

Final Decision : Disposed Off

Judgement

A.S. Anand, C.J.-Leave granted.

2. The respondent had been appointed as a driver purely on ad hoc basis by the District Judge, Bahraich vide order dated June 22, 1996. On certain charges of misconduct being framed against him he was placed under suspension on June 9, 1998. The order of suspension was followed by departmental proceedings. There was a preliminary enquiry conducted by the VII Additional Civil Judge (Junior Division), Bahraich and on submission of the report of the preliminary enquiry, which had found the respondent prima facie guilty, a full fledged enquiry was held. After serving the respondent with a charge-sheet and taking into consideration his reply, show cause notice was issued to the respondent by the District Judge along with a copy of the enquiry officer's report calling upon the respondent to show cause why he be not punished by an order of dismissal. The order of dismissal was passed on November 23, 1998. The respondent did not file any departmental appeal as provided under Section 7 of the U.P. Subordinate Court Staff (Punishment and Appeal) Rules, 1976. Instead of filing an appeal before the competent authority, the respondent filed a writ petition. The learned

single Judge, vide order dated November 17, 2000 set aside the order of punishment of dismissal and remanded the matter to the District Judge for taking a fresh decision on the punishment to be imposed in the light of the observations made by the learned single Judge. The learned single Judge further directed that the respondent shall be deemed to have been reinstated till an order is passed by the District Judge, as directed by the learned single Judge. The appellant filed an appeal against the order of the learned single Judge, which came to be dismissed on January 2, 2001. Hence, this appeal by special leave. We have serious doubts of the manner in which the learned single Judge has dealt with the writ petition. The applicability of doctrine of proportionality as demonstrated in *Union of India and another v. G. Ganayutham*, appears to have been completely lost sight of by him. As held in *Om Kumar v. Union of India*, JT 2000 Suppl.(3) SC 92 in exercise of judicial review jurisdiction, High Court cannot/interfere with quantum of punishment, in the field of administrative law unless it is satisfied that *Wednesbury Principles* are violated, in which case the High Court shall ordinarily remit the matter to authority competent to order punishment. In *U.P.S.R.T.C. v. Subhash Chandra Sharma*, punishment of removal awarded after proof of charges was held not liable to be interfered with unless it was "shockingly disproportionate". No such finding was arrived at either by learned single Judge or by Division Bench.

3. Faced with the situation, learned counsel for the respondent submitted that since the respondent had not filed an appeal before the departmental authority, even if the impugned order is to be set aside, his right to appeal may be reserved to him so that he can urge all the points which are available to him in law before the appellate authority. The suggestion appears to us to be fair and reasonable.

4. We accordingly, set aside the impugned orders passed by the learned single Judge and by the Division Bench in special appeal and allow this appeal. We permit the respondent to file a departmental appeal against the order of punishment before the competent authority. The authority shall decide that appeal within two months from the date when the appeal is preferred, uninfluenced by the orders made by the High Court or by this Court. Learned counsel for the respondent submits that the respondent shall file the appeal within four weeks. The appeal is allowed. No costs.