SUPREME COURT OF INDIA

Govt. of A.P.

Vs.

P. Chandra Mouli

C.A.No.2588 of 2009

(Dr. Arijit Pasayat J.)

16.04.2009

JUDGEMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is by the State of Andhra Pradesh questioning the judgment passed a Division Bench of the Andhra Pradesh High Court allowing the writ petition filed by the respondent No.1. The proceedings initiated by the Director General of Police (in short the `DGP')placing respondent No. 1 under suspension pending conclusion of disciplinary proceedings were quashed. Cost of Rs.10,000/- was imposed to be paid by the DGP and the Commissioner of Police.

3. Background facts in a nutshell are as follows:

> "On 17.1.2005 the then Commissioner of Police, Hydrabad, respondent No.2 herein had relieved the respondent No.1 from the post of Assistant Commissioner of Police, Banjara Hills, Hyderabad and directed him to report in the office of DGP.
>
> On 26.1.2005 Respondent No. 1 filed O.A. bearing No. 413 of 2005 before the A.P. Administrative Tribunal, Hyderabad (in short the `Tribunal') in which the Director General of Police, Commissioner of Police and Dy. Commissioner of Police, Hyderabad were pleaded as respondents. The present respondent No.2 was not impleaded.
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> On 1.2.2005 the Director General Police placed the respondent No.1 under suspension pending departmental proceedings under Rule 8 (1)(a) of the *A.P. Civil Services (Classification, Control and Appeal) Rules 1991* (in short the `Rules') basing on the report of Dy. Commissioner of Police, West Zone, dated 24.1.2005 which was forwarded to the Director General of Police by the then Commissioner of Police.

On 03.02.1005 the Tribunal issued notice in the above O.A. No.413 of 2005, filed by the Respondent no.1 herein.

On 10.2.2005 the Respondent No.1 had also filed a separate O.A. No.589/ 2005 before the Tribunal to which the State of Andhra Pradesh, the respondent No.2 by name was impleaded as respondents besides the Director General of Police, Commissioner of Police and Dy. Commissioner of Police, West Zone were also impleaded as respondents.

On 24.02.2005 Tribunal disposed of O.A. No. 589 of 2005 filed by the Respondent No.1 directing him to avail the alternative remedy of appeal against the order dated 1.2.2005 passed by the *Director General of Police under Rule 33 of the Rules*, before invoking the jurisdiction of the Tribunal under Section 14 of the Administrative Tribunals Act (in short the `Act') as it is mandatory under Section 20 thereof.

On 02.03.2005 the Respondent No.1 herein had filed a writ of Mandamus in W.P. No. 4247 of 2005 in the High Court of Andhra Pradesh against the order dated 24.2.2005 in O.A. No. 589 of 2005 in which notice was issued only to the Director General of Police.

On 7.3.2005 in reply to the said show cause notice, the Director General of Police filed a detailed counter affidavit on 7.3.2005.

On 24.3.2005 High Court by its impugned judgment and order has allowed the Writ Petition No. 4247 of 2005 filed by the Ist respondent for a Writ of Mandamus by going into the merits of the case and setting aside the order of suspension dated 1.2.2005 passed by the Director General of Police and imposed Rs.10,000/- as costs on the Director General of Police and Commissioner of Police holding that it was malafide. According to appellants the order was passed without even issuing notice and providing an opportunity of hearing to other respondents i.e. Commissioner of Police and Dy. Commissioner of Police, West Zone, Hyderabad.

4. According to learned counsel for the appellant-State the order passed by the High Court is clearly unsustainable. The suspension order was in order and without any foundation, malafide has been concluded.

5. Learned counsel for the respondent No.1 supported the judgment of the High Court.

6. It is to be noted that no notice was issued to the DGP to have any say in the matter. Only the Commissioner of Police was made respondent and the DGP was also not impleaded by name but by official designation. The writ petition was allowed on the ground that the order of suspension was not bonafide and was tainted with inference of malafides. It appears that a charge memo was issued for taking disciplinary action and the respondent No.1 has submitted a reply that a suspension order containing some allegation has been set aside by the High Court and therefore there is nothing further to be done.

