

# SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Sujata Malhotra

(G Pattanaik and B Kumar JJ.)

01.03.2002

## ORDER

1. Leave granted.

2. The State of Rajasthan is in appeal against the judgment of the division bench of Rajasthan High Court. The respondent who was an employee remained unauthorisedly absent from 1983 till 1987 and for such unauthorised absence without permission, a regular disciplinary proceeding was initiated and ultimately on the basis of the findings arrived at in the inquiry, the disciplinary authority directed termination of her service on 28.2.1992.

3. Against the said order of termination, she approached the High Court by filing a writ petition. By the impugned judgment, the High Court being of the opinion that the punishment of termination is grossly disproportionate to the delinquency in question, set aside the order of termination and directed reinstatement and payment of 50 per cent as back-wages with the further direction that the period of absence would be treated as extraordinary leave which, according to the High Court, is itself a punishment for over-stay. The aforesaid conclusion of the High Court; on the face of it, is erroneous inasmuch as the order of an employer to treat a particular period of absence as extraordinary leave when the employee has no leave due, by no stretch of imagination can be held to be an order of punishment.

4. The learned counsel, appearing for the appellant-State of Rajasthan strenuously contended that the High Court was totally in error in substituting the punishment awarded by the employer once the conclusion of guilt is not interfered with. According to him, the delinquent having been found guilty of continuous absence for more than five years in a regular departmental proceeding and no infirmity having been found with that proceeding, the court was not justified in interfering with the quantum of punishment awarded. Mr. Jain, appearing for the respondent, on the other hand, submitted that the High Court has taken into consideration all relevant factors including the circumstances under which the respondent remained absent from duty and ultimately came to the conclusion that the punishment of termination is shockingly disproportionate to the conscience of a reasonable man and, therefore, the court was justified in interfering with the order of termination passed.

5. Having considered the rival submissions and on examining the impugned judgment of the High Court, we find considerable force in the submissions made by the learned counsel for the appellant. The High Court possibly would not be within its power to interfere with an order of punishment inflicted in a departmental proceeding until and unless any lacuna in the departmental proceeding is noticed or found. But having regard to the fact that the order of reinstatement has already been implemented and the respondent is continuing in service subsequent to the date of the order of the High Court, we are not inclined to interfere with that part of the order of the High Court even though, we find considerable force in the arguments of the counsel for the State of Rajasthan. While, therefore, the order directing reinstatement of the respondent is upheld, we cannot sustain the other part of the order directing payment of back-wages to the extent of 50 per cent for the period the respondent was not in service, we, therefore, set aside that part of the order of the High Court. For the purpose of clarification, we reiterate that though the respondent would be entitled to be reinstated in service and the period of her absence would be treated as a part of continuity in the service for the purpose of retrial benefit but she would not be entitled to any pecuniary benefits for the total period of her absence till the date of her reinstatement in service. The appeal stands disposed of accordingly.