U.P. State Textile Corporation Ltd vs P.C. Chaturvedi And Ors on 3 October, 2005

Equivalent citations: AIR 2006 SUPREME COURT 87, 2005 AIR SCW 5519, 2006 (1) ALL LJ 311, (2005) 6 ALL WC 5986, 2006 (1) SRJ 87, 2005 (8) SCALE 46, 2005 (8) SCC 211, 2005 LAB LR 1197, 2005 (7) SLT 681, 2005 BLJR 3 2349, 2005 SCC (L&S) 1108, (2005) 3 CURLR 868, (2006) 109 FACLR 411, (2006) 1 LABLJ 413, (2005) 4 LAB LN 979, (2006) 1 PAT LJR 243, (2005) 7 SCJ 632, (2005) 6 SERVLR 32, (2005) 6 SUPREME 612, (2005) 8 SCALE 46

Author: Arijit Pasayat

Bench: Arijit Pasayat, H.K. Sema

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           CASE NO.:
Appeal (civil)  7240-7241 of 2003

PETITIONER:
U.P. State Textile Corporation Ltd.

RESPONDENT:
P.C. Chaturvedi and Ors.

DATE OF JUDGMENT: 03/10/2005

BENCH:
Arijit Pasayat & H.K. Sema

JUDGMENT:
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JUDGMENT ARIJIT PASAYAT, J.

The appellant (hereinafter referred to as the `employer') calls in question legality of the judgment rendered by a Division Bench of the Allahabad High Court holding that dismissal of respondent No.1 (hereinafter referred to as `employee') from service pursuant to the disciplinary proceedings was invalid.

Respondent No. 1-employee filed a writ application questioning legality of the departmental proceedings initiated against him culminating in the order dated 12.7.1993 passed by the Managing Director of the employer- Corporation. The Managing Director was in agreement with the findings of the Enquiry Officer holding that very serious charges of misconduct were proved and, therefore, the respondent No. 1-employee was liable for major and deterrent punishment of dismissal. The appeal filed by respondent No. 1-employee was dismissed by order dated 31.12.1993 by the Chairman of the Corporation. There were other prayers in the writ petition i.e. (i) to command the

respondent in the writ petition to continue his functioning and to pay his regular monthly salary and allowance including arrears of salary from 1.7.1992; (ii) to direct the respondent in the writ petition in the interest of justice to consider the writ petitioner's case for voluntary retirement as he had become about 56 years old subject to the decision in the writ petition. The second prayer was made as the writ petitioner believed that the Corporation was in the process of winding up and had even closed two of its mills at Jhansi and Sandeela and all the employees working in its head office had been given option to retire under a voluntary retirement scheme. The disciplinary proceedings were initiated on the basis of a complaint made to the Managing Director. On receipt of the complaint the respondent No. 1-employee was asked to furnish his comments about the allegations. Respondent No. 1-employee submitted his comments on 27.5.1992 on receipt of the confidential letter dated 2.5.1992 from the Managing Director. Thereafter, on 30.6.1992 an order of suspension was passed by the Managing Director. Six charges were framed against the respondent No.1-employee, all of which related to alleged misconduct and financial irregularities involving several crores of rupees. The Enquiry Officer held that all the six charges except charge No. 5 were proved. The report was given to the concerned authorities on 3.2.1993. The enquiry report indicated that though the last date of hearing was 8.10.1992, the respondent No. 1-employee did not participate after 3.10.1992. It appears that on 5.1.1993 the respondent-employee had made a prayer for grant of subsistence allowance which was not granted. In between, by making certain allegations against the Enquiry Officer the respondent No. 1-employee had prayed for change of the Enquiry Officer. According to him, relevant documents were not supplied to him and Enquiry Officer was exhibiting bias. The prayer in this regard was made on 11.10.1992 which was rejected on 1.12.1992. It is relevant that in the order dated 1.12.1992 the Chairman had noted that in spite of adequate opportunities the charged officer did not effectively participate and was raising various untenable pleas obviously with the object of delaying the proceedings. The writ petition was resisted by the present appellant. It was pointed out that all documents had been made available to the respondent No. 1-employee for the purpose of inspection and relevant copies were supplied. Therefore, adequate opportunity was granted to respondent No. 1-employee to defend himself properly in the departmental proceedings.

