

(2023) 08 CAL CK 0103

In the Calcutta High Court

Case No : MAT No. 576 Of 2017, CAN 1, 2 Of 2017 (Old No: CAN 5575, 5576 Of 2017)

Union Of India & Anr.

APPELLANT

Vs

Mahendra Kumar

RESPONDENT

Date of Decision : 30-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 08 CAL CK 0103

Hon'ble Judges : V. M. Velumani, J; Rai Chattopadhyay, J

Bench : Division Bench

Advocate : Loknath Chatterjee, Sarda Sha, Pratick Dhar, Ritwik Pattanayak

Final Decision : Dismissed

Judgement

Rai Chattopadhyay, J

1. Appellants, the Union of India and others, have preferred the instant appeal to challenge the order of the Hon'ble Single Judge dated January 18, 2017, in W. P. No 11387 (W) of 2016. The appellants have challenged the order of the Hon'ble Single Judge as above on the grounds inter alia that, the same is misconceived and bad in law, is a result of non-consideration of and nonapplication of mind to, all the materials on record and that the same is liable to be set aside.

2. Bereft of any unnecessary details, the factual background of this case may be summarised in a manner as follows:

The respondent/writ petitioner challenged the following two orders of the appellant authorities, in the writ petition, i.e,

(i) dated October 3, 2015 and (ii) dated January 15, 2016.

The writ petitioner/respondent was employed as a sub-inspector (M) of Central Reserve Police Force and at the relevant point of time was posted at Durgapur Range Head Quarter, District – Burdwan. He was issued a charge sheet on May

21, 2007. The petitioner was made to face and answer 5 distinct charges, vide the said charge sheet. He was alleged for the misconduct that he planned and hatched conspiracy by asking the recruitment clerk, to prepare some candidates for written examinations in lieu of accepting money, that he intentionally concealed the information from his superiors regarding his knowledge about the questions, set for written examination, that he failed to maintain absolute secrecy of the official documents which were eventually found in a place other than the safe custody, he committed irregularity in processing the transfer case of executive personnel in bulk and even did not observe the prescribed criteria by proposing names of ineligible candidates for such transfer and also that in spite of being aware of the fact of written complaint by one of the examinees regarding demand of bribe made to him, the writ petitioner/respondent did not disclose the fact to his superior officers.

3. The enquiry officer conducted enquiry and has ultimately come to the finding vide his report dated February 25, 2009, that the charges framed against the writ petitioner/respondent were not proved. The disciplinary authority, however, disagreed with the findings in the enquiry report as above and a "disagreement note" dated May 20, 2009, was communicated to the writ petitioner/respondent. This has prompted the writ petitioner/respondent to submit a written representation to the disciplinary authority on June 5, 2009. At the same time, the respondent/writ petitioner challenged the said "disagreement note", vide writ petition being W.P.No. 9786(w) of 2009. The Court directed him in the same, vide order dated June 22, 2009, to submit a fresh representation within a stipulated period, which the Disciplinary Authority was to consider and pass necessary order, within the prescribed time limit. However, before this exercise could be completed, the Disciplinary Authority issued an order of dismissal of the writ petitioner, vide memo dated July 13, 2009. Order of dismissal of the writ petitioner, as above, was challenged by him in an appeal, presented before the appropriate authority on August 4, 2009. A representation was also submitted on October 30, 2009. Appellate Authority dismissed the appeal vide order dated December 2, 2009 and upheld writ petitioner's punishment for dismissal. By filing another writ petition being No. W.P.665(w) of 2010, the present respondent challenged the said order dated December 2, 2009, before this Court. The Hon'ble Single Bench, in the said case, set aside the order of dismissal and directed for reinstatement of service of the present respondent. The present appellants challenged the order of the Hon'ble Single Judge in an appeal being FMA No. 1190 of 2013. The Hon'ble Division Bench gave its nod regarding the order of the Hon'ble Single Judge and sent back the matter to the Disciplinary Authority to consider representation of the present respondent/writ petitioner and to pass a reasoned final order. No action to comply with the said order of the Hon'ble Division Bench had prompted the present respondent/writ petitioner to file a contempt case before this Court, that is, CPAN No. 764(w) of 2015. It was only after a rule was issued against the Inspector General of Police, West Bengal Circle, Central Reserve Police Force, the memo dated October 3, 2015 was issued.

