(2012) 03 CHH CK 0026

In the Chhattisgarh High Court

Case No : Writ Appeal No. 20 of 2007

Jai Kumar Agrawal Dead Kamla Devi Agrawal Wo Jai Kumar	APPELLANT
Vs	
The Municipal Corporation Durg	RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:
Penal Code, 1860 (IPC) — Section 408

Citation : (2012) 03 CHH CK 0026

Hon'ble Judges : Sunil Kumar Sinha, J;R.S. Sharma, J

Bench : Full Bench

Advocate : Pankaj Shrivastava, for the Appellant; Sharmila Singhai Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—This appeal is directed against the order dated 30th of November, 2006 passed in W.P. No. 1072/2001, whereby the writ petition filed by the appellant/petitioner (now dead), challenging the order dated 28.2.2001 (Annexure-P/7) passed in Departmental Enquiry, has been dismissed by the Writ Court. Appellant/petitioner- Jai Kumar Agrawal died during the pendency of this appeal, therefore, he has been substituted by his wife- Kamla Devi Agrawal.

2. The facts, briefly stated, are as under:-

The appellant was working as a Moharrir in Municipal Corporation Durg. He was assigned with the duty of collection of taxes from different Wards. Till 25.11.1980, he collected taxes to the tune of Rs. 5,009.11 p. from various members of different Wards and issued receipts to them, but the aforesaid amount was not deposited with the accounts of the Corporation. On 25.11.1980, the appellant submitted an application, in his own hand-writing, before the Corporation in which he admitted that he had collected the aforesaid amount, but the same was utilized in the ill-ness of his daughter, therefore, a time till 26.11.1980 be granted to him for depositing the said amount in the accounts of the Corporation. The aforesaid amount was never deposited by the appellant. The appellant was placed under suspension vide order dated 27.11.1980 on the ground of misappropriation of funds to the tune of Rs. 5,009.11 p. in the above manner. Immediately after suspension, a show-cause notice dated 8.2.1981 with charge-sheet, memorandum of charges, list of witnesses and list of documents, was issued to the appellant. Show-cause notice and charge- sheet was duly served upon the appellant. Vide his application dated 12.3.1981, the appellant prayed for time to file reply of the charge-sheet. The appellant did not file reply on merits. A criminal case was also registered against the appellant u/s 408 of the Indian Penal Code. In the criminal case, the appellant was acquitted vide judgment dated 9.5.2000 by the Chief Judicial Magistrate, Durg. During the pendency of the criminal trial, the departmental enquiry could not proceed and the appellant retired from services on attaining the age of superannuation on 13.11.1993. The enquiry then proceeded and the Inquiry Officer submitted his report on 19.12.2000. Thereafter, the appellant was served with a second notice dated 15.1.2001 as to why the proposed punishment may not be imposed on him. The appellant submitted his detailed reply on 5.2.2001 mainly taking the ground that he was acquitted in the criminal case; in the judgment passed by the Criminal Court, it was not held that he had collected a sum of Rs. 5,009.11 p. as taxes as such he was not liable to pay amount of taxes allegedly collected by him; and after the above findings recorded by the Criminal Court he cannot be punished in the departmental enquiry. He prayed that the above reply be treated as his representation and he should be awarded full back-wages and other consequential benefits. The disciplinary authority after considering all the facts, application of the appellant dated 25.11.1980 wherein he admitted collection of the amount to the extent of Rs. 5,009.11p., issue of receipts thereof and misappropriation of the same, imposed the following punishment by order dated 28.2.2001 which was challenged in the Writ Petition :-

(Vernacular matter deleted)

It was argued before the Writ Court that proper opportunity of hearing was not granted to the appellant. The appellant was acquitted in criminal case, therefore, after acquittal, the department should not have proceed against the appellant on the same facts etc. The Writ Court held that the show- cause notice along with requisite documents was duly issued to the appellant; the appellant received the show-cause notice and sought 15 days time vide his application dated 12.3.1981. The second show-cause notice was again served and thereafter the impugned order was passed. The Writ Court, therefore, dismissed the Writ Petition.

