
(1994) 11 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 18744 of 1987

V.B. Naidu

APPELLANT

Vs

Director General, Central Power Research Institute

RESPONDENT

Date of Decision : 24-11-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) ILR (Kar) 396

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : M.S. Nagaraj and Sheriff, for the Appellant; S.G. Sundaraswamy, Senior Advocate for R1, for the Respondent

Judgement

Saldanha, J.—Heard learned Counsel on both sides. The petitioner is an ex-employee of the Central Research Institute which is the first respondent to this Petition. In the year 1985, the petitioner was working as a Technician Grade IV. The record indicates that in the months of April & June 1985, the petitioner was charge-sheeted in relation to acts of misconduct, pursuant to his having been placed under suspension in the month of April 1985. The acts of misconduct principally do not require to be elaborately set out in so far as they can be summarised under the head of gross misbehaviour in relation to trade union activities. The petitioner along with several others is alleged to have spoken discourteously to the Director and had confined the senior officers in the office premises for several hours and had indulged in several other incidental acts that were construed as misconduct. The second charge sheet related to the petitioner having distributed a pamphlet wherein serious allegations have been made against some of the senior executives. The enquires were held against the petitioner and the enquiry officers recorded adverse verdict against him in both the enquires to the effect that all the charges had been proved. The disciplinary authority after considering the enquiry reports and the record of the cases by an order dated 4.11.85 inflicted on the petitioner the penalty of compulsory retirement with immediate effect. It is this order that is the subject matter of the

challenge in the present Petition. It appears from the record that the petitioner had preferred an appeal which was not disposed of for quite some time, but the respondent's Counsel informs me that he is unable to state as of now as to what had happened to that appeal. Basically we are concerned with the order of the disciplinary authority because this is the order impugned in the present Petition. It is obvious that the petitioner's appeal was not successful as otherwise the respondents would have informed him about the same.

2. Initially, the petitioner's learned Counsel sought to challenge the verdict principally on the ground that the procedure prescribed by law has not been scrupulously followed. He sought to point out that one of the witnesses has not been earlier cited, that the record from other proceedings was virtually borrowed and included in the present proceeding and that generally, the conduct of the enquiry does not pass scrutiny. I have examined these submissions in relation to the record that is before me and I am not dealing with them elaborately for the simple reason that none of the submissions are liable to be upheld. There is no basic fundamental or gross infirmity or legal error either in the conduct of the enquiry or for that matter when it comes to the evaluation of the evidence. The material does indicate that all the charges that were the subject matter of the enquiry were established. The disciplinary authority in this background was therefore required to decide in relation to the various options that were before him as to what would be a fair and just punishment that was commensurate with the misconduct that has been held established. The disciplinary authority obviously, in order to soften the blow, chose the least of the three harsh punishments by directing an order of compulsory retirement which would not preclude the petitioner from further employment nor for that matter would it deprive him of his accrued benefits. The order in question took effect immediately which was why the petitioner approached this Court.

3. The subsidiary argument canvassed on behalf of the petitioner is that the punishment awarded to the petitioner even assuming the charges were held to be proved is too harsh. It was pointed out that the petitioner had put in several years of service and under these circumstances, even if the misconduct required a relatively grave punishment, that the Regulations do prescribe several such punishments and therefore there was no need to deprive him of his only source of livelihood. It was sought to be contended that minor punishments have been awarded to the other persons against whom action had been taken and that consequently, the petitioner should not be singled out for harsh treatment.

4. On the question or quantum of punishment, the respondent's learned Counsel has advanced two submissions. Firstly he has pointed out to me that this is not a factory in the conventional sense but it happens to be a Research Centre and in such a situation where an academic institution is concerned, acts of misbehaviour and indiscipline will have to be severely dealt with. He submitted that having regard to the persistent misconduct of the petitioner that the respondents had no option except to award a punishment that severed his connection with the

institution and that in the background of the case, it was fully justified. More importantly, the learned Counsel submitted that once a Court comes to the conclusion that the charges are established, that the Writ Jurisdiction of the Court ought not to be exercised for the restrictive purposes of varying or modifying the order to the extent of quantum of punishment. He submitted that in law, the Court may be competent to strike down, an order completely but short of that, since this Court does not embark upon a full scale trial unlike the Labour Court, that it is neither open nor proper to exercise the power of varying the quantum of punishment alone if the rest of the order is being upheld.

5. As far as the first argument is concerned, I do concede that the Courts are required to take special note of the type of activity that is being carried out in a place and that the Courts will in this background come down very heavily with regard to cases of misbehaviour particularly where Universities, Hospitals, Educational Institutions etc. are concerned. In so doing however, it is equally necessary to ensure that a degree of balance is maintained while imposing the punishment and that an amount of self restraint is also apparent while choosing the quantum of punishment that is being awarded. To this extent, therefore, to my mind the submissions canvassed by the petitioner's learned Counsel that even if the charges are fully held to be established that the order for compulsory retirement was too harsh in the facts of this case is to my mind justified.

6. As regards the second head of argument canvassed on behalf of the respondents is concerned, I need to observe that Judicial discretion is required to be exercised in all cases and by all authorities Judicial and quasi judicial particularly where penal consequences are involved. Where the High Court in exercise of its jurisdiction under Article 226 of the Constitution is exercising unfettered powers which include the power to quash and set aside a final order it can never be argued that a lesser power cannot be exercised by the same Court. In a case where it appears that the authority has gone wrong only to the limited extent of imposing a punishment that is too harsh, a Writ Court can and will mould the relief to that limited extent only.

7. I have taken full note of the misconduct that has been committed by the petitioner, his age, his status in life, the type of activity carried on by the respondent institution and all other relevant circumstances. To my mind, the consequences of interference with the impugned order would result in financial consequences to respondent No. 1 if the petitioner were to be ordered to be reinstated with consequential benefits. However, it is a well settled principle of Service Law that even if an order of reinstatement were to be made that unless the facts so justify, it is unnecessary to direct that the opposite party must be paid the whole or some of the backwages. Petitioner's learned Advocate canvassed a strong plea that if the petitioner were to be reinstated, that he must automatically get his entire backwages. On the facts of this case, to my mind the petitioner does not qualify for this. At the very highest, if the order were to be set aside the record would still justify the petitioner not being paid anything

other than what he has already received for the entire interim period. The only limited benefit that the petitioner can be conferred on is that he would be entitled to continuity of service for ultimate computation of his over all permanent benefits, to the extent that he be granted continuity of service vis-a-vis the entire period of absence namely the dates between the punishment order having taken effect and the date on which he is reinstated.

8. The Petition therefore succeeds partially. The order dated 4.11.1985 is modified to the extent that the petitioner is directed to be reinstated and the period during which he was out of employment shall be treated as sufficient punishment for the acts of misconduct that have been established against him. The respondents are directed to reinstate the petitioner to his original position with effect from 1.2.1995. The petitioner shall be entitled to receive his normal salary and allowances with effect from that date. It is clarified, that the petitioner will not be liable to return any of the pensionary amounts that have been received by him upto the date of reinstatement. However, as regards whatever other terminal benefits that have been paid to him are concerned, the option shall be left to the petitioner either to refund the same to respondent No. 1 or to request the respondent No. 1 to adjust the same as debits against the amounts that will ultimately be payable to the petitioner. Rule Absolute to this extent only. No order as to costs.