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Court : Rajasthan

Decided On : Feb-06-1997

Reported in : 1997(2)WLC355; 1997(1)WLN181

Judge : V.G. Palshikar, J.

Appeal No. : S.B. Civil Writ Petition No. 5996 of 1992

Appellant : Suresh Kumar Chug

Respondent : State and ors.

Disposition : Petition allowed

Judgement :

V.G. Palshikar, J.

1. By this petition, the petitioner has challenged the order dt. 26.9.92 (Annex. 8 to the petition) as illegal and unsustainable in law for several grounds mentioned in the petition.

2. The factual matrix necessary for adjudication of the lis stated briefly is as follows; the petitioner was working as Lower Division Clerk in the District Industries Centre, Udaipur and was placed under suspension for remaining absent without leave and for wilful disobedience of the orders, this was done by order dt. 13.3.89. On 7.2.90, a charge - sheet was framed and served on the petitioner with

memorandum of charges and enquiry was commenced against the petitioner under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as 'CCA Rules'). The charges basically pertained to wilful disobedience of the orders and wilful absence without obtaining leave. During the proceedings of the departmental enquiry, the petitioner complained on several occasions regarding non-supply of the statement of charges, statement of allegations and several documents on which reliance was placed by the department for those charges. It is also complained by the petitioner that he was not given permission to avail the service of an assistant to help him in the enquiry. On 26.9.92, the impugned order of punishment of removal from service was passed which according to the petitioner was made in hot haste and without giving an opportunity of hearing to the petitioner. It is also alleged that before making order of punishment dt. 26.9.92 no notice asking to petitioner to show cause why he should not be penalized accompanied by report of the Enquiry Officer was served on the petitioner and therefore, according to the petitioner the cardinal principles of natural justice have been violated.

3. The learned Counsel for the petitioner assailed the order of termination on several grounds of violation of the principles of natural justice by non-supply of certain documents, non-supply of the copy of the Enquiry officer's report, non-granting of adequate opportunity to lead his case and it is, therefore, submitted that this wholly vitiates the entire proceedings and the petitioner is entitled to be exonerated from the charges. According to the learned Counsel, the quantum of punishment is grossly disproportionate to the charges even if they are held to have been proved which factum is of course denied. Relying on a decision of the Supreme Court reported in AIR 1996 SC page 484, it was argued by the learned Counsel that the High Court does have jurisdiction to go into the question of quantum of punishment;

If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

4. The argument therefore, is that even if other contentions claiming quashing of the entire proceedings are not acceptable, the quantum of punishment of removal from service for the alleged misconduct of not preparing bills remaining absent without leave is so shocking disproportionate that this Court should interfere and mould the punishment appropriately to meet the ends of justice.

5. Thereafter, several authorities of the Supreme Court were pointed out by the learned Counsel, wherein, the Supreme Court has factually interfered and reduced the sentence. Then again citing several authorities of the Supreme Court, it was contended by the learned Counsel that if all his contentions and technical objections regarding the proceedings being vitiated for want of following procedures prescribed by the principles of natural justice are accepted, issue of ordering re-enquiry may arise. Relying on several decisions of the Supreme Court, learned Counsel pleaded, that in the peculiar facts and circumstances of the present case which is pending before this Court for last seven years, no such re-enquiry may be ordered.

6. In *Mehnga Singh v. Inspector General of Police and Ors.* reported in : (1995)5SCC682 the Supreme Court interfered with the quantum of punishment in view of the fact that the previous record of the appellant Mehnga Singh was unblemished and therefore, punishment of dismissal was directed to be substituted by want of compulsory retirement. Relying on this decision, the learned Counsel argued that taking into consideration the age of the petitioner, the nature of charges and the quantum of the punishment is liable to be reduced substantially. In : 1990 CriLJ1013 also, the Supreme Court has interfered with the punishment and reduced the same. To the similar effect is the decision reported in 1991 Supp (2) SCC page 503. Similar is the case reported in : AIR 1991 SC328 . Relying on these decisions of the Supreme Court therefore, the submission made that the quantum of punishment is grossly disproportionate to the alleged misconduct and looking to the age of the petitioner and the misconduct with which he is charged, the punishment is liable to be reduced.

7. Several allegations of violation of principles of natural justice have been prima facie established by the petitioner. The reply of the respondent in that behalf is not

satisfactory and consequently quashing of the enquiry with a direction to conduct fresh enquiry in accordance with rule and after obedience of the principles of natural justice is liable to be directed, normally. However, taking into consideration the following decisions, I am inclined to accept the arguments of the learned Counsel for the petitioner that directing re-enquiry in the circumstances of the present case would also be disproportionately harmful to the petitioner as has been observed by the Supreme Court. This Court can shorten the duration of litigation, mould the punishment in such a manner to meet the ends of justice. I am, therefore, of the view that the petitioner is guilty of the misconduct with which he is charged. At the same time, it is true that there has been infraction of several procedures established for protecting the interest of the petitioner, which may entail re-enquiry as re-enquiry in the matter of procedural irregularities is the normal rule. In my opinion moulding of the punishment which obviously is disproportionate to the misconduct will meet the ends of justice. Hence, the following order.

8. The petition is therefore, accepted and is allowed. The order of termination is set aside. The petitioner shall be reinstated, however, he will not be entitled to any back wages for the period during which he remained out of service which shall be his punishment for misconduct committed. The period so excluded shall also not count for his pensionary benefits, however, his pay on reinstatement shall be fixed after taking into consideration this period. There will be no order as to costs.