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State of U.P. and ors. Vs. State Public Services Tribunal and anr.

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Court : Allahabad

Decided On : Apr-07-2003

Reported in : 2003(3)AWC2323; (2003)2UPLBEC1123

Judge : B.S. Chauhan and ;Ghanshyam Dass, JJ.

Acts : Indian Penal Code (IPC) - Sections 409; Code of Criminal Procedure (CrPC) - Sections 169

Appeal No. : C.M.W.P. No. 14962 of 2003

Appellant : State of U.P. and ors.

Respondent : State Public Services Tribunal and anr.

Advocate for Def. : K.K. Tripathi, Adv.

Advocate for Pet/Ap. : S.C., and ;Nurul Huda, Adv.

Disposition : Petition allowed

Judgement :

Dr. B.S. Chauhan and Ghanshyam Dass, JJ.

1.This writ petition has been filed against the judgment and order dated 13.12.2002 (Annexure-1), passed by the respondent No. 1 Tribunal allowing the claim petition of the respondent employee and setting aside the order of

termination dated 25.5.1988.

2. Facts and circumstances giving rise to this are that the said respondent employee was involved in a criminal case under Section 409, I.P.C. During the pendency of the criminal case, enquiry was held against him and his services were terminated on the basis of the enquiry report vide order dated 25.5.1988. Respondent was discharged by the criminal court in view of the provisions of Section 169, Cr.P.C. and in view of the submission of the final report by the Investigating agency. He submitted an application for reinstatement which was rejected as his termination was based oh enquiry report. Being aggrieved, he preferred the Writ Petition No. 17710 of 1988. During the pendency of the writ petition, he was discharged vide order dated 18.9.1990. When the writ petition came for hearing on 24.7.1997, petitioner did not press the petition. Thus, it was dismissed as not pressed. Subsequent thereto, petitioner preferred a Claim Petition No. 2575 of 1998 before the respondent Tribunal claiming the relief of setting aside the order dated 25.5.1988.

3. The claim petition was contested by the present petitioner on the ground that as the earlier writ petition had been filed by the said employee, the claim petition was barred by constructive res judicata as well as being hopelessly time barred, the learned Tribunal rejected the said contention of the State and allowed the petition, hence this petition.

4. Heard Shri Nurul Huda, learned standing counsel appearing for the petitioner and Shri K.K. Tripathi, learned counsel for the respondent No. 3.

5. It has been submitted by the learned counsel for the State that the petition was barred by constructive res Judicata and the learned Tribunal failed to appreciate the issue involved herein, and thus, petition deserves to be allowed. On the contrary, Shri Tripathi, learned counsel for the respondent has submitted that once the petition has been dismissed as not pressed vide order dated 24.7.1997, there could be no bar for the Tribunal to entertain the petition and petition is liable to be dismissed.

6. We have considered the rival submissions made by the learned counsel for the parties and perused the record. Admittedly, Writ Petition No. 17710 of 1988 had been filed for quashing the order of punishment dated 25.5.1988. On 24.7.1997, this Court passed the following order ;

'The writ petition is dismissed as not pressed.'

The learned Tribunal has dealt with the issue as under :

'However, this submission does not remain acceptable as the writ petition by the petitioner was withdrawn on the assurance of the OPs. for his reinstatement. In this regard the petitioner has filed the copy of the order of the High Court dated 24.7.1997 and an application for withdrawal of the writ petition. In the application it is specifically mentioned that the OPs. had assured him to take back in service and so he had been withdrawing the writ petition. Not only so, the petitioner moved several applications for his reinstatement in service in view of the assurance of the OPs. But his request was not acceded to. Thus, the writ petition was not decided on merit by the Hon'ble High Court and the petitioner was allured to withdraw on the pretext of his taking back in service. Apart that after decision of the criminal case, the petitioner is also having a claim to be reconsidered for the service. It has also been established from the record and as also observed above, that the departmental proceedings are basically illegal and against the principle of natural Justice. The petitioner has not been afforded the opportunity of hearing and the departmental proceedings were concluded without any proper oral enquiry and solely based on the record and reply to the charge-sheet. However, this was not in consonance with the legal principle laid down by the Hon'ble Supreme Court and High Court in various decisions. As such the department enquiry basically suffers with legal infirmity and due to such basically violation of the provisions of law and principles of natural Justice the claim petition cannot be thrown out only on the point of limitation.'

7. The aforesaid observation made by the learned Tribunal clearly shows that the learned Tribunal misdirected itself in appreciating the actual issue involved. The question of considering reinstatement after decision of acquittal or discharge, by a competent criminal court arises only and only if the dismissal from services was

based on conviction by the criminal court. The view of the provisions of Article 311(2)(b) of the Constitution are analogous provisions in the rules. In a case where enquiry had been held independently of the criminal proceedings, acquittal in a criminal court is of no help. The law is otherwise. Even if a person stood acquitted by a criminal court, domestic enquiry can be held, the reason being that standard of proof required in a domestic enquiry and the criminal cases are altogether different. In a criminal case, standard of proof is beyond reasonable doubt while in a domestic enquiry, it is probability of preponderances vide Nelson Motis v. Union of India and Anr., AIR 1992 SC 1981, in which the Hon'ble Supreme Court has categorically held as under :

'The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore, cannot conclude the departmental proceeding.'

