STATE OF M.P. AND OTHERS. A

v.

HAZARILAL

(Civil Appeal No. 6498 of 2005)

FEBRUARY 12, 2008 B

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Service Law – Termination of service – In view of conviction u/s 323 r/w 34 IPC by a Criminal Court – Tribunal and High Court directing his reinstatement holding that C *punishment was excessive – On appeal, held: Disciplinary authority while imposing punishment under its statutory discretionary powers, should take into account attending facts and circumstances of the case – In the facts of the case, order of termination is unreasonable and also disproportionate –* D *Service rules relied on by the State is not applicable to the instant case – Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 – r.19.*

Respondent was a peon. He was convicted u/s 323 r/w s. 34 IPC and was punished with fine of Rs.500/-. In E **view of that, disciplinary action was taken against him and consequently his services were terminated. His application seeking his reinstatement was allowed by the State Administrative Tribunal holding that the punishment of termination of service is excessive. Writ petition filed** F **against the order of the Tribunal was dismissed. Hence the present appeal.**

Dismissing the appeal, the Court

HELD: 1.1 The attitude of the appellant is G **unreasonable. Respondent had not committed any misconduct within the meaning of the provisions of the Service Rules. He was involved in a matter for causing simple injury to another person. He was not even sent to**

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A **prison. Only a sum of Rs.500/- was imposed upon him as fine. [Para 5] [790-G; 791-A]**

1.2 An authority which is conferred with a statutory discretionary power is bound to take into consideration all the attending facts and circumstances of the case B **before imposing an order of punishment. While exercising such power, the disciplinary authority must act reasonably and fairly. Respondent occupies the lowest rank of the cadre. He was merely a contingency peon. Continuation of his service in the department would not bring a bad** C **name to the State. He was not convicted for any act involving moral turpitude. He was not punished for any heinous offence. [Para 8] [792-B, C]**

Shankar Das vs. Union of India **1985 (2) SCC 358 –** D **relied on.**

2. The legal parameters of judicial review has undergone a change. Wednesbury principle of unreasonableness has been replaced by the doctrine of proportionality. Applying the doctrine of proportionality E **principle also, no interference with the impugned judgment is called for. [Paras 12 and 15] [793-E; 794-G]**

Indian Airlines Ltd. vs. Prabha D. Kumari **2006 (11) SCC 67**; *State of U.P. vs. Sheo Shanker Lal Srivastava* **2006 (3) SCC 276**; *M.P. Gangadhran and Anr. vs. State of Kerala and* F *Ors.* **AIR 2006 SC 2360**; *Coimbatore District Central Cooperative Bank vs. Coimbatore District Central Cooperative Bank Employees Association and Anr.* **2007 (4) SCC 669**; *Ranjit Thakur vs. Union of India and Ors.* **1987 (4) SCC 611 – relied on.**

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Seal (FC) (Appellant) vs. Chief Constable of South Wales Police (respondent) **2007 (4) All ER 177**; *Huang (FC) (Respondent) vs. Secretary of State for the Home Department (Appellant) and Kashmiri (FC) (Appellant) Vs. Secretary of State for the Home Department (Respondent) (Conjoined*

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Appeals) **2007 (4) All ER 15;** *Tweed (Appellant) vs. Parades Commission for Northern Ireland (Respondents) (Northern Ireland)* **2007 (2) All ER 273;** *Beltast City Council (Appellants) vs. Miss Behvain Limited (Respndents) (Northern Ireland)* **2007 (3) All ER 1007; R** (*On the application of Countryside Alliance and Ors) vs. Her Majesty's Attorney General and Anr.* **2007 (3) WLR 922– referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6498 of 2005.

From the final Judgment and Order dated 28.4.2004 of the High Court of Judicature for Madhya Pradesh, Jabalpur Bench at Gwalior in W.P. No. 375/2003.

Siddhartha Dave, Vibha Datta Makhija and Nemtiben Ao for the Appellants.

