Hombe Gowda Edn. Trust & Anr vs State Of Karnataka & Ors on 16 December, 2005

Equivalent citations: AIRONLINE 2005 SC 1, (2006) 108 FAC LR 584, (2006) 1 LAB LJ 1004, (2006) 1 SCT 197, (2006) 1 RAJ LW 632, (2006) 1 SCJ 107, 2006 (1) SCC 430, (2006) 1 SERV LR 635, (2006) 1 CUR LR 280, (2006) 1 LAB LN 461, (2005) 10 SCALE 307, (2006) 2 MADLW(CRI) 481, 2006 LAB LR 141, (2005) 10 JT 598, (2005) 8 SUPREME 608, (2006) 2 JCR 24 (SC), (2005) 10 JT 598 (SC)

Author: S.B. Sinha

Bench: S.B. Sinha, P.P. Naolekar

CASE NO.:
Appeal (civil) 2554 of 2003

PETITIONER:
Hombe Gowda Edn. Trust & Anr.

RESPONDENT:
State of Karnataka & Ors.

DATE OF JUDGMENT: 16/12/2005

BENCH:
S.B. Sinha & P.P. Naolekar

JUDGMENT:

JUDGMENT W I TH CIVIL APPEAL NOS.2555-2557 OF2003 S.B. SINHA, J :

One Venkappa Gowda, Respondent No.3 herein, was at all material times a lecturer in Kuvempu Mahavidyalaya, the Appellant No.2 herein. The said institution is under the management of the Appellant No.1.

The private institutions in the State of Karnataka are governed by the Karnataka Private Educational Institutions (Discipline and Control) Act, 1975, (for short, ' the Act').

The Respondent No.3 herein was subjected to a disciplinary proceeding on an allegation that he had assaulted the Principal of Appellant No.2 with a 'chappal'. He was found guilty of the said charge and dismissed from service. An appeal was preferred by him before the Educational Appellate Tribunal (for short, 'the Tribunal')

in terms of Section 8 of the said Act. The said Tribunal is constituted in terms of Section 10 thereof. The proceeding before the said Tribunal by a legal fiction is treated to be a judicial proceeding. It is not in dispute that the Appellant No.2 received grant-in-aid from the State of Karnataka in terms of the Grant-in-Aid Code framed by the Karnataka Collegiate Education Department. Before the Tribunal, the State of Karnataka as also the Director of Collegiate Education were impleaded as parties. A preliminary issue was framed as to whether the departmental proceedings held against the Respondent No.3 was in consonance with the provisions of Rule 14(2) of CCS (CCA) Rules. While deciding the preliminary issue, it was held that the departmental proceeding was invalid in law. The Appellants, therefore, adduced evidences before the Tribunal to prove the charges against Respondent No.3. The Tribunal having regard to the pleading of the parties formulated the following questions for its determination :

"1. Whether the respondents 1 and 2 have proved by acceptable evidence that allegation that the appellant had absented from duty unauthorisedly and as to whether his conduct was unbecoming of lecturer ?

2. Whether the evidence establishes that the appellant had misbehaved on 18.1.87 and as to whether he had indulged in physical assault upon the Principal?

3. If so, whether the punishment of dismissal imposed upon the appellant is justified in this case and if not what punishment he deserves?"

Upon consideration of the evidence adduced before it, the Tribunal held that the first charge had not been satisfactorily proved by cogent and acceptable evidence. As regard the second charge, it was found :

"R.W. 1 has himself stated that he did not permit appellant to sign the attendance register in the morning of 18.9.87. It led to verbal altercation and then turned to heated argument. According to R.W. 1 appellant abused him in the vulgar language as :

(Boli magane, Mudi goobe, Neenyaru nnann Jekijethus) RW. 1 pushed him. This particular part of his evidence is sought to be corroborated to evidence of C.S Dhanpal. Dhanpal has stated he was present in the chamber of Principal when appellant arrived. He also says that the Principal refused to permit appellant to sign the attendance register. Dhanpal further stated that R.W. 1 told appellant he will not permit him to sign even morning registers if he does not sign afternoon registers.

After hearing such talk Vankappagowda replied "It is not a proper conduct of Principal" and rushed towards him. Then Principal took away the register from Venkappagowda At that juncture Venkappagowda caught hold of his collar. Simultaneously Principal R.W. 1 pushed Venkappagowda down which resulted in his fall. After falling down Venkappagowda got up and hit the Principal with

a chappal."

