

State and anr. Vs. B.C. Dwivedi

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Court : Gujarat

Decided On : Apr-07-1983

Reported in : (1983)2GLR1315

Judge : B.K. Mehta and; S.A. Shah, JJ.

Appellant : State and anr.

Respondent : B.C. Dwivedi

Judgement :

B.K. Mehta, J.

1. The State Government and the Commissioner of Labour by this Letters Patent Appeal seek to challenge the interim order dated December 29,1982 made by this Court (Coram: P.D. Desai, J.) in Special Civil Application No. 5214 of 1982 while issuing Rule nisi. The learned Single Judge directed the respondents of the said special civil application to reinstate the petitioner-respondent herein in service forthwith and to permit him to report to duty with effect from opening of the office hours on December 30, 1982, and to give him appropriate posting upon his so reporting for duty. This direction was given in light of the similar direction being given by Supreme Court in Corporation of the City of Nagpur v. Ramchandra and Ors. : (1981)IILLJ6SC . It should be recalled at this stage that the Deputy Secretary, Labour and Employment Department of the State of Gujarat has by his order of September 13, 1980 suspended the original petitioner pursuant to his

being trapped in the Anti-corruption raid carried out by the Anti-Corruption Department for having accepted illegal gratification of Rs. 100/- from one Shri Harendra Amratlal Vora of Surendranagar on August 5, 1980, and an offence was registered against him under Section 5(2) of the Prevention of Corruption Act. The impugned order of suspension, therefore, stated that 'having regard to the nature of the offence, if a person is prosecuted to a Court, he would be sentenced or if proceedings are initiated departmentally, he would be subjected to major penalty.' The impugned order, therefore, directed that the respondent-petitioner be suspended immediately and he would be entitled to subsistence allowance permissible under the rules. It is common ground that the respondent-petitioner was acquitted by the Special Judge, Surendranagar vide his judgment and order of January 6, 1982. The State Government has preferred an appeal in the High Court from the said judgment and order. It is also not in dispute that no inquiry by way of disciplinary proceeding has been initiated after the impugned order of suspension, or after the acquittal. No charge-sheet has been served on the respondent-petitioner.

2. It should be also noted that according to the Government resolution of April 13, 1970 issued in the General Administration Department, the earlier Government Circular dated 6-4-1965 has been amended so as to provide that in case of acquittal, full pay and allowance shall be admissible for the period of absence from duty. The Government Circular of 6-4-1965 sought to provide as to how the period of absence during suspension, removal or dismissal is to be regulated on subsequent reinstatement of a Government employee. It is in this back ground that the learned Single Judge considered as to what should be the appropriate interim relief in the matter. In Ramchandra's case (supra), the Court was concerned as to what should be the appropriate directions which should be issued in the matter pending trial of the respondent in Criminal Case No. 1902/76 filed in the Court of Judicial Magistrate, First Class, Nagpur. The Supreme Court, speaking through Fazal Ali, J' left the question as to whether departmental inquiry pending against the respondents be continued after their acquittal to the concerned authority. However, the Supreme Court directed that in case the respondents are acquitted, the order of suspension shall be revoked and the respondents will be reinstated and allowed full salary thereafter even though the authority chooses to proceed

with the inquiry. It is in this context that the learned Single Judge gave the impugned directions in the interim order.

3. We have heard the learned Advocates for the parties and we do not think that there are any justifying reasons for us to interfere with the impugned directions in the interim order. The reasons are obvious. In the first place, the power of suspension under Rule 5 of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971 is open to the appointing authority, or the disciplinary authority in contemplation of the disciplinary proceedings, or its pendency, or where a criminal case against the delinquent employee is under investigation, inquiry or trial in respect of any criminal offence involving moral turpitude. In our opinion as the matter stands at present, none of the contingencies provided in Clauses (a) and (b) of Rule 5(1) is in existence. The learned Assistant Government Pleader, appearing on behalf of the State, urged that inasmuch as the State Government has preferred an appeal from the judgment and order of the Special Judge, Surendranagar acquitting the respondent-petitioner, the power of suspension under Rule 5(1)(b) is still available to the authority concerned. We cannot agree with the learned Assistant Government Pleader since the concept of trial in criminal law has a well recognised connotation and the trial would mean all proceedings including sentence vide : B.R. Lawrence v. Emperor AIR 1933 PC 218. In other words, the trial concludes with the judgment of acquittal or conviction vide : The State v. Naramuddin Ahmed and Anr. AIR 1955 Assam 214 and Joti Prasad v. State : AIR1951 All549 . Merely because the acquittal appeal has been preferred, it cannot be said that the trial continues. The alternative contingency of suspending a Government employee in contemplation of disciplinary proceeding or its pendency is also not in existence in the present case since, as observed above, no inquiry has been established much less no charge-sheet has been issued though the respondent-petitioner was suspended as back as 30th September, 1980 and the corruption cases ended by his acquittal on 6th January 1982. The power of suspension, therefore, comes to an end. There is also an additional ground in support of the view which we are inclined to take for not interfering with the impugned order. In the State Government Circular issued in General Administration Department of July 8, 1970, which is more in the nature of a policy decision which the State Government has taken in view of the public

accounts Committee's reaction to a large number of Government servants being kept under suspension. In that context, the material part of paragraph 3 of the said Circular reads as under:

3 ...However, if the acquittal in a prosecution case or setting aside of an order of dismissal, removal etc. is on technical ground and not on the merits of the case, there should be no objection to proceedings being instituted in such cases. Government is, however, pleased to direct that even in such cases, the Government servants should not be placed under suspension again after reinstatement in service i.e. fresh prosecution or departmental inquiry against them, if considered necessary, should be instituted and completed expeditiously, without placing them under suspension.

(Emphasis Supplied)

4. The learned Assistant Government Pleader has invited our attention to the decision of the Supreme Court in *Vidya Charan Shukla v. Purshottam Lal Kaushik* : [1981]2SCR637 where it was held that if a successful candidate is disqualified for being chosen, at the date of his election or at any earlier stage of any step in the election process, on account of his conviction and sentence exceeding two years' imprisonment, but his conviction and sentence are set aside and he is acquitted on appeal before the pronouncement of judgment in the election petition pending against him, his disqualification is annulled and rendered non-est with retroactive force from its very inception, and the challenge to his election on the ground that he was disqualified is no longer sustainable. We do not think this decision of the Supreme Court can be of any assistance to the cases of the State Government at this stage.

5. The result is that this letters patent appeal should be dismissed with costs. Interim relief granted by the Division Bench in Civil Application No. 5077 of 1982 stands vacated.