The plea of the respondent-employee was that on 3.10.1992 all of a sudden the Enquiry Officer asked him to cross-examine the witnesses. Same was objected to by him as he was taken by surprise. But without properly considering the grievance all the four witnesses were examined and the matter was adjourned for further hearing. The respondent No. 1-employee filed his protest letters on 3.10.1992 and 7.10.1992 and requested the Enquiry Officer not to proceed in the matter and made a representation on 11.10.1992. But on 8.10.1992, four of the remaining witnesses were examined and the enquiry report was submitted.

The High Court held that departmental proceedings were non-est on two grounds. Firstly, it was observed that on 8.10.1992 certain documents were accepted by the Enquiry Officer and copies thereof were not supplied to the respondent No. 1-employee. His request for copies of the documents was not heeded to and, therefore, he was highly prejudiced and the proceedings were in gross violation of the principles of natural justice. Additionally, it was held that non-payment of subsistence allowance also vitiated the departmental proceedings. Letter of respondent No. 1-employee dated 5.1.1993 was taken note of to observe that he had no other source of livelihood and non-payment of subsistence allowance was clearly violation of Article 21 of the Constitution of India,

1950 (in short `the Constitution') and, therefore, the proceedings could not be considered legal and proper. Accordingly, it was held that even if it is accepted that there was requirement of signing the attendance register that was really not of any significance and in any event, was a bona fide lapse. It was held that claim of respondent No. 1-employee that he was attending office was otherwise established. The impugned enquiry report as well as the order of termination of service were quashed. However, the employer was given liberty to start the proceedings afresh from the stage of the enquiry as it stood on 3.10.1992. Direction was given for payment of salary and admissible allowances.

A review petition was filed by the present appellant which was rejected.

It was pointed out by the appellant that in the order of suspension itself it was clearly noted that separate register would be maintained to mark his attendance in office but the respondent No. 1-employee did not sign the attendance register, which, would have otherwise shown whether he was attending office pursuant to the order of suspension. Therefore, the non- payment of subsistence allowance is of no consequence. Further, no prejudice has been shown as to how he was prejudicially affected by non- payment of subsistence allowance, particularly, when he did not comply with the requirements of the order of suspension about his signing the attendance register after attending office.

As regards the conclusion that copies of relevant documents were not supplied, stand before the High Court was reiterated and it was submitted that inspection was allowed and taking copies of relevant documents was permitted.

Learned counsel for respondent No. 1-employee has submitted that the High Court has rightly interfered in the matter because the respondent No. 1 was greatly prejudiced by non-supply of documents, action of the Enquiry Officer proceeding ex-parte and last but not the least the non payment of subsistence allowance.

We shall first deal with the plea regarding alleged non compliance with the principles of natural justice.

Records reveal that copies of large number of documents were supplied to the respondent No. 1. Whether they were adequate for the purpose of taking a view in the disciplinary proceedings is another matter, but to say the relevant documents were not supplied is not correct. The High Court had attached great importance to the alleged admission of documents for the purpose of adjudication on 8.10.1992. Though this ground was urged with great vehemence before the High Court, it is not disputed that what was accepted by the Enquiry Officer on 8.10.1992 was not any document but list of documents/books of accounts in the possession of respondent No. 1- employee. It has not been shown as to how the non-supply of this list caused any prejudice. The stand of the respondent was that additional documents had been entertained which plea the High Court had wrongly accepted. As noted above no additional document was brought on record, and it was the list. On that score, the High Court's view is clearly untenable.

The residual question is non-payment of subsistence allowance.

So far as the effect of not paying the subsistence allowance is concerned, before the authorities no stand was taken by the respondent No. 1-employee that because of non-payment of subsistence allowance, he was not in a position to participate in the proceedings, or that any other prejudice in effectively defending the proceedings was caused to him. He did not plead or substantiate also that the non-payment was either deliberate or to spite him. It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employee is handicapped because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as an absolute position in law that non-payment of subsistence allowance amounts to denial of opportunity and vitiates departmental proceedings.

The above position was highlighted in Indra Bhanu Gaur v. Committee, Management of M.M. Degree College and Ors., [2004] 1 SCC 281.

It is to be noted that no grievance was made at any time during the pendency of the proceedings that the respondent No. 1-employee was being prejudiced on account of non-payment of subsistence allowance. In fact, for the first time the request was made for payment of subsistence allowance on 5.1.1993 i.e. after completion of the enquiry. The ratio in Indrabhanu's case (supra) is clearly applicable to the facts of the present case.

