SUPREME COURT OF INDIA

Naresh Govind Vaze

Vs.

Govt. of Maharashtra

C.A.No.5608 of 2007

(S.B. Sinha and Harjit Singh Bedi JJ.)

04.12.2007

JUDGMENT

S.B. SINHA, J :

1. Leave granted.

2. Appellant herein is a judicial officer. His services were terminated by the Government of Maharashtra on the recommendations made by the High Court of Bombay relying on or on the basis of a report of an inquiry officer appointed to inquire into the charges levelled against him.

3. Appellant joined the judicial service in the State of Maharashtra on 16th November, 1995. His wife was also a judicial officer. She, however, resigned in December, 2003.

4. In relation to orders of transfer passed against him, the appellant on various occasions had been issued several memos. It is not necessary for us to deal therewith.

5. Several strictures were also passed against him, on the judicial side. Several adverse remarks were also passed. A complaint was made on 24th January, 2001 wherein the following allegations were made against the appellant, that he was in the habit of :

(a) "refusing to grant leave.

(b) Issuing notices intentionally

(c) Noting remarks in red ink in the service books of employees (d) Insulting the employees

(e) Writing "not satisfactory work" in the report for increment and not sending the said report within time.

(f) Rejecting the applications for grant of G.P.F. (g) Converting leave into leave without pay

(h) Insisting employees to produce medical certificates and produce receipt of bills.

(i) Threatening Assistant Superintendent"

6. The disciplinary committee of the High Court opined that a departmental proceeding should be initiated against him. Statement of imputations, the charge sheet, list of witnesses and list of documents as approved by the disciplinary committee were served upon him. The imputation of charges served upon him are :

"(a) During his tenure at Patan, the Petitioner was not interested in discharging his duties and had submitted as many as six representations for transfer, all of which were rejected.(b) The Petitioner had used intemperate language while communicating with the High Court under his representation dated 02.05.2000. (c) The Petitioner was in the habit of frequently leaving the Headquarters, thereby causing inconvenience to Advocates and litigants. The Petitioner used to behave whimsically and adamantly and was harassing the litigants, Advocates and employees only with an intention to get transfer at a convenient place. The Petitioner was unable to run the office administration effectively and smoothly and had as such exhibited his incompetence in administrative discharge of his duties."

7. The District Judge of Satara was appointed as an inquiry officer. He, having considered the materials on record, opined that inter alia all the charges to the effect that while submitting his representation to the High Court in regard to his transfer, he had used intemperate language and had made allegations against the administrative authority, were proved. He was also found to have been harassing members of the Bar, litigants and even members of the staff. It was opined that he was not in a position to run the administration effectively and smoothly.

8. The disciplinary committee of the High Court, upon consideration of the said report, in its meeting dated 16th August, 2004 decided to issue a second show cause notice to the appellant. In response thereto, he stated to have been expecting such a notice from the disciplinary committee and, thus, had no fear in his mind therewith. He further stated that 'if the High Court wanted to dismiss him he would have nothing to say because he was part of the judiciary and had been knowing that the disciplinary authority would take action against him'. He also contented that it was the High Court who had persistently put him in difficulty by transferring frequently and he was not bothered about any orders passed by the High Court. He also threatened to initiate action against the High Court.

9. The representation made by the appellant was rejected by the disciplinary committee in its meeting dated 22nd November, 2005. A decision was taken to impose upon him a major penalty of compulsory retirement from service as prescribed under Rule 5(1)(vii) of the Maharashtra Civil Service (Discipline and Appeal) Rules, 1979 (for short "the said Rules"). It was furthermore decided that 2/3rd compulsory retirement pension as admissible under Rule 100 of Maharashtra Civil Service (Pension) Rules, 1982 be given to him.

10. Pursuant to and in furtherance of the recommendations made by the High Court, the State of Maharashtra issued an order dated 14th December, 2005 to that effect which was communicated to the appellant on 16th December, 2005.

11. Appellant filed a writ petition being W.P. No. 8640 of 2005 on 17th November, 2005 before the High Court. The same, however, was withdrawn on 21st December, 2005.

12. He filed another writ petition on 28th February, 2006 which was marked as WP No. 1354 of

2006 claiming a large number of reliefs. By an order dated 2.05.2006, the Division Bench of the said Court issued a limited notice in regard to the prayers made in clauses (h), (k), (t) and (z) and the first part of prayer (y) of para 17 of the writ petition.

13. The said writ petition has been dismissed by reason of the impugned judgment.

14. Mr. Naresh Govind Vaze, Appellant, who appeared in person, inter alia questioned the constitutional validity of the Rules. He also submitted that as a departmental proceeding is a judicial proceeding and the inquiry officer is court, the provisions of the Evidence Act would be applicable. According to him, in terms of Rule 8 of the said Rules, it was obligatory on the part of the inquiry officer to summon the witnesses whom he intended to examine and the same having been refused, principles of natural justice were violated. It was also urged that as he had filed an affidavit by way of defence statement and having not been cross- examined on behalf of the High Court, the averments made therein must be held to have been accepted by it and in that view of the matter the inquiry officer committed a serious error in holding him guilty of the charges levelled against him.

