SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Vijay Saxena

Crl.A.No.1864 of 2008

(D.K. Jain and G.S.Singhvi JJ.)

21.11.2008

ORDER

1. Delay condoned.

2. Leave granted.

3. This appeal, by the State of Rajasthan, is directed against order dated November 05, 2007 passed by the High Court of Judicature for Rajasthan at Jaipur. By the impugned order, while accepting the second application filed by the respondent for suspension of his conviction under Sections 302 and 323 read with 34 of the *Indian Penal Code* (for short, IPC), the High Court has also stayed the operation of order dated September 06, 2007 passed by the Director General (Prisons), Rajasthan, terminating the services of the respondent under Rule 19 of the *Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958*. The High Court has also directed that the respondent shall be taken back in service forthwith.

4. Since the main grievance of the appellant is in regard to the stay of order of dismissal of the respondent and his reinstatement, we deem it unnecessary to state the facts in detail. It would suffice to note that on 14th August, 2007, the respondent, a mechanic in the Central Jail, was convicted for offences under Sections 302 and 323 read with 34, IPC and was sentenced to life imprisonment etc. As noted above, the services of the respondent, who had been suspended on November 16, 2005, were terminated on September 6, 2007. The respondent challenged his conviction and sentence by preferring Criminal Appeal No. 1590 of 2007. When his application for suspension of sentence came up for consideration on September 10, 2007, the same was allowed and the sentence was suspended during the pendency of the appeal on his complying with certain conditions imposed therein. The respondent filed yet another application seeking suspension of the conviction itself. It is on this application, the High Court passed the following order:

> "Coming to the case on hand it may be noticed that the appellant has been convicted under Section 302 with the aid of Section 24 IPC. The sentence awarded to appellant has already been suspended and now in view of the order of conviction of the learned

trial judge, the Director General, Prisons terminated the services of the appellant under Rule 19 of the CCA Rules. it appears to us on record that the appellant is a physically handicapped person, his wife is cronic heard patient and appellant has to perform, marriages of his three daughters and because of the loss of employment, the appellant and his family have to suffer untold hardships. Since, the order of conviction has already been executed, it is necessary to issue the appropriate directions. We, therefore, in the interest of justice suspend the order of conviction during the pendency of the appeal and directed that the order of conviction in so far it relates to appellant shall remain suspended till the disposal of criminal appeal. We also stayed the order dated September 6, 2007 passed by the Director General Prisons, Rajasthan, Jaipur under Rule 19 of the CCA Rules and direct that appellant Vijay Saxena shall be taken back in service forthwith. Resultingly, we allow the application."

5. Hence, the appeal by the State.

6. We have heard learned counsel for the parties. Mr. Aruneshwar Gupta, learned counsel appearing on behalf of the State submitted that the order passed by the High Court, staying the operation of order of dismissal of the respondent and directing his reinstatement is illegal in as much as in a petition filed under Section 389 read with Section 482 of the Code of Criminal Procedure, 1973, the High Court had no jurisdiction to entertain a prayer with regard to the order of dismissal by the disciplinary authority, particularly when the said order had not been challenged.Per contra, Mr. M.R.Calla, learned senior counsel appearing on behalf of the respondent, while fairly conceding that the High Court was in error in passing the order in regard to the reinstatement of the respondent, vehemently submitted that since the order passed by the Director General, Prisons, Rajasthan in terms of Rule 19 of the aforementioned Rules without affording an opportunity of hearing to the respondent is ex facie illegal, this Court may quash the same or grant leave to the respondent to challenge the same in appropriate proceedings but in the meanwhile, the respondent may be deemed to be under suspension. In support of the submission that before imposing any penalty the disciplinary authority is required to apply its mind to the penalty which could appropriately be imposed on a delinquent employee, learned counsel has placed reliance on the decision of this Court in *Shankar Dass Vs. Union of India & Anr.*[1]. Having regard to the factual scenario, briefly referred to above, we are unable to countenance the view taken by the High Court and are convinced that the order is clearly untenable. It is trite to state that the scope of proceedings in a criminal Court and the scope of disciplinary proceedings in a departmental enquiry are quite distinct, exclusive and independent of each other. Not only the approach and objective in criminal proceedings and the disciplinary proceedings are distinct and different, even the standard of proof, the mode of enquiry and the rules governing the trial and enquiry are also different. While in departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. It needs little emphasis that even aquittal of an employee in a criminal case, let alone a stay of conviction, does not necessarily lead to the conclusion of departmental proceedings. The desirability or propriety of departmental proceedings has to be determined taking into consideration all the facts and circumstances of

the case and, therefore, stay of departmental action cannot be as a matter of course, which, unfortunately, is the case here. It is manifest that the sole issue before the High Court in the second application preferred by the respondent, was whether pending disposal of his appeal, the conviction of the respondent could be stayed. We feel that while dealing with a petition under Section 389 read with Section 482 Cr.P.C., the High Court ought not to have taken up the matter of validity of the order of termination of the services of the respondent. We have, therefore, no hesitation in holding that the order passed by the High Court staying the operation of the order passed by the Director General, Prisons dismissing the respondent, was clearly without jurisdiction. However, we are not inclined to interfere with the impugned order insofar as it pertains to the suspension of the conviction of the respondent. Accordingly, the appeal is partly allowed and the order passed by the High Court insofar as it purports to stay the operation of the order passed by the Director General, Prisons and directs the reinstatement of the respondent is set aside. It goes without saying that it will be open to the respondent to challenge the order of dismissal passed against him by taking recourse to appropriate proceedings in accordance with law. If the respondent deems it fit to prefer an appeal against the said order within two weeks from the receipt of a copy of this order, along with an application for condonation of delay in preferring the same, we hope that the appellate authority shall consider the application for condonation of delay sympathetically.

[1]*1985 (2) SCC 358*