

R.M. Gurjar and Another

Vs

High Court of Gujarat and Others

Civil Appeal No. 2107 of 1977

(Kuldip Singh, Dr. A. S. Anand JJ)

11.08.1992

JUDGEMENT

KULDIP SINGH, J.

1. R.M.Gurjar and D.N.Jadhav were working as junior clerks in the Civil Courts under the administrative control of District Judge, Broach, Gujarat. Disciplinary proceedings were initiated against them on the charge that they falsely identified three persons before a Judicial Magistrate. At the enquiry both of them admitted the charge and prayed for mercy. The District Judge by the order dated June 5, 1974 imposed the penalty of withholding their future promotions with permanent effect. The High Court in exercise of its powers under Rule 23 of the Gujarat Civil Services (Discipline And Appeal) Rules, 1971 (the Rules) enhanced the penalty and imposed the punishment of removal from service. It is not disputed that the High Court enhanced the penalty after affording opportunity to the two officials in accordance with law. Gurjar and Jadhav challenged the order of their removal by way of a writ petition under Article 226 of the Constitution of India before the High Court. The learned single Judge after considering the relevant provisions including the historical background of various constitutional reforms appears to have been of the view that the source of power to pass the impugned order lay in the constitutional control of the High Court under Article 235. However, the difficulty which came in the way of the learned single Judge to hold so was on account of the judgment of a Division Bench in Ramesh C. Mashruvala v. State, 16 Guj LR 277 : (1975 Lab IC 578) wherein the Division Bench had given a restricted interpretation to Article 235 and had confined its applicability to persons in the judicial service of the State only. Accordingly, the learned single Judge referred the following two questions to be decided by a larger Bench:

"(1) Whether the High Court on its administrative side has jurisdiction to enhance the penalty imposed by the District Judge upon a member of the ministerial staff of the subordinate Court in exercise of the powers of review conferred by Rule 23 of the Gujarat Civil Services (Discipline and Appeal) Rules, 1971?

(2) Whether the control vested in the High Courts under Article 235 of the Constitution is exercisable only over members of the judicial service of the State as defined in Article 236(b) or whether the ministerial officers and servants on the establishment of the subordinate courts are also ultimately subject to such control?"

2. While the reference was pending before the Full Bench, the decision in Mashruvala case (1975

Lab IC 578) was set aside by this Court in State of Gujarat v. R. C. Mashruvala, (1977) 2 SCC 12: (AIR 1977 SC 1619) and it was held that the Registrar of the Small Cause Court was a judicial officer in the judicial service of the State and came within the scope and intend of Articles 235 and 236 of the Constitution of India.

3. The Full Bench of the High Court speaking through the Acting Chief Justice primarily dealt with question No. 2 and came to the conclusion that the "control" under Article 235 of the Constitution of India extends to the ministerial officers and servants on the establishment of the subordinate Courts also. The second question was, accordingly, answered against the petitioners. On the interpretation of Article 235 and the rules the first question was also decided against the petitioners. This appeal by way of special leave is against the judgment of the Full Bench of the High Court.

4. From the judgment of the Full Bench it transpires that though the Bench entered into lengthy discussion on the interpretation of the constitutional provisions contained in chapter VI of the Constitution, it did not elaborately deal with the relevant rules which have a direct bearing on the first question. We, therefore, consider it desirable, at this stage, to first deal with the relevant provisions of the Gujarat Civil Services'(Discipline and Appeal) Rules, 1971. The relevant rules are extracted hereunder:

Rules 7, 18, 21 and 23 of the Rules are as under:

"7. (1) and (2).....

(3) Without prejudice to the provisions of sub-rules (1) and (2), Heads of Departments and Heads of Offices may impose any of the penalties mentioned in Rule 6 upon any Government servant of subordinate or inferior service serving under them whom they have power to appoint.

(4).....

18. Orders against which appeal lies'- (1) Subject to the provisions of Rule 22, a Government servant may prefer an appeal against all or any of the following orders, namely:-

(i) an order of suspension made or demand to have been made under Rule 5.

(ii) an order imposing any of the penalties specified in Rule 6 whether made by the Disciplinary Authority or by any appellate or reviewing authority.

(iii) an order enhancing any penalty, imposed under Rule 6.

(iv).....

(d) has the effect of his non-promotion to a higher post, or

18(2). An appeal referred to in sub-rule (1) shall lie to an officer immediately superior to the officer who made the order:

.....

21(1)

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6, or enhancing any penalty imposed under the said rule, the appellate authority shall consider-

.....

(d) whether the penalty imposed is excessive, adequate or inadequate, and, after consultation with the Commission, if such consultation is necessary in the case, pass orders-

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

(ii)

Provided that-

(i).....

(ii) no order for enhancing the 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

.....

23. Review of orders in disciplinary cases.- The authority to which an appeal against an order imposing any of the penalties specified in Rule 6 lies may, of its own motion or otherwise, call for the record of any proceeding under these rules and review any order passed in such a case and, may, after consultation with the Commission where such consultation is necessary, pass such order as it deems fit as if the Government servant had preferred an appeal against such order;

Provided that no action under this rule shall be taken after the expiry of a period of more than six months from the date of such order."

5. The District Judge, being the Head of office and the appointing authority of the appellants, was the disciplinary authority under Rule 7(3) of the Rules. The District Judge imposed the punishment of stoppage of promotion on permanent basis. Reading Rules 18(1) and 18(2) of the Rules together it is obvious that an order imposing the penalty of stoppage of promotion is appealable and the appeal lies before an officer immediately superior to the officer who made the order. In this case the order having been made by the District Judge, the appeal would lie to an officer authority immediately superior to the District Judge. The District Judge is under the administrative control of the High Court. The nature and extent of control which vests in the High Court under Article 235 of

the Constitution of India has been authoritatively determined by this Court in *State of West Bengal v. Nerpendra Nath Bagchi*, (1966) 1 SCR 771 : (AIR 1966 SC 447). Therefore, UT, indisputably, the High Court is the immediate superior authority to the District Judge and the appeal against the order of the District Judge in this case would lie to the High Court. Rule 23 of the Rules empowers the appellate authority to exercise the power of review. It is, thus, clear on the plain reading of the Rules that the High Court being the appellate authority had the power to review the order of the District Judge. Admittedly, the High Court passed the order enhancing the punishment in exercise of its powers under Rule 23 of the Rules. Therefore, we hold that the High Court was within its jurisdiction on the administrative side to enhance the punishment of the appellants in exercise of its powers under Rule 23 of the Rules.

On the interpretation placed by us on the Rules, the answer to the first question has to be in the affirmative. We are also of the opinion that the answer to the second question as rendered by the Full Bench of the High Court is unexceptionable and does not call for any interference. The appeal consequently fails and is dismissed but with no order as to cost.

Appeal dismissed.

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