

Gopal Kumar Mathur Vs. State of U.P. and anr.

Gopal Kumar Mathur Vs. State of U.P. and anr.

SooperKanoon Citation : sooperkanoon.com/483189

Court : Allahabad

Decided On : Apr-11-2008

Reported in : 2008(3)AWC2425A; [2008(118)FLR604]

Judge : B.S. Chauhan and; Arun Tandon, JJ.

Appellant : Gopal Kumar Mathur

Respondent : State of U.P. and anr.

Disposition : Petition allowed

Judgement :

B.S. Chauhan and Arun Tandon, JJ.

1. This writ petition has been filed challenging the order dated 26.2.1998 by which the petitioner has been removed from service, the judgment and order dated 8.2.2000, passed by the U.P. Public Service Tribunal (hereinafter called the Tribunal') by which the claim petition of the petitioner has been rejected and also the order dated 5.9.2000 by which the review application filed against the order dated 5.9.2000 has been rejected by the Tribunal.

2. The fact and circumstances giving rise to this case are that the petitioner, while posted as Executive Engineer at Allahabad, was served with a charge-sheet dated 31.1.1997 containing following three charges:

Charge No. 1 : He spent more than allotted funds on the projects sanctioned by the Government in different financial years and, thus, has violated para 375 (b) of Financial Hand Book Vol. 6 and is guilty of dereliction to duties in observing para 108 of the U.P. Budget Manual.

Charge No. 2 : He got the work done from the contractors for a sum of Rs. 2.20 crores without allocation of fund and thereby 220 vouchers in respect to aforesaid payment remained pending. He has, thus, violated para 375 of Financial Hand Book Vol. 6 and is guilty of dereliction to duties in observing para 108 of the U.P. Budget Manual by getting the work done from the contractors without allocation of funds.

Charge No. 3 : For the financial years 1990-91 to 93-94, temporary imprest for a total sum of Rs. 506.24 lacs were opened but have not been adjusted and still adjustment of temporary imprest of Rs. 2.64,783.10 is pending and in view thereof, payment of labourers could not be made and thereby temporary imprest have been kept unadjusted. Non-payment of wages to labourers and absence of any demand for payment by the labourers creates doubt on the genuinity of the work makes integrity doubtful.

3. The petitioner submitted reply to the aforesaid charges on 12.3.1997. After conclusion of the enquiry, the inquiry officer submitted the report recording following findings on the aforesaid charges:

Charge No. 1 has been found to be proved partly to the extent of non-observance of para 376 of Financial Hand Book Vol. 6, i.e. excess expenditure than the allotted funds on the work of magh mela, however, rest of the charge has not been found proved.

Similarly, charge No. 2 has been found proved as the payments were stopped due to non-availability of funds.

In charge No. 3, only non-adjustment of temporary imprest has been found proved and rest of the charge has not been found proved. Therefore, charge of lack of integrity stands disproved.

4. Thereafter, a copy of the said report was served upon the petitioner on 19.8.1997. The petitioner submitted his reply to the enquiry report on 28.9.1997 and after considering the same, the order of punishment dated 26.2.1998 was passed by the disciplinary authority removing the petitioner from service. Being aggrieved, the petitioner preferred claim petition before the Tribunal which has been dismissed vide order dated 8.2.2000. Review application filed against the said order has also been dismissed vide order dated 5.9.2000. Hence, the present writ petition.

5. We have heard Shri Ashok Khare, learned senior advocate for the petitioner and Shri R.B. Pradhan, learned standing Counsel for the respondents.

6. Large number of submissions have been made including that the enquiry has not been conducted giving adherence to the statutory provisions or meeting the requirement of principles of natural Justice. Copies of the documents were not supplied to the petitioner etc., but the Tribunal has considered all these aspects and rejected the submissions in those regards.

7. It is evident from the charge-sheet dated 31.1.1997 that except a part of charge No. 3 there was not even a slightest whisper against the petitioner for misappropriation, embezzlement or mis-utilisation of public fund. The charges had been only in respect of incurring expenditure in anticipation as per the demands raised by him for meeting requirement of various works and projects under him and thereby incurring expenditure over and above the allotted fund. It was recorded by the inquiry officer that there was nothing on record to hold that his integrity could be doubtful. The inquiry officer found the charges partly proved.

8. The basic issue which has been agitated before the Tribunal admittedly had been that to the extent the charges stood proved, the punishment awarded to the petitioner was disproportionate. However, the Tribunal rejected it observing that the gravity of the charges were serious in nature warranting maximum penalty and the Tribunal had no competence to substitute its punishment over the punishment awarded by the disciplinary authority as the matter fell exclusively with the domain of the competent authority.

9. In the facts of this case admittedly no charge of embezzlement, corruption or even corrupt motive, mis-utilisation or misappropriation had been levelled. A part of charge No. 3 had been raising doubts about his integrity which could not be proved at all. The charge against the petitioner had been mainly of incurring the expenditure over and above the sanctioned limit, i.e., merely a technical misconduct, whether the penalty of removal from service can be held to be proportionate and as to whether such a matter can be subject-matter of judicial review, inasmuch as on the quantum of punishment.

10. In *Municipal Committee, Bahadurgarh v. Krishnan Bihari and Ors.* : [1996]2SCR827 , the Hon'ble Supreme Court held as under:

In a case of such nature-indeed, in cases involving corruption-there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large ; it is the act of misappropriation that is relevant.

