

SUPREME COURT OF INDIA

State of Maharashtra

Vs.

Vijay Kumar Aggarwal

C.A.No.1020-1021 of 2014

(K.S.Radhakrishnan and A.K.Sikri JJ.)

29.01.2014

JUDGMENT

A.K.SIKRI, J.

1. Delay Condoned.

2. Leave Granted.

3. Since counsel for the State of Maharashtra (Appellant) as well as Respondent No. 1, who appears in person, were ready to argue the matter finally, we heard both the parties at length.

4. The issue involved in the present case is in a very narrow compass, though actual matrix, stated in this matter, is irritatingly long. In any case, it is not necessary for us to narrate all the background facts in their entirety. Eschewing those details which are altogether unnecessary for the disposal of the present appeal, we state here under those only facts that are relevant for our purpose.

5. Having successfully cleared the Civil Services Examination and being allocated Maharashtra Cadre, as a member of the Indian Administrative Services (IAS), Respondent No. 1 joined the service in the State of Maharashtra on 1.09.1982. While, discharging duties in that capacity, he was suspended from service vide order dated 26.05.1988 which was followed by charge-sheet dated 6.07.1988 for major penalty proceedings. Respondent No. 1 had challenged the legality of suspension order as well as the validity of said charge-sheet. However, we are not

concerned with all those proceedings. We may only mention that in all three charge-sheets were served upon Respondent No. 1 namely, charge-sheet dated 6.07.1988, 4.5.1998 as well as charge-sheet dated 5.10.1998. Though, departmental inquiries started in these cases and gave rise to multiple litigation, some of which would be taken a note of hereinafter, it is pertinent to mention at this stage that on the basis of departmental inquiry conducted into the charges levelled vide charge-sheet dated 5.10.1998, Respondent No. 1 was dismissed from service vide order dated 2.04.2007.

6. In the charge-sheet dated 4.05.1998, the mis-demeanour alleged against Respondent No. 1 was that he unauthorizedly absented from duty i.e. did not join duty even after his suspension was withdrawn. In the third charge-sheet dated 5.10.1998, the charge related to not filing of annual returns.

7. Respondent No. 1 had challenged the validity of these charge-sheets before the Central Administrative Tribunal in which he could not succeed. His writ petitions challenging the orders of the Tribunal were also dismissed. These writ petitions were taken up along with four other writ petitions and all these writ petitions were decided by the High Court vide common judgment dated 14.12.2010. While repelling the challenge to the validity of the charge-sheets the High Court had, inter alia, observed as under:-

“ We need not dilate on the issue for the simple reason the petitioner could earn no promotion till he was exonerated in the disciplinary proceedings and we note that the petitioner is facing three inquiries and is himself responsible for the delay and we note that in one of them i.e. the 2nd charge-sheet an order dismissing him from service has already been passed which is under challenge before the Tribunal.”

8. We may record here that initially Respondent No. 1 had filed C.M. in this court and it had granted stay of the inquiry proceedings in the writ petition filed by Respondent No. 1. However, that writ was dismissed on 7.10.2002 and thereafter, Inquiry Officer was appointed on 20.12.2002. At that stage the Respondent No. 1 had sought quashing of the charge-sheet dated 6.07.1988 by filing OA No. 1386/06. In that OA, he had prayed for quashing of order dated 20.12.2002 as well, under which the inquiry officer was appointed to conduct an inquiry pertaining to the said charge-sheet. This OA was dismissed by the Tribunal which was subject matter of challenge in Writ Petition(Civil) No. 2563 of 2007. This writ petition was also dismissed along with other batch matters by the aforesaid common judgment.

