

K.D. Aggarwal Vs. District and Session Judge and ors.

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Court : Delhi

Decided On : Sep-17-2009

Reported in : 166(2010)DLT234

Judge : Sunil Gaur, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : W.P. (C) No. 12402 of 2004

Appellant : K.D. Aggarwal

Respondent : District and Session Judge and ors.

Advocate for Def. : Avinash Ahlawat, Adv.

Advocate for Pet/Ap. : Ali Mirza, Adv

Judgement :

Sunil Gaur, J.

1. Petitioner K.D. Aggarwal, was working as Ahlmad in the Court of Sh. S.M. Aggawal, Additional District Judge, Delhi. On 20th September, 1994, aforesaid court reported about missing of five execution files as detailed in the Enquiry Report (Annexure P-12). On 12th May, 1997, petitioner was charge sheeted for the loss of the above said execution files. In the Enquiry held against the petitioner

three witnesses had deposed, whereas the petitioner himself had deposed in his defence. On 26th May, 2001, Enquiry Officer submitted her Report (Annexure P-12) holding the petitioner guilty of gross negligence and carelessness. The Disciplinary Authority, i.e. the District and Session Judge, Delhi, vide Order of 17th May, 2004, imposed the penalty of dismissal from service upon the petitioner while holding as under:- Being an Ahlmad the charged official should have acted very carefully, cautiously and diligently but he has not taken care of these attributes resulting in the loss of 5 judicial files and has thus acted with gross negligence and carelessness. I may mention that this is not his first and the only case of loss of records. There have been 7 (seven) enquiries of loss of files against him. He has been exonerated in two enquiries. 5 (five) enquiries are still pending. In the year 2002, his Presiding Officer has given him the remark 'doubtful' regarding integrity. I am mentioning this because evidently he has become habitually negligent and carefree not realizing that loss of Court file means loss of faith of the public in the judicial systems. So in a way he is subverting the Justice Delivery System. He, therefore, in my view, deserves no sympathy and is not a fit person to continue in the Court service. I, therefore, impose a punishment of dismissal from service upon Sh. K.D. Aggarwal, Reader of this office with immediate effect. Formal order be issued..

2. The effect of impugned Orders (Annexures P-1 & P-2) passed by the Disciplinary Authority on the same day, is same.

3. Instead of preferring a statutory appeal, petitioner has filed this writ petition challenging the impugned Order of 'dismissal from service' on the ground that the evidence led during the enquiry does not support the charges framed against him. It is pointed out that there is no documentary evidence to show that the files in question were lost during the period when the petitioner was working as Ahlmad. It is pointed out that the lost files had moved from petitioner's table to the table of the Nazir and the Nazir Mr. Karimullah Khan is infact responsible for the loss/ misplacing of the files in question. During the course of the arguments attention of this Court was drawn to the evidence of Nazir Karimullah to point out that he had not obtained the signatures of Ahlmad in token of having returned the file as there was no such procedure.

4. In view of the aforesaid, it is contended on behalf of the petitioner that evidence on record does not prove the charge against the petitioner. In substance, the stand of the petitioner is as follows:

(i) Since it is confirmed by District Nazir (Karimullah Khan) that payment vouchers were made in the said Execution Files/Payment Files, it is evident that the files were given by the Petitioner to District Nazir.

(ii) Ahlmads were over burdened. As is evident from the statement of Karimullah Khan also, Ahlmad and District Nazir were not maintaining any record/register for movement of files.

(iii) Once the file was delivered to the Nazarat, the evidence must be with Nazarat to show that the file was in fact returned to the petitioner /Ahlmad.

(iv) When payment voucher was made and order was passed by the Presiding Officer Shri T.S. Oberoi, the file becomes a 'disposed of case'.

(v) Unfortunately, CW3 Karimullah Khan was placed under suspension. He left without handing over charge to the new Nazir Harphool Singh. Harphool Singh must have made a list of the files, but the possibility of consigning the 'disposed of file. to the record room instead of returning to the Petitioner/Ahlmad could not be ruled out.

(vi) Since the Petitioner was not expected to maintain a register to record the movement of file to Nazarat, there could not have been any occasion for the Petitioner to ask for the file or make a complaint that the file is not returned. Under the system then prevailed, he had to wait until the file is returned by the Nazarat.

5. Contesting respondent in the counter-affidavit has taken a preliminary objection of petitioner not preferring an appeal against the dismissal Order and on merits, the case put forth by the petitioner has been denied and the stand taken is as under:

It is submitted that the petitioner is custodian of records. It was his primary duty to issue judicial files against proper receipt and receive back the same from the

concerned official/ Court. Files just cannot go missing. It is only those files that are listed for the day which are sent to the Court. After the case is over, they are taken back by the Ahlmad. It is only the negligence of the individual Ahlmad which results in loss of files.

