

(2009) 04 SC CK 0229

In the Supreme Court Of India

Case No : Civil Appeal No's. 2586-2587 of 2009 (Arising out of S.L.P. (C) No's. 25544-25545 of 2008)

Parkash Singh Teji

APPELLANT

Vs

Northern India Goods Transport Co. Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Delhi High Court (Original Side) Rules, 1967 — Rule 8, 9

Citation : AIR 2009 SC 2304 : (2009) AIRSCW 5511 : (2009) 4 ALT 1 : (2009) 6 JT 540 : (2009) 43 OCR 432 : (2009) 5 SCALE 546 : (2009) 12 SCC 577 : (2010) 1 SCC(L&S) 160 : (2009) 6 SCR 278 : (2010) 1 SLJ 108 : (2009) 6 Supreme 320 : (2009) 6 UJ 2543

Hon'ble Judges : K. G. Balakrishnan, C.J;P. Sathasivam, J

Bench : Division Bench

Advocate : P.S. Patwalia, Aman Preet Singh Rahi, D.K. Tripathi, Tushar Bakshi and Ashok K. Mahajan, for the Appellant; Gaurav Sharma, Sumeet Bhatia, Surbhi Mehta, (for Mahinder Singh, Advocate), for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Leave granted.

2. These appeals, by special leave, arise from the judgment and final orders of the High Court of Delhi dated 06.07.2006 and 23.03.2007 in R.F.A. No. 178 of 2006 and in C.M. No. 13584 of 2006 in R.F.A. No. 178 of 2006 respectively whereby the High Court declined to expunge the adverse remarks made against the appellant. The appellant, who is a Judicial Officer, is now challenging the judgment dated 06.07.2006 of the High Court to the limited extent whereby the Division Bench passed certain adverse remarks against him.

3. The case of the appellant is briefly stated hereunder:

(a) The appellant, who is a Member of the Delhi Higher Judicial Service, posted as Addl. District and Sessions Judge, Delhi, was transferred in the place of Shri Satnam Singh, Addl. District and Sessions Judge on 13.09.2005. A suit for

recovery which was filed in the year 1984 in the Delhi High Court by the first respondent against second respondent herein, subsequently on enhancement of the pecuniary jurisdiction of the Delhi High Court, was transferred to the District Court.

(b) As sufficient opportunities were given to the plaintiff to lead evidence, the appellant, on 19.12.2005, dismissed the suit of the plaintiff. Thereafter, an appeal was filed by the plaintiff against the said judgment and the High Court, by the impugned judgment dated 06.07.2006, allowed the appeal of the plaintiff and remanded the case to the trial Court. The High Court, while remanding the case, made certain remarks and directions against the appellant. When the file of the aforesaid suit was put up before the appellant for retrial, then only he noticed the adverse remarks made against him by the High Court. The appellant immediately filed an application in the High Court for expunction of the aforesaid remarks. The High Court, by order dated 23.03.2007, disposed of the application stating that the remarks are only corrective in nature and do not suggest any lack of integrity on the part of the officer.

(c) The Annual Confidential Report (in short "ACR") of the appellant from the years 2000 to 2006 has been consistently graded as B+ and the High Court has promoted him to the Super-time Scale also. The ACR for the year 2006 was communicated to him on 21.08.2007. On the basis of his service record w.e.f. 12.09.2007 he had assigned much more responsible and onerous task of presiding as a Designated Judge/Special Judge, NDPS, Patiala House Court, New Delhi for conducting the trial of NDPS cases. The High Court, vide letter dated 01.08.2008, has communicated to the appellant the ACR for the year 2007 which has been downgraded from B+ to B. Therefore, he submitted his representation to the High Court for review of the said ACR. He reliably came to know that the said ACR has been downgraded on the basis of the remarks in the judgment dated 06.07.2006 passed in R.F.A. No. 178 of 2006. To the best knowledge of the appellant, there is no report or complaint about his work or conduct by anyone in the year 2007. If the said remarks in the judgment dated 06.07.2006 are not expunged, it would affect his future prospects and if the same are allowed to stay and the ACR is not re-casted, the appellant would suffer substantial loss in future as he has left with eight years of service for superannuation and he is in the zone of consideration for elevation to the Bench of the Delhi High Court.

4. While granting permission to file special leave petition, this Court has impleaded the High Court of Delhi as party respondent. Pursuant to the issuance of notice to the High Court of Delhi, a reply has been filed stating that as per the judgment of the High Court dated 06.07.2006, a copy of the said judgment was placed in the personal file/service record of the appellant as also before the then Hon'ble Inspecting Judge for the year 2006. The appellant was graded as B+ for the years 2000 to 2006 by the Full Court of the Delhi High Court. On the basis of his performance at the relevant time, he was granted Super-time Scale of Delhi Higher Judicial Service. Thereafter, he was posted as Addl. Sessions Judge, NDPS

at Patiala House Courts w.e.f. 12.09.2007. On consideration of overall performance of the appellant during the year 2007, the Committee of Hon'ble Inspecting Judges in the meeting held on 15.07.2008, for the year 2007 recorded his ACR as B. The said remarks were communicated to him by letter dated 01.08.2008. On a complaint dated nil made by one Shri G.S. Gorkal, the Committee of Hon'ble Inspecting Judges for the year 2008 ordered that the same may be considered at the time of awarding ACR grading. The appellant had made representation dated 19.08.2008 for review of Grade B for the year 2007. The said representation was duly considered and rejected by a decision dated 01.09.2008 of the Full Court and the same was communicated to the appellant vide letter dated 22.09.2008.

