

SUPREME COURT OF INDIA

Sec.To Gov. Information Pub. Rel. Dep.

Vs.

John Maria Jesudoss

C.A.No.518 of 2015

(T.S.Thakur and Adarsh Kumar Goel JJ.)

16.01.2015

JUDGMENT

ADARSH KUMAR GOEL, J.

1. Leave granted.
2. This appeal has been preferred against the judgment and Order dated 15th June, 2012 passed by the High Court of Madras in Writ Appeal No.1099 of 2012.
3. The respondent was employed as a Junior Assistant in Government Central Press since 1988. On 15th February, 1995, the disciplinary proceedings were initiated against him alleging that he was not attending his official duties regularly, he failed to submit the personal register to the Superintendent and that he frequently applied for leave, adversely affecting the discipline of other co-workers.

A second charge sheet dated 28th January, 1997, was served on him alleging interpolation in the attendance register falsely showing that he had attended the office on 10th January, 1997 and that he left the office before time unauthorisedly. After enquiry, the charge in the first charge sheet having been proved, Order dated 17th April, 1997 was passed removing him from service. It was observed in the order that the appellant failed to submit any written explanation; enquiry report dated 19th March, 1996 was submitted against him; a copy whereof was sent to him on 24th April, 1996 to which he did not give any reply. On appeal, the appellate authority vide Order dated 1st September, 1997, modified the order of punishment of removal from service to reduction of pay by five stages. Thereafter, vide Order dated 1st December, 1997, the disciplinary authority passed fresh order of removal

from service on the basis of second charge sheet based on the alleged misconduct on 10th January, 1997 which charge was held proved during disciplinary enquiry. It was observed that the order of removal was passed on 25th June, 1997 but the same was held in abeyance on account of pendency of appeal against Order dated 17th April, 1997. Since Order dated 17th April, 1997 had been set aside in appeal and the order of removal based on the second charge sheet, which had been kept in abeyance, was considered necessary to be issued. The said order was affirmed by the appellate authority on 24th February, 1998. Against the said order, the respondent preferred O.A. No.4377 of 2001 before the Tamil Nadu Administrative Tribunal which was transferred to the High Court on abolition of the Tamil Nadu Administrative Tribunal in 2007 and was registered as Writ Petition No.4446 of 2007. Learned single Judge of the High Court allowed the said writ petition on 21st December, 2011 with back wages and all other benefits. The order of single Judge has been affirmed by the Division Bench.

4. We have heard learned counsel for the parties.

5. Learned counsel for the appellant submitted that interference with the order of removal dated 1st December, 1997 was not justified on the assumption that the order dated 1st September, 1997 was a bar to pass an order of removal. The said order dated 1st September, 1997 arose out of the first charge sheet dated 15th February, 1995 relating to distinct misconduct of habitually leaving the office without any intimation and frequently applying for leave. The impugned order dated 1st December, 1997 arose out of the second charge sheet dated 28th January, 1997 relating to misconduct on 10th January, 1997 by leaving the office without permission and tempering of official record.

6. Learned counsel for the respondent supported the impugned order and also submitted that even if misconduct alleged in the second charge sheet was taken to be distinct, order of removal was shocking and disproportionate to the charge and thus, the order of the High Court reinstating the respondent with back wages was fully justified.

7. We have given anxious consideration to the rival submissions.

8. The question for consideration is whether order dated 21st December, 2011 passed by the learned Single Judge as affirmed by the Division Bench vide

impugned order dated 15th June, 2012 reinstating the respondent with back wages and other benefits is justified.

9. It will be appropriate to reproduce the misconduct alleged in the two charge sheets. The alleged misconduct in the first charge sheet dated 15th February, 1995 is as follows:

"1. The individual is not sincere in attending the official duty and after signing the attendance register habitually leave the office without any intimation.

2. Failure to submit the personal register to the superintendent.

3. Frequently applying leave. His sincerity adversely affect the discipline of other co-workers."

The alleged misconduct in the second charge sheet dated 28th January, 1997 is as follows :

"1. Indulging in correction of official records to his personal advantage.

2. On coming late to the office on 10.1.1997 and without getting the permission of his superior signed the running not file for the attendance register that he has attended the office.

3. After signing the register that he has attended the office he went out of the office and never returned for the whole day."

10. It is clear from the record that the misconduct alleged in both the charge sheets is the subject matter of separate enquiries, and was held to be proved. The first order of the disciplinary authority is dated 17th April, 1997 while the second order of the disciplinary authority is dated 1st December, 1997. The appellate order dated 1st September, 1997 is in appeal against the order dated 17th April, 1997. Thus, there is error in assuming that order dated 1st September, 1997 became final and conclusive, as regards the misconduct alleged in the second charge sheet. The observations in the impugned order of learned single Judge are as follows : "In view of the disciplinary proceedings attained finality by an order dated 01.09.1997 of the second respondent modifying the punishment of dismissal into one by reinstating the petitioner in service and reducing the pay by five stages and postponement of increment for five years, the respondents 2 and 3 have no jurisdiction to pass the impugned orders on the same disciplinary proceedings.

Hence, the impugned orders are liable to be set aside and accordingly, the same are quashed. The petitioner is entitled to backwages and other benefits since he was illegally terminated from service. The respondents are directed to reinstate the petitioner with backwages and other benefits within a period of six (6) weeks from the date of receipt of a copy of this order."

The above order is clearly based on erroneous assumption that order dated 1st December, 1997 was in respect of the same misconduct as was covered by the order dated 1st September, 1997. The fact remains that both the orders are in respect of different misconducts. The finding of proof of misconduct is not under challenge. Faced with the situation, learned counsel for the respondent submitted that even if a separate and distinct misconduct is proved, the order of removal could not be justified having regard to the nature of alleged misconduct.

11. We are of the view that while the High Court erroneously assumed that the order dated 1st December, 1997 was vitiated on account of disciplinary proceedings having attained finality on the passing of order dated 1st September, 1997, what attained finality was the disciplinary proceeding initiated by first charge sheet and not those initiated by second charge sheet. Thus, distinct punishment in respect of misconduct covered by second charge sheet could be validly imposed. Thus, the order of reinstatement with back wages and other benefits cannot be sustained. However, we do find merit in the submission made on behalf of the respondent that even if distinct punishment was to be imposed, it could not be the order of removal. Undoubtedly, misconduct of unauthorisedly leaving the office has been subject matter of two independent charge sheets on different occasions and on both occasions the charges have been established. There is also an allegation of tempering with the record but that charge also relates to covering up of the unauthorized absence. The order of punishment of removal from service was passed 17 years ago. Having regard to all the facts and circumstances of the case, we are of the view that the impugned order of removal ought to be set aside and substituted by order of compulsory retirement. We would have directed compulsory retirement from the date of removal i.e. 1st December, 1997 but since this may be few days earlier to completion of ten years from and deprive the respondent of proportionate terminal benefits, the date of compulsory retirement will be the date on completion of ten years of service.

12. Accordingly, this appeal is partly allowed to the above extent, substituting the order of removal by order of compulsory retirement.