

SUPREME COURT OF INDIA

State of U.P.& Ors.

Vs.

J.P.Saraswat

C.A.No.2436 of 2011

(Aftab Alam and R.M. Lodha,JJ.,)

11.03.2011

JUDGMENT

Aftab Alam, J.,

SLP(Civil) No.35896 of 2009

1. Delay condoned.

2. Leave granted.

3. The respondent, a veterinary surgeon, was in the service of the State Government of Uttar Pradesh. On December 23, 1991, he made an application for no-objection certificate for obtaining visa for going to the United States of America. The no-objection certificate was granted to him. He then made an application on September 30, 1993 for grant of earned leave from October 4, 1993 to November 2, 1993. The leave was granted to him on November 8, 1993. He left for the USA on October 3, 1993, but did not join his duties even after his leave was over. Instead, he kept on sending applications for extending the leave. Finally, he came back to India and joined the service on June 1, 1995. He again left for the USA on the ground that his wife was unwell, once again sending applications for leave. He came back to India in the year 1999 and, according to him, joined his duties on November 22, 1999.

4. He was put under suspension on March 22, 2000, and a charge-sheet was given to him on April 10, 2000. He was subjected to a disciplinary proceeding on two charges, one, going abroad without taking permission from the Government and the other unauthorized absence from duty.

5. In the departmental enquiry, the charges were established against him and on that basis he was awarded the punishment of "termination of service which may not debar from future employment" vide office memo dated August 16, 2003. The office memo further stated that the decision about payment of salary and allowances to the delinquent during the period of suspension would be taken later on.

6. The respondent challenged his termination from service by filing a writ petition (Civil Miscellaneous Writ Petition no.47118 of 2003) before the Allahabad High Court. The writ petition was substantially allowed by the High Court by judgment and order dated April 22, 2008, against which this appeal is preferred by grant of a special leave.

7. The High Court noted that in his application for grant of earned leave, though the respondent had mentioned that his flight to the USA was confirmed, he did not ask for permission for going abroad; hence, his visit abroad was without due permission by the State Government. In connection with the second charge relating to unauthorized absence, the High Court noted that during the respondent's first visit to the USA in the year 1993 he had undeniably overstayed his leave and in his second visit he had gone there without any sanctioned leave at all. Therefore, the other charge was also duly established.

8. One should have thought that that would be the end of the matter but not so the High Court. Proceeding further from that stage, in a curious way, the High Court observed that on the applications sent by the respondent for extension/grant of leave, no orders were passed by the Government. Further, even though he remained absent for a long time, the Government did not send any notice asking him to resume his duties, failing which his services would be terminated. In view of the omissions on the part of the State Government, the High Court concluded that the punishment awarded to the respondent was excessive and, consequently, quashed the impugned order of his termination of service dated August 16, 2003. In this regard, the High Court made the following observations:

"7. It is not disputed that the petitioner had been sending the applications from abroad for leave. No orders were passed on these applications. The Government knew that the petitioner was in US. In case the presence of the petitioner was required in India, the Government ought to have rejected the application of the petitioner and initiated the disciplinary proceeding at that time. The government could also send (sic send) him a notice that in case the petitioner does not join then his services will be terminated. Considering the fact that neither any proceedings were taken against the petitioner at that time nor any order was passed on his application and no notice was sent to the petitioner, the punishment awarded to the petitioner is excessive. In view of this the order dated 16.8.2003 is quashed."

9. Having quashed the order of termination of service, the High Court substituted it by a set of directions in terms of which for the period of his suspension, the respondent would not be entitled to any payment other than the subsistence allowance; he would not be entitled to any salary for the period for which he did not work but the period of his unauthorized absence would be adjusted against his leave and, finally, his pension would be deducted by 35%. The High Court further directed that all amounts due to the respondent in terms of its order should be paid to him within 6 months from the date of production of a certified copy of the judgment and in case of delay in payment, the due amount would attract simple interest at the rate of 6% per annum.

10. We are completely unable to appreciate the manner in which the High Court proceeded in the matter and, in our view, the High Court grievously erred in assuming the role of the employer. Having come to the finding that the charges against the respondent were duly established, the High Court ought to have simply dismissed the writ petition. Any interference on the question of punishment is permissible in very rare cases where the punishment is so disproportionate to the established charge that it would appear unconscionable and actuated by malice. In the facts of the case, the punishment given to the respondent was quite moderate and there was not even a whisper of any malice, etc. The respondent went to the USA and overstayed his leave for over a year and a half on the first occasion and on the second occasion, he went to the USA without even caring to obtain leave and remained there for over four years. In those circumstances, the punishment of termination of service that would not debar from future employment was a perfectly reasonable and fair punishment and there was no occasion for the High Court to interfere with that order. The High Court was equally wrong in setting aside the punishment order passed against the respondent on the ground that the State Government had not responded to his applications for extension/grant of leave or that during the long period of his absence the government had not sent him any notice asking to resume duties by a certain date. These could never be the grounds for the High Court to set aside the punishment order passed by the State Government and to replace it by its own set of directions.

11. In light of the discussion made above, the judgment and order of the High Court is set aside and the writ petition filed by the respondent is dismissed.

12. The appeal is allowed but with no order as to costs.