3. Mr. Pankaj Shrivastava, learned counsel appearing on behalf of the appellant, raised almost similar arguments which were raised before the learned Single Judge. He argued that principles of natural justice were not followed and effect of acquittal in the criminal case was not examined in its proper prospective.

4. The argument relating to non-observance of principles of natural justice appears to be unjustified. In the instant case when the appellant admitted in

clear words by submitting an application in his own hand-writing on 25.11.1980 that he had collected the taxes to the tune of Rs. 5,009.11 p., but he could not deposit the same and a time may be granted, then the respondent suspended the appellant vide order dated 27.11.1980. Immediately after suspension, a show-cause notice dated 8.2.1981 with charge- sheet, memorandum of charges, list of witnesses and list of documents was issued to the appellant. The appellant received the above notice on 7.3.1981. By filing an application dated 12.3.1981, the appellant sought for time to file reply to the show-cause, but no reply was filed till the end. The respondent in light of the pendency of criminal case then decided to wait the decision of criminal case which ultimately was decided on 9.5.2000 leading to acquittal of the appellant. In the meanwhile, the appellant superannuated on 13.11.1993. The Inquiry Officer thereafter proceeded with the enquiry and submitted his report on 19.12.2000 and then the second notice dated 15.1.2001, proposing punishment was issued to the appellant. The appellant submitted a detailed reply to this notice and mainly emphasized on quashing of the enquiry on the basis of acquittal in criminal case. In the above manner, it is apparent that the appellant was served with a show-cause notice along with description of charges and all requisite materials. He did not choose to file reply to show-cause and after filing an application for grant of time, he did not file reply to the first notice at all. In the above facts and circumstances, it cannot be said that the appellant was not given opportunity to defend himself. Even in reply to the second show-cause notice, the appellant did not utter single word about his application dated 25.11.1980 in which he admitted his guilt. The learned Single Judge has relied on the decision of Viveka Nand Sethi Vs. Chairman, J and K Bank Ltd. and Others, , in which the Supreme Court, while considering the applicability of principles of natural justice, held that when facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. It is not unruly horse. Reliance was placed on 3 earlier decisions i.e. Dr. (Mrs.) Gurjeewan Garewal Vs. Dr. (Mrs.) Sumitra Dash and Others, State of Punjab Vs. Jagir Singh, & Karnataka State Road Transport Corporation and Another Vs. S.G. Kotturappa and Another,

5. The learned Single Judge held that it was an admitted position that the appellant made clear admission in his application dated 25.11.1980 (Annexure-R/2) and pleading to this effect was taken in Para-3 of the return filed by the respondent. We find that no rejoinder was filed by the appellant to confront the above specific plea taken by the respondent. It is on all these materials, the learned Single Judge held that it was not a case in which the principles of natural justice were not followed and the above punishment was imposed.

6. So far as argument relating to effect of acquittal in criminal case is concerned, the criminal case and departmental enquiry are 2 different proceedings. The criminal case and the departmental enquiry operate in distinct areas. In criminal

proceedings, a fact is to be proved with all certainty to prove the guilt beyond all reasonable doubts and a high degree of proof is required. Whereas in departmental proceeding the degree of proof is one of preponderance of probabilities, however, the situation would be different where the departmental proceeding and criminal cases are based on the same set of facts and evidence without there being any variance. The learned Single Judge has cited various decisions in this regard and has held that in the present case, the facts produced before the criminal Court were not identical and similar and the application dated 25.11.1980 (Annexure- R/2), wherein the appellant admitted his guilt, was also not produced and examined in the criminal Court. The writ Court, therefore, recorded the finding that the facts and grounds before the criminal Court were different and the appellant cannot succeed in the departmental enquiry on the acquittal in criminal case. We do not find any infirmity in the above finding.

7. For the foregoing reasons, we do not find any substance in this writ appeal. The appeal, therefore, is liable to be dismissed and is hereby dismissed. No cost.