(2014) 11 AHC CK 0235

In the Allahabad High Court

Case No : Writ - A No. 49478 of 2010

M.C. Tyagi APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)(a)
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 7

Citation : (2014) 11 ADJ 265 : (2015) 5 ALJ 153 : (2015) 2 AWC 1413 : (2015) LabIC 3507

Hon'ble Judges : Suneet Kumar, J

Bench : Single Bench

Advocate : K.K. Dwivedi, Advocate for the Appellant; Dhananjay Awasthi and Gautam Baghel, Advocate for the Respondent

Judgement

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Suneet Kumar, J.—The petitioner was working as Assistant Grade-I in U.P. Financial Corporation, Noida, Gautam Budh Nagar (hereinafter referred to as Corporation). On 23.8.2001 an F.I.R. was registered against the petitioner under Section 120B and Section 7 of the Prevention of Corruption Act, 1988 Mayur Vihar Phase III, Delhi by C.B.I., New Delhi wherein it was alleged by the complainant that the petitioner along with another investor of the corporation had demanded illegal gratification of Rs. 1.5 lacs to get the file closed. The petitioner was placed under suspension on 25.8.2001, after the investigation charge-sheet was submitted against the petitioner, trial Court vide judgment and order dated 3.7.2007 convicted the petitioner for a period of three years and imposed fine of Rs. 50,000/- under Section 7 and 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

2. Petitioner preferred criminal appeal no. 389 of 2007 before the Delhi High Court. The appeal was admitted, but interim bail was granted by the trial Court. On 21.6.2010 by the impugned order the petitioner was dismissed from service

of the corporation with immediate effect under regulation 39 of the U.P.F.C. Staff Regulations.

3. Submission of the learned counsel for the petitioner is that the appeal, against the conviction, was admitted by the appellate Court and since the petitioner was enlarged on bail and criminal appeal is pending, thus, the impugned order is bad, the petitioner should have been reinstated pending decision by the appellate Court.

4. In rebuttal Sri Gautam Baghel, learned counsel for the respondent corporation would submit that since the petitioner was convicted for accepting bribe of Rs. 1,000/- from one of the loanee of the corporation, the conviction amounts to moral turpitude, merely because the petitioner''s appeal was admitted by the Delhi High Court and was enlarged on bail, it would not amount to staying the conviction, the impugned order has been passed strictly as per regulation 39 of the U.P.F.C. Staff Regulation.

5. Rival submissions fall for consideration.

6. The sole question for determination is as to whether the petitioner convicted for charge of corruption, merely on being enlarged on bail would entitle the petitioner to continue in service pending decision in the criminal appeal.

7. Regulation 39 of the U.P. Financial Corporation Staff Regulation is as follows:

Regulation No. 39: Employees Arrested For Debt or on Criminal Charge:

(1) An employee who is arrested for debt or on a criminal charge shall be liable to suspension and shall be allowed the payments admissible to an employee under suspension Regulation 40 until the termination of the proceedings against him, when an adjustment of his pay and allowances shall be made according to the circumstances of the case and in the light of the decision of the Board. The full pay and allowances shall be given only in the event of the employee being acquitted of all blames. An employee who is committed to prison for debt or is convicted for any criminal offence may be dismissed. A conviction by court need not in itself involve the refusal of a certificate of good character and mere conviction need not be regarded as a disqualification for service and the Board shall take into consideration the circumstances of the conviction before finally dismissing the employee of the Corporation when an employee is placed under suspension and is subsequently dismissed (in continuation of such suspension), the dismissal shall be with effect from the order of dismissal of the employee

(2) Where a conviction of an employee is set aside by a higher court and the employee is acquitted honorably, he shall be reinstated in service.

Explanation: in this Regulation "termination of proceedings" shall mean the decision of the Lowest Court, which finally disposes of the case:

8. On conviction the petitioner''s matter was placed before the Board of Directors of the corporation, on 10th June, 2010, Board considered the judgment dated

19.6.2007, order of sentence dated 3.7.2007 passed by Court of Special Judge, Delhi, resolved to dismiss the petitioner from service. The power was exercised under regulation 39. A bare perusal of regulation 39 it is evident that an employee who is committed to prison or is convicted for any criminal offence may be dismissed.

9. Explanation to regulation 39 states "termination of proceedings" shall mean decision of first Court which decides/disposes of the case finally.

10. The petitioner contends that principle enshrined under Article 311(2)(a) of Constitution of India shall be applicable. Though the petitioner is not a civil servant but is an employee of a statutory body, the rules applicable to an employee of the corporation shall apply and not Article 311 on conviction.

11. The disciplinary authority is to regard the conviction of the concerned servant as sufficient proof of misconduct on his part. The authority has to decide whether conviction demands the imposition of any penalty and, if so, what penalty. For this purpose, the authority has to take into consideration the judgment of the criminal court, the entire conduct of the servant, whether the gravity of the offence was a technical or trivial in nature, and the extenuating circumstances, if any. The disciplinary authority has to do this exercise ex parte, without giving a hearing to the concerned civil servant. (Vide Shankar Dass Vs. Union of India (UOI) and Another, , Union of India versus Tulsi Ram Patel AIR 1995 SC 1416, Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, .

12. Article 311(2)(a) speaks of "conduct which has led to his conviction of a criminal charge", whereas regulation 39 states that the Board "shall take into consideration the circumstances of the conviction", though worded differently would mean the same thing. It does not speak of sentence or punishment awarded or pendency of appeal against the conviction or enlargement on bail or suspension of the punishment will not come in the way of the authority to pass appropriate orders on the basis of servants conduct leading to his conviction. The Supreme Court disapproved the suggestion that government servant ought not to be dismissed till the appeal, revision or other remedies are over as that would mean to continue in service a person who has been convicted of serious offences by a criminal court.

13. In Union of India Versus Ramesh Kumar 1997 SC 3531, Supreme Court held that suspension of sentence does not wipe out conviction which continues and is not obliterated.

14. Regulation 39 is clear that on conviction the petitioner can be dismissed from service. The Board of Directors considered the judgment and sentence of the trial Court, the impugned order terminating the service of the petitioner was passed. The petitioner was not required to be given any hearing, as the Board of Directors were to consider only the judgment and sentence while passing the order of termination. The regulation 39 clearly states that on the conviction, the

employee shall be terminated. The trial Court judgment runs into 36 pages and holds the petitioner guilty beyond reasonable doubt of the charges.

15. For the facts and reasons stated herein above, the Court is not inclined to interfere with the impugned order.

16. The writ petition is, accordingly, dismissed.

17. No order as to costs.