B.U. Ugrappa Vs. the Executive Secretary, Karnataka State Council for Science and Technology and ors.

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Court : Karnataka

Decided On : Jan-20-2004

Reported in : 2004(3)KarLJ474

Judge : R. Gururajan, J.

Acts : Constitution of India - Articles 226 and 227

Appeal No. : Writ Petition No. 22313 of 2001

Appellant : B.U. Ugrappa

Respondent : The Executive Secretary, Karnataka State Council for Science and Technology and ors.

Advocate for Def. : Sundaraswamy Ramdas and Anand

Advocate for Pet/Ap. : K.V. Narasimhan, Adv.

Judgement :
ORDER

R. Gururajan, J.

1. Petitioner is before me challenging Annexures-A to C passed by the first respondent and Annexures-L and N passed by the third respondent.

2. Petitioner was appointed to the post of a Helper in 1979. Thereafter he was appointed as a Peon (designation subsequently changed as Junior Attender), He was promoted as Attender during 1986 and as Junior Assistant in September 1993. While he was working as Junior Assistant in Karnataka State Council for Science and Technology, a charge-sheet was served in terms of Annexure-A on him, attributing certain misconduct and misbehaviour on his part. He was asked to submit his reply. Thereafter one Sri Kulkarni was appointed as the Enquiry Officer and thereafter, on his resignation one Sri Gopinath was appointed as Enquiry Officer. The presiding officer was also appointed by the respondent. The charge-sheet was issued by Sri A.N.N. Murthy, the first respondent-Executive Secretary and Appointing Authority. According to the petitioner, the entire incident had occurred in the Chambers of the Secretary and therefore he is not competent to initiate proceedings against the petitioner. The Enquiry Officer has submitted his report in terras of Annexure-D. One Sri M.S. Ram Prasad who happened to be one of the complainants became the Executive Secretary by the time the enquiry report was submitted and he was also a witness at the enquiry. He passed an order imposing penalty reducing the petitioner to the lower post, of Attender on the pay scale of Rs. 1,040-1,900/-. Against the said order petitioner preferred an appeal. Appeal was rejected. Thereafter, he moved this Court in W.P. No. 44871 of 1999. This Court quashed the orders and remanded the matter for redecision. Thereafter a show-cause notice was issued on the basis of the enquiry report by the management. Petitioner submitted his reply. Thereafter, Annexure-L was issued and appeal was filed and the appeal came to be rejected. With these facts petitioner is before me.

3. Notice was issued and respondents have entered appearance. According to them the enquiry was held in a fair manner providing all opportunities to the petitioner. They say that taking into consideration, the seriousness of the misconduct the punishment was imposed. They justify their action.

4. Heard the learned Counsels for the parties.

5. Learned Counsel for the petitioner would argue that the Sri Ann Murthy is biased in the case on hand. It was he who appointed the Enquiry Officer. He says that any orders passed by Sri A.N.N. Murthy, on the facts of this case require my interference. He strongly relies on the theory of bias in a case like this. His second submission is that the punishment is disproportionate to the charge levelled against the petitioner. He refers to the material facts to contend that this Court has to come to aid of the petitioner. Per contra, learned Counsel for the management supports the act of the management.

6. After hearing the learned Counsel, I have carefully perused the material on record.

7. Admitted facts reveal of certain misconducts on the part of the petitioner. An enquiry was conducted and thereafter the present order has been passed. It is to be noticed at this stage that the petitioner on an earlier occasion had approached this Court and this Court set aside the orders on the ground that the person who has passed the orders was himself a complainant and also a witness. After the orders of this Court the management has issued a show-cause notice along with an enquiry report. Petitioner has submitted a reply and in the reply he states that the appointing authority himself framed the charges and appointed the Enquiry Officer. According to him, this comes in the way of the proceedings by the management. While considering these objections, the management has stated that the acts of the petitioner were detrimental to the interest of the council and that therefore he deserves a punishment in the matter. Thereafter an appeal has been filed and the Appellate Authority by a detailed order has noticed that the impugned order does not require any further consideration. At this stage, I must notice that the impugned show-cause notice and orders have been passed by the Secretary and not by Mr. A.N.N. Murthy. He only appointed the Enquiry Officer and the presenting officer and he was not a witness. A mere appointment of Enquiry Officer and the presenting officer by Mr. A.N.N. Murthy does not by itself prove the theory of bias. Bias is a serious plea. It has to be supported by the material on record. No such material is placed except making a bald suggestion. It is also to be noticed that in the earlier writ petition this plea was neither raised nor considered by this Court. In these circumstances, it is not possible for this Court to

set aside the enquiry on the plea of bias which according to me has no foundation. At this stage, I must notice the judgment of the Supreme Court in Saran Motors (Private) Limited, New Delhi, v. Vishwanath and Anr., 1964-11-LLT-139 (SC) in which the plea of bias was considered. The Supreme Court in the said case ruled as under:

'It is impossible to accept the contention that because a person is sometimes employed by the employer as a lawyer, he becomes incompetent to hold a domestic enquiry. It is well-known that enquiries of this type are generally conducted by the officers of the employer and in the absence of any special individual bias attributable to a particular officer, it has never been held that the enquiry is bad just because it is conducted by an officer of the employer. If that be so, it is obviously unsound to take the view that a lawyer, who is not a paid officer of the employer, is incompetent to hold the enquiry, because he is the employer's lawyer and is paid remuneration for holding the enquiry'.

8. Inspiration can be drawn from this judgment that unless specific bias is attributed to Mr. A.N.N. Murthy, it cannot be said that he was biased against the petitioner. The plea of bias is not acceptable to me.

9. I must also notice another judgment relied on by the management in the case Syed Rahimuddin v. Director General, C.S.I.R., : (2001)IILLJ 1246 SC wherein the Supreme Court has ruled in para 6 as under:

'Bias undoubtedly, would have to be established either by evidence or on the Material on record which are relied upon by the Enquiring Officer in coming to his conclusion as to the guilt of the delinquent'.

10. In G.M.S. Prabhu v. Canara Bank, ILR 1999 Kar. 4500 this Court after noticing the judgment of the Supreme Court in Pankajesh v. Tulsi Gramin Bank and Anr., : (1997)IILLJ821SC has ruled as under:

'The onus of proving bias is on the delinquent officer and this allegation should be clearly proved if the enquiry proceedings are sought to be set aside. Petitioner has not discharged his burden. Therefore, I do not find any merit in the first contention

canvassed by the learned Counsel for the petitioner. Accordingly, it is rejected'.

11. In the light of these three rulings, I am of the view that the allegation of bias is not based on facts but it is also not proved, warranting my interference.

12. Insofar as the punishment is concerned, it is seen from the material on record that the petitioner has misbehaved with other colleagues using foul language in the office premises. He also attended several telephone calls using indecent words while conveying messages. These charges have been held to be proved in terms of the enquiry report. On going through the report it is seen that the said findings are based on facts. It is fairly well-settled that an employee is required not to violate the decency expected in a public office. He cannot use foul language against his employers. His behaviour as narrated in the office order Annexure-A would show that the petitioner is not serious about maintaining discipline in the office premises. Similarly his attending telephone calls by using indecent words also cannot be brushed aside by this Court. In these circumstances, it is not possible for this Court to interfere with the impugned order. Law is also well-settled in this regard. The Supreme Court in the case of Union of India v. B.K. Srivastava, has ruled in para 8 reading as under

'We find that fair treatment had been given to the respondent in the enquiry. There has been lawful exercise of power by the Disciplinary and Appellate Authorities. There has been no abuse of power. In these circumstances, the Tribunal should have stayed its hands. It is part of the function of the Tribunal to substitute its own decision when enquiry is held in accordance with rules and punishment is imposed by the authorities considering all the relevant circumstances and which it is entitled to impose'.

13. The Supreme Court again in the case of Bank of India v. Degala Suryanarayana, : (1999)IILLJ682SC has ruled in para 11 has under:

'The Court exercising the jurisdiction of judicial review wouldnot interfere with the findings of fact arrived at in thedepartmental enquiry proceedings excepting in a case of malafides or perversity i.e., where there is no evidence to support afinding or where a finding is such that no man acting reasonablyand with objectivity could

have arrived at that finding. The Courtcannot embark upon re appreciating the evidence or weighing thesame like an Appellate Authority, So long as there is someevidence to support the conclusion arrived at by the departmentalauthority, the same has to be sustained'.

14. In the light of these judgments, and on the facts of this case, it cannot be said that the punishment is disproportionate warranting my interference.

15. It is also to be noticed that the petitioner seems to be a chronic misbehaved employee as I see from the appellate order. It is hoped that at least in future he mends his ways in his own interest.

16. In these circumstances, I find no merits in this petition. Petitionstands rejected. No costs.