
(1995) 03 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2145 of 1992

K.S.S.N. Sharma

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

Date of Decision : 02-03-1995

Acts Referred:

Constitution of India, 1950 — Article 311
Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1959 — Rule 9(3)
State Bank of India (Supervisory Staff) Service Rules, 1975 — Rule 50A(4)
State Bank of Mysore (Officers) Service Regulations, 1979 — Regulation 69(4)

Citation : (1995) 1 ALT 837 : (1995) 2 LLJ 479

Hon'ble Judges : Syed Shah Mohammed Quadri, J

Bench : Single Bench

Advocate : R.N. Reddy, for the Appellant; K. Srinivasa Murthy, for the Respondent

Final Decision : Allowed

Judgement

Syed Shah Mohammed Quadri, J.—The petitioner was an employee of the State Bank of India and was working under the 1st respondent on the material date. He joined the service of the Bank as Clerk in March 1970. In October 1979 he was promoted as Officer Junior Management Grade. On June 6, 1987 he was suspended from service pursuant to an alleged trap said to have been laid on June 1, 1987 on the allegation of accepting illegal gratification of Rs. 500/-. After conducting enquiry he was awarded the punishment of removal from service by order of the 1st respondent dated December 26, 1990. The petitioner assailed the validity of the said order of removal in Writ Petition No. 2395 of 1991. That writ petition having been dismissed, at the admission stage on February 20, 1991, on the ground of non-avilment of alternative remedy, he filed Writ Appeal No. 232 of 1991. On April 25, 1991 a Division Bench of this Court allowed the said Writ Appeal and quashed the impugned order of removal. That judgment of the Division Bench had become final. It seems the petitioner was again

suspended in exercise of the power under Rule 50-A(4) of the State Bank of India (Supervising Staff) Service Rules, for short, "the service rules", on June 12, 1991. The petitioner states that the scales of pay of the employees of the Bank were revised with effect from November, 1987 but his pay was not fixed in the revised scales of pay on the ground that he was under suspension, so he is entitled to full emoluments with annual increments from the date of the first suspension, that is June 6, 1987 to the date of the order of the second suspension on June 12, 1991 as the order of his removal by the Bank was set aside by the Division Bench. After the judgment of the Division Bench, the Bank served a copy of the enquiry report and after considering his explanation it passed orders, dated October 18, 1991, again removing him from service. It is represented that the validity of that order is questioned in Writ Petition No. 15620 of 1993. Be that as it may, the relief claimed in this writ petition is that the petitioner is entitled to full salary in revised scales of pay from the date of his first suspension, viz., June 6, 1987 to the date of second suspension on June 12, 1991.

2. The Bank filed a detailed counter-affidavit. The averments with regard to the service of the petitioner and the disciplinary proceedings are not denied by the respondents. However, it is stated that the Division Bench, while quashing the order of removal, observed that it was open to the authority to proceed with the enquiry, by furnishing a copy of the enquiry report to the petitioner and by following the procedure in accordance with law. Accordingly enquiry was conducted against the petitioner after complying with the directions of the Division Bench. It is stated that as directed by the High Court and also as per Rule 50-A(4) of the service rules the Bank again kept the petitioner under suspension from the date of serving the order of removal dated January 12, 1991 and the proceedings were continued and he was removed from service again by order dated October 18, 1991. It is submitted that the petitioner is not entitled to subsistence allowance in the revised scale of pay in view of the circular of the Bank dated December 5, 1989 that the revised scales of pay were not applicable to the officers under suspension prior to November 1, 1987 unless the disciplinary authority decides that the period of suspension was to be treated as on duty. It is further submitted that the petitioner is not eligible for subsistence allowance as per the revised scale of pay; he was eligible for subsistence allowance only in the pre-revised scales of pay and accordingly he was paid the same. In these circumstances it is prayed that the writ petition be dismissed.

3. Sri R.N. Reddy, the learned Counsel appearing for the petitioner, contended that the order of suspension dated June 6, 1987 merged in the order of first removal dated December 26, 1990 and when once that order was set aside the suspension order would not get revived, consequently the petitioner would be deemed to be in service and entitled to full wages for the period June 6, 1987 to June 12, 1991.

4. Sri. K. Srinivasa Murthy, the learned Standing Counsel for the respondents,

submits that the Division Bench while allowing the writ petition did not give any direction to reinstate the petitioner or grant back wages, therefore the petitioner is not entitled to any back wages. His further contention is that as the Division Bench set aside the order of removal on the ground of not furnishing a copy of the enquiry report, this Court should now consider whether he had suffered any prejudice on account of withholding of the enquiry report and as he has not suffered any prejudice because even after furnishing copy of the enquiry report and considering his explanation he was again removed from service from October 18, 1991, so no relief can be granted to him in this writ petition.

