

State of U.P. and Others

Vs

Nand Kishore Shukla and Another

Civil Appeal No 4722 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

### JUDGMENT

1. We have heard learned counsel for the parties.

2. Leave granted.

3. This appeal by special leave arises from the order of the Allahabad High Court, Lucknow Bench made on September 5, 1991 in W.P.No.9550 of 1989. The respondent had challenged the order of his removal from service. He was appointed on December 4, 1973 as a Clerk in the Collectorate, Hardoi on temporary basis. He was removed from service in the year 1977 and, ultimately, by orders of the Court he was reinstated in the service on July 12, 1984. By proceedings dated May 25, 1987, he was kept under suspension on disciplinary grounds and enquiry was conducted in that behalf. Though opportunities were given to the respondent, he did not avail it. He had asked for production of 21 witnesses for cross-examination. The enquiry officer considered that nine witnesses were relevant in respect of charges and that respondent was called upon to cross-examine those witnesses but respondent had not chosen to cross-examine those witnesses. Consequently by proceedings dated December 5, 1987, the enquiry officer submitted his report holding that the 5 charges were proved against the respondent and recommended for his dismissal from service. The disciplinary authority passed the order on January 6, 1988 removing the respondent from service. The representative petition before the Service Tribunal resulted in dismissal. His writ petition was allowed by the High Court. Thus, this appeal by special leave.

4. It is seen that since the respondent did not cooperate in the enquiry, the witnesses could not be examined with regard to charges 1, 3 and 5. Charge 2 relates to sale of properties worth Rs.91,000/- to the private persons and also purchase of the properties worth Rs.10,000/-, which are admitted facts. According to the explanation given by the respondent, he sought oral permission and pursuant to the oral permission, he had sold the properties. With regard to his capacity to purchase the properties worth Rs.10,000/-, he had stated that pursuant to his reinstatement in service, out of payment of arrears of a sum of Rs. 40,000/- he had purchased the properties worth Rs.10,000/-. According to him, his father had purchased the property in his name and, therefore, he had to execute the sale deed to the third party as a vendor. This was brought to the notice of authorities and that oral permission was given. The question is : whether oral permission is valid in law?

5. Rule 24 of the U.P. Government Servant Conduct Rules, 1956 is as under :-

"24. Movable, immovable and valuable property - (1) No Government servant shall except with the previous knowledge of the appropriate authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise, either in his own name or in the name of any member of his family;

Provided that any such transaction conducted otherwise than through a regular and reputed dealer requires the previous sanction of the appropriate authority.

(2) A Government servant who enters into any transaction concerning any movable property exceeding in value, the amount of his pay for one month or rupees one thousand, whichever is less, whether by way of purchase, sale or otherwise, shall forthwith report such transaction to the appropriate authority;

Provided that no Government servant shall enter into any such transaction except with or through a reputed dealer or agent of standing or with the appropriate authority.

(3) At the time of first appointment and thereafter at intervals of five years, every Government servant shall make to the appointing authority through the usual channel, a declaration of all immovable property owned, acquired or inherited by him or held by him on lease or mortgage and of shares and other investment, which may, from time to time be held or acquired by him or by his wife or by any member of his family living with, or in any way dependent upon him such declaration should state the full particulars of the property, shares and other investment.

(4) The appropriate authority may, at any time, by general or special order require a Government servant to submit within a period specified in the order a full and complete statement of such movable or immovable property held or acquired by him or by any member of his family as may be specified in the order such statement shall, if so required by the appropriate authority, including details of the means by which or the source from which such property was acquired.

(5) The appropriate authority :-

(a) in the case of a Government servant belonging to the State service, shall for purpose of sub-rules (1) and (4), be the Government and for sub-rule (2), the Head of the Department.

(b) in the case of other Government servants for the purposes of sub-rules (1) to (4) shall be the Head of the Department."

6. A reading thereof clearly indicates that when a Government servant enters into transaction of movable or immovable property the procedure indicated in the service rules therein, i.e. no Government servant shall except with the previous knowledge of the appropriate authority acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise, either in his own name or in the name of any member of his family shall be followed. Under the proviso any transaction conducted otherwise than through a regular and reputed dealer requires the previous sanction of the appropriate authority. This is an admitted position. The contention of Shri Raju Ramachandran, learned senior counsel for respondent, is that in view of the finding given by the enquiry officer that 5 charges have been held proved and in view of the fact that charges 1,3,4 and 5 could not be gone into due to non-availment of opportunity on the part of the respondent it would not be predicated with certainty that the disciplinary authority would have passed the order of removal from service on the basis of charge 2 alone.

7. It is settled law that the Court is not a Court of appeal to go into the question of imposition of the

punishment. It is for the disciplinary authority to consider what would be the nature of the punishment to be imposed on a Government servant based upon the proved misconduct against the Government servant. Its proportionality also cannot be gone into by the Court. The only question is : whether the disciplinary authority would have passed such an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the appellate authority, the Court would be loath to interfere with that part of the order. The order of removal does not cast stigma on the respondent to disable him to seek any appointment elsewhere. Under these circumstances, we think that the High Court was wholly wrong in setting aside the order.

8. The appeal is accordingly allowed. No costs. It is stated that the respondent has not been paid subsistence allowance during the period of suspension. Liberty is given to the respondent to approach the Government and the Government would consider the same according to rules. Appeal allowed.