4. By dint of the said order dated October 3, 2015, the concerned authority has imposed punishment of compulsory retirement of the present respondent/writ petitioner, from service, with effect from the date of the memo, i.e, October 3, 2015. Another appeal was preferred by the respondent, challenging the said order which was ultimately dismissed vide an order dated January 15, 2016.
5. Those two orders are the subject matter of challenge, in the present writ petition. The respondent/writ petitioner has prayed for setting aside of those two orders under challenge.
6. The Hon'ble Single Judge, while disposing of the writ petition has held in the impugned judgment on the point of legality of the impugned orders (as mentioned above), that those would be illegal and liable to be set aside. The Court found it proper to mould the reliefs sought for by the present respondent/writ petitioner and directed without interfering into the impugned orders, that the respondent/writ petitioner would be entitled to a sum of ₹ 2 lakhs each year, till the date of his superannuation as per his conditions of service, as monetary compensation. The court directed that the monetary compensation as above would be payable from January 1, 2016 and over and above the benefits that had been extended to him pursuant to the said orders under challenge in the writ petition. The Court has stipulated a period of 90 days from the date of receipt of the copy of the judgment by the present appellants/respondents in the writ petition, for making payment to the present respondent/writ petitioner. The Court further directed that appellant's failure to comply with the order would entitle the writ petitioner to a relief of reinstatement in the service with full back wages.
7. The introductory point of argument by Mr. Loknath Chatterjee, appearing for the appellants would be that the impugned order is misconceived, erroneous and bad in law and even inexecutable insofar as the Hon'ble Single Bench could not have at the same breath, sustain the orders of the authority under challenge and also granted yearly compensation to the writ petitioner/respondent. According to Mr. Chatterjee, the impugned order of the Hon'ble Single Bench is self-contradictory, suffers from nonapplication of mind and is liable to be set aside.
8. The appellant is also aggrieved with the finding of the Hon'ble Single Judge, that if there be an occasion of non-compliance and violation of the said impugned order by the appellant, then the impugned order of compulsory retirement from service of the respondent and the order of the appellate authority affirming the same, would stand set aside and the respondent/writ petitioner would be entitled to reinstatement in service with full back wages. The arguments made on this on behalf of the appellant is that, there is no reasonable nexus of non-payment of compensation with reinstatement in service. A point has been made out that, grant of compensation even after upholding the finding of the appellate authority regarding the commission of guilt by the respondent/writ petitioner, is by itself delving on the wrong notion that the respondent is required to be awarded and compensated for violation of any of his rights. According to the appellant,

reinstatement of service with full back wages in case of any non-payment of the said compensation would only multiply the magnitude of illegality. Mr. Chatterjee points out that the respondent/writ petitioner has never prayed for any relief of grant of compensation and such an order by the Hon'ble Single Judge is beyond scope of the writ petition, which cannot be sustained. Mr. Chatterjee says further that the penultimate and operative part of the impugned judgment suffers from gross mutual contradictions, perversity and illegality and that the writ petitioner has never challenged the finding of the Hon'ble Single Judge upholding his termination order. Lastly, it has been urged that in a disciplined force, any act of indiscipline should be handled, in strictest manner and the appellant authority, in case of the writ petitioner/respondent, has diligently discharged its duty as above.

9. Per contra Mr. Pratick Dhar, while representing the respondent/writ petitioner, has firstly taken this court to the back drop of the case that is, for the self same incident a total of 7 persons were chargesheeted. 5 of them have already been reinstated by the appellant. 1 of the delinquent employees, amongst those 7 persons chargesheeted, was exonerated in the enquiry, on the basis of the similar and identical set of statements. He further informs that "disagreement note" was issued only to the writ petitioner/respondent and also cares to mention that the same is only due to malafide and malicious intentions. It has been submitted that not only the writ petitioner/respondent has been subjected to discrimination, gross and substantive, but also his valuable rights under the law have been jeopardised at the instance of the present appellants.

10. So far as the merits of the case is concerned, Mr. Dhar has submitted that the "disagreement note" has been based on the statements and findings in the preliminary enquiry. According to him the findings in the preliminary enquiry cannot be relied on to culminate into the result at the stage of completion of the full-fledged disciplinary proceedings. He says that the purpose of a preliminary enquiry is only to the extent to ascertain if a regular enquiry proceeding under the rules is warranted or not. The moment the authority takes a decision as to whether or not a regular enquiry proceeding should be initiated, the utility of a preliminary enquiry immediately ceases to operate, beyond that point of time. He has emphasized that it is only illegal and arbitrary, that even after conducting a disciplinary proceeding, as per rules, the authority would ignore the findings thereof, which is based on the evidence and other materials considered by the enquiry officer during the entire proceeding. To answer to the challenge thrown by the appellants regarding respondent/writ petitioner's not challenging the finding of the Hon'ble Single Bench regarding sustaining his compulsory retirement, Mr. Dhar says on behalf of his client that the appellants could not successfully rely on any action by his client, to substantiate its own case. According to Mr. Dhar the appellants have to succeed on the merits of its own case. Respondent's not asking for such a relief should not strengthen appellant's case.

