(2019) 03 UK CK 0119

In the Uttarakhand High Court

Case No : Writ Petition No. 178 Of 2017 (S Of B)

Nand Kishore Yadav APPELLANT

Vs

Chairman Cum Managing Director, Appointing Authority, Tehri Hydro Development Corp. India & Another RESPONDENT

Date of Decision : 26-03-2019

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7(2), 17(1)
Conduct, Discipline And Appeal Rules, 1980 — Rule 23(2), 26, 26(j), 28, 28(1), 29, 30, 33, 33(1)

Citation : (2019) 03 UK CK 0119

Hon'ble Judges : Ramesh Ranganathan, CJ;N.S. Dhanik, J

Bench : Division Bench

Advocate : Rakesh Thapliyal, Shobhit Saharia

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This writ petition is filed seeking a writ of certiorari to quash the impugned order dated 31.12.2016 passed by the first respondent; a writ of mandamus directing the respondents to reinstate the petitioner in service with all consequential benefits including arrears of salary, or in the alternative to treat the petitioner to be continuing under suspension till the disposal of Criminal Appeal No. 419 of 2016 or till the date of his superannuation whichever is earlier.

2. Facts, to the limited extent necessary, are that the petitioner was appointed as a Junior Executive in the respondent corporation on 03.08.1990 and was, thereafter, promoted as an Assistant Engineer. He was promoted as an Engineer, and was thereafter promoted as a Senior Engineer, and then as a Deputy Manager and then as a Manager in the year 2009. He was, lastly, promoted as Senior Manager in 2014. A First Information Report was lodged against the petitioner on 13.01.2011 alleging that he had demanded illegal gratification towards the dues of the contractor amounting to Rs. 21-22 lakhs. The petitioner

was arrested and, as he was in judicial custody for more than 48 hours, he was placed under suspension, as per Rule 23 (2) of the Conduct, Discipline and Appeal Rules, by order dated 15/17.01.2011. The petitioner's suspension was revoked by order dated 28.12.2012. While matters stood thus, the Special Court C.B.I, vide order in C.B.I. Case No. 01 of 2011 dated 17.12.2016, convicted the petitioner for the offence under Section 7(2) read with Section 17 (1) of the Prevention of Corruption Act, 1988 and sentenced him to undergo rigorous imprisonment for a period of five years and with fine of Rs. 10,000/-. Consequent on his conviction, the impugned order dated 31.12.2016 was passed imposing on the petitioner the punishment of dismissal from service with effect from the date of the final judgment passed by the Court of the Special Judge Anti Corruption C.B.I. on 17.12.2016 convicting the petitioner.

3. Aggrieved by the order passed by the C.B.I. Court, the petitioner preferred Criminal Appeal No. 419 of 2016 before this Court, which appeal is said to be still pending on the file of this Court. The petitioner was enlarged on bail on 09.01.2017 and, by order dated 11.01.2019, execution of the sentence was suspended during the pendency of the appeal.

4. Sri Rakesh Thapliyal, learned counsel for the petitioner, would submit that, since the sentence imposed on the petitioner by the C.B.I. Judge has been suspended by this Court, the order passed by the competent authority, under Rule 33 (1) of the Conduct Disciplinary and Appeal Rules, would no longer remain in force; the mere fact that criminal proceedings were instituted against the petitioner did not discharge the respondents of its obligations to conduct a disciplinary inquiry against the petitioner, more so, since the order of punishment, imposed on him, is for alleged misconduct; since Rule 33 (1) confers a discretion on the competent authority, it was open to him, instead of imposing the penalty of dismissal from service on the petitioner, to place him under suspension; and since the petitioner's sentence has been suspended in appeal, the impugned order necessitates being set-aside, leaving it open to the authorities to consider placing the petitioner under suspension during the pendency of the Criminal Appeal.