It was held :

> Since I am only appreciating facts placed before me, it is but necessary that the facts so projected should be considered collectively and not in isolation. Each fact spoken by the witnesses has woven a web clearly indicating that all was not well between the Principal and the appellant and therefore, incident on 18.9.87 took a violent turn. The evidence has to be weighed according to the norms of reasonable probabilities, but not in trade mans scale. While doing this exercise I have formed an opinion that the incident would not have occurred had the Principal employed restrained upon his words and action. Any way even the act of the appellant in using chapels to assault the Principal cannot under any circumstances be justified. Both persons involved are teachers what is taught should be practiced. If what their action show is any indication an impression is gathered that the Principal and the appellant have acted in undesirable manner and unbecoming of academitials to say the least teachers, their acts are demeaning the profession they have adopted "
>
> Despite holding that although it could not be said that the Respondent No.3 acted in retaliation to the action of the Principal, but such conduct was not justifiable, he opined that the assault by the Respondent No.3 on the Principal was proved. However, he awarded punishment of withholding of three increments only in plea of the order of dismissal passed by the Appellants.
>
> It was further held :
>
> "The appellant shall be taken back to service and will be entitled to all pecuniary benefits like salary and allowances retrospectively from the date of dismissal minus and subject to withholding of three increments.
>
> The respondent 1 and 2 are held liable to make payment of amount due to the appellant. I also hold respondents 3 and 4 vicariously liable to discharge the claim of the appellant.
>
> Aggrieved, the Management, the State of Karnataka also the Respondent No.3 preferred separate writ petitions before the Karnataka High Court.
>
> The High Court in its judgment came to the following findings :
>
> "When the action of the petitioner in assaulting the Principal with chappal stands proved by the evidence of R.Ws. 1 to 5, whatever may be the provocation for such a conduct, the said conduct of the Petitioner cannot be justified under any circumstances. Therefore the Tribunal was fully justified in holding that the misconduct alleged against the Petitioner stands proved partly."

The High Court noticed that the punishment imposed by the Tribunal could not be given effect to as Respondent No.3 in the meantime reached the age of superannuation within three months from the date of the order and, thus, held that the Appellants should be directed to pay back wages to the extent 60% only. It was further held that though the primary liability to make such payment is that of the Management, when Management could claim the same by way of advance grant or by way of reimbursement from the Government, its liability to pay the said amount cannot be disputed.

Both the Management as also the State are, thus, in appeal before us.

Mr. R.S. Hegde and Mr. S.R. Hegde, the learned counsel appearing on behalf of the Appellants in their respective appeals, would submit that as a finding of fact was arrived at both by the Tribunal as also the High Court that the Respondents committed a misconduct, which is grave in nature, there was absolutely no justification in directing payment of 60% back wages after setting aside the order of punishment of dismissal imposed by the Management.

Mr. S.N. Bhatt, the learned counsel appearing on behalf of Respondent No.3, on the other hand, would contend that a finding of fact has been arrived at by the Tribunal which has been affirmed by the High Court that it was the Principal who provoked Respondent No.3. It is not in dispute, Mr. Bhat, submitted that the Principal was also at fault but curiously enough he was not proceeded against. Both the Respondent No.3 and the Principal of the College having been found guilty, it was argued, it was obligatory on the part of the Management to initiate a departmental proceeding also against the Principal. The Management of the Institution being guilty of being selectively vindictive, Mr. Bhat urged, it is a fit case where this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India.

It was further submitted that the question should also be considered from the angle that charge no. 1 framed against the Respondent No.3 was not proved Our attention was also drawn to the fact that the Management had sought for time for complying with the order of the High Court which having been granted, the Appellants are estopped and precluded from maintaining this appeal.

It is now well-settled that by seeking extension of time to comply with the order of the High Court by itself does not preclude a party aggrieved to question the correctness or otherwise of the order of the High Court as thereby a party to a lis does not waive his right to file an appeal before this Court.

The Respondent No.3 is a teacher. He was charge-sheeted for commission of a serious offence. He was found guilty by the Tribunal. Both the Tribunal as also the High Court, as noticed hereinbefore, have arrived at a concurrent finding of fact that despite grave provocation, the Respondent No.3 cannot be absolved of the charges levelled against him. It may be true that no departmental disciplinary proceeding was initiated against the Principal of the Institution, but the same by itself would not be a relevant fact for imposing a minor punishment upon the Respondent. It may further be true that the Respondent No.3 committed the offence under a grave provocation, but as noticed hereinbefore, the Tribunal as also the High Court categorically held that the charges against him were established.

