
(2007) 08 AHC CK 0103
In the Allahabad High Court
Case No : Writ Petition No. 5469 (SB) of 1994

State of U.P. and Another

APPELLANT

Vs

Shyam Lal Verma and Another

RESPONDENT

Date of Decision : 20-08-2007

Acts Referred:

Citation : (2007) 08 AHC CK 0103

Hon'ble Judges : Sanjay Misra, J and Sudhir Agarwal, J

Judgement

Sanjay Misra and Sudhir Agarwal, JJ.

1. Standing Counsel for the petitioners and Sri Hari Shankar Singh for respondent No. 1 the sole contesting respondent.
2. The writ petition is directed against the judgment dated 27.12.1993 passed by U.P. Public Service Tribunal (hereinafter to be referred as the Tribunal), Lucknow in Claim Petition No. 420F/V/88 of respondent No. 1 setting aside his dismissal order dated 23.4.1988 and directing the petitioner to reinstate him with all consequential benefits.
3. The facts giving rise to the present writ petition are that respondent No. 1 was appointed as police constable on 1.1.1974. While posted at Kanpur Dehat he was transferred to Kanpur City on 4.8.1984 whereupon he did not report to duty and remained absent till 7.4.1986. A charge sheet was issued to respondent No. 1 on 30.12.1988 on the ground of alleged unauthorised absence from duty even after availing joining time from 8.4.1984 to 7.4.1986 and after holding departmental enquiry the punishment of dismissal was imposed upon respondent No. 1. His appeal was also rejected by the appellate authority. Aggrieved, he preferred a claim petition under Section 4 of the U.P. Public Services Tribunal Act, 1976 before the Tribunal contending that in the order of punishment the disciplinary authority regularised his absence from duty for the period in question and in these circumstances it cannot be said that the respondent was guilty of misconduct since regularisation of absence condoned the allegations of

misconduct. He also contended before the Tribunal that proper enquiry was not conducted and he was not afforded adequate opportunity however the Tribunal has allowed the claim petition accepting his first contention that his period of absence was regularised, hence the respondent No. 1 would not have been said to be guilty of any misconduct and therefore, the impugned order of punishment was set aside and the claim petition has been allowed.

4. The learned Counsel for petitioners contended that merely for the reasons that subsequently the competent authority for various other purposes regularised the unauthorised absence of an employee, that would not result in a condoning misconduct of unauthorized absence and the view taken by the Tribunal is clearly illegal.

5. On the contrary, the learned Counsel for respondent No. 1 supported the judgment of the Tribunal and further contended that in any case since" there was no proper enquiry giving adequate opportunity of defence to the respondent No. 1 and therefore, the order of dismissal has rightly been set aside by the Tribunal and the judgment impugned in the writ petition does not warrant any interference. In the alternative, he contended that the submissions regarding denial of adequate opportunity during the course of enquiry have not been dealt by the Tribunal since his claim petition was allowed on the first contention that after regularising absence he ceased to be guilty of any misconduct and therefore, in respect to other issues raised by the respondent, the matter may be remitted to the Tribunal.

6. We have heard learned Counsel for the parties and perused the record. It is not disputed that respondent No. 1 remained absent without sanction of any leave i.e. unauthorizedly from 8.4.1984 to 7.4.1986 whereagainst disciplinary proceedings were initiated against him by the competent authority in accordance with Rules. In the enquiry when the charge of unauthorized absence was found proved, the punishment order was passed by the Senior Superintendent of Police imposing punishment of dismissal but his period of absence was regularised as leave without pay since such an order is required for various other purposes, in our view merely because the disciplinary authority has regularised the period of absence as leave without pay, that would not amount to condoning the misconduct of unauthorized absence and the view taken by the Tribunal otherwise is clearly illegal and cannot sustain. In fact we find that the view taken by the Tribunal runs contrary to the law of the land laid down by the Apex Court as long back as in 1969 and is consistently being followed till date. In *State of M.P. v. Harihar Gopal*, 1969 SLR 274 (SC): AIR 1969 NSC 36, it is clearly held that an order passed only for the purposes of regularising leave would not have the effect of wiping out the punishment. Subsequently in *State of Punjab v. Bakshish Singh*, 1998 (8) SCC 222, the Apex Court observed that the period of absence having been regularised as leave without pay would automatically set at naught the order of dismissal and therefore, expressed a view contrary to *Harihar Gopal* (supra). Noticing the conflict in the two judgments, the matter was

