

(2001) 06 AP CK 0038

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 26770 and 26784 of 1999

V. Raju

APPELLANT

Vs

Commander, Works Engineer

RESPONDENT

Date of Decision : 22-06-2001

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2001) 06 AP CK 0038

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : V. Venkata Ramana, for the Appellant; M. Ratna Reddy, Addl. S.C. for C.G., for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—These matters appear at the interlocutory stage in the days" list and when they were called on, the learned counsel appearing on behalf of the parties submitted that the writ petitions itself can be disposed of. Since both the matters involve common questions of law and fact, they are being disposed of by this common judgment.

2. The facts of the matter lie in a very narrow compass. The petitioners herein were appointed as Mazdoors in the office of the 1st respondent on or about 23-2-1988. At the time of their joining, they have produced a School Leaving Certificate, which was found to be a forged one. On the aforementioned ground they were dismissed from service. An Original Application, O.A. No. 815 of 1995, was filed before the learned Central Administrative Tribunal, Hyderabad Bench, and by reason of an order dated 20-3-1998 the O.A. was disposed of directing:

"It is stated that the applicant is a poor ex-class IV employee and has already became over-aged. Hence to get some employment elsewhere is not possible due to the dismissal order. By the dismissal order he had lost chances of getting employment in some other Govt. offices. Further the Appellate Authority himself

has quoted in para-4 of the Appellate Order that the Applicant was doing excellent work and shown good conduct during the period of service. That itself is sufficient to forgive him for the misconduct and award a lesser punishment instead of dismissal from the service. We do see the point in the submission of the learned counsel for the applicant. We also feel that a poor Class-IV employee without knowing the consequences for the act done by him should not be asked to suffer very much. Hence we feel that a lenient view may have to be taken. But the Courts or Tribunals do not have powers to modify the punishment as observed by the Apex Court. Hence we feel that the case of the applicant has to be referred back to respondent No.2 to reconsider the punishment awarded to the applicant to see whether a lighter punishment can be awarded which in our opinion may meet the hands of the justice."

3. Pursuant to and in furtherance of the said direction, the appellate authority has passed an order on 25-6-1998, which is in the following terms:

"AND WHEREAS the Appellate Authority in obedience of the said Honourable CAT Hyderabad Bench Order has reconsidered and again gone thoroughly the details of the case, also keeping in view the Govt. of India's Instructions vide M.H.A.O.M. No.5 1 65-Estt.D, dated 30 Apr 1965, reproduced under Rule 11 of CCS (CC & A) Rules 1965 with regard to action for furnishing false information at the time of appointment or there has been suppression of any factual information in the Attestation form comes to notice at any time during the service of a person his services would be liable to be terminated.

AND WHEREAS the Appellate Authority keeping in view of the grievances put forth by the said V. Raju, Ex-Mazdoor and the Govt. instructions on the subject and the fact that it was conclusively and undoubtedly established that the said Shri V. Raju, Ex-Mazdoor deserves the punishment awarded by the Disciplinary Authority on 29 Aug 94, which is just and equitable. There is no scope to interfere with the punishment keeping in view the lapses committed by the applicant.

AND WHEREAS the Appellate Authority, therefore, reconsidered the punishment already awarded to Shri V. Raju, Ex-Mazdoor by the Disciplinary Authority and considering the facts and circumstances of the case felt that there is no need to reduce the quantum of the penalty awarded to Shri V. Raju, Ex-Mazdoor."

4. The learned Tribunal, relying on a decision of the Apex Court in U.P.STATE ROAD TRANSPORT CORPORATION & ORS. v. A.K.PARUL¹ inter alia held that the Court or the Tribunal has no jurisdiction to interfere with the quantum of punishment. The question, which has been raised in this application, is a vexed one.

5. It is true that the doctrine of proportionality, keeping in view the several decisions of the Apex Court and in particular OM KUMAR AND OTHERS v. UNION OF INDIA², must be considered in the light of the principles of Wednesbury unreasonableness, as evolved in ASSOCIATED PROVINCIAL PICTURE HOUSES v.

WEDNESBURY CORPORATION.³ But, it appears that in the instant case the learned Tribunal felt on the earlier occasion that having regard to the facts and circumstances of this case, the punishment meted out to the petitioner was so disproportionate so as to shock the conscience of the Court. In OM KUMAR's case (2 supra) the Apex Court made a distinction between primary review and secondary review. While considering the administrative action the Court may invoke the underlying principles adumbrated in Article 14 of the Constitution of India, if the same suffers from the vice of unreasonableness, in the light of the decision of the Apex Court in E.P.ROYAPPA v. STATE OF TAMILNADU⁴.

6. Another important aspect which requires consideration from another angle is if a misrepresentation is made for the purpose of obtaining an appointment, the same would constitute a serious misconduct, but if a person has produced something which was not necessary to be produced and/or the documents so produced were wholly irrelevant for the purpose of obtaining the appointment, the same may be considered in a different perspective.

7. The order passed by the appellate authority dated 25-6-1998, which was impugned before the learned Tribunal, is not a speaking order. In the said order, the appellate authority has not considered the aforementioned aspect of the matter. We are, therefore, of the opinion that the learned Tribunal ought not have dismissed the Original Application filed by the petitioners herein.

8. We, therefore, allow these writ petitions, set aside the order passed by the learned Tribunal, as also the order dated 25-6-1998 and direct the appellate authority to consider the matter afresh in the light of the observations made hereinabove. The appellate authority may also consider the matter, having regard to the various decisions of this Court in DISTT.MANAGER, APSRTC, VIJAYAWADA v. K.SIVAJI,⁵ M.R.RAO v. GOVT. OF A.P., HYD.,⁶ T.J. (P) LTD. v. AUTHORITY UNDER PAYMENT OF WAGES ACT & ANR.,⁷ S.B.T.P.O. ASSOC v. P.O., INDL. TRIBUNAL⁸ and dispose of the representation filed by the petitioner within one month from the date of communication of the order. No order as to costs.