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Court : Karnataka

Decided On : Dec-12-2012

Judge : A. Venugopala Gowda

Appeal No. : Writ Petition No. 49850 of 2012 (S-DIS)

Appellant : D.L. Nagaraj

Respondent : Senior Divisional Manager, Lic of India

Judgement :

(Prayer: This petition is filed under Articles 226 and 227 of the Constitution of India, praying to call for the records, set aside the impugned order dated 22.11.2012 and direct the respondent to reinstate him to service and grant all consequential benefits including arrears of salary etc.)

1. This writ petition has been filed for setting aside an Order dated 22.11.2012, dismissing the petitioner from the service of the respondent - Corporation and to direct the respondent to reinstate the petitioner into service and extend all consequential benefits.

2. Petitioner joined the service of the Corporation, as an 'Assistant' on 01.04.1992. Having been promoted, he was working in the post of 'Assistant Administrative Officer'. On 14.02.2012, petitioner was served with a charge-sheet, alleging commission of certain misconduct. Petitioner submitted a reply dated 24.02.2012 and denied the allegations made in the said charge-sheet. Respondent decided to

conduct an inquiry into the charges and appointed an Inquiry Officer on 14.03.2012. W.P.No.46628/2012 was filed to direct the respondent, to furnish the documents sought, to defend petitioner's case in the enquiry. The writ petition was disposed of on 22.11.2012, by observing that, if there is any explanation/reply submitted to the show-cause notice, the respondent is bound to consider the same, before taking any decision. The enquiry Officer submitted a report dated 02.08.2012, holding the charged employee is guilty of all the charges mentioned in the charge-sheet. Copy of the said enquiry report was furnished to the petitioner along with a letter dated 13.08.2012. Petitioner submitted a reply dated 21.08.2012, denying the charges and maintaining that for every transaction, there are office notes and vouchers maintained in the registers at the branch and he had only carried out the instructions of his higher authorities. The disciplinary authority, having considered the enquiry report, issued a show cause notice dated 30.10.2012, wherein, it was provisionally proposed to impose on the petitioner, penalty of 'dismissal from service' and 'recovery of Rs.2,35,585/-', in terms of Regulation 39(1)(g) and (c) of the LIC of India (Staff) Regulations, 1960 (for short, 'the Staff Regulations'). Petitioner submitted a reply dated 21.11.2012 and reiterated his stand that he has not committed any misconduct and sought to drop the disciplinary proceedings. Disciplinary authority, taking note of the said reply, not agreeing with the contentions raised by the petitioner, passed an order dated 22.11.2012, whereby, petitioner was dismissed from service of the Corporation and it was also decided to recover Rs.2,35,585/-.

3. Assailing the said order (Annexure-V), this writ petition has been filed, mainly contending that there is denial of a reasonable opportunity of hearing to defend himself in the disciplinary enquiry and that the defence in the reply submitted has not been considered and that the finding of misconduct recorded having no material support, is perverse and illegal.

4. Sri. Vijaykumar, learned advocate, contended that the respondent is 'an instrumentality of the State' and is amenable to the writ jurisdiction. He submitted that the impugned order having been passed in utter violation of principles of natural justice, being wholly arbitrary and illegal, could be examined and an appropriate writ can be issued, to undo the wrong done to the petitioner. He

submitted that though the impugned order can be challenged in an appeal, there being violation of principles of natural justice by the respondent, there is no need to exhaust the alternate remedy. Reliance was placed on the decision in the case of *Satwati Deswal vs. State of Haryana and others* - 2010(1) SCC 126.

5. The short but neat question that arises for consideration is:

Should this Court interfere with an order of dismissal passed against the petitioner who has a remedy available to him under the Staff Regulations of the respondent - Corporation?

6. It is trite that the jurisdiction under Article 226 of the Constitution though wide, its exercise is discretionary. The jurisdiction is not exercised, simply because it is lawful to do so. Apex Court and this Court have evolved certain self imposed limitations in the matter of exercise of jurisdiction under Article 226. One such limitation always kept in view, while exercising the extra-ordinary writ jurisdiction is the availability of an equally efficacious remedy to an aggrieved party, as provided by the Statute itself. When an alternate statutory remedy is available, normally, litigant cannot by-pass the statutory remedy and invoke the writ jurisdiction. It is a recognized principle that, when a statutory remedy is available, the aggrieved person should resort to the mechanism as provided under the statute i.e., to seek redressal of the grievance. No doubt, there could be exceptions to the said general rule in cases involving utter violation of principles of natural justice by a statutory authority or where the constitutional validity of the very statute or part thereof is questioned. Writ jurisdiction being a discretionary jurisdiction, cannot be normally permitted to be availed, when the very statute provides a forum for redressal of the grievance.

7. In the instant case, the impugned order of penalty has been passed in exercise of the power conferred under the Staff Regulation 39(1)(g) and (c) of the Corporation. The said provision reads as follows:

“39. (1) Without prejudice to the provisions of other regulations, any one or more of the following penalties for good and sufficient reasons, and as hereinafter provided, be imposed by the disciplinary authority specified in Schedule I on an

employee who commits a breach of regulations of the Corporation, or who displays negligence, inefficiency or indolence or who knowingly does anything detrimental to the interest of the Corporation, or conflicting with the instructions or who commits a breach of discipline, or is guilty of any other act prejudicial to good conduct-

(a) x x x x

(b) x x x x

(c) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of order;

(d) x x x x x

(e) x x x x x

(f) x x x x x

(g) dismissal.

