
(2008) 06 SHI CK 0013
In the High Court Of Himachal Pradesh

High Court of H.P.

APPELLANT

Vs

Smt. Kiran Aggarwal

RESPONDENT

Date of Decision : 05-06-2008

Acts Referred:

Constitution of India, 1950 — Article 235

Citation : (2008) 2 ShimLC 218

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.—This appeal is directed against the judgment of a learned Single Judge of this Court dated 14.6.2007 passed in CWP No. 628 of 2002 whereby he has allowed the writ petition filed by the respondent herein.

2. Briefly stated the facts of the case are that the respondent (hereinafter referred to as the petitioner) was a Member of the Higher Judicial Service. Disciplinary proceedings were initiated against her and a memorandum under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as the Rules) was issued to her on 4.11.1996. The substance of the imputation of misconduct was enclosed with the memorandum. Three Articles of Charges were levelled against her. It is not necessary to refer to the Article of Charges since that dispute stands already decided. The petitioner was put under suspension on 4.4.1997. The Enquiry Officer vide his report dated 27th March, 1997 held that all the three Articles of Charges stand conclusively proved against the petitioner. The report of the Enquiry Officer was accepted and the High Court of Himachal Pradesh (hereinafter referred to as the High Court) recommended that the petitioner be dismissed from service. The recommendation of the High Court was accepted by the Government and the petitioner was dismissed from service vide notification dated 29th April, 1997.

3. The petitioner filed CWP No. 527 of 1997 challenging her dismissal from

service. The Division Bench hearing the matter upheld the enquiry report but came to the conclusion that the punishment was excessive and disproportionate. The judgment of this Court is reported as *Kiran Aggarwal v. The Chief Secretary to the Government of Himachal Pradesh and Ors.* 2001 (3) SL.C. 184. The operative portion of the judgment reads as follows:

58. For the reasons aforesaid, the petition deserves to be partly allowed. The enquiry initiated against the petitioner is held to be legal, valid and in accordance with law, so also the findings arrived at by the Inquiry Authority do not call for any interference and the charges levelled against the petitioner are held proved but an order of penalty of dismissal passed against the petitioner is disproportionate, excessively high and unreasonable. The order of penalty is, therefore, set aside and the matter is sent back to the Disciplinary Authority for reconsideration and to take appropriate decision in accordance with law. In the light of the decisions of the Hon'ble Supreme Court, as also the observations made in the earlier part of the judgment. The petition is accordingly partly allowed. In the facts and circumstances of the case, there shall be no order as to costs.

4. This judgment was delivered on 30th July, 2001. On 9th August, 2001 an order was issued, relevant portion of which reads as follows:

Now, therefore, in view of the provisions of Rule 10(4) of the CCS (CCA) Rules, 1965, it is hereby notified that the order of suspension of the said Smt. Kiran Agarwal as notified vide order No. HHC/GAZ/14-30/74-II-5530-5537, dated 4.4.1997, shall be deemed to have continued in force on and from the date of the aforesaid order of dismissal, i.e. 29.7.1997, and shall remain in force until further orders.

The Headquarters of the said Smt. Kiran Agarwal during the deemed suspension shall remain the same as fixed, vide initial order of suspension dated 4.4.1997.

5. Thereafter, the matter was considered by the High Court on the administrative side and a recommendation was made that instead of penalty of dismissal from service, penalty of compulsory retirement be imposed upon the petitioner. The State Government accepted this recommendation and issued order compulsorily retiring the petitioner from H.P. Higher Judicial Service on 27th September, 2001.

6. It would be relevant to mention that the petitioner challenged the judgment delivered by this Court in CWP No. 527 of 1997 by filing Petition for Special Leave to Appeal before the Apex Court. This petition was listed for admission before the Supreme Court on 10th December, 2001 i.e. after the order compulsorily retiring the petitioner had been passed. The Apex Court held as follows:

The High Court has, in the impugned judgment, fairly taken the view that the punishment originally imposed was disproportionate to the offence of which the petitioner had been found guilty. Now, we do not see any reason to interfere,

even in regard to the punishment which has subsequently been imposed.