6. In the rejoinder filed by the petitioner, he has reiterated his stand and on the quantum of punishment, it has been stated that similarly placed officials have been inflicted lesser punishment of withholding in increments for varying periods and the extreme penalty imposed upon the petitioner is highly disproportionate.

7. Counsel for the parties have been heard and the material on record as well as the decisions cited, have been perused.

8. The submissions advanced on behalf of the petitioner essentially pertain to the merits of the case, which cannot be gone into by this Court in the exercise of writ jurisdiction. Admittedly, remedy of appeal was available to the petitioner. Reasons for not preferring the appeal against the impugned Order are not forthcoming. There are no allegations of any mala fide. The purpose of providing for the remedy of appeal is that the case on merits is reviewed by a higher authority. Reliance has been placed upon a decision in *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors.* : AIR 1999 SC 22 to assert that existence of alternative statutory remedy does not debar this Court to exercise its jurisdiction under Article 226 of the [Constitution of India](#). There is no dispute about it. However, what is said in the aforesaid decision, reads as under:

The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternate remedy were by no means exhaustive and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus

pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before this Court.

9. In the case of Chhote Lal and Ors. v. Govt. of India and Ors. : 57 (1995) DLT 542, it has been said by this Court that the Court may or may not permit the respondent to raise the plea of alternate remedy depending upon the circumstances of each case. Even after the issuance of Rule, the plea regarding the non maintainability of the writ petition was not raised by the respondents and therefore, in the aforesaid decision, the Court had proceeded to deal with the matter on merits. Plea of alternate remedy was raised belatedly in Chhote Lal's case (Supra) and therefore it was rightly negatived. Whereas in the instant case, the plea of alternate remedy of the appeal has been raised by the respondents at the first instance in their counter affidavit. Therefore, reliance placed upon Chhote Lal's case (Supra) by the petitioner is misplaced.

10. In S.K. Mahajan v. Oriental Bank of Commerce and Anr. : 60 (1995) DLT 140, settled legal position regarding recourse to alternate remedy is highlighted in the following words:

No doubt, it is true that when the statute has provided mechanism for redressal of the grievance, Courts while exercising discretionary powers under Article 226 of Constitution would normally not permit the petitioner to invoke the extra-ordinary writ jurisdiction if other statutory remedies are provided until and unless the Court comes to a prima facie opinion that the impugned action of the State, Authority or person is perverse, arbitrary and violates the principal of natural justice.

11. In the aforesaid case of S.K. Mahajan (Supra), the dispute was regarding refixation of pay, which was to be considered in the light of fourth bi-partite settlement and instead of relegating the petitioner to avail of alternate remedy, it was held that the aforesaid settlement was binding on the parties. Aforesaid case stands distinguished on facts and is not a precedent for this Court to exercise its discretionary jurisdiction under Article 226 of [Constitution of India](#).

12. In Ramesh Chander Vashisth v. Chief General Manager State Bank of India and Anr. 2002 III AD (Delhi) 940, what has been said by this Court, is as under:

It is well settled that the disciplinary authority and on appeal, the appellate authority being fact finding authorities, are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct and the High Court, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty.

13. During the course of the arguments, a grievance was made regarding petitioner being singled out for the loss of the files in question and Nazir being made a witness instead of an accused. This also an aspect which relates to the merits of the case, which can be better appreciated by the Appellate Authority. On the quantum of punishment, reliance has been placed by the petitioner upon decisions reported in 2003 VII AD 426 and : (2003) 8 SCC 9. This Court is of the considered view that the proportionality of the punishment can be very well considered by the Appellate Authority as in the case of Ramesh Chander Vashisht (Supra), the case was sent back to the Appellate Authority for fresh decision on the question of appropriate punishment.

14. In the facts and circumstances of this case, mere pendency of this matter in this Court for a period of four or five years is not sufficient to persuade me to exercise the discretionary jurisdiction under Article 226 of [Constitution of India](#) and to by pass the statutory remedy of appeal available to the petitioner. The challenge made to the Enquiry Report on merits as well as on proportionality of punishment, is required to be tested by the Appellate Authority. By excluding the time spent by the petitioner before this Court, it is deemed appropriate to permit the petitioner to file statutory appeal against the impugned order within one month from today, failing which, impugned order shall attain finality.

15. In the light of the aforesaid, this petition stands disposed of.

16. No costs.

