

Usha Vs. Handloom Development Corporation

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Court : Kerala

Decided On : Oct-27-1999

Reported in : (2000)IILLJ158Ker

Judge : Arijit Pasayat, C.J. and; K.S. Radhakrishnan, J.

Acts : Kerala State Handloom Development Corporation Ltd. Service Rules - Rule 107; [Indian Penal Code \(IPC\), 1860](#); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 389

Appeal No. : W.A. No. 2104/1997

Appellant : Usha

Respondent : Handloom Development Corporation

Advocate for Def. : B.S. Krishnan,; Antony Dominic and; C.N. Ramachandran Na

Advocate for Pet/Ap. : K. Ramakumar, Adv.

Disposition : Appeal dismissed

Judgement :

Pasayat, C.J.

1. The appellant while working as an employee of Kerala State Handloom Development Corporation Ltd. (in short 'the Corporation') was dismissed from

service of the Corporation on the basis that she has been convicted in a criminal case by the C.B.I. Court. Same was challenged in this case. Learned Single Judge in O.P. No. 18677 of 1977 found that the Kerala State Handloom Development Corporation Ltd. Service Rules, (in short 'Service Rules') empowers the Corporation to take such action on the event of conviction and sentence passed by a criminal Court. Same is the subject matter of challenge.

2. Two points have been urged in support of the writ appeal by the learned counsel for appellant. Firstly, it is submitted that an appeal has been filed against the conviction and sentence and appellate Court has suspended the execution of sentence. Therefore the automatic termination is without any basis. Secondly, it is submitted that no opportunity was granted before termination was effected. Learned counsel for respondent Corporation submitted that in view of the specific provisions in Clause 107 of the Rules and Clause 64(2) of the Manual for disciplinary Proceedings (in short 'the Manual') issued by the Government of Kerala, which is applicable to the Corporation, the order passed directing termination cannot be faulted.

3. Factual position is undisputed. The appellant was convicted in C.C. No. 5 of 1994 by the Court of Special Judge (SPE/CBI)I. Under Clause 107 of the service rules an employee, who was convicted for offence punishable under the Indian Penal Code, 1860 or any other law for the time being in force, shall be liable to be dismissed from service of Corporation. Clause 64(2) of the Manual deals with cases where services of the concerned employee is found to be not in the interest of the Corporation. It is to be noted that the appellant was placed under suspension from January 22, 1997 and the order of termination is dated August 30, 1997. It was observed that further continuance of the employee would not be in the interest of the Corporation.

4. We shall consider the effect of an order suspending execution of sentence. Rule 107 of the service rules do not provide that on suspension of execution of sentence by the Appellate Court the order of dismissal based on conviction stands obliterated and dismissed employee has to be treated under suspension till disposal of appeal by the Appellate Court. The service rules also do not provide for

waiting disposal of appeal, filed by the employee, by the appellate Court for taking action against him on ground of misconduct which has led to his conviction by, a competent Court of law. The order dismissing an employee from service on the ground of misconduct leading to his conviction by the competent Court of law does not lose its sting merely because a criminal appeal is filed and the Appellate Court has suspended the execution of sentence. The suspension of execution of sentence is under Section 389 of the Code of Criminal Procedure, 1973, (in short 'the Code'). The Appellate Court has power to suspend the execution of sentence and to release an accused on bail. When it is so done, the effect is that the sentence of conviction is for the time being postponed or kept in abeyance during the pendency of the appeal. In other words, by suspension of execution of sentence, an accused avoids undergoing sentence pending criminal appeal. But the conviction continues and is not obliterated. Consequently, if the conviction is not obliterated, any action taken by the employer against the employee, which led to his conviction by the Court of law does not lose its efficacy merely because Appellate Court has suspended the execution of sentence. This position was elaborately dealt with by the Apex Court in *Union of India v. Ramesh Kumar*, AIR 1997 SC 3531. The matter was also considered by the Apex Court in *Deputy Director of Collegiate Education (Administration), Madras v. S. Nagoor Meeran*, AIR 1995 SC 1364, where it was observed as follows:

'Taking proceedings for and passing orders of dismissal, removal or reduction in rank of Government servant who has been convicted by criminal Court is not barred merely because the sentence or order is suspended by the appellate Court or on the ground that the said Government servant accused has been released on bail pending the appeal. It cannot be said that until the appeal against the conviction is disposed of, action under Clause (a) of second proviso to Article 311(2) is not permissible. The more appropriate course in all such cases is to take action under Clause (a) of second proviso to Article 311(2) once a Government servant is convicted of a criminal charge and not to wait for the appeal or revisions as the case may be. If however, the Government servant accused is acquitted on appeal or other proceeding, the order can always be revised and if the Government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course

suggested, viz. to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal Court.'

5. So far as the second question is concerned, according to appellant, opportunity of hearing has to be given before the order of termination was passed. Basis of such submission is the observance of principles of natural justice. It appears that Rule 107 has been made by the Corporation with the intention to prevent an employee of Corporation served with a charge sheet and arrested in furtherance thereof, from continuance in service. Ofcourse, it would be subject to the result of the trial. Continuance of the employee involved in an offence would be an affront to good and disciplined conduct required. His continuance in service of the Corporation would demoralise the service. Therefore, it is more expedient in the public interest not to hold any further enquiry and terminate his services forthwith, which however, shall be subject to the result of the trial as abovestated. The doctrine of principle of natural justice has no application when the authority concerned is of the opinion that it will be inexpedient to hold an enquiry and that would be against the interest of security of the Corporation to continue in employment the concerned employee, when serious acts are likely to affect the foundation of the institution. The position was elaborately dealt with by the Apex Court in Hari Pada Khan v. Union of India, (1996-I-LLJ-1044) (SC).

6. Since both the points urged in the Writ Appeal are Without substance, the result is dismissal of the same. We direct so.