5. On the other hand Sri Shobhit Saharia, learned counsel appearing on behalf of the respondent-corporation, would submit that, on conviction by a competent Criminal Court, Rule 33 (1) confers power on the competent authority to impose any of the penalties stipulated in Rule 26; in case Rule 33 (1) is applicable, there is no obligation cast on the employer to once again conduct a departmental inquiry, since the basis for imposing the punishment is the conviction of the petitioner on a criminal charge; the charge, for which the petitioner was convicted, is for an offence under the Prevention of Corruption Act which would, undoubtedly, amount to misconduct; the mere fact that the sentence has been suspended would not obliterate the petitioner's conviction by the competent Criminal Court; and, as long as the order of conviction continues to remain in force, no interference is called for with respect to the order of punishment

impugned in the writ petition.

6. The applicable Rules are the Tehri Hydro Development Corporation, Conduct, Discipline Appeal Rules. Rule 26 thereof relates to penalties and, thereunder, penalties have been classified as minor and major penalties. The penalty of dismissal from service, under Rule 26 (j), is a major penalty. In terms of the proviso to Rule 26, in every case in which the charge of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act is established, the penalty mentioned in clause (i) and (j) shall be imposed. Rule 28 prescribes the procedure for imposing major penalties and, under Rule 28 (1), no order imposing any of the major penalties, specified in Clause (f) to (j) of Rule 26, shall be made except after an inquiry is held in accordance with the Rules. Rule 33, which prescribes a special procedure in certain cases, explicitly states that, notwithstanding anything contained in Rule 28, 29 or 30, the disciplinary authority may impose any of the penalties specified in Rule 26 in, among other, circumstances (1) Where the employee has been convicted on a criminal charge or on the strength of facts or conclusions arrived at by a judicial trial. Rule 33 is applicable notwithstanding anything contained in Rule 28 also. As Rule 28 relates to the procedure for imposing major penalties and, under sub-clause (1) thereof, no major penalty can be imposed except after an inquiry is held, Rule 33 which enables the disciplinary authority to impose any of the penalties specified in Rule 26 would prevail notwithstanding anything contained in Rule 28 and consequently, in cases where an employee has been convicted on a criminal charge, it is open to the disciplinary authority to straight away impose any of the penalties specified in Rule 26 without adherence to the procedure prescribed in Rule 28 i.e. of holding an inquiry. The basis underlying Rule 33 is obvious. When a competent Criminal Court holds an employee guilty on a criminal charge which, in the present case is for an offence under the Prevention of Corruption Act, the necessity to hold a departmental inquiry, once again to establish the charges, is obviated; and, on such conviction, it is open to the disciplinary authority to straight away impose any of the penalties specified in Rule 26 which would include the penalty of dismissal from service under Rule 26 (j).

7. The petitioner's contention that, consequent on the sentence being suspended by this Court, the order of punishment would automatically come to an end does not merit acceptance. The distinction, between conviction on a criminal charge and imposition of a sentence pursuant thereto, must always be borne in mind. It is only if a person is convicted of a criminal offence i.e. he is held guilty of such an offence would the question regarding imposition of a sentence then arise for consideration. The sentence imposed on the petitioner is as a consequence of his conviction on a criminal charge. The effect, of suspension of the order of sentence, is only that the petitioner would not be required to undergo the sentence imposed by the Trial Court as long as the interim order passed in the Criminal Appeal remains in force. That does not, however, obliterate the fact that the petitioner was held guilty of a criminal offence, and was convicted by a

competent Criminal Court.

8. Since Rule 33 (1) empowers the disciplinary authority to impose the penalties under Clauses (i) and (j) of Rule 26 of the Act, in case where the employee has been convicted on a criminal charge, and since the order of conviction continues to remain in force, the order passed by the disciplinary authority does not necessitates interference. Exercise of sympathy, as sought by Shri Rakesh Thapliyal, learned counsel for the petitioner, would not be justified in the present case. The petitioner was convicted of the charge of having demanded a bribe. While we may not be understood to have expressed any opinion on the merits of the order of the Trial Court in holding him guilty of such a charge, since these are all matters for the High Court to examine in the Criminal Appeal filed there against, suffice it to observe that, in the light of the conviction of the petitioner on the charge of having demanded a bribe, his case does not deserve sympathy. The writ petition fails and is, accordingly, dismissed. No costs.