11. Mr. Dhar has further answered the point raised on behalf of the appellant

regarding the grant of relief of compensation to be beyond the scope of the writ petition, by saying that a Court of equity is designated to deliver complete justice. According to him, in that endeavour, moulding reliefs must be a very basic and inherent add-on to the Court's power. He says further that but for the same the hands of a Court of equity would be tied and not free to do complete justice. On that perspective, according to Mr. Dhar there is no absurdity or illegality committed by the Hon'ble Single Bench, in granting compensation, which might not have been prayed, in specific terms, by the respondent/writ petitioner.

12. On merits, Mr. Dhar has further submitted that in the disciplinary enquiry proceeding against the present respondent, statement of all the witnesses before the enquiry officer are same and identical like that in case of other similarly placed delinquents, as mentioned above. It has been submitted that, therefore, on the basis of the said same and identical statements, no differential treatment could have been lawfully enforced against the present respondent. As a matter of fact, according to the respondent the enquiry officer could not have come to a different finding, than that of the other delinquent person exonerated earlier, on the basis of the said same and identical evidence. Mr. Dhar says that in this way his client has been subjected to gross discrimination and infringement of his legal rights.

13. The last submission of Mr. Dhar is that there is no cogent reason or valid ground as to why this appeal Court should interfere with the impugned order of the Hon'ble Single Judge dated January 18, 2017, in W. P. No. 11387 (W) of 2016. As such, he says that the appeal may be dismissed and the impugned order as above may be affirmed by this court.

14. The operative part of the impugned judgment dated January 18, 2017, may be divided in a manner as follows:

Firstly, the Court has directed that the orders under challenge in the writ petition, being orders dated October 3, 2015 and that dated January 15, 2016, to be illegal and liable to be set aside. To this part there has been no challenge or contra argument by any of the parties in the appeal.

Secondly, the Hon'ble Single Bench thereafter, has moulded the relief claimed in the writ petition for the reason that in view of the seriousness of the charges levelled against the respondent/writ petitioner, for which the employer may not any further have faith and confidence in the writ petitioner. That may not be conducive for a healthy work atmosphere;

Thirdly, thus the Court has not allowed writ petitioner's prayer for reinstatement in service. Instead, the Court directed that he shall be paid a sum of Rs.2,00,000/-, each year as monetary compensation, from a certain date till the date of superannuation of the writ petitioner. It has been directed that such monetary compensation would be allowed to the writ petitioner over and above the benefits extended to him pursuant to the impugned order dated October 3,

2015;

Next is that in case of failure or negligence of the present appellants to make payment of compensation within the stipulated time, the order of compulsory retirement of the writ petitioner/respondent from service and the appellate order affirming the same, would stand set aside and then the writ petitioner would be entitled for reinstatement in service with full back wages.

15. By moulding the prayer of the writ petition, thus, the Hon'ble Single Bench has granted relief to the respondent/writ petitioner.

16. Since the finding of the Hon'ble Single Judge regarding illegality of the two impugned orders as above, has not been countered in this appeal, there is no necessity for this Court to go beyond the same. Thus such finding is upheld.

17. The challenge of the appellants in this appeal, on merits, rests on the grounds that the "disagreement note" dated May 20, 2009 is legible to be sustained, particularly on the ground that the reports of the preliminary enquiry contradicted the report of the enquiry proceedings, to the detriment of the rights and interests of the appellants. It is submitted that whereas in preliminary enquiry report sufficient materials transpire to suggest writ petitioner's involvement in the alleged misconduct, the enquiry report in the disciplinary proceeding, which was based on the statement of the witnesses, finally demolished the evidence collected during preliminary enquiry but found only the opposite. None of the witnesses supported authorities' allegations and thus finally the writ petitioner/respondent was exonerated in the disciplinary proceedings. According to the appellants, in view of the report of the preliminary enquiry as well as the enquiry in the disciplinary proceedings, it clearly transpires that the final verdict of the enquiry officer in the disciplinary proceeding is flawed on the basis of untrue statements by the witnesses, motivatedly recorded. There has been, however, no contradiction to the well acceptable argument advanced by Mr. Dhar on behalf of respondent/writ petitioner, on this aspect, that the report of the preliminary enquiry virtually ceases to have any force after authority takes a decision on the basis of the same to proceed for a full fledged disciplinary enquiry proceeding. The law is well settled that, a preliminary enquiry to any of the charges alleged against any of the employees would be for the purpose of ascertaining if there is any substantivity into the allegations levelled against him. A preliminary enquiry is not even mandatory or compulsory. The moment the preliminary enquiry report facilitates with the relevant information to the authorities regarding necessity to proceed further against any delinquent employee for proof of charges levelled against him, the purpose of such enquiry would be accomplished. A preliminary enquiry would try to determine whether there are grounds to prosecute the person against whom allegations have been made, in other words, its purpose terminates upon the authority determining if allegation is baseless altogether, or so substantive that a formal procedure should be adopted as per rules, to prove the charges. Thereafter the employer would proceed to conduct an enquiry by appointing enquiry officer, examining