The High Court also committed a serious error, it was submitted, insofar as it failed to exercise its power of judicial review.

15. Appellant is a judicial officer. Indisputably, he was served with a memorandum of charges. All the requisite documents were served upon him. He had also been served with the list of witnesses. Before the inquiry officer, witnesses were examined. Appellant had prayed for issuance of summons by the inquiry officer upon some Hon'ble Judges of the High Court of Bombay. The same was refused by the inquiry officer. On a querry made by us as to for what purpose he intended to examine the High Court Judges and how the High Court Judges could have deposed in his favour in relation to the charges framed against him, the appellant had no answer. Most of the charges levelled as against the appellant were in relation to use of intemperate language in his representations. He even in his representation to the second show cause notice had used such language which, in our opinion, does not behove a judicial officer.

16. Whereas independence and objectivity on the part of a judicial officer is always welcome but the same would not mean that a judicial officer is free to use abusive or intemperate language against the High Court. He might have felt aggrieved while orders of transfer were passed against him but the same would not mean that while making representations before the High Court he would use such language. It is expected that a judicial officer would use such language which behoves a judicial officer.

17. Appellant did not question the validity of the said Rules before the High Court. There is even otherwise absolutely no ground therefor. His contention before us that the said Rules having not been framed under a substantive statute, the same is ultra vires is liable to be rejected as the said Rules had been framed under the proviso appended to Article 309 of the Constitution of India. The said Rules have, thus, the force of a statute.

18. Submission of the appellant that the District Judge Satara could not have been appointed as an inquiry officer by the High Court is again a contention without any substance. By appointing a District Judge as an inquiry officer, the High Court did not delegate its disciplinary power in his favour as contended by the appellant. The District Judge being superior in rank to the appellant could have been appointed as an inquiry officer by the High Court. We, thus, do not see any reason

to accept the contentions of the appellant in this behalf.

19. Appellant has gone to the extent of making a submission before us that the notice dated 16th December, 2005 is ultra vires the preamble as also Article 21 of the Constitution of India. We fail to understand as to on what basis such a submission was made. If he has been found guilty of commission of large number of misconducts, the same cannot be questioned on the ground of violation of Preamble as also Article 21 of the Constitution of India.

20. Similarly, submission of the appellant that the departmental proceeding being a judicial proceeding, the inquiry officer must be held to be a court and the provisions of the Evidence Act would be attracted, is equally meritless. It is now a well-settled principle of law that the inquiry officer appointed to inquire into the charges levelled against a delinquent officer is neither a court nor the provisions of the Evidence Act are applicable.

21. Submission of the appellant that the inquiry officer failed to comply with the procedure for imposing penalties as laid down in Rule 8 of the said Rules is equally without any merit.

Sub-rules (5), (6), and (7) of Rule 8 of the said Rules read, thus: "(5)(a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary as to do, appoint, under sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 9 of these rules;

(b) If no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into the articles of charge or may, if it considers it necessary to do so, appoint under sub-rule (2) of these rules an inquiring authority for the purpose; (c) Where the disciplinary authority appoints an inquiring authority it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present the case in support of the articles of charge before the inquiring authority.

(6) The disciplinary authority shall where it is not the inquiring authority, forward to the inquiring authority

(i) a copy of each of the articles of charge and the statement of the imputations of misconduct or misbehaviour; (ii) a copy of the written statement of defence, if any, submitted by the Government servants; (iii) copies of statements of witnesses, if any, referred to in sub-rule (3) of this rule; (iv) evidence proving the delivery of the documents referred to in sub-rule (3) to the Government servant; and (v) a copy of the order appointing the Presenting Officer.

(7) The Government servant shall appear in person before the inquiring authority on such day and at such time within ten working days from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing, specify in this behalf, or within such further time not exceeding ten days, as the inquiring authority may allow."

22. Appellant did not elaborate as to how the provisions of the said Rules had not been followed.

Only because the rule provides for summoning of the defence witnesses, the same would not mean that the inquiry officer had no discretionary jurisdiction in this behalf. An inquiry officer cannot summon witnesses far less the Judges of the High Court who have nothing to do in the matter. The delinquent officer must show that the witnesses to be summoned have something to do with the issues involved in the disciplinary proceeding. It is evident that such a request was made only to embarrass the inquiry officer. As indicated hereinbefore, the appellant, when questioned, could not inform us as to for what purpose he intended to examine the High Court Judges.

23. For the reasons aforementioned, we do not find any merit in this appeal which is dismissed with costs. Counsel's fee assessed at Rs.10,000/- (Rupees ten thousand only).