The Tribunal's jurisdiction is akin to one under Section 11A of the Industrial Disputes Act. While exercising such discretionary jurisdiction, no doubt it is open to the Tribunal to substitute one punishment by another; but it is also trite that the Tribunal exercises a limited jurisdiction in this behalf. The jurisdiction to interfere with the quantum of punishment could be exercised only when, inter alia, it is found to be grossly disproportionate.

This Court repeatedly has laid down the law that such interference at the hands of the Tribunal should be inter alia on arriving at a finding that no reasonable person could inflict such punishment The Tribunal may furthermore exercises its jurisdiction when relevant facts are not taken into consideration by the Management which would have direct bearing on the question of quantum of punishment.

Assaulting a superior at a workplace amounts to an act of gross indiscipline. The Respondent is a teacher. Even under grave provocation a teacher is not expected to abuse the head of the institution in a filthy language and assault him with a chappal. Punishment of dismissal from services, therefore, cannot be said to be wholly disproportionate so as shock one's conscience.

A person, when dismissed from services, is put to a great hardship but that would not mean that a grave misconduct should go unpunished. Although the doctrine of proportionality may be applicable in such matters, but a punishment of dismissal from service for such a misconduct cannot be said to be unheard of. Maintenance of discipline of an institution is equally important. Keeping the aforementioned principles in view, we may hereinafter notice a few recent decisions of this Court.

In Management of Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh and Anr. [JT 2004 (7) SC 333 = (2004) 8 SCC 200], this Court held :

> "This leaves us to consider whether the punishment of dismissal awarded to the workmen concerned dehors the allegation of extortion is disproportionate to the misconduct proved against them. From the evidence proved, we find the workmen concerned entered the Estate armed with deadly weapons with a view to gherao the manager and others, in that process they caused damage to the property of the Estate and wrongfully confined the manager and others from 8.30 p.m. on 12th of October to 3 a.m. on the next day. These charges, in our opinion, are grave enough to attract the punishment of dismissal even without the aid of the allegation of extortion. The fact that the management entered into settlement with some of the workmen who were also found guilty of the charge would not, in any manner, reduce the gravity of the misconduct in regard to the workmen concerned in this appeal because these workmen did not agree with the settlement to which others agreed, instead chose to question the punishment."

Yet again in Muriadih Colliery v. Bihar Colliery Kamgar Union [(2005) 3 SCC 331 = JT 2005 (2) SC 444], the law has been laid down in the following terms :

> "It is well-established principle in law that in a given circumstance it is open to the Industrial Tribunal acting under Section 11-A of the Industrial Disputes Act, 1947 has the jurisdiction to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the Tribunal decides to interfere with such punishment it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment. In the instant case it is the finding of the Tribunal which is not disturbed by the writ courts that the two workmen involved in this appeal along with the others formed themselves into an unlawful assembly, armed with deadly weapons, went to the office of the General Manager and assaulted him and his colleagues causing them injuries. The injuries suffered by the General Manager were caused by lathi on the head. The fact that the victim did not die is not a mitigating circumstance to reduce the sentence of dismissal."

[See also Mahindra and Mahindra Ltd. v. N.N. Narawade etc. JT 2005 (2) SC 583].

In V. Ramana v. A.P. SRTC and Others [(2005) 7 SCC 338], relying upon a large number of decisions, this Court opined :

> "The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision. To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed."

In Bharat Forge Co. Ltd. v. Uttam Manohar Nakate [(2005) 2 SCC 489], it was held :

> "Furthermore, it is trite, the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, must act within the four corners thereof. The Industrial Courts would not sit in appeal over the decision of the employer unless there exists a statutory provision in this behalf. Although its jurisdiction is wide but the same must be applied in terms of the provisions of the statute and no other. If the punishment is harsh, albeit a lesser punishment may be imposed, but such an order cannot be passed on an irrational or extraneous factor and certainly not on a compassionate ground.

> In Regional Manager, Rajasthan SRTC v. Sohan Lal it has been held that it is not the normal jurisdiction of the superior courts to interfere with the quantum of sentence unless it is wholly disproportionate to the misconduct proved. Such is not the case herein. In the facts and circumstances of the case and having regard to the past conduct of the respondent as also his conduct during the domestic enquiry proceedings, we cannot say that the quantum of punishment imposed upon the respondent was wholly disproportionate to his act of misconduct or otherwise arbitrary."