The SLP is dismissed.

It is apparent that the Supreme Court not only rejected the writ petition but also upheld the punishment of compulsory retirement which had subsequently been imposed.

7. On February 8, 2002 the High Court issued another order whereby it was directed that subsistence allowance shall be paid to the petitioner for the period from 5.4.1997 till 27.9.2001. The petitioner had vide letter dated 7.1.2002 prayed for regularization of her period of service from 5.4.1997 to 27.9.2001. This request was rejected vide letter dated 15th February, 2002.

8. The petitioner thereafter filed CWP No. 628 of 2002 for quashing the order dated August 9, 2001 whereby she had been placed under suspension and the orders dated February 8, 2002 and 15th February, 2002 and prayed that she may be paid full salary for the period 5.4.1997 to 27.9.2001. The learned Single Judge allowed this writ petition and aggrieved against the said judgment, the High Court has filed the present appeal.

9. Sh. Bipin Negi, learned Counsel for the High Court contends that the judgment of the learned Single Judge is incorrect and does not lay down the correct law. He submits that the learned Single Judge has misinterpreted Sub-rule (4) of Rule 10 of the Rules. On the other hand the petitioner who is appearing in person has supported the judgment.

10. To appreciate the rival contentions of the parties it would be pertinent to reproduce Sub-rule (4) of Rule 10 of the Rules which reads as follows:

Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the Disciplinary Authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.

11. Rule 10(4) quoted hereinabove clearly provides that where the penalty of dismissal etc. imposed upon a Government servant is set-aside by a Court and the disciplinary authority decides to hold further inquiry the Government servant shall be deemed to have been placed under suspension from the date of the original order of dismissal, removal or compulsorily retirement. The proviso to

the Rules lays down that further inquiry shall only be ordered if it is intended to meet a situation where the Court has passed an order purely on technical grounds. The learned Single Judge relying upon certain judgments held that the order of suspension is not a speaking order and that the requirements of Sub-rule (4) of Rule 10 were not met inasmuch as no decision had been taken to hold fresh inquiry and therefore the order of suspension dated August 9, 2001 is illegal and liable to be set-aside.

12. We are constrained to disagree with the reasoning given by the learned Single Judge. A plain reading of Rule 10(4) makes it clear that when an order of dismissal from service is set-aside by a Court then suspension is automatic from the date of the original order of dismissal and the employee shall remain suspended till further orders. Only a formal order of suspension is required to be passed. In our considered view since the suspension is automatic under the provisions of the Rules no reasons are required to be given.

We are also of the view that keeping in view the facts of the present case the mere fact that no further inquiry had been ordered does not mean that there is non-compliance with the Rules. Each case has to be decided on its own facts. In the present case the Court upheld the inquiry report and only set-aside the punishment on the ground that it was excessive and disproportionate. Obviously the inquiry which had been upheld was not to be conducted again. The only question which was required to be reconsidered was as to what punishment is to be imposed on the petitioner. Obviously no further enquiry could have been held. The law does not expect any party to do the impossible. In the present case expecting the employer to issue orders holding an inquiry was to expect the impossible.

13. The learned Single Judge has placed heavy reliance on the observations of the Apex Court in the case of H.L. Mehra Vs. Union of India (UOI) and Others, . In our opinion, the said judgment has no application to the facts of the present case. In that case the Apex Court was basically concerned with Sub-rule (5) of Rule 10 and not with Sub-rule (4). The employee in that case was facing criminal prosecution. He was ordered to be suspended. Later on departmental proceedings were initiated against him on a different set of facts. The applicant was convicted of the criminal charge and his conviction was upheld by the High Court. He filed an appeal before the Supreme Court. During the pendency of the Appeal the employee was dismissed from service on the basis of his conviction in the criminal case. Later the employee was acquitted by the Supreme Court and thereafter the President passed an order (i) setting aside the order of dismissal; (ii) allowing the original departmental inquiry to proceed further till finalization and (iii) continued the suspension order. It was in this context that the Apex Court observed as follows:

...Once the suspension has come to an end by an order of dismissal, which was effective when made, it cannot be revived by mere subsequent setting aside of the order of dismissal in the absence of a statutory provision or rule to that

effect. That is precisely the reason why Sub-rules (3) and (4) had to be introduced in Rule 10 providing for retrospective revival and continuance of the suspension in cases falling within those sub-rules.

In fact the observations quoted above go against the petitioner. The Apex Court has held that Sub-rules (3) and (4) of Rule 10 provided for retrospective revival and continuance of suspension in cases falling within those Sub-rules. In H.L. Mehra's case the employee had been suspended in view of the criminal proceedings even before disciplinary proceeding were initiated. He was not suspended as a result of disciplinary proceeding. Therefore, on setting aside of the conviction the old suspension order could not be revived. This case has no applicability to the present proceedings. The other observations were in respect of Sub-rule (5) which is couched in totally different language.

14. Reliance is also placed by the petitioner on the judgment of the Apex Court in Mahender Singh v. Union of India and Anr. 1991. (2) SCC 127. Therein the Apex Court laid down the following guidelines for the application of Sub-rule (4) of Rule 10:

There are three requirements for the application of Rule 10(4); (i) the Government servant is dismissed, removed or compulsorily retired as a measure of penalty; (ii) the penalty of dismissal, removal or compulsory retirement is set aside or declared or rendered void by a decision of a Court of law; (iii) the disciplinary authority, decides to hold a further inquiry against the Government servant on the allegations on which the original order of penalty was imposed. If these three requirements are satisfied then the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of original order of penalty of dismissal, removal or compulsory retirement and he shall continue to remain under suspension until further orders.

15. The learned Single Judge held that the 3rd condition had not been satisfied. As already held by us above in a case where the inquiry report has not been set-aside and only the punishment has been set-aside on the ground that it is excessive no further inquiry is required and therefore, the requirement of fulfilling condition No. 3 does not arise. The facts of Mahender Singh's case were also entirely different. The original order of termination in that case was not passed as a measure of punishment but was an order of termination simplicitor. The order of termination was set aside on the ground that it amounts to punishment and could not have been passed without holding an inquiry. Therefore, it was in that context that the Apex Court held that Rule 10(4) had no application to the case, since no inquiry had been conducted previously. In the present case, the petitioner was suspended and removed consequent to an inquiry and on the order of dismissal being set aside the original suspension order automatically revived in terms of Rule 10(4).

16. The Apex Court in Nelson Motis Vs. Union of India and another, , held thus:

The comparison of the language with that of Sub-rule (3) reinforces the

conclusion that Sub-rule (4) has to be understood in the natural sense. It will be observed that in Sub-rule (3) the reference is to "a Government servant under suspension" while the words "under suspension", are omitted in Sub-rule (4). Also the Sub-rule (3) directs that on the order of punishment being set aside, "the order of his suspension shall be deemed to have continued in force" but in Sub-rule (4) it has been said that "the Government servant shall be deemed to have been placed under suspension." The departure made by the author in the language of Sub-rule (4) from that of Sub-rule (3) is conscious and there is no scope for attributing the artificial and strained meaning thereto. In the circumstances it is not permissible to read down the provisions as suggested. We, therefore, hold that as a result of Sub-rule (4) a Government servant, though not earlier under suspension, shall also be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, provided of course, that the other conditions mentioned therein are satisfied.

17. According to this judgment, even if the employer was not placed under suspension during disciplinary proceeding, if the order imposing penalty of dismissal, removal or compulsory retirement is set-aside the employee shall be deemed to have been placed under suspension from the date of the order imposing the penalty. In our view this judgment supports the case of the appellant.