Nitin S. Tambwekar, B.S. Sai and K. Rajeev for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Respondent was a Peon appointed in a Middle School. He is said to have assaulted one Ram Singh on 5th October, 1989. He was prosecuted for commission of the said offence and was convicted by a Court of Magistrate by a judgment dated 22nd July, 1992 under Section 323 read with Section 34 of the Indian Penal Code and sentenced to undergo one month's simple imprisonment. On an appeal preferred by him, the sentence was reduced to a fine of Rs.500/- only. A revision thereagainst was filed by the respondent herein before the High Court.

2. A show cause notice was issued to the respondent as to why disciplinary action shall not be taken against him in view of the judgment of conviction passed against him in the said criminal case. By an order dated 25th November, 1993 his services were terminated by the Deputy Director, Vidisha. An appeal thereagainst was preferred by the respondent in terms

of Madhya Pradesh State Services Act. However, no order was passed therein. A revision was filed by him before the Deputy Director, Public Education. During the pendency of the said revision application, his criminal revision petition filed before the High Court was dismissed. The prayer of the respondent that he be reinstated in service was rejected in terms of the order dated 11th January, 1994 passed by the Deputy Director, Public Education, Vidisha.

3. Respondent thereafter filed an Original Application before the State Administrative Tribunal, Gwalior. The Tribunal by an order dated 25th November, 2002 allowed the said application holding :-

> "However, the applicant succeeds on the ground that the punishment of removal from service is grossly excessive because the punishment was only under section 323 IPC and the High Court has clarified that the punishment does not involve any moral turpitude every power vested in a public authority has to be exercised fairly, justly and reasonably. Respondents should have applied their mind to the penalty which should be appropriately be imposed in the circumstances of the case. Please see *Shankar Das Vs. Union of India* (1985 2 SCC 358). This does not seem to have been done."

A writ petition filed thereagainst by the appellants before the High Court has been dismissed by reason of the impugned judgment.

4. Mr. Siddhartha Dave, learned counsel appearing on behalf of he appellants, submitted that the High Court committed a manifest error in passing the impugned judgment in so far as it failed to take into consideration that the Tribunal or the High Court could not have interfered with the quantum of punishment.

5. The case in hand appears to be a gross one. This Court is unable to appreciate the attitude on the part of the appellant herein which ex-facie appears to be wholly unreasonable.

Respondent had not committed any misconduct within the meaning of the provisions of the Service Rules. He was involved in a matter for causing simple injury to another person. He was not even sent to prison. Only a sum of Rs.500/- was imposed upon him as fine.

6. Rule 19 of M.P. Civil Services (Classification, Control and Appeal) Rules, 1966, which provides for special procedure in certain cases, to which reliance has been placed by the appellants does not appear to be applicable in the instant case. The said Rule reads thus :-

"19. Special procedure in certain cases.

Notwithstanding anything contained in Rule 14 to Rule 18

(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonable practicable to hold an inquiry in the manner provided in these rules, or

(iii) where the Governor is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit.

Provided that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule."

7. By reason of the said provision, thus, "the disciplinary authority has been empowered to consider the circumstances of the case where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge", but the same would not mean that

A irrespective of the nature of the case in which he was involved or the punishment which has been imposed upon him, an order of dismissal must be passed. Such a construction, in our opinion, is not warranted.

B 8. An authority which is conferred with a statutory discretionary power is bound to take into consideration all the attending facts and circumstances of the case before imposing an order of punishment. While exercising such power, the disciplinary authority must act reasonably and fairly. Respondent occupied the lowest rank of the cadre. He was merely a C contingency peon. Continuation of his service in the department would not bring a bad name to the State. He was not convicted for any act involving moral turpitude. He was not punished for any heinous offence.

D 9. The Tribunal, in our opinion, rightly placed reliance upon the decision of this Court in *Shankar Das vs. Union of India* : (1985) 2 SCC 358 wherein this Court commended the judgment of a Magistrate of Delhi as he had let off the appellant therein under Section 12 of the Probation of Offenders Act stating :-

E "Misfortune dogged the accused for about a year and it seems that it was under the force of adverse circumstances that he held back the money in question. Shankar Dass is a middle-aged man and it is obvious that it was under compelling circumstances that he could not deposit the F money in question in time. He is not a previous convict. Having regard to the circumstances of the case, I am of the opinion that he should be dealt with under the Probation of Offenders Act, 1958."