5. In view of the above contentions, the short question that arises for consideration is whether the petitioner is entitled to salary for the period from the date of the first suspension dated June 6, 1987 to the date of second suspension on June 12, 1991.

6. It has already been noted above that the petitioner was first suspended from service from June 6, 1987 and consequent upon the disciplinary enquiry he was removed from service by order dated December 26, 1990. Though Writ Petition No. 2395 of 1991, filed against the said order of removal, was dismissed at the admission stage by a learned single Judge on February 20, 1991, yet Writ Appeal No. 232 of 1991, filed against the said order of the learned Single Judge, was allowed by the Division Bench on April 25, 1991. The Division Bench observed as follows:-

"... Considering the patently clear state of law on this aspect of the problem, we allow this Writ Appeal and set aside the judgment of the learned single Judge under appeal and quash the order of removal dated December 26, 1990 (DPD (D-10) No. 2508 as confirmed by the appellate authority on March 19, 1991. It is open for the authorities to proceed with the enquiry by furnishing a copy of the enquiry report by following the procedure thereafter in accordance with law...."

From the above judgment two things are clear; first that the Court did not grant a further direction to reinstate the petitioner in service and secondly left it open to the authorities to proceed with the enquiry by furnishing a copy of the enquiry report and by following the procedure thereafter in accordance with law. Here we are not concerned with the second aspect. In so far as the first aspect is concerned, though there is no direction to reinstate the petitioner in service, equally so, there is no observation to the effect that the payment of salary and other benefits would abide the result of the enquiry which could be conducted after a copy of the enquiry report was given to the petitioner. The question then arises what is the effect of the order of the Division Bench? In my considered view once the order of dismissal has been set aside by the Division Bench, the petitioner has a right to be put back in the same position in which he would have continued had he not been suspended or removed from service; so also on passing the order of dismissal of the petitioner from service the earlier order of suspension merges into the said order of dismissal which has been set aside. The result would be the petitioner would be entitled to be treated as being in service

unless this consequence is prevented by express order of the Court by a rule to the contrary. No such rule is brought to my notice and it has been pointed out that the Division Bench did not observe otherwise. I am supported in my view by the following Judgments.

7. A similar question arose for consideration in *R. Shamanna v. State of Mysore* 1987(1) ALR 726, before Karnataka High Court. In that case the petitioner who was an employee of the State Bank of Mysore was placed under suspension on May 26, 1972, pending disciplinary enquiry against him. After the enquiry he was dismissed from service on December 8, 1977. In a writ petition filed against the order of removal the same was set aside by a learned single Judge. The bank unsuccessfully went in appeal against the order of the learned Single Judge. The appeal was dismissed on July 6, 1984. Thereafter the Bank again suspended the petitioner therein but paid the arrears of subsistence allowance to the petitioner in exercise of the power under Regulation 69(4) of the State Bank of Mysore (Officers) Service Regulations, 1979, which is similar to the above said rule. The petitioner there claimed that he was entitled to salary from the date of his first suspension dated May 26, 1972. The learned Judge took the view that earlier the order of suspension dated May 26, 1972 stood merged in final order of dismissal passed on December 8, 1977 and when the said order was set aside by the High Court the order of suspension could not revive, therefore the petitioner would be entitled to full salary for the period commencing from the date of suspension till the date of passing of the order of removal.

8. In *Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh*, , the appellant was an employee of Government of Uttar Pradesh. He was suspended from service in April, 1952 pending enquiry into certain allegations of misconduct. After enquiry he was dismissed from service by the Government, by order dated September 16, 1953. He challenged the validity of that order in a civil suit. The suit was dismissed by the trial Court, but, on appeal, the High Court of Allahabad set aside the order of dismissal holding that reasonable opportunity was not afforded to the petitioner before passing the order and he was thus deprived of the protection of Article 311 of the Constitution. In that case the Supreme Court observed that the effect of the decree of the civil suit was that the appellant was never to be deemed to have been lawfully dismissed from service and the order of reinstatement was superfluous; the effect of the adjudication of the Civil Courts is to declare that the appellant had been wrongfully prevented from attending to his duties as a public servant and he could not be deprived of the remuneration which he would have earned had he been permitted to work.