Discussion of the High Court, while declining to quash the charge-sheet dated 6.07. 1988 is contained in paras 54 to 59 of the said judgment dated 14.12.2010. We would like to reproduce certain portions thereof, as under:-

“The Original Application has been dismissed by the Tribunal by the Tribunal holding that no mala fide against any officer and much against the one who has issued the charge-sheet has been established. It has been held that the charges are not vague. It has been held that it is impermissible to consider the evidence relied upon by the petitioner to determine whether the charges are maintainable. It has been held that it cannot be said that the charges do not attract a disciplinary action.

We may note that during arguments before us, the petitioner was not understanding the difference between the maintainability of an action vis-a-vis its sustainability. It appears that before the Tribunal the petitioner was arguing with reference to the material on which he wanted to rely and thereupon show that the charges could not be sustained; needless to state the issue, when a charge-sheet is challenged, is not whether the charge can ultimately be sustained. The issue is whether there is prima facie material to maintain the charge and whether on the allegations made in the statement of imputation a charge is attracted.

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The petitioner has not alleged any mala fide against any officer and none has been impleaded as a respondent. During arguments the petitioner wanted us to look into the material which has yet to take the shape of evidence and thus we refrain from commenting upon the issue for the reason it would be premature for us to express any view on the material on basis whereof the charge-sheet has been issued. Thus, we find no merit in WP(C) No. 2563 of 2007 and concur with the reasoning of the Tribunal that it would be premature to express any opinion and as clarified by the Tribunal in para 83 of the impugned decision, in case any final order is passed against the petitioner, he may raise all legally permissible pleas.”

9. The Respondent did not challenge the aforesaid order by approaching this court. At this stage, the position relating to departmental inquiries against the respondent, can be summed up as under:-

1. Respondent No. 1 was served with three charge-sheets dated 6.07.1988, 4.05.1998 and 5.10.1998.

2. He had challenged the validity of these charge-sheets but failed in his attempts.

3. Because of the pendency of various proceedings in one judicial forum or the other, the departmental proceedings were delayed. In fact, in so far as charge-sheet dated 6.07.1988 is concerned, stay of proceedings was granted by this court which continued up to October, 2002. Thereafter, when the Inquiry Officer was appointed on 20.12.2002, Respondent No. 1 filed OA before the Tribunal seeking quashing of the charge-sheet as well as orders dated 20.12.2002. The Tribunal dismissed the said OA on 6.08.2007. Respondent No. 1 filed review petition which was also dismissed on 17.01.2007. Thereafter, he filed Writ Petition(Civil) No. 2563 of 2007 which was dismissed on 14.12.2010.

4. In the meantime, the inquiry into second charge-sheet dated 4.05.1998 proceeded which resulted in the order of dismissal from service passed against Respondent No. 1. The Respondent No. 1 has challenged the dismissal order and his OA in this behalf is pending before the Tribunal.

10. It so happened that Respondent No. 1 filed C.M. No. 18072 of 2011 in already decided Writ Petition (Civil) No. 2563 of 2007. This C.M. was dismissed by the High Court vide its order dated 21.11.2011, observing that under the garb of that C.M., Respondent No. 1 was in fact seeking review of the judgment dated 14.12.2010 and as such it was not maintainable. Respondent No. 1 thereafter filed another C.M. No. 19106 of 2011 in Civil Writ Petition No. 2563 of 2007. In this C.M. No. 19106 of 2011, he submitted that inquiry into the charge-sheet dated 6.07.1988 could not proceed as it was unduly prolonged. He had relied upon order dated 21.07.2008, as per which High Court had directed that if it is permissible in law, the inquiry in question may be continued pertaining to the said charge-sheet keeping in view the fact that in another inquiry, penalty of dismissal from service was already inflicted upon the petitioner. In the order dated 21.7.2008, further direction was given to conclude the inquiry within 8 months. On that basis, in the C.M. Filed by Respondent No. 1, he had contended that no other inquiry could continue as he had been dismissed from service in one enquiry. In the alternative, as the enquiry was not concluded within 8 months as directed vide orders dated 21.7.2008, the charge-sheet lapsed.