18. We are also of the view that the powers to suspend an employee over whom control is vested in the High Court does not emanate only from the Rules. The High Court also has the power to suspend an employee under Article 235 of the Constitution of India. This power is independent of the power granted under the CCS (CCA) Rules. The Apex Court after considering the entire law on the subject in *Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others*, in para 40 held as follows:

40. The interpretation and scope of Article 235 has been the subject of several decisions of this Court. The position crystallised by those decisions is that the control over the subordinate judiciary vested in the High Court under Article 235 is exclusive in nature, comprehensive, in extent and effective in operation. It comprehends a wide variety of matters. Among others, it includes:

(a) (i) Disciplinary jurisdiction and a complete control subject only to the power of the Governor in the matter of appointment, dismissal, removal, reduction in rank of District Judges, and initial posting and promotion to the cadre of District Judges. In the exercise of this control, the High Court can hold inquiries against a member of the subordinate judiciary, impose punishment other than dismissal or removal, subject, however, to the conditions of service, and a right of appeal, if any, granted thereby and to the giving of an opportunity of showing cause as required by Article 311 (2).

(ii) In Article 235, the word "control" is accompanied by the word "vest" which

shows that the High Court alone is made the sole custodian of the control over the judiciary. The control vested in the High Court being exclusive, and not dual, an inquiry into the conduct of a member of the judiciary can be held by the High Court alone and no other authority. The State of West Bengal Vs. Nripendra Nath Bagchi, , Samsher Singh Vs. State of Punjab and Another, ; The High Court of Punjab and Haryana and Others Vs. The State of Haryana and Others,].

(iii) Suspension from service of a member of the judiciary with a view to hold a disciplinary inquiry.

(b) Transfers, promotions and confirmation of such promotions, of persons holding posts,, in the judicial service inferior to that of District Judge. State of Assam and Another Vs. S.N. Sen and Another, State of Assam and Another Vs. Kuseswar Saikia and Others, .

(c) Transfers of District Judges State of Assam Vs. Ranga Mahammad and Others, ; Chandramouleshwar Prasad Vs. The Patna High Court and Others, .

(d) Recall of District Judges posted on ex-cadre posts or on deputation on administrative posts. The State of Orissa Vs. Sudhansu Sekhar Misra and Others, .

(e) Award of selection grade to the members of the judicial service, including District Judges, being their further promotion after their initial appointment to the cadre. (State of Assam v. Kuseswar Saikia (supra)).

(f) Confirmation of District Judges, who have been on probation or are officiating, after their initial appointment or promotion by the Governor to the cadre of District Judges under Article 233, (Punjab and Haryana High Court v. State of Haryana) (supra).

(g) Premature or compulsory retirement of Judges of the District Courts and of Subordinate Courts (State of U.P. v. Batuk Deo Pati Tripathi 1978 Lab IC 839 (SC) (supra)).

19. Thus, it is clear that the power to suspend is not only derived from Rule 10(4) of the Rules but also from Article 235 of the Constitution of India.

20. The petitioner had been removed from service from 29th April, 1997. She did not work after the said date. In the writ petition filed by he the Inquiry Officer"s report was upheld. The Court however found that the penalty of dismissal imposed upon her was excessive and therefore the matter was sent back to the disciplinary authority for reconsideration of the penalty. No further disciplinary proceedings were required to be held. The suspension under Rule 10(4) was automatic and only a formal order was required to be passed. No reasons were required to be given. No further inquiry could be held and therefore in our view the learned Single Judge erred in holding that since inquiry was not initiated, the suspension of the petitioner under Sub-rule (4) of Rule 10 was arbitrary.

21. In view of the above discussion, the appeal is allowed, the order of the

learned Single Judge is set-aside and the writ petition filed by the petitioner is dismissed. There will be no order as to costs.