7. It further appears that the respondent No.1 challenged the charge memo dated 6.2.2005 before the Andhra Pradesh Administrative Tribunal. The same was dismissed for default on 13.9.2008. On 31.3.2008 respondent no.1 has been allowed to retire without prejudice to the pendency of the disciplinary proceedings.

8. The High Court ought to have noticed that this was not a case where alternative remedy could be avoided. It was necessary, as rightly observed by the Tribunal in the first occasion, for respondent No.1 to avail alternative remedy. Further the High Court has considered the plea of malafides in writ petition. The Tribunal had not considered the case on merit. It had only directed the respondent No.1 to avail Statutory remedy. That being so it was certainly not open to the High Court to go into a detail examination of the alleged malafide.

9. In *Union of India v. Ashok Kumar & Ors.*[1] it was inter alia noted as follows:

> "Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill-will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fide in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (*S. Pratap Singh v. State of Punjab*[2]). It cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility. As noted by this Court in *E. P. Royappa v. State of Tamil Nadu and Another*[3], Courts would be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. (See *Indian Railway Construction Co. Ltd. v. Ajay Kumar*[4])."

10. As observed by this Court in *Gulam Mustafa and Ors. v. The State of Maharashtra and Ors.*[5] mala fide is the last refuge of a losing litigant.

11. In *Midley Minerals India Ltd. v. State of Orissa*[6] it was inter alia observed as follows:

> "We are unable to accept the contention of the learned counsel for the 4th respondent that the action of the State Government was vitiated by mala fides. It is trite that plea of mala fides has to be specific and demonstrable. Not only this, but the person

against whom the mala fides are alleged must be made a party to the proceedings and given reasonable opportunity of hearing. We find no such attempt made in the writ petition before the High Court. At the highest even putting the most liberal construction on the writ petition, what was alleged was a contravention of the Rules and, consequently, legal mala fides and nothing beyond that. The argument of mala fides must therefore fail. Next, it is urged by the learned counsel for the respondent that it is an elementary principle of law that an individual shareholder of a company cannot be considered as equivalent to the company, for company has a distinct legal personality. Consequently, he contends that the application made by Jitendra Kumar Lohia could not have enured to the benefit of the appellant company. According to him, Jitendra Kumar Lohia and the appellant being two distinct legal entities, the assumption of the State Government, that the application for renewal of the quarry lease could be treated as a continuation of Jitendra Kumar Lohia's application, was erroneous and unsustainable in law. We are unable to accept this contention. We have highlighted as to how the State Government and Jitendra Kumar Lohia treated the application for renewal of quarry lease made by Jitendra Kumar Lohia as enduring to the benefit of the appellant company. If the State Government had treated them to be separate legal entities, there was no question of imposing a condition on the appellant that the transfer of the lease was granted on the specific condition that Jitendra Kumar Lohia and his family members hold the controlling interest in the company. The facts and circumstances belie this contention of the learned counsel for the fourth respondent. It cannot be accepted."

12. Added to that a writ petition was filed on 2.3.2005 and notice was issued only to the DGP (not by name but by official designation) but the allegations of malafides were made in his personal name. The reply was filed on 7.3.2005 and the impugned order was passed on 24.3.2005.

13. It is trite that the power of punishment to an employee is within the discretion of the employer and ordinarily the courts do not interfere, unless it is found that either the enquiry, proceedings or punishment is vitiated because of non-observance of the relevant rules and regulations or principles of natural justice or denial of reasonable opportunity to defend, etc. or that the punishment is totally disproportionate to the proved misconduct of an employee. All these principles have been highlighted in *Indian Oil Corpn. Ltd. v. Ashok Kumar Arora*[7] *and Lalit Popli v. Canara Bank*[8].

14. It is not a case where the High Court should have entertained the writ petition when the Tribunal had disposed of the OA only on the ground of availability of alternative remedy. The impugned order is set aside. We make it clear that we have not expressed any opinion on the merits of the case.

15. The appeal is allowed with no order as to costs.

[1][2005(8) SCC 760] [2] AIR 1964 SC 72 [3] AIR 1974 SC 555 [4]2003 (4) SCC 579
[5](1976 (1) SCC 800) [6]2004(12) SCC 39 [7](1997(3) SCC 72) [8](2003(3) SCC 583)