Uttaranchal Road Transport Corpn.And ... vs Mansaram Nainwal on 28 July, 2006

Equivalent citations: AIR 2006 SUPREME COURT 2840, 2006 (6) SCC 366, 2006 AIR SCW 3928, 2006 LAB. I. C. 3305, 2006 (5) ALL LJ 609, (2007) 2 ALLMR 457 (SC), 2006 (9) SRJ 25, 2006 (7) SCALE 430, 2006 (3) ALL CJ 1863, 2006 ALL CJ 3 1863, (2006) 4 JCR 163 (SC), (2006) 6 SCJ 501, (2006) 4 LAB LN 171, (2007) 1 MAD LW 99, (2006) 3 PAT LJR 372, (2006) 3 SCT 830, (2006) 5 SERVLR 261, (2006) 5 SUPREME 917, (2006) 7 SCALE 430, (2006) 3 UC 1691, (2006) 3 CURLR 585, (2006) 110 FACLR 1165, (2006) 3 LABLJ 505, MANU/SC/3331/2006

Author: Arijit Pasayat

Bench: Arijit Pasayat, Lokeshwar Singh Panta

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           CASE NO.:
Appeal (civil)  3179 of 2006

PETITIONER:
Uttaranchal Road Transport Corpn.and Ors

RESPONDENT:
Mansaram Nainwal

DATE OF JUDGMENT: 28/07/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
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J U D G M E N T (Arising out of SLP (C) No. 162 of 2006) ARIJIT PASAYAT, J.

Leave granted.

Appellants call in question legality of the judgment rendered by a learned Single Judge of the Uttaranchal High Court. By the impugned judgment, the learned Single Judge set aside the order of termination passed by appellant No.2 and directed re-instatement of the respondent in service with continuity of service, but without back wages.

Factual background needs to be noted in brief.

The respondent was appointed as Driver in appellant No.1-U.P. State Road Transport Corporation (hereinafter referred to as the 'Corporation'). On 10.10.1990 while the respondent was plying the bus No.UGA 938 on Mussoorie road, all of a sudden the vehicle met with an accident and fell into a ditch. Thereafter, a disciplinary enquiry was initiated against the respondent in which the charges against the respondent were found proved and the appellant vide its order dated 31.3.1993 dismissed the respondent from service. Thereafter, the respondent filed an appeal before appellant No.2, which was rejected on 30.6.1993. Thereafter, the respondent raised an industrial dispute under Section 4-K of the U.P. Industrial Disputes Act, 1947 (in short the 'Act'). The industrial dispute decided by the award was referred in the following terms:-

> "Whether the termination of the services of applicant/workman Sri Mansaram Nainwal s/o Visheshware Dutt Nainwal, driver by the employers from 31.3.1993 is unjustified and/or illegal? If so, to which benefit/compensation the applicant/workman is entitled and to what extent?"

The Labour Court issued notice to the parties. The appellants and the respondent filed their written statement/objection. The stand of appellants before the Labour Court was that the respondent was appointed as a Driver. On 10.10.1990 when he was plying the bus No. UGA 938 on Dehradun-Mussoorie Road, due to his rash and negligent driving, the bus fell into the ditch in which 12 persons died and some other persons got seriously injured and the bus was also got damaged as a result of which the Corporation suffered a huge loss of Rs.2,50,000/-. It was also pleaded that the respondent was charge sheeted and a departmental enquiry was held against him in which full opportunity of hearing was provided to the respondent. In the enquiry, the charges against the respondent were found proved and he was removed from the service.

On the other hand, the respondent in his written statement accepted that he was served charge sheet and a departmental enquiry was also held against him. But he pleaded that the necessary documents were not being produced though demand was made several times. The Investigating Officer found him not guilty in the enquiry, even though he was dismissed from service.

Labour Court found the respondent guilty and held that the termination was not unjustified.

Challenging the order of Labour Court, the respondent filed a Writ Petition which, as noted above, was allowed by the impugned judgment. The foundation of the High Court's judgment was to the effect that in the criminal trial the respondent was acquitted and placing reliance on a decision of this Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr. (1999 (3) SCC 679) the order of termination was set aside.

In support of the appeal, learned counsel for the appellant submitted that the ratio in Anthony's case (supra) has no application to the facts of the present case. It has not even been indicated as to how the factual position is similar. In any event, acquittal in a criminal case does not lead to an automatic re-instatement and also does not render the departmental proceedings invalid. It was, therefore, submitted that the High Court was clearly wrong in its conclusion.

On the other hand, learned counsel for the respondent submitted that the departmental authorities in the enquiry conducted against the respondent had clearly found that he was not responsible for the accident and there was no misconduct involved.

The position in law relating to acquittal in a criminal case, its effect on departmental proceedings and re- instatement in service has been dealt with by this Court in Union of India and Anr. v. Bihari Lal Sidhana (1997 (4) SCC

385). It was held in paragraph 5 as follows:

> "5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be re- instated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Re- instatement would be a charter for him to indulge with impunity in misappropriation of public money."

The ratio of Anthony's case (supra) can be culled out from paragraph 22 of the judgment which reads as follows:

> "The conclusions which are deducible from various decisions of this Court referred to above are:
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> (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
>
> (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it

would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

Though the High Court had not indicated as to how the decision of this Court in Anthony's case (supra) laid down as a matter of law that whenever there is acquittal in a criminal trial re-instatement is automatic, in all probabilities basis was para 36 of Anthony's case (supra) which reads as follows:

"36. For the reasons stated above, the appeal is allowed, the impugned judgment passed by the Division Bench of the High Court is set aside and that of the learned Single Judge, insofar as it purports to allow the writ petition, is upheld. The learned Single Judge has also given liberty to the respondents to initiate fresh disciplinary proceedings. In the peculiar circumstances of the case, specially having regard to the fact that the appellant is undergoing this agony since 1985 despite having been acquitted by the criminal court in 1987, we would not direct any fresh departmental enquiry to be instituted against him on the same set of facts. The appellant shall be reinstated forthwith on the post of Security Officer and shall also be paid the entire arrears of salary, together with all allowances from the date of suspension till his reinstatement, within three months. The appellant would also be entitled to his cost which is quantified at Rs.15,000/-."

(underlined for emphasis) The High Court unfortunately did not discuss the factual aspects and by merely placing reliance on earlier decision of the Court held that reinstatement was mandated. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the

well-settled theory of precedents, every decision contains three basic postulates (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC

647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

Unfortunately, the High Court has not discussed the factual scenario as to how the Anthony's case (supra) had any application. As noted above, the position in law relating to acquittal in a criminal case and question of re-instatement has been dealt with in Sidhana's case (supra). As the High Court had not dealt with the factual scenario and as to how the Anthony's case (supra) helps the respondent, we think it appropriate to remit the matter back to the High Court for fresh consideration. Since the matter is pending for long, it would be in the interest of the parties if the High Court is requested to dispose of the writ petition within a period of 4 months from the date of receipt of this order.

The appeal is allowed to the aforesaid extent with no order as to costs.