(2015) 03 KAR CK 0357

In the Karnataka High Court

Case No : Writ Petition No. 9321 of 2006 (S-DIS)

N. Dasharath Wadi APPELLANT

Vs

The Managing Director, Karnataka Scheduled Castes and Scheduled Tribes Development Corporation Limited RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Citation : (2015) 3 KarLJ 148 : (2015) 4 KCCR 3907

Hon'ble Judges : Ravi V. Malimath, J

Bench : Single Bench

Advocate : P. Vilas Kumar, for the Appellant; Gourish Khashampur and V.Y. Kumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ravi V. Malimath, J.—The petitioner was initially appointed as a Clerk-cum-Typist by-respondent order dated 17-2-1983. He was promoted as a First Division Assistant-cum-Field Officer in the year 1988. Thereafter he received various promotions. Articles of charges were issued against the petitioner on certain acts of misconduct on 22-11-2004. He submitted his explanation. An Enquiry Officer was appointed. The enquiry was held. The report was submitted on 18-6-2005 holding all the six charges levelled against the petitioner having been proved. A second show-cause notice was issued. The same was replied to. The Managing Director passed the order terminating him from service. Aggrieved by the same, the present petition is filed. Learned Counsel for the petitioner contends that the petitioner is governed by the Karnataka Scheduled Castes and Scheduled Tribes Development Corporation Limited (Classification, Control and Appeal) Rules, 1991. In terms whereof, Rule 7 provides for the nature of penalties that could be imposed, which reads as follows:

"7. Nature of penalties.--One or more of the following penalties for goods and sufficient reasons and as hereinafter provided may be imposed on Corporation Employees, namely.--

(i) to (viii).............

(ix) Removal from service.

(x)....".

In terms of the schedule to said rules, the nature of punishment to be imposed, the Appellate Authority, Revisional Authority and Appointing Authority is narrated. Insofar as the petitioner is concerned he is a Group ''C'' employee. Therein it is stated that the authorities with reference to clauses (i) to (v) of Rule 7 are noted therein, so also with reference to clauses (vi) to (x) of Rule 7. The petitioner is governed by clause (ix) of Rule 7. Therein the authorities that could have imposed the penalty is the General Manager (Development). The authority to whom an appeal would lie is the Managing Director. The Revisional Authority is the Board. Annexure-A is the order of removal from service. Annexure-A is the order issued by the Managing Director. It runs contrary to the Rules. The order of removal has been passed by the Appellate Authority and not by the authority who can pass the order of punishment. Therefore, the said order is a nullity and requires to be quashed.

2. The Hon''ble Supreme Court in the judgment in the case of Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others, AIR 1995 SC 1053 : (1995) 70 FLR 817 : (1995) 2 JT 74 : (1995) 2 LLJ 68 : (1995) 1 SCALE 451 : (1995) 2 SCC 474 : (1995) 1 UJ 313 , held at para 6 as follows:

"6. The respondent-Bank in its submission contended that although it is true that the Deputy General Manager had acted as the Disciplinary Authority when he was in fact named under the Regulations as an Appellate Authority, no prejudice is caused to the appellant because the Deputy General Manager is higher in rank than the Disciplinary Authority, viz., the Divisional Manager/AGM (Personnel). According to the Bank, it should be held that when the order of punishment is passed by a higher authority, no appeal is available under the Regulations as it is not necessary to provide for the same. It was also contended that there is no right to appeal unless it is provided under the Rules or Regulations. Although the argument looks attractive at first sight, its weakness lies in the fact that it tries to place the Rules/Regulations which provide no appeal on par with the Rules/ Regulations where appeal is provided. It is true that when an authority higher than the Disciplinary Authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the Disciplinary Authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the Disciplinary Authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the Disciplinary

Authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the rules/ regulations as to when the higher authority or the Appellate Authority should exercise the powers of the Disciplinary Authority. The higher or Appellate Authority may choose to exercise the power of the Disciplinary Authority in same cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/Appellate Authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent-Bank that when an Appellate Authority chooses to exercise the power of Disciplinary Authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted".

3. In the instant case also a provision for appeal has been provided against the order of Disciplinary Authority. It is not the case where there is no provision for an appeal. Therefore, the law as laid down by the Hon''ble Supreme Court in the aforesaid judgment requires to be applied to the present case. Under these circumstances I have no hesitation to hold that the order of removal from service suffers from an error and a defect and consequently would have to be set aside. Under these circumstances considering the petitioner''s case so far as the merits of the enquiry report is concerned would not arise for consideration. The plea is one of an inherent error in passing the order of punishment. Therefore, it is not necessary to go into the merits of the findings recorded by the Enquiry Officer.

4. Having set aside the impugned order herein, what is required to be considered is the consequential orders that is required to be passed. The petitioner is removed from service by an order Annexure-A, dated 17-3-2006. By setting aside the order, the petitioner pleads that he would be entitled to all consequential service benefits including entire extent of back wages. However, I am of the considered view that notwithstanding holding that Annexure-A suffers from an inherent error, in my considered view grant of the entire extent of back wages would be highly unjust. The impugned order is set aside not on merits, but on law, by following the aforesaid judgment of Hon''ble Supreme Court. Therefore, when the order is not set aside on merits, but purely in terms of the illegality committed by the Appellate Authority exercising the powers of the Disciplinary Authority, the petitioner''s plea for entitlement of 100% back wages would be unjustified. In my considered view it would be just and proper to grant back wages at 50% of what his entitlement is. However, the petitioner would be entitled to continuity of service and other consequential benefits. Consequently, the petition is allowed:

(a) The order dated 17-3-2006 in No. 2005-06:22156-57 vide Annexure-A passed by the respondent is set aside.

(b) The petitioner is entitled to 50% of his back wages from 17-3-2006.

(c) He shall be reinstated in service with continuity of service without loss of seniority to the post that he will be entitled to on the basis of continuity of service.

This order to be complied within a period of eight weeks from the date of receipt of copy of this order. Rule made absolute.