11. Similar view has been reiterated in *Ruston & Homsby (I) Ltd. v. T.B. Kadam* AIR 1975 SC 2025; *U.P. Road Transport Corporation v. Basudeo Chaudhary and Anr.* : (1997)11SCC370 ; *Janatha Bazar South Kanara Central Cooperative Wholesale Stores Ltd. and Ors. v. Secretary, Sahakari Nourkarara Sangha and Ors.* : (2000)11LLJ 1395 SC ; *Karnataka State Road Transport Corporation v. B.S. Hullikatty* : (2001)11LLJ725SC and *Regional Manager. R.S.R.T.C. v. Ghanshyam Sharma* : (2002)11LLJ234SC .

12. In *Divisional Controller N.E.K.R.T.C. v. H. Amaresh* : (2006)1111LLJ232SC , the Hon'ble Supreme Court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption, the only punishment is dismissal.

13. Similar view has been reiterated by the Hon'ble Supreme Court in *U.P.S.R.T.C. v. Vinod Kumar* : (2008)11LLJ676SC .

14. In the instant case, as the charge of corruption or corrupt motive had not been proved and the proved misconduct remained only to the extent of technical

misconduct, we are of the considered opinion that the Tribunal had erred in observing that it was the case of imposing the maximum penalty.

15. The second issue involved herein as to what is the scope of judicial review of quantum of punishment has been considered by the Hon'ble Supreme Court in a catena of judgments, and it was held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution. (Vide Bhagat Ram v. State of Himachal Pradesh and Ors. : (1983)ILLJ1SC ; Ranjit Thakw v. Union of India and Ors. : 1988 CriLJ158 ; Union of India and Ors. v. Giriraj Sharma : (1994)ILLJ604SC ; S.K. Gird v. Home Secretary, Ministry of Home Affairs and Ors. 1995 Suppl (3) SCC 519; Bishan Singh and Ors. v. State of Punjab and Anr. : (1997)ILLJ926SC and B.C. Chaturvedi v. Union of India and Ors. : (1996)ILLJ 1231 SC).

16. In Ranjeet Thakur (supra), the Hon'ble Apex Court observed as under:

But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on the aspect, which is otherwise, within the exclusive province of the Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. In the present case, the punishment is so stringently disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review.

17. The said judgment has been approved and followed by the Apex Court in Union of India and Ors. v. G. Ganayutham : (2000)ILLJ648SC . and after examining elaborately the concept of reasonableness, rationality and proportionality, the same view has been reiterated.

18. In B.C. Chaturvedi (supra), after examining various earlier decisions of the Supreme Court, the Court observed that in exercise of the powers of judicial review, the Court cannot 'normally' substitute its own conclusion or penalty.

However, if the penalty imposed by an authority 'shocks the conscience' of the Court, it would appropriately mould the relief either directing the authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself, impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, Court can also consider the circumstances under which the misconduct was committed. In a given case, the prevailing circumstances might have forced him to do so, though he had no intention to do so. (Vide *Giriraj Sharma (supra)*). The Court may further examine the effect, if order is set aside or substituted by some other penalty.

19. In *G. Ganayutham (supra)*, the Apex Court has considered the entire law on the subject and compared the Indian Law with English, Australian and Canadian Laws, and held that in case the Court comes to the conclusion that the punishment awarded is disproportionate or the disciplinary authority was irrational in imposing the punishment, the punishment cannot be quashed as even then the matter has to be remitted back to the appropriate authority for reconsideration and it is only in very rare cases that the Court might-to shorten the litigation-think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority. In *Aniltej Singh Dhaliwal (supra)*; *U.P.S.R.T.C. and Ors. v. A.K. Parul* : AIR 1999 SC1552 and *Teri Oat Estates (P.) Ud. v. U.T., Chandigarh and Ors.* : (2004)2SCC130 . the Apex Court has taken the same view.

20. In *V. Ramana v. A.P.S.R.T.C. and Ors.* : (2005)IIILLJ725SC , the Hon'ble Supreme Court reconsidered the whole issue, compared the Indian Law with English Law on judicial review and after placing reliance on large number of judgments, came to the conclusion that every administrative order should be rational and reasonable and the order should not suffer from any arbitrariness. The scope of judicial review as to the quantum of punishment is permissible only if it is found that it is not commensurate with the gravity of the charges and if the Court comes to the conclusion that the scope of judicial review as to the, quantum of punishment is permissible/only if it is found to be 'shocking to the conscious of the Court, in the sense that it was in defiance of logic or moral standards.' In a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority to reconsider the penalty imposed.

However, in order to shorten the litigation it may, in exceptional and rare cases, itself can impose appropriate punishment by recording cogent reasons in support thereof.

21. In view of the above, in appropriate cases, where the punishment is found to be shocking, the Court in exercise of limited power of judicial review, can also interfere with the quantum of punishment. In the instant case, there is no whisper even of misappropriation or embezzlement of public money or corrupt motive and in fact no loss has been incurred by the State and the charge which stood proved against the petitioner had been only to the extent of spending the amount over and above the sanctioned amount. We are of the considered opinion that the punishment of removal imposed upon the petitioner is disproportionate to the delinquency and thus liable to be quashed.

22. At this stage, Shri R.B. Pradhan, learned standing Counsel has suggested that instead of substituting the order of punishment, the judgment of the Tribunal be set aside and the matter be remanded to the State authorities to reconsider the issue of punishment afresh.

23. In view thereof, we allow the writ petition, quash the order of punishment dated 26.2.1998, set aside the judgment and orders of the Tribunal dated 8.2.2000 and 5.9.2000. The matter is remanded to the respondent No. 1 for passing a fresh order in view of the observations made above, which should be less than the punishment of removal from service, within a period of three months from the date of filing a certified copy of this order before him.

24. Needless to say that the petitioner Shall be entitled for all consequential benefits.