

State of Karnataka and Others

Vs

V. B. Hiregowdar

Civil Appeal No. 9750 of 1996

(Dr. A. S. Anand, K. T. Thomas JJ)

19.07.1996

ORDER

1. Special leave granted.

2. The respondent who was serving as an officer of the Government of Karnataka in the Department of Child Development in Bidar District in the year 1982-1983 faced disciplinary enquiry on charges of certain irregularities in the release of government funds. The Inquiry Officer, who conducted the enquiry found the respondent guilty of the charges framed against him. The disciplinary authority accepted the report of the Inquiry Officer and by its order dated 10-4-1990 imposed penalty of reduction in rank upon the respondent. The respondent approached the Karnataka Administrative Tribunal and challenged the order of disciplinary authority. On 28-8-1990 the Tribunal dismissed the application on merits holding the order of the disciplinary authority to be valid. After dismissal of the application, the respondent filed a review application before the Tribunal wherein he contended that the ground urged by him regarding non-furnishing of the enquiry report, which had vitiated the punishment imposed upon him, was not considered by the Tribunal while disposing of the original application on 28-8-1990. The review application was allowed on 11-11-1991 and the order dated 28-8-1990 was recalled. The application was put up for fresh hearing. By its order dated 18-11-1992, the Tribunal relying upon the judgment in Union of India v. Mohd. Ramzan Khan [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] allowed the original application holding that the order of punishment stood vitiated on account of non-supply of the copy of the report of the Inquiry Officer to the applicant. It is that order which has been put in issue in this appeal.

3. From a perusal of the record we find that the attention of the Tribunal was drawn by the appellant to the observations in Union of India v. Mohd. Ramzan Khan [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] to the effect that the judgment in the said case would have only prospective application. The appellant also brought to the notice of the Tribunal another judgment of this Court in Rangaswamaiah case [State of Karnataka v. M. Rangaswamaiah, (1996) 10 SCC 507] wherein this Court had clarified that the judgment delivered in Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] was of prospective application and was not to apply to cases where disciplinary authority had imposed punishment on the delinquent employee earlier to 20-11-1990, the date on which the judgment in Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] was delivered. The Tribunal, however, 'declined' to apply the said ruling and instead relied upon an order of this Court in State of Karnataka v. Dr M. Sathyanarayana Shetty dismissing the special leave petition on 13-5-1992. The Tribunal observed that since the special leave petition against the judgment of the Karnataka High Court in Dr M. Sathyanarayana Shetty case had been dismissed, it followed that the non-furnishing of copy of the

enquiry report vitiated the punishment imposed by the disciplinary authority. The Tribunal apparently failed to take into consideration that this Court in Dr M. Sathyanarayana Shetty case did not specifically deal with the question whether the judgment in Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] was to operate retrospectively or prospectively. The Tribunal, it appears to us, laboured hard to grant relief to the respondent ignoring the law laid down in Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] itself as also in Rangaswamaiah case [State of Karnataka v. M. Rangaswamaiah, (1996) 10 SCC 507]. The approach adopted by the Tribunal, to say the least, was improper.

4. The rule laid down in Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] on 20-11-1990 that non-furnishing of the copy of the enquiry report to a delinquent employee would render the final order void is only applicable prospectively after the date of the decision in Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505]. Hence, no order of punishment passed on a delinquent employee before 20-11-1990 is challengeable on the basis of the judgment in Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] and proceedings in such cases are to be decided on the basis of the law as it existed prior to the decision in Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] except in cases where the service rules themselves provide for supply of copy of the report of the Inquiry Officer to the delinquent employee before imposing punishment.

5. A Constitution Bench of this Court in Managing Director, ECIL v. B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] while affirming the judgment in Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] has set the controversy at rest and categorically laid down that the judgment in Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] is of prospective application only and that no order of punishment made before 20-11-1990 was to be tested on the basis of the law laid down in Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505].

6. In the instant case, the order of the disciplinary authority punishing the respondent was passed on 10-4-1990, much before the date of judgment in Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] was delivered. The law laid down in Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] therefore, had no application to the fact-situation in the present case. The order of the Tribunal, therefore, cannot be sustained since it applied the law laid down in Ramzan Khan case [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] retrospectively.

7. Consequently, this appeal succeeds and is allowed. The impugned order of the Karnataka Administrative Tribunal is hereby set aside. Since the respondent in spite of being served twice has chosen to remain absent, there will be no order as to costs.