In M.P. Electricity Board v. Jagdish Chandra Sharma [(2005) 3 SCC 401], this Court held :

> "In the case on hand, the employee has been found guilty of hitting and injuring his superior officer at the workplace, obviously in the presence of other employees. This clearly amounted to breach of discipline in the organisation. Discipline at the workplace in an organisation like the employer herein, is the sine qua non for the efficient working of the organisation. When an employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or an Industrial Tribunal to take the view that the punishment awarded is shockingly disproportionate to the charge proved. We have already referred to the views of this Court. To quote Jack Chan, "discipline is a form of civilly responsible behaviour which helps maintain social order and contributes to the preservation, if not advancement, of collective interests of society at large".

Obviously this idea is more relevant in considering the working of an organisation like the employer herein or an industrial undertaking. Obedience to authority in a workplace is not slavery. It is not violative of one's natural rights. It is essential for the prosperity of the organisation as well as that of its employees. When in such a situation, a punishment of termination is awarded for hitting and injuring a superior officer supervising the work of the employee, with no extenuating circumstance established, it cannot be said to be not justified. It cannot certainly be termed unduly harsh or disproportionate. The Labour Court and the High Court in this case totally misdirected themselves while exercising their jurisdiction. The Industrial Court made the correct approach and came to the right conclusion."

In Divisional Controller, KSRTC (NWKRTC) v. A.T. Mane [(2005) 3 SCC 254], this Court held :

> "From the above it is clear that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the Appellate Tribunals and courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal. In the present case, there is evidence of the inspector who checked the bus which establishes the misconduct of the respondent. The domestic tribunal accepted that evidence and found the respondent guilty. But the courts below misdirected themselves in insisting on the evidence of the ticketless passengers to reject the said finding which, in our opinion, as held by this Court in the case of Rattan Singh is not a condition precedent. We may herein note that the judgment of

> this Court in Rattan Singh has since been followed by this Court in Devendra Swamy v. Karnataka SRT."

It was further held :

> "Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating the corporation's funds, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal."

In Municipal Board of Pratabgarh and Another v. Mahendra Singh Chawla and Others [(1982) 3 SCC 331], whereupon reliance has been placed by Mr. Bhat, the employee concerned, an Overseer, having accepted a paltry amount of Rs. 200/- was convicted and sentenced under Section 161 161 IPC. Upon taking into consideration various circumstances including the fact that he was advanced in age, this Court modified the sentence of dismissal from withholding of back wages from 31.08.1965 till the date of reinstatement. No law had been laid down therein.

It is no doubt true, as has been contended by Mr. Bhat , in some cases, this Court may not exercise its discretionary jurisdiction under Article 136 of the Constitution of India, although it may be lawful to do so; but the circumstances mentioned by Mr. Bhat for not exercising the said jurisdiction do not appeal to us to accept the said contention. Indiscipline in an educational institution should not be tolerated. Only because the Principal of the Institution had not been proceeded against, the same by itself cannot be a ground for not exercising the discretionary jurisdiction by us. It may or may not be that the Management was selectively vindictive but no Management can ignore a serious lapse on the part of a teacher whose conduct should be an example to the pupils. This Court has come a long way from its earlier view points. The recent trend in the decisions of this Court seek to strike a balance between the earlier approach of the industrial relation wherein only the interest of the workmen was sought to be protected with the avowed object of fast industrial growth of the country. In several decisions of this Court it has been noticed that how discipline at the workplaces/ industrial undertaking received a set back. In view of the change in economic policy of the country, it may not now be proper to allow the employees to break the discipline with impunity. Our country is governed by rule of law. All actions, therefore, must be taken in accordance with law. Law declared by this Court in terms of Article 141 of the Constitution of India, as noticed in the decisions noticed supra, categorically demonstrates that the Tribunal would not normally interfere with the quantum of punishment imposed by the employers unless an appropriate case is made out therefor. The Tribunal being inferior to that of this court was bound to follow the decisions of this Court which are applicable to the fact of the present case in question. The Tribunal can neither ignore the ratio laid down by this Court nor refuse to follow the same.

In Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. And Another [(1997) 6 SCC 450], it was held :

> "When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops."

[See also Ajay Kumar Bhuyan and Ors. etc. v. State of Orissa and Ors. etc. (2003) 1 SCC 707].

Yet again in M/s D. Navinchandra and Co., Bombay v. Union of India and Ors. [(1987) 3 SCC 66], Mukharji, J (as His Lordship then was) speaking for a three-Judge Bench of this Court stated the law in the following terms :

> " Generally legal positions laid down by the court would be binding on all concerned even though some of them have not been made parties nor were served nor any notice of such proceedings given."

For the reasons aforementioned, the impugned judgments cannot be sustained, which are set aside accordingly. The appeals are allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.