11. Accepting the contention of Respondent No. 1 that he has since been dismissed pursuant to inquiry in the another charge-sheet, the High Court has passed the impugned order dated 28.03.2012, restraining the appellant from proceeding ahead with the charge-sheet dated 6.07.1988. Operative portion of the order is as under:-

“The inquiry against the petitioner is governed by the All India Services (Discipline and Appeal) Rules, 1969 and suffice would it be to state that having levied penalty of dismissal from service upon the petitioner in another separate inquiry pursuant to another charge-sheet, the instant inquiry pertaining to the charge-sheet dated 6.07.1988 cannot continue and the proceeding have to terminate in as much as the Rules in question do not envisage a penalty to be imposed upon somebody who is not a member of the service and is not subject to the pension rules, Needless to state as a result of being dismissed from service, the petitioner is not entitled to any pension.

We accordingly disposed of the application restraining the State of Maharashtra to proceed ahead with the Charge-sheet dated 6.07.1988.”

12. It is clear from the above that only on the ground that Respondent No. 1 has already been dismissed from service in another separate inquiry, the High Court has held that in so far as charge-sheet dated 6.07.1988 is concerned, inquiry cannot continue. We are of the opinion that the High Court is only partially correct in his approach. No doubt, so long as Respondent No. 1 is facing penalty of dismissal, no question arises to continue the inquiry into the charges levelled vide charge- sheet dated 6.07.1988. It is because of the reason that with the dismissal of Respondent No. 1 from service, as of now Respondent No. 1 has ceased to be the employee of the Appellant. Moreover, the employee who has already been dismissed from service cannot be imposed any other penalty on the conclusion of inquiry pertaining to the charge- sheet dated 6.07.1988. Therefore, at this stage no purpose is going to be served to continue with the inquiry into the said charge-sheet. At the same time, it is also to be borne in mind that Respondent No. 1 has challenged dismissal order and the matter is pending before the Tribunal. In case the said dismissal is set aside by the Tribunal and/ or the High Court/ this Court and Respondent No. 1 is reinstated in service as a result thereof, the relationship of employer-employee between the parties shall also stand restored. In that eventuality, it would be permissible for the appellant to proceed with the inquiry relating to charge-sheet dated 6.07.1988 as well. Therefore, normally such a

direction of the High Court to the effect that “proceedings have to terminate” in so far as charge-sheet dated 6.07.1988 is concerned would not be correct. Instead of terminating these proceedings appropriate order as that should normally be passed is to keep in ‘abeyance’. That is the course of action which is permissible under the extant Rules as well as, in such circumstances.

13. Having clarified the legal position, a question that arises for consideration is as to whether this Court would interfere with the orders passed by the High Court, in the facts and circumstances of this case. We may make it clear that in view of the aforesaid legal position we could have modified the orders of the High Court with direction to keep the inquiry proceedings pertaining to the charge sheet dated 6.7.1998 instead of terminating the inquiry. However, there is another important fact, which cannot be lost sight of and that compels us not to interfere with the impugned order of the High Court. The charge sheet in question is dated 6.7.1988. It pertains to the charges of the period even prior thereto. This charge sheet is thus, more than 25 years old. Further no departmental proceedings in respect of this charge sheet can start till the conclusion of the judicial proceedings in respect of dismissal orders dated 2.4.2007 relating to the charge sheet dated 4.5.1998. That process would consume few more years. We are, therefore, of the opinion that even if the dismissal order against Respondent No. 1 is ultimately set aside and he is reinstated back in service, reopening of the inquiry qua charge sheet dated 6.7.1988 after 30 years or so would not serve any purpose. Thus, while not agreeing with the reasons given by the High Court in the impugned order, for our own reasons as mentioned above, we are not inclined to interfere with the conclusion/ direction of the High Court in terminating the inquiry pertaining to charge-sheet dated 6.7.1988, in exercise of powers conferred under Section 136 of the Constitution. As a result the present appeal is dismissed.