8. Right of appeal has been provided under the Staff Regulation 40, material part of which reads as follows:

“40. Every employee shall have a right of appeal to the appellate authority specified in Schedule I against an order imposing upon him any of the penalties specified under Regulation 39.”

9. The Staff Regulation 41 provides limitation period for appeal i.e., three months from the date on which the appellant received a copy of the order appealed against. The proviso thereunder enables the appellate authority to entertain the appeal after expiry of three months' period, if it is satisfied that the appellant had sufficient cause for not submitting the appeal in time. Regulation 42 provides the form and contents of the appeal. Regulation 43 is with regard to the submission of appeal. Regulation 45 is with regard to the transmission of appeal. Regulation 46 provides for consideration of appeal. The same being material, reads as follows:

46. (1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Regulation 36 and having regard to the circumstances of the case the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Regulation 39, the appellate authority shall consider -

(a) whether the procedure prescribed in these Regulations has been complied with, and if not, whether such non-compliance has resulted in failure of justice;

(b) whether the findings are justified; and

(c) whether the penalty imposed is excessive, adequate or inadequate, and pass orders-

(i) setting aside, reducing, confirming or enhancing the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstance of the case.

Provided that-

(i) the appellant authority shall not impose any enhanced penalty which neither such authority nor the authority which made the order appealed against is competent in the case to impose;

(ii) no order imposing an enhanced penalty shall be passed unless the appellant is given an opportunity of making any representation which he may wish to make against such enhanced penalty; and

(iii) If the enhanced penalty which the appellate authority proposes to impose is one of the penalties in clauses (b) to (g) of Regulation 39, and an inquiry under the said Regulation has not already been held in the case, the appellate authority shall itself hold such inquiry or direct that such inquiry be held and thereafter on consideration of the proceedings of such inquiry and after giving the appellant an opportunity of making any representation which he may wish to make against such

penalty, pass such orders as it may deem fit.

(3) All appeals should be disposed of as expeditiously as possible and in any event not later than 6 months from the date of receipt of the appeal by the appellate authority.”

10. Thus, it is clear from the said provision that, when an appeal is submitted against an order imposing any of the penalties specified in Regulation 39, the appellate authority has an obligation to consider, firstly, whether the procedure prescribed in the Regulations has been complied with and if not, whether the non compliance has resulted in failure of justice; secondly, whether the findings recorded by the authority imposing the penalty is justified; and thirdly, whether the penalty imposed is excessive, adequate or inadequate. Upon recording of the findings, the appellate authority has been conferred with the power of either setting aside the impugned order, refusing / confirming / enhancing the penalty or remitting the case to the authority which imposed the penalty or to any other authority, with such direction as it may deem fit in the circumstance of the case.

11. From a bare reading of the Regulation 46, it is evident that the power conferred upon the appellate authority in examining the validity of the disciplinary enquiry held and the consequential penalty imposed on an employee is wide. This Court while exercising the power of judicial review, cannot go into the realm of appreciation of evidence unless the findings are perverse and illegal and/ or quantum of punishment, unless it is shockingly disproportionate to the gravity of the proved misconduct. The power conferred on the appellate authority under Regulation 46 is comprehensive enough, to undo the wrong, if any, done to an employee by the disciplinary authority.

12. In the case of S.S. Rathore Vs. State of Madhya Pradesh - AIR 1990 SC 10, Apex Court has held that, when the rules relating to disciplinary proceedings provide for an appeal against an order of punishment imposed on a servant, the same should be resorted to in the first instance.

13. In Satwati Deswal (supra), the appellant, a lecturer was terminated by respondent No.5 therein, by issuing a non speaking and an unreasoned order. Not

even a show-cause notice had been issued to her nor was the order of termination passed by initiating any disciplinary proceedings and giving an opportunity of hearing to the appellant. The termination order when challenged by way of a writ petition, the same was dismissed by the High Court, on the ground that the appellant had an alternate remedy to file an appeal under the relevant rules. Keeping in view the said undisputed facts, Apex Court has held that the writ petition was maintainable and the High Court was in error in holding that the writ petition was not maintainable.

14. The factual position in this case, noticed supra, is not akin. In the instant case, the penalty order (Annexure - V) has been passed by issuance of a charge-sheet and after holding a disciplinary enquiry and also issue of a second show-cause notice. Whether there is Violation of provisions of Regulation 39 by the disciplinary authority or not, is a matter which can be examined by the appellate authority, since the appellate authority has been conferred with a comprehensive power, as noticed supra.

In the result, for non exhaustion of alternate, statutory and efficacious remedy, this writ petition must fail and is accordingly dismissed.

It is open to the petitioner to submit an appeal for consideration. The appellate authority has an obligation to decide the appeal, both on questions of fact and law, expeditiously and in any event, not later than six months from the date of receipt of appeal.

The contentions raised against the impugned order of dismissal/penalty, are left open for determination by the appellate authority.

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