referred to Larger Bench of the Apex Court in Maan Singh v. Union of India, 2003 SCC (L&S) 464. A three Judges Bench of Apex Court after considering both these judgment held that in Bakshish Singh (supra) the Apex Court did not decide the question as to the effect of regularisation of leave on the punishment order. In that case the Apex Court really considered the scope of power of remand and did not consider the question whether the view expressed by the first Appellate Court in affirming the order of trial Court was justified or not. Consequently the Larger Bench following Harihar Gopal (supra) and held as under:

"In Harihar Gopal case this Court noticed that the delinquent officer in failing to report for duty and remaining absent without obtaining leave had acted in a manner irresponsibly and unjustifiedly; that, on the finding of the Enquiry Officer, the charge was proved that he remained absent without obtaining leave in advance; that the order granting leave was made after the order terminating the employment and it was made only for the purpose of maintaining a correct record of the duration of service and adjustment of leave due to the delinquent officer and for regularising absence from duty subsequent to termination of employment had the effect of invalidating termination. Thus, this Court concluded that it could not be held that the authority after terminating the employment of the delinquent officer intended authority after terminating employment of the delinquent officer intended to pass an order invalidating that earlier order by sanctioning leave so that he was deemed not to have remained absent from duty without leave duly granted"

7. The Larger Bench while confirming the view taken in Harihar Gopal's case also over ruled a large number of judgment of various High Courts which have taken a contrary view and mis is referred in para 7 of the judgment. It categorically followed and up hold the decision taken in Harihar Gopal wherein the Court has held that in the absence of any rule governing service conditions of the employee under which an order regularising absence from duty subsequent to termination of employment had an effect of invalidating termination, where a punishing authority has passed order of regularising leave without pay, the same would not have the effect as if the authority has intended to invalidate its earlier order of punishment by the subsequent one contained in the same order. A Division Bench of the Apex Court has reiterated the same view in State of Punjab and others, v. Charanjit Singh, 2003 (8) SCC 458, following law laid down in Harihar Gopal's case (supra) and Maan Singh's (supra) and in para 5 of the judgment the Apex Court has observed:

"In State of Punjab v. Bakshish Singh, which was relied upon by the Courts below in holding that the misconduct stood condoned, was explained in Maan Singh. No law has been laid down in Bakshish Singh to the effect that only in the event, leave without pay is directed to be granted while passing an order of punishment, the leave having been regularised the order of punishment also becomes bad in law and void abinitio. While deciding Bakshish Singh this Court had not taken into consideration an earlier binding precedent in State of M.P. v.

Harihar Gopal, wherein it has clearly been stated that such an order is passed only for the purpose of regularising the leave and there by the effect of punishment is not wiped out. In Maan Singh it was held that the period of absence when treated as leave without pay, was with a view to regularise the leave and not for condonation of misconduct."

8. In view of the aforesaid exposition of law the judgment of the Tribunal impugned in the writ petition cannot sustain and therefore, has to be set aside. However, the respondent No. 1 had also challenged order of punishment on the grounds that he was not afforded adequate opportunity of defence and enquiry was not conducted in accordance with Rules but those issues have not been considered by the Tribunal since it had allowed the claim petition on the first question raised by the respondent No. 1. In this view of the matter in our view it would be appropriate to remit this matter to the Tribunal to reconsider the claim petition afresh on other issues raised by respondent No. 1 and decide it in accordance with law.

9. In the result the writ petition is allowed. The impugned judgment of the Tribunal is hereby set aside and the matter is remanded back to the Tribunal to decide other issues raised by the respondent No. 1 on merits expeditiously and preferably within a period of four months from the date of production of a certified copy of this order. There shall be no order as to costs. Petition allowed.