As per Uttar Pradesh State Textile Corporation Conduct, Control and Disciplinary Rules, 1992 (in short the `Rules') Rule 41 provides as follows:

> "41- Subsistence allowance during suspension: An employee under suspension shall be entitled to draw subsistence allowance equivalent to 50% of his basic pay plus 50% dearness allowance provided that the employee is not engaged in any other employment or business or profession or vocation. The subsistence allowance would be payable only when the employee, if required, presents himself every day at the place of work or such other place as mentioned in the relevant order. Further, the employee, under suspension would have to furnish a certificate that he is not engaged in other employment, business, profession or vocation for entitlement of subsistence allowance.
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> Variation in amount of subsistence allowance:
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> (2) Where the period of suspension exceeds six months, the authority which made or is deemed to have made the order of suspension, shall competent to vary the amount of subsistence allowance for any period subsequent to the period of the first six months as follows:

> (a) The amount of subsistence allowance may be increased upto 75% of the basic pay and dearness allowance thereon if the period of suspension has been prolonged for reasons, to be recorded not directly attributable to the suspended employee;
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> (b) The amount of subsistence allowance may be reduced upto 25% of the basic pay and dearness allowance thereon if the period of suspension has been prolonged due to reasons, to be recorded directly attributable to the suspended employee."

Rule 41 provides that the subsistence allowance is payable only when the employee, if required, presents himself every day at the place of work. Obviously, for establishing that the employee had presented himself at the place of work, the authorities had clearly stipulated a condition that the attendance register was to be signed. No explanation was offered by the respondent no. 1-employee as to why he did not sign the register. It cannot be lightly brushed aside as technical and/or inconsequential. As admittedly, the respondent No. 1-employee had not signed the attendance register even though specifically required in the order of suspension the High Court was not justified in coming to a conclusion that the non signing was not consequential or a bona fide lapse. It is also to be noted that at various point of time the employer informed the respondent No. 1-employee about the consequences of his not signing the attendance register as stipulated in the order of suspension.

We find that while granting opportunity to the employer to proceed further in the matter direction was given for payment of full salary and consequential benefits.

In Managing Director, ECIL, Hyderabad and Ors. v. B. Karunakar and Ors., [1993] 4 SCC 727 it was observed as follows:

> "Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunal's should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of

> punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

That being so, direction for payment of full back salary and consequential benefits cannot be sustained.

In P.G.I. of Medical Education and Research, Chandigarh v. Raj Kumar, [2001] 2 SCC 54, this Court found fault with the High Court in setting aside the award of the Labour Court which restricted the back wages to 60% directed payment of full back wages. It was observed thus at p. 57, para 9:

> "9. The Labour Court being the final Court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect."

This Court observed again at para 12 at p.58 :

> "12. Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no strait-jacket formula can be evolved, though, however there is statutory sanction to direct payment of back wages in its entirety."

The position was re-iterated in Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya, [2002] 6 SCC 41; Indian Railway Construction Co. Ltd. v. Ajay Kumar, [2003] 4 SCC 579 and M.P. State Electricity Board v. Jarina Bee (Smt.), [2003] 6 SCC 141.

The High Court's judgment is, therefore, clearly unsustainable. But we find substance in the plea of respondent No. 1-employee that his challenge before the High Court was not restricted to the two points on which the High Court granted relief and there were certain other grounds of challenge.

Learned counsel for the appellant submitted that there is absolutely no merit in the challenges made in the writ petition. We do not think it necessary to go into that aspect as the High Court dealt with only two aspects and not others. We, therefore, while setting aside the impugned judgment of the High Court so far as the two grounds on which relief was granted to the respondent No. 1-employee remit the matter to the High Court for consideration of other grounds of challenge raised in the writ petition. The High Court shall now consider the writ petition on the grounds other than the two with which we have dealt with in these appeals. Writ petition no. CMWP No. 7631/1994 is restored to the High Court for dealing with the matter afresh. It is to be noted that respondent No. 1 has already attained the age of superannuation in 2002. We make it clear that we have not expressed any opinion about the other grounds of challenge as raised in the writ petition.

The appeals are disposed of accordingly. No costs.