and cross examining witnesses in terms of the applicable rules and regulations and in compliance with the principles of natural justice. The result of the proceedings and the report of the enquiry officer would depend on the deposition and materials collated during the period of the main enquiry proceeding itself and not as per any material or statement obtained during preliminary stage, unless the same is also relied on later. The employer would not be at liberty, according to its own wish and whims, after initiation of a disciplinary proceeding as per rules applicable, to relate back to the preliminary enquiry and its report, for its final decision, as the report of the enquiry officer, in the disciplinary proceeding has exonerated the delinquent, against all the imputation and alleged charges brought by the authorities, against the delinquent employee. This would only lead to gross arbitrariness.

18. Alleged misconduct of the respondent/writ petitioner, as transpired in the preliminary enquiry report is the ground for the authorities to record a "disagreement note" as well as imposing punishment to him. Rule of law would require the authorities to afford the respondent an opportunity of hearing and their compliance with the principle of natural justice, so far as the report of preliminary enquiry is concerned, to ultimately rely on that as a foundation of punishment. Unfortunately in this case excepting blatantly disagreeing with the report of the enquiry officer in the disciplinary proceeding, the punitive measures against the respondent have been announced without affording him any opportunity to defend himself, so far as the report of the preliminary enquiry is concerned. It would not be out of place to mention that a copy of such report has not even been served upon the respondent, before the authorities relied on the same as the basis of the punishment imposed. This Court is inclined to refer to a judgment, that is, *Wiseman vs. Borneman* reported in 1971 AC 297. It was held that :-

"as to procedural fairness where preliminary inquiries are conducted (See 5th Ed., 1995 (page 491, para 10.027) that the question of "proximity between investigation and act or decision" depends on the degree of proximity so far as the person affected claiming a right of hearing is concerned. Court says: Thus, a person empowered or required to conduct a preliminary investigation with a view to recommending or deciding whether a formal enquiry or hearing (which may lead to a binding and adverse decision) should take place, is not normally under any obligation to comply with rules of fairness (*Beetham vs. Trinidad Cement Co.* 1960 A.C.. 132; *Medical Board of Queens Land vs Byrne College of Physicians, ex P Samuels* (1996) 58 D.L.R.(2ND) 622; *Re; Drummoyne M.C.* (1962). S.R. (N.S.W.) 193. But he may be placed under such an obligation if his investigation is an integral part of a process which may terminate in action adverse to the interest of a person claiming to be heard before him. (*Wiseman vs. Borneman* 1971 AC 297). *Re: All General Canada and Canadian Tabacco Manufacturers' Council* (1986)"

19. According to the submissions of the appellant, the relief granted to the writ

petitioner/respondent has been beyond scope of the writ petition, in so far as the petitioner has never prayed for any relief of grant of compensation till the time of his actual superannuation. The Court of equity is ordained and designated to confer complete justice. Nothing would prevent the Court to grant an appropriate relief, as it thinks fit and proper against the touch stone of the particular facts and circumstances of a case, excepting that being tainted with illegality, perversity or arbitrariness. The powers conferred upon the Court under Article 226 of the Constitution of India is not limited to the scope and bounds of the prayers of the writ petition only. The scope is of much wider amplitude. The extraordinary power under Article 226 of the Constitution can well be exercised by the High Court to secure the ends of justice. In doing so, unless any patent and palpable error or illegality or any perversity creeps into the order of the Court, there would not be any plausible ground to challenge propriety of such an order.

