SUPREME COURT OF INDIA

Govt. of A.P.

Vs.

B.Jagjeevan Rao

C.A.No.80 of 2009

(Dipak Misra and N.V. Ramana JJ.)

12.05.2014

JUDGMENT

DIPAK MISRA, J.

1. Calling in question the legal propriety of the judgment and order dated 7.8.2007 passed by the Division Bench of the High Court of Judicature, Andhra Pradesh at Hyderabad in W.P. No. 16102/2007 whereby the High Court has overturned the decision rendered by the A.P. State Administrative Tribunal (for short, 'the Tribunal') in O.A. No. 2206/2007 vide order dated 19.04.2007, the present appeal has been preferred by special leave.

2. The facts lies in a narrow compass. The Respondent herein was charge-sheeted for offences punishable Under Section 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the Act') and eventually after trial was convicted and sentenced to rigorous imprisonment of one year and payment of fine of Rs. 1000/- with a default clause. He assailed the conviction and sentence in Criminal Appeal No. 371/2007 and the High Court vide order dated 29.03.2007 in Crl. A.M.P. No. 497/2007 entertaining an application Under Section 389(1) of the Code of Criminal Procedure, 1973 (for short, 'the Code,') directed suspension of sentence and enlargement of bail on certain conditions. Be it noted, the High Court did not direct stay of the judgment of conviction recorded by the learned trial judge.

3. After the conviction the Department of Finance issued G.O. No. 91 dated 16.4.2007 dismissing the Respondent from service by invoking power under Rule

25 of A.P.C.S. (CC&A) Rules, 1991 (for short, 'the Rules'). The correctness of said order of dismissal was called in question before the Tribunal on the foundation that once there was an order Under Section 389(1) of the Code, the concerned Department could not have taken recourse to Rule 25(1) of the Rules to dismiss the Respondent from service. The Tribunal repelled the said submission of the Respondent and resultantly, dismissed the original application.

4. Being dissatisfied with the aforesaid decision, the Respondent preferred a writ petition and the High Court analysing the effect and impact of Rule 25(1) of the Rules and taking note of the order passed in criminal appeal came to hold that when the criminal appeal was pending for adjudication and there had been suspension of sentence, the concerned Department could not have passed an order of dismissal from service, and accordingly quashed the order of the tribunal and lancinated the order of dismissal.

5. It is contended by Mr. Babu, learned Counsel for the Appellant that the High Court has fallen into grave error in interpreting Rule 25 of the Rules and has misconstrued the issue pertaining to the stay of conviction, and order of suspension of sentence as engrafted Under Section 389(1) of the Code. He has relied on the decisions rendered in The Director of Collegiate Education v. S. Nagoor Meera (1995) 3 SCC 377 and K.C. Sareen v. CBI, Chandigarh (2001) 6 SCC 584.

6. It is not in dispute that the Respondent was convicted by the Principal Special Judge for SPE & ACB Cases for the offences punishable under the Act. The High Court, as the order would reflect, had only directed suspension of sentence. There was no order of stay of conviction. It is well settled in law that there is a distinction between suspension of sentence and stay of conviction. This has been succinctly stated in Rama Narang v. Ramesh Narang (1995) 2 SCC 513:

> 7...
>
> Section 389(1) empowers the Appellate Court to order that the execution of the sentence or order appealed against be suspended pending the appeal. What can be suspended under this provision is the execution of the sentence or the execution of the order. Does 'Order' in Section 389(1) empowers the

Appellate Court to order that the execution of the sentence or order appealed against be suspended pending the appeal. What can be suspended under this provision is the execution of the sentence or the execution of the order. Does 'Order' in-Section 389(1) mean order of conviction or an order similar to the one Under Sections 357 or 360 or the Code? Obviously, the order referred to in Section 389(1) must be an order capable in execution. An order of conviction by itself is not capable of execution under the Code. It is the order of sentence or an order awarding compensation or imposing fine or release on probation which are capable of execution and which if not suspended, would be required to be executed by the authorities.

In certain situations the order of conviction can be executable, in the sense, it may incur a disqualification as in the instant case. In such a case the power Under Section 389(1) of the Code would be invoked, in such situations, the attention of the Appellate Court must be specifically invited to the consequence that is likely to fall to enable it to apply its mind to the issue since Under Section 389(1) it is under an obligation to support its order 'for reasons to be recorded by it in writing'. If the attention of the Court is not invited to this specific consequence which is likely to fall upon conviction how can it be expected to assign reasons relevant thereto?... If such, a precise request was made to the Court pointing out the consequences likely to fall on the continuance of the conviction order, the Court would have applied its mind to the specific question and if it thought that case was made out for grant of interim stay of the conviction order, with or without conditions attached thereto, it may have granted an order to that effect.