10. Despite the said observation Shankar Das was G dismissed from service. This Court held :-

"7. It is to be lamented that despite these observations of the learned Magistrate, the Government chose to dismiss the appellant in a huff, without applying its mind to the penalty which could appropriately be imposed upon him H

insofar as his service career was concerned. Clause (a) of the second proviso to Article 311(2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge". But, that power, like every other power, has to be exercised fairly, justly and reasonably. Surely, the Constitution does not contemplate that a government servant who is convicted for parking his scooter in a no-parking area should be dismissed from service. He may, perhaps, not be entitled to be heard on the question of penalty since clause (a) of the second proviso to Article 311(2) makes the provisions of that article inapplicable when a penalty is to be imposed on a government servant on the ground of conduct which has led to his conviction on a criminal charge. But the right to impose a penalty carries with it the duty to act justly. Considering the facts of this case, there can be no two opinions that the penalty of dismissal from service imposed upon the appellant is whimsical."

11. We express similar dis-satisfaction in this case.

12. Furthermore the legal parameters of judicial review has undergone a change. Wednesbury principle of unreasonableness has been replaced by the doctrine of proportionality. [See : *Indian Airlines Ltd. vs. Prabha D. Kumari*: (2006) 11 SCC 67 ; *State of U.P. vs. Sheo Shanker Lal Srivastava :* (2006) 3 SCC 276 and *M.P. Gangadharan and another vs. State of Kerala and others :* AIR 2006 SC 2360.]

13. At this stage we may also notice the application of the Doctrine by the United Kingdom House of Lords in *Seal (FC) (Appellant) vs. Chief Constable of South Wales Police (Respondent)* : [2007] 4 All ER 177; *Huang (FC) (Respondent) v. Secretary of State for the Home Department (Appellant) and Kashmiri (FC) (Appellant) vs. Secretary of State for the Home Department (Respondent) (Conjoined Appeals)* : [2007] 4 All ER 15; *Tweed (Appellant) vs. Parades Commission for*

A *Northern Ireland (Respondents) (Northern Ireland)* [2007] 2 All ER 273; *Belfast City Council (Appellants) vs. Miss Behavin' Limited (Respondents) (Northern Ireland)* [2007] 3 All ER 1007 and *R (on the application of Countryside Alliance and others and others) vs. Her Majesty's Attorney General and another* B [2007] 3 WLR 922.

14. It is interesting to note that distinguishing between the traditional grounds of judicial review and the doctrine of proportionality, Lord Carswell in *Tweed* (Supra) after referring to previous decisions and authorities, observed:

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"The starting point is that there is an overlap between the traditional grounds of review and the approach of proportionality. Most cases would be decided in the same way whichever approach is adopted. But the intensity of review is somewhat D greater under the proportionality approach. Making due allowance for important structural differences between various convention rights, which I do not propose to discuss, a few generalisations are perhaps permissible. I would mention three concrete differences without suggesting that my statement is exhaustive. First, the doctrine of proportionality may require the E reviewing court to assess the balance which the decision maker has struck, not merely whether it is within the range of rational or reasonable decisions. Secondly, the proportionality test may go further than the traditional grounds of review inasmuch as it may require attention to be directed to the relative weight F accorded to interests and considerations. Thirdly, even the heightened scrutiny test developed in R v Ministry of Defence, Exp Smith [1996] QB 517, 554 is not necessarily appropriate to the protection of human rights."

G 15. Applying the said principle also, in our opinion, no interference with the impugned judgment is called for.

16. Reliance has been placed by the learned counsel on *Coimbatore District Central Cooperative Bank vs. Coimbatore Distarict Central Cooperative Bank Employees Association* H *and another :* (2007) 4 SCC 669 wherein also this Court

accepted the applicability of the doctrine of proportionality. Therein this Court has quoted with approval the decision of this Court in *Ranjit Thakur vs. Union of India and others :* (1987) 4 SCC 611 as also *M.P. Gangadharan and another vs. State of Kerala and others :* (2006) 6 SCC 162, which had applied the doctrine of proportionality. A B

17. For the reasons aforementioned there is no merit in this appeal which is dismissed with costs. Counsel fee is quantified at Rs.25,000/-.

K.K.T. Appeal dismissed. C