
(1996) 04 SC CK 0169

In the Supreme Court Of India

Case No : Civil Appeal No. 3869 Of 1993

Union of India (UOI) and Others

APPELLANT

Vs

V.B. Hajela

RESPONDENT

Date of Decision : 11-04-1996

Acts Referred:

Citation : (1997) 11 SCC 310

Hon'ble Judges : S. C. Agrawal, J;G. T. Nanavati, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. The respondent was employed as Inspecting Officer (Textiles) in the Department of Supply of the government of India. Disciplinary proceedings were initiated against him on the basis of a charge-sheet dated 27/2/1987. After holding an inquiry into the charges the penalty of compulsory retirement from service with effect from 27/5/1988, was imposed on the respondent by order dated 26/5/1988. The respondent filed an application (OA No. 604 of 1988) challenging the said order of compulsory retirement before the central Administrative tribunal, (hereinafter referred to as "the Tribunal"). The said application of the respondent was allowed by the Tribunal by judgment dated 8/8/1991 on the ground that the copy of the report of the Inquiry Officer had not been furnished to the respondent before the disciplinary authority passed the order of punishment. While setting aside the order of punishment the tribunal gave the following directions:

"ACCORDINGLY this application is allowed and the impugned punishment order dated 26/5/1988 is quashed and set aside. However, we clarify that this decision will not preclude the disciplinary authority from revising the proceedings and continuing with it in accordance with law from the stage of supplying the Inquiry Report."

During the pendency of the said proceedings before the tribunal the respondent

had attained the age of superannuation and stood retired on 28/2/1991.

2. Thereafter by order dated 19-2-1992, the respondent was treated as deemed to have been placed under suspension from the date of compulsory retirement with effect from 27/5/1988 to 28/2/1991, under Rule 10(4 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as "the Rules") and sanction was accorded by the President under Rule 9(2(a) of the Central Civil Services (Pension) Rules, to continue the proceedings against the respondent. The respondent filed a second petition (OA No. 321 of 1992 before the tribunal challenging the said order dated 19-2-1992 regarding his deemed suspension. The said application has been allowed by the tribunal by the impugned judgment dated 5/8/1992. The tribunal has held that sub-rule (4 of Rule 10 could not be invoked against the respondent because he had not been suspended from service at any stage during the pendency of the earlier disciplinary proceedings. The tribunal has, therefore, directed that the order of suspension shall not be enforced as against the respondent. Feeling aggrieved by the said decision of the tribunal the appellants have filed this appeal.

3. Sub-RULES (3 and (4 of Rule 10 of the Rules read as under:

"(3 Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4 Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a government servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders:

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case."

4. A perusal of the said provisions shows that sub-rule (3 deals with a situation where the penalty of dismissal, removal or compulsory retirement from service is set aside in appeal or on review and provides that if the government servant was under suspension the order of suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement. Sub-rule (4 deals with a situation where the penalty of dismissal, removal or compulsory retirement from service is set aside or declared

null and void in consequence of or by decision of a court of Law and provides that in such a case if the disciplinary authority, on a consideration of the circumstance of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement has been imposed, the government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement.

5. In *Nelson Motis v. Union of India* this court has noticed this difference between language used in sub-rules (3 and (4 and has held:

"The comparison of the language with that of sub-rule (3 reinforces the conclusion that sub-rule (4 has to be understood in the natural sense. It will be observed that in sub-rule (3 the reference is to "a government servant under suspension" while the words "under suspension" are omitted in sub-rule (4. Also sub-rule (3 directs that on the order of punishment being set aside, "the order of his suspension shall be deemed to have continued in force" but in sub-rule (4 it has been said that "the government servant shall be deemed to have been placed under suspension". The departure made by the author in the language of sub-rule (4 from that of sub-rule (3 is conscious and there is no scope for attributing the artificial and strained meaning thereto. In the circumstances it is not permissible to read down the provisions as suggested. We, therefore, hold that as a result of sub-rule (4 a government servant, though not earlier under suspension, shall also be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, provided of course, that the other conditions mentioned therein are satisfied."

In view of said decision in *Nelson Motis* it must be held that the tribunal was in error in holding that sub-rule (4 of Rule 10 could not be invoked because the respondent was not placed under suspension earlier.

6. Shri M.N. Shroff, the learned counsel appearing for the respondent, has, however, submitted that in the present case the respondent had already retired prior to the judgment of the tribunal in the earlier proceedings setting aside the order of compulsory retirement and that since the respondent had already retired from service the provisions of sub-rule (4 of Rule 10 were not applicable and the respondent could not be deemed to have been placed under suspension. Shri Shroff has placed reliance on the decisions of this court in *V.P. Gidroniya v. State of M.P* and *H.L. Mehra v. Union of India*.

7. It is no doubt true that the respondent stood retired on 28/2/1991 prior to the judgment of the tribunal dated 8/8/1991 in the earlier proceedings whereby the order of compulsory retirement was set aside. But by the said judgment the tribunal had only set aside the order imposing the penalty of compulsory retirement. The disciplinary proceedings that had been initiated against the respondent under the charge-sheet dated 27/2/1987 were not quashed and remained still pending. By its judgment dated 8/8/1991 the tribunal had

indicated that the said decision would not preclude the disciplinary authority from reviving the disciplinary proceedings and continuing with it in accordance with law from the stage of supplying the Inquiry Report. In these circumstances, it was open to the disciplinary authority to continue the said proceedings from the stage of supplying the Inquiry Report. The disciplinary authority decided to do so and the necessary sanction under Rule 9(2(a) of the central Civil Services (Pension) Rules was accorded by the President, as is evident from the order dated 19-2-1992. Thus both the requirements for the applicability of sub-rule (4) of Rule 10 were satisfied in the present case and the respondent has to be treated as deemed to have been placed under suspension with effect from 27/5/1988, the date of the passing of the original order of compulsory retirement, in view of sub-rule (4) of Rule 10 of the Rules. The decisions on which reliance has been placed by Shri Shroff have no application in the present case.

8. In *V.P. Gidroniya v. State of M.P.* this court has laid down the principle that if the master has a power to suspend his servant pending an enquiry into his misconduct, either in the contract of service or in the statute or the rules framed thereunder governing the service, an order of suspension passed by the master has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay any wages during the period of suspension. Such a power to suspend the contract of service cannot be implied and therefore, if in the absence of such a power in the contract, statute or rules, an order of suspension is passed by the master, it only forbids the servant to work without affecting the relationship of master and servant, and the master will have to pay the servant's wages. As indicated by this court in *H.L. Mehra v. Union of India* the said principle stands modified by sub-rules (3 and (4 of Rule 10 of the Rules. In *H.L. Mehra* this court has considered whether the impugned order of suspension could be sustained under sub-rule (4 of Rule 10 and it was found that out of the two conditions which are required to be satisfied for the application of sub-rule (4 the second condition was not satisfied in that case because the subsequent inquiry was not conducted on allegations on which the penalty of dismissal was originally imposed. In the instant case, as mentioned earlier, both the conditions that are required for application of sub-rule (4 of Rule 10 are satisfied.

9. In the result, the appeal is allowed, the impugned judgment of the tribunal dated 5/8/1991 is set aside and OA No. 321 of 1992 filed by the respondent is dismissed. No order as to costs.