5. We heard Mr. P.S. Patwalia, learned senior counsel for the appellant and Mr. Gaurav Sharma, learned Counsel for the 3rd respondent, High Court of Delhi.

6. The questions which arise for consideration are:

(a) Whether in the facts and circumstances of the case, the High Court was justified in making adverse remarks/observations and directions against the appellant in its judgment dated 06.07.2006;

(b) Whether its further direction for placing the said judgment in the personal/service record of the appellant and also before the Hon'ble Inspecting Judge for perusal is warranted?

7. Before considering the grievance of the appellant, it would be useful to refer the remarks/directions of the High Court in the order dated 06.07.2006 which reads thus:

Before parting, we wish to make it clear that the learned Judge who passed the impugned judgment and decree need be careful in future, rather than adopting a hasty, slip shod and perfunctory approach as is manifest from the judgment delivered by him in this case. We further direct that a copy of this order shall be placed on the personal/service record of the officer, while another copy be placed before the Hon'ble Inspecting Judge of the officer for His Lordship's perusal.

8. According to the appellant, by making such remarks behind his back, the High Court failed to appreciate certain relevant facts. It was pointed out that the suit which was decided by the appellant on 19.12.2005 was filed in the year 1984 and the plaintiff was given sufficient opportunities to lead evidence. The evidence which the plaintiff had already lead when the suit was pending in the Delhi High Court was in fact tagged with the order sheet and the documents on which the plaintiff was relying were not even exhibited. According to the appellant, in view of this the mistake occurred was neither deliberate nor intentional. It was also highlighted that the deposition of witnesses P.W. 1 to P.W. 3 was not arranged properly in the file and the same were not traceable. Insofar as evidence of P.W.3 is concerned, according to the appellant, no order sheet reflects that the evidence was actually recorded on 15.04.1991. It was highlighted that the High

Court failed to appreciate that the statement of P.Ws was attached with the order sheet and it was not arranged or placed where it should have been placed as per Rules 8 and 9 of the Delhi High Court (Original Side) Rules, 1967.

9. Apart from the above explanation with reference to the alleged lapse as pointed out by the Division Bench, the appellant has highlighted that his ACR from 2000 to 2006 has been consistently graded as B+ and he was also promoted by the High Court to the Super-time Scale and recently assigned with much more responsibility and onerous task of presiding as a Designated Judge/Special Judge, NDPS, Patiala House, New Delhi.

10. In the light of the explanation, we also perused those relevant materials. As rightly highlighted and pointed out by Mr. P.S. Patwalia, learned senior counsel for the appellant, in the facts and circumstances and the materials available, we are satisfied that the remarks/observations and the directions made in para 10 of the order dated 06.07.2006 are not warranted. Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectives of the army. As observed in A.M. Mathur Vs. Pramod Kumar Gupta, , the duty of a restraint, humility should be constant theme of our Judges. This quality in decision making is as much necessary for Judges to command respect as to protect the independence of the judiciary.

11. We are not undermining the ultimate decision of the High Court in remitting the matter to the trial Court for fresh disposal. However, we are constrained to observe that the higher Courts every day come across orders of the lower courts which are not justified either in law or in fact and modify them or set them aside. Our legal system acknowledges the fallibility of the Judges, hence it provides for appeals and revisions. A Judge tries to discharge his duties to the best of his capacity, however, sometimes is likely to err. It has to be noted that the lower judicial officers mostly work under a charged atmosphere and are constantly under psychological pressure. They do not have the benefits which are available in the higher courts. In those circumstances, remarks/observations and strictures are to be avoided particularly if the officer has no occasion to put forth his reasonings.

12. In the matter of: `K' A Judicial Officer (2001) 3 SCC 54, it was held that any passage from an order or judgment may be expunged or directed to be expunged subject to satisfying the following tests: (i) that the passage complained of is wholly irrelevant and unjustifiable; (ii) that its retention on the records will cause serious harm to the persons to whom it refers; (iii) that its expunction will not affect the reasons for the judgment or order. In para 12, it was further held that though the power to make remarks or observations is there but on being questioned, the exercise of power must withstand judicial scrutiny on the touchstone of following tests: (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the

case, as an integral part thereof, to animadvert on that conduct. The overall test is that the criticism or observation must be judicial in nature and should not formally depart from sobriety, moderation and reserve.

13. In the light of the above principles and in view of the explanation as stated by the appellant for commenting the conduct of the plaintiff, we are satisfied that those observations and directions are not warranted. It is settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before Courts of law unless it is really necessary for the decision of the case as an integral part thereof. The direction of the High Court placing copy of their order on the personal/service record of the appellant and a further direction for placing copy of the order before the Inspecting Judge of the officer for perusal that too without giving him an opportunity would, undoubtedly, affect his career. Based on the above direction, there is every possibility of taking adverse decision about the performance of the appellant. We hold that the adverse remarks made against the appellant was neither justified nor called for.

14. In the interest of justice and fairness, we expunge the offending remarks made against the appellant in para 10 of the impugned order of the High Court of Delhi, dated 06.07.2006. Since these appeals are confined only to expunging of the adverse remarks, the same are allowed. No costs.