
(1996) 03 AHC CK 0065

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 18185 of 1987

Maresh Chandra Saxena

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-03-1996

Acts Referred:

Citation : (1996) 03 AHC CK 0065

Hon'ble Judges : P.K.Mukherjee, J

Final Decision : Dismissed

Judgement

Paritosh K. Mnkherjee, J.—In the instant writ petition, the petitioner has challenged the impugned order of termination dated 30101985, passed by the respondent No. 4, being disciplinary authority, Assistant Director, Regional Research Institute (Ayurveda). Lucknow and appellate orders dated 2011996 and 20101986, passed by the respondent No. 5, being Assistant Director (Administration), Central Council for Research in Ayurveda and Siddha, New Delhi, filed as Annexures6, 8 and 11 to the writ petition.

2. It is the case of the petitioner that he was dismissed from service on establishment of guilt, on the basis of chargesheet by order dated 30101985.

3. Thereafter, when the petitioner preferred an appeal, the appellate authority, being respondent No. 5, by his order dated 2011986, has, however, inter alia, came to conclusion that the penalty of dismissal from the services, imposed upon the appellant by the respondent No. 4 was disproportionate to the charges against the appellant.

4. Although, the appellate authority upheld the findings of the disciplinary authority to the effect that the appellant (the petitioner herein) was guilty of the charges framed against him in disciplinary case, but, set aside the penalty of dismissal from services with effect from 30101985, imposed on the petitioner, having regard to the gravity of the charges proved against him.

5. Having heard Sri B. P. Singh, learned counsel for the petitioner and Sri A. P. Shahi, counsel for the respondent authorities at some length, this Court is of the view that the appellate authority has approached the case from proper angle, as in view of catena of decisions, particularly in the case of Bhagat Ram v. State of Himanchal Pradesh, AIR 1983 SC 454, which has been subsequently followed in the case of Ranjit Thakur v. Union of India and others, AIR 1987 SC 2380, it has been held that the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.

6. In the case of Ranjit Thakur v. Union of India, (supra), their Lordships, Hon'ble A. P. Sen and M. N. Venkatachaliah, JJ. had followed the judgment of House of Lords in the case of Council of Civil Service Unions v. Minister for the Civil Service, (1984) 3 WLR 1174 (HL). In this judgment Lord Diplock, inter alia, observed that anything disproportionate should be discarded.

7. In view of this Court, although the appellate authority had arrived at the conclusion, after taking into consideration of the decisions of apex Court, referred to above, but those judgments have not been referred in the appellate order. In fact, the appellate authority after arriving at a necessary conclusion that the punishment of dismissal from services was too harsh, and should be interfered with, had proposed to pass following orders :

The pay of Shri M. C. Saxena, GDA, shall be reduced by two stages for a period of two years with effect from 30.10.85 with the condition that during this period of two years Shri Saxena shall not be entitled to earn any increment. However, after the expiry of the said period of two years the reduction will not have the effect of postponing future increments of his pay.

8. Although, this writ petition was moved as far back as on 14.10.1987, but at that time no interim order was granted, thereby restraining the respondents to deduct the salary of the petitioner at the reduced pay scale. Further since the aforesaid two years have been expired with effect from 30.10.1985, this Court in my view is not entitled to interfere with the appellate order.

9. However, as pointed out by learned counsel, appearing for the respondents that the petitioner being approached Central Administrative Tribunal, and the respondent No. 2 not being an appellate authority, within the meaning of Article 12 of the Constitution, and further not giving liberty to the petitioner to withdraw the case from the tribunal for placing it before the appropriate Court, the petitioner is not entitled to approach this Hon'ble Court under Article 226 of the Constitution of India.

10. Since this writ petition is disposed of without granting any relief, the point raised by Sri A. P. Shahi, learned counsel for the respondents is not called upon to decide by this Court as the same has not been directly connected with the present writ petition.

11. Writ petition is dismissed as above, by maintaining the order dated 2011986, passed by the appellate authority being Assistant Director (Administration), Central Council, New Delhi.

12. It is, however, made clear that the petitioner will be entitled to regular scale of pay after two years with effect from 30101995.