9. In *K. Saradamma v. Sr. Superintendent of Post Office* 1983 (2) SLR. 41 the petitioner was an Extra Departmental Branch Post Master of Posts & Telegraphs Department. She was suspended from duty with effect from December 31, 1975 and was later removed from service on July 31, 1977 for certain alleged misconduct. After exhausting departmental remedies, she filed writ petition in

the High Court of Kerala, which was allowed. However, thereafter the petitioner was reinstated into service on March 23, 1982 but was again placed under suspension on April 17, 1982. In the subsequent writ petition she claimed salary from the date of suspension to the date of reinstatement. The Kerala High Court held that Rule 9(3) of the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules 1954 (which provides that the extra departmental employees will not be entitled to suspension allowance) could not control the right of an employee to get full wages during the period of suspension, if the suspension was found to be unjustified as a consequence of the suspension, order getting merged with the dismissal order and that order itself being set aside by a Court. It was also observed that the suspension order could not revive after the dismissal itself was declared invalid and the dismissed employee could claim restitution and that he had a right to be put back in the position he would have occupied but for the suspension and dismissal. Thus the claim of the petitioner therein was upheld.

10. Reliance is placed by Sri. K. Srinivasa Murthy, learned Standing Counsel for the respondents, in support of his contention, referred to above, on the latest judgment of the Supreme Court in *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, , particularly on sub-para (v) at page 178. It may be usefully extracted here:

"(v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus a stretching the concept of justice to illogical and exasperating limits. It amounts to an "Unnatural expansion of natural justice" which in itself is antithetical to justice".

In that case the Supreme Court was mainly concerned with the effect of *Union of India and others Vs. Mohd. Ramzan Khan*, , where a copy of the enquiry report

had not been furnished to the delinquent-employee before passing the impugned order. A plain reading of the observation of the Supreme Court, extracted above, shows that in that paragraph the Supreme Court was considering the question of the effect of not furnishing a copy of the report of the enquiry officer before passing the order of punishment and laying down guide lines with regard to the relief which should be granted in such cases. In the instant case the question before me is not as to what order should be passed as a consequence of non-furnishing the report of the enquiry officer to the petitioner because that question was already considered by the Division Bench in Writ Appeal No. 232 of 1991 and the Division Bench had set aside the order of removal for that reason by its judgment dated April 25, 1991 which had become final. The only question which arises for consideration in this case is the effect of setting aside the order of removal vis-a-vis the right of the petitioner to claim back wages for the period during which he was kept under suspension pending enquiry. Therefore, in my view the above observation of the Supreme Court would not advance the case of the respondents in denying the claim of the petitioner for the back wages during the period mentioned above.

11. The next judgment relied upon by Sri. K.Srinivasa Murthy in Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, . The facts giving rise to that case were that the respondent therein was an employee of Warehousing Corporation. On the allegation of misappropriation of stocks of the Corporation he was dismissed from the service of the Corporation and he was asked to remit the amount representing the value of the stocks alleged to have been misappropriated. That order of dismissal was challenged in a writ petition before the High Court of Allahabad. A learned single Judge of the High Court dismissed the writ petition but a Division Bench, on appeal, reversed the order of the learned single Judge and remanded the case to the learned single Judge for decision on merits. Thereafter the learned single Judge allowed the writ petition and quashed the order of dismissal of the respondent, recording the finding that the principles of natural justice were not followed, with a direction to reinstate the employee with full back wages. That order of the learned single Judge was confirmed by the Division Bench on appeal the matter was carried by the Corporation to the Supreme Court. In the Supreme Court various contentions were raised. With regard to the granting of full back wages, the Supreme Court pointed out that the respondent did not raise an industrial dispute but invoked the jurisdiction of the High Court directly challenging the order of dismissal. It was observed as follows:-

".... whether a workman or employee of a statutory authority should be reinstated in public employment with or without full back wages, is a question of fact depending on evidence to be produced before the tribunal. If after the termination of his employment the workman/employee was gainfully employed elsewhere, that is one of the important factors to be considered in determining whether or not the reinstatement should be with full back wages and with continuity of employment. For these two fold reasons, we are of opinion that the

High Court was in error in directing payment to the employee full back wages."

The principle laid by the Supreme Court applies to a case where the question before the Court was whether back wages should be ordered to an employee while setting aside the order of dismissal when he has invoked the jurisdiction of the High Court without approaching the forum provided under the Industrial Disputes Act. In this case the question before me is not as to what order should be passed consequent upon the setting aside the order of dismissal. Here the question before me is what is the consequence of the order setting aside the order of dismissal. There is no plea before me that the petitioner has not invoked the alternative remedy of approaching the Labour Court or that the remedy to approach the Labour Court is available to him and he failed to invoke the same.

12. For the above reasons, I hold that the petitioner is entitled to full emoluments according to revised scale of pay for the period from June 6, 1987 the date of the first suspension to June 12, 1991 the date of second suspension. The writ petition is accordingly allowed but in the circumstances of the case there shall be no order as to costs.