Government of Andhra Pradesh

Vs.

M. Narasimha Murthy

Civil Appeal No. 600 of 1980

(Dr. T. K. Thommen, V. Ramaswamy JJ)

17.07.1990

ORDER

1. The appeal by special leave arises from the judgment of the Andhra Pradesh Administrative Tribunal dated January 18, 1979 decreeing the suit instituted by the respondent whereby he challenged the order of the government dated September 22, 1970 dismissing him from service. The Administrative Tribunal found that the order of dismissal was rendered on the basis of an enquiry conducted by the Disciplinary Tribunal which had no jurisdiction to conduct the enquiry as Rule 3(2) of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1961, under which the enquiry is purported to have been conducted, had been declared invalid by a judgment of the High Court rendered on December 20, 1973. The Administrative Tribunal apparently did not notice that judgment had been reversed by a Division Bench of the High Court by its judgment dated July 19, 1976 holding that Rule 3(2) was intra vires and valid.

2. Mr. Nambiar, appearing for the appellant State, raises two fundamental points. He submits that the question as to the jurisdiction of the Disciplinary Tribunal had been conducted against the respondent in earlier proceedings as a result of which it was not open to the Administrative Tribunal to reconsider the same question. Secondly, Mr. Nambiar, submits that Rule 3(2) was in operation at all material times. It was in force at the time of the reference to the Disciplinary Tribunal. It remained in force long past the submission of the enquiry report of that Tribunal. The sub-rule was deleted only in 1978. The decision of the learned Single Judge striking down Rule 3(2) had been reversed by the Division Bench as a result of which the validity of the rule was never affected.

3. Counsel for the respondent, Mr. P. Krishna Rao, submits that although the jurisdiction of the Disciplinary Tribunal had been questioned by the respondent in the earlier proceedings, no decision had been rendered specifically on the point and the dismissal of the special leave petition instituted by the respondent did not result in res judicata as regards the jurisdiction of the Administrative Tribunal. He further submits that at the time of instituting the respondent's suit, the judgment of the learned Single Judge was in force, and by the time the decree of the Administrative Tribunal was rendered in 1979, the sub-rule itself had been deleted.

4. It has to be noticed, as rightly contended by Mr. Nambiar, that the jurisdiction of the Disciplinary Tribunal was specifically in issue in the writ filed by the respondent challenging the order of dismissal. He had contended that Rule 3(2) was invalid. The High Court dismissed the writ upholding the dismissal of the respondent. It was open to the respondent to contend before this Court in not specifically rendering a finding as to the validity of Rule 3(2). Whatever that be, the special leave petition having been dismissed, the decision of the High Court upholding the government's order dismissing the respondent, had become final. Subsequently, it was not open to

the respondent to agitate the very same question, in a suit which he subsequently filed. It was a clear case of the question having been already concluded by the decision of the High Court dismissing the writ in which he had specifically raised the question as to the validity of Rule 3(2).

5. It is true that before the suit was filed, the learned Single Judge had struck down Rule 3(2) but that decision was reversed by the Division Bench subsequently holding that Rule 3(2) was not invalid. In the circumstances Rule 3(2) was or deemed to have been, at all material times on the statute book and reference to the Disciplinary Tribunal in terms thereof by the government was perfectly competent.

6. The Administrative Tribunal has by the impugned order set aside the order of the government on the ground of jurisdiction arising from the alleged invalidity of Rule 3(2). In our view, Rule 3(2) was at all material times valid, operative and binding and, therefore, the reference to the Disciplinary Tribunal by the government was competent and the decision of the government on the basis of the report of that Tribunal was not liable to be upset on the ground of jurisdiction. This was the only point which arose for consideration before the Administrative Tribunal and no decision was rendered by it on the merits. Accordingly, we set aside the impugned judgment, and the appeal of the State is allowed. However, in the circumstances of the case, the parties shall bear their respective costs.

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