7. A similar view has been expressed in K.C. Sareen v. CBI, Chandigarh (supra).

8. The question, thus, emerges whether an inquiry should have been held Under Article 311(2) of the Constitution, regard being had to the scheme of Rule 25(1) of the Rules. In this context, we would like to extract a passage from the pronouncement of the Constitution Bench in Union of India v. Tulsiram Patel MANU/SC/0373/1985 : AIR 1985 SC 1416. In the said case, the officer concerned was convicted Under Section 332 of the Indian Penal Code and the learned

Magistrate had released him on probation under the Probation of Offenders Act. Considering the said factual position the Constitution Bench opined thus:

> 152. The second ground upon which the High Court rested its decision is equally unsustainable. The circumstances which were taken into consideration by the disciplinary authority have been sufficiently set out in the order of compulsory retirement, they being that the Respondent's conviction Under Section 332 of the Indian Penal Code and the nature of the offence committed which led the disciplinary authority to the conclusion that the further retention of the Respondent in the public service was undesirable. The mention of Section 332 of the Indian Penal Code in the said order itself shows that Respondent was himself a public servant and had voluntarily caused hurt to another public servant in the discharge of his duty as such public servant or in consequence of an act done by that person in the lawful discharge of his duty. The facts here are eloquent and speak for themselves. The Respondent had gone to the office of his superior officer and had hit him on the head with an iron rod. It was fortunate that the skull of Raj Kumar was not fractured otherwise the offence committed would have been the more serious one Under Section 333. The Respondent was lucky in being dealt with leniently by the Magistrate but these facts clearly show that his retention in public service was undesirable. In fact, the conduct of the Respondent was such that he merited the penalty of dismissal from government service and it is clear that by imposing upon him only the penalty of compulsory retirement, the disciplinary authority had in his mind the fact that the Magistrate had released him on probation. We accordingly hold that Clause (i) of Rule 19 of the Civil Services Rules was rightly applied to the case of the Respondent.

9. Having stated the principle, we shall now advert to the Rule position. Rule 25(1) being relevant is reproduced below.

> Special Procedure in Certain Cases: Notwithstanding anything contained in Rule 20 to Rule 24
>
> (1) where penalty is imposed on a Government Servant on the ground of conduct which has led to his conviction on a criminal charge, the

disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit.

10. The requirement of the said Rule, as it seems, is that the conduct of Government servant that had led to conviction on the criminal charge and the circumstances of the case are to be considered by the disciplinary authority before imposing the appropriate punishment. In the case at hand, the Respondent was convicted Under Section 7 and 13(1)(d) read with Section 13(2) of the Act and sentenced to one year rigorous imprisonment. In almost similar case in S. Nagoor Meera (supra), a two-Judge Bench, after referring to the conceptual mandate of Article 311(2) and after referring to the dictum in Shankar Dass v. Union of India MANU/SC/0369/1985 : (1985) 2 SCC 358 has expressed thus:

> 10. What is really relevant thus is the conduct of the government servant which has led to his conviction on a criminal charge. Now, in this case, the Respondent has been found guilty of corruption by a criminal court. Until the said conviction is set aside by the appellate or other higher court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice.
>
> 11. The Tribunal has given yet another reason for quashing the show-cause notice, viz., that whereas the conviction of the criminal court was on 4-2-1991, the impugned show-cause notice was issued only on 27-10-1993. The Appellant has explained that though the Respondent (sic Appellant) had come to know the conviction soon after the judgment of the criminal court, of the order of the High Court suspending the sentence. It is stated that after obtaining legal advice, the show-cause notice was issued. In our opinion, the delay, if it can be called one, in initiating the proceedings has been properly explained-and in any event, the delay is not such as to vitiate the action taken.

11. Regard being had to the aforesaid enunciation of law and keeping in view the expected standard of administration, conviction on the charge of corruption has to be viewed seriously and unless the conviction is annulled, an employer cannot be compelled to take an employee back in service. Therefore, the High Court has

clearly erred in its interpretation of Rule 25(1) and further committed illegality in not keeping in mind the distinction between stay of conviction and suspension of sentence as envisaged Under Section 389(1) of the Code.

12. In the result, the appeal is allowed, the judgment and order of the High Court, being sensitively susceptible, are set aside. There shall be no order as to costs.