8. In State of Karnataka and Anr. v. Venkataramanappa, (1996) 6 SCC 455, the Apex Court held that acquittal in a criminal case cannot be held to be a bar to hold departmental enquiry for the same misconduct for the reason that in a criminal trial, standard of proof is different as the case is to be proved beyond reasonable doubt but in the departmental proceeding, such a strict proof of misconduct is not required. In the said case, the departmental proceedings had been quashed by the Tribunal as the delinquent had been acquitted by the criminal court of the same charges. The Apex Court reversed the judgment observing as under :

'It was, thus, beyond the ken of the Tribunal to have scuttled the departmental proceedings against the respondent on the footing that such question of bigamy should normally not be taken up for decision in departmental inquiries, as the decision of the competent courts tending to be decision in rem would stand at the highest pedestal. There was clear fallacy in such view because for purposes of Rule 28, such strict standards, as would warrant a conviction for bigamy under Section 494, I.P.C. may not, to begin with, be necessary. We, therefore, explain away the orders of the Tribunal to the fore extent that Rule 28 can be invoked.......Let the inquiry be held.'

9. Similarly. in Senior Superintendent of Post Offices v. A. Gopalan, (1997) 11 SCC 239, the Supreme Court held that 'in a criminal case the charge has to be proved by standard of proof beyond reasonable doubt while in departmental proceeding, the standard of proof for proving the charge is preponderance of probabilities.' The Tribunal was, therefore, in error in holding that 'in view of the acquittal of the respondent by the criminal court on the charges..............The finding on the ...., charge in the departmentalproceedings cannot be upheld and must be set aside.

10. In State of Andhra Pradesh v. K. Allabaksh, (2000) 10 SCC 177, while dismissing the appeal against acquittal by the High Court, the Apex Court observed as under:

'That acquittal of the respondent shall not be construed as a clear exoneration of the respondent, for the allegations call for departmental proceedings, if not already initiated, against him.'

This Court has taken the same view in Shiv Dayal v. State of Rajasthan, 2000 (2) RLW 1323.

11. Thus, there can be no doubt regarding the settled legal proposition that as the standard of proof in both is quite different and the termination is not based on conviction of an employee in a criminal case, the acquittal of the employee in criminal case cannot be the basis of taking away the effect of departmental proceedings. Nor such an action of the department can be termed as double jeopardy. The submission made In this regard is preposterous. Therefore, the learned Tribunal has committed an error in holding that after being discharged from criminal court, the employee had a right of reconsideration for reinstatement.

12. Even otherwise, whatever may be assurances given by the present petitioner to its employees, once the writ petition had been withdrawn as not pressed before this Court vide order dated 24.7.1997, the question of entertaining the petition for the same relief did not arise as the employee did not withdraw the petition with the liberty to agitate the issue before another court or forum or liberty to file a fresh petition if the cause arises in view of the principle enshrined in Order XXIII, Rule 1

of the Code of Civil Procedure (hereinafter called C.P.C.).

13. In Sarguja Transport Service v. S.T.A.T., Gwalior and Ors., AIR 1987 SC 88 and Ashok Kumar v. Delhi Development Authority, 1994 (6) SCC 97, the Apex Court has held that filing the successive petition before a Court amounts to sheer abuse of process of the Court and is against the public policy. In Khacher Singh v. State of U.P. and Ors., 1995 (1) AWC 599 : AIR 1995 All 338, the Division Bench of Allahabad High Court after placing reliance on its earlier judgments in L.S. Tripathi v. Banaras Hindu University, 1993 (1) UPLBEC 448 and Saheb Lal v. Assistant Registrar, B.H.U., 1995 (1) UPLBEC 37. held that successive writ petition was not maintainable.

14. Similarly, in Auinash Nagra v. Navodaya Vidyalaya Samiti and Ors., 1997 (2) SCC 534, the Hon'ble Supreme Court has taken the same view and held that the second writ petition was not maintainable as the principle of constructive res judicata would apply. Therein also, the writ petition filed in the first Instance was withdrawn with permission of the Court without liberty to file the second writ petition.

15. In the instant case, as the order impugned is dated 25.5.1988, a writ petition filed against challenging the same order had been withdrawn without seeking any permission to file a fresh petition either before this Court or before competent forum, the second petition was not maintainable, and the learned Tribunal had misdirected itself in deciding the Issue involved.

16. In view of the above, as the claim petition filed before the learned Tribunal itself was not maintainable and, therefore, there was no occasion for the Tribunal to entertain the same. The judgment impugned is liable to be set aside, being non-est without jurisdiction.

17. The petition succeeds and is allowed. Impugned order dated 13.12.2002 is hereby set aside.

18. In the facts and circumstancesof the case, there shall be no order asto costs.

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