20. The finding of the Hon'ble Single Bench as regards the impugned two orders, dated October 3, 2015 and dated January 15, 2016, is of illegality and non-maintainability of the same. However, the grievance of the writ petitioner has been mitigated by granting him some other relief, than prayed for. Appellants question that sustenance of the punishment and also granting relief cannot prevail side by side. Firstly the appellants are committing error to perceive that impugned orders in the writ petition are sustained by the Court. There is no ambiguity or uncertainty regarding the decision of the Court about illegality of the orders under challenge in the writ petition. It naturally and undeniably flows to the conclusion that the order of compulsory retirement of the respondent is now nixed and set at naught by the Court. It shall not be out of place to reiterate that the Hon'ble Single Judge's findings of illegality of the said orders has not been questioned in this appeal. After holding the order under challenge as illegal, now it is for granting relief to the petitioner. Compulsive re-induction of the respondent/writ petitioner in service might not be appropriate for the work atmosphere of the organization, so far as the relationship of him with his authority, is concerned. The parties have been entangled in litigation over this solitary issue, since the year 2007. It is anybody's guess that they may not any further be compatible with each other in a relationship of master and servant. In that event a prudent Judge would only think of prioritising the collective wellbeing than circumscribing to the relief only of reinstatement in service of the respondent/writ petitioner. After prolonged years of strainous and wreaking legal battle, his returning back to the force may not be convivially accepted by the authorities. It's about the coherence and congeniality in the work atmosphere than any compulsive compliance of the Court's order, which might have concerned the Hon'ble Single Judge and thus prompted him to mould the relief to be granted to the respondent/writ petitioner. It is not an acceptable argument on behalf of the appellants, that the findings of the Hon'ble Single Judge are the result of non-application of mind and the directions are ultimately contradictory to each other. Illegality of the impugned orders and grant of moulded reliefs to

the writ petitioner, which originally did not find place in the writ petition, are not to be separately looked into, but are only interlinked through a bridge of well thought of, reasonable and practical consideration of probable subsequent outcome, on the basis of the fact situation of the particular case.

A judgment of the Hon'ble Supreme Court reported in 1981 (3) SCC 528 (B.R. Ramabhadriah vs. Secretary, Food & Agriculture Department, Andhra Pradesh &ors.) may be mentioned, where it was held that Court should in the interest of justice suitably mould the relief in a writ petition under Article 226 of the Constitution of India. It was observed that the endeavour of the Court should be to remedy an injustice when it is brought to its notice rather than deny relief to an aggrieved party on purely technical and narrow procedural grounds. It was emphasized that the Court was not powerless to grant a relief by departing from that has been prayed in the writ petition for the purpose of rendering substantial justice.

Court's power to exercise judicial discretion in moulding relief in a case under Article 226 of the Constitution of India has again been upheld by the Hon'ble Supreme Court in the judgment of Ranu Hazarika & Ors. Vs. State of Assam &Ors. reported in 2011 (4) SCC 798, though at the same time the Hon'ble Court has used the words of caution that such a discretion may not be exercised to perpetuate and encourage any illegality.

Moulding relief in view of the particular facts and circumstances of the case by the High Court has been held to be an approach of the High Court unquestionable and consequently affirmed by the Hon'ble Supreme Court, in the judgment of State of Uttar Pradesh & Ors. Vs. Dinesh Singh Chauhan reported in 2016 (9) SCC 749.

Hence, it is found that by moulding the relief of the respondent/writ petitioner or by granting compensation to him for a particular period of time along with other applicable benefits, the Hon'ble Single Bench has not committed any exaggerated exercise of the power vested in it by law. As such the same cannot be held to be palpably perverse but only maintainable and thus upheld.

21. The Hon'ble Single Judge has heavily relied on the evidence brought on record during the disciplinary proceedings and very rightly so. The finding of the Hon'ble Single Bench that "apart from the statements recorded during the preliminary enquiry, there was nothing substantial on the record of the regular enquiry to hold the petitioner guilty", holds good in the light of the facts and circumstances of the present case.

22. The order impugned dated January 18, 2017, being thoroughly based on proper appreciation of the materials on record and also the facts and circumstances of the case and supported by the settled provision of law, this Court finds no palpable illegality or even irregularity as to the same to warrant any interference. Prayer of the appellants is de hors merit and should fail.

23. The appeal being MAT 567 of 2017 is dismissed along with CAN 1 of 2017 (Old No: CAN 5575 of 2017) and CAN 2 of 2017 (Old No: CAN 5576 of 2017). It is further directed that the appellants shall immediately pay all the arrear amount of money, in accordance with the order of the Hon'ble Single Bench, within 4 weeks, failing which the respondent/writ petitioner shall be entitled to be reinstated in service immediately thereafter.

24. Urgent photostat certified copy of this judgment, if applied for, be given to the parties, upon compliance of requisite formalities.