State Of Rajasthan And Anr vs Mohammed Ayub Naz on 3 January, 2006

Equivalent citations: AIR 2006 SUPREME COURT 856, 2006 (1) SCC 589, 2006 AIR SCW 197, 2006 LAB. I. C. 857, 2006 (2) SERVLJ 179 SC, 2006 (1) SCALE 79, 2006 (3) SRJ 142, (2006) 2 SERVLJ 179, (2006) 1 CTC 361 (SC), (2006) 38 ALLINDCAS 48 (SC), (2006) 1 KER LT 581, (2006) 1 LABLJ 742, (2006) 1 SCJ 348, (2006) 1 SUPREME 37, (2006) 108 FACLR 841, (2006) 1 LAB LN 145, (2006) 2 RAJ LW 1084, (2006) 1 SCT 445, (2006) 1 SERVLR 832, (2006) 1 WLC(SC)CVL 495, (2006) 1 CURLR 401, (2006) 1 SCALE 79, MANU/SC/263/2006

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Bench: H.K. Sema, Ar. Lakshmanan

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           CASE NO.:
Appeal (civil)  939 of 2003

PETITIONER:
State of Rajasthan and Anr.

RESPONDENT:
Mohammed Ayub Naz

DATE OF JUDGMENT: 03/01/2006

BENCH:
H.K. Sema & Dr. AR. Lakshmanan

JUDGMENT:
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JUDGMENT Dr. AR. Lakshmanan, J.

The above appeal arises from the final judgment and order dated 13.12.2001 passed by the High Court of Rajasthan in Division Bench (Civil) Special Appeal No. 1073 of 2001 wherein the appeal filed by the State of Rajasthan was dismissed by the High Court by a non-speaking order.

The respondent-herein joined the services of the Government of Rajasthan in the Cooperative Department. He was promoted as UDC in March, 1965. He applied for 3 days leave while he was working as UDC. According to him, he became sick and could not attend the office for the period from 09.01.1978 to 19.01.1981. He was charge-sheeted under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958. The enquiry was held and the respondent attended the enquiry. It is his further case that he was not allowed to join duty even though he was marking

his presence from 13.08.1984 to 23.08.1984. His services were terminated by way of publication in newspaper "Dainik Navjyoti dated 27.08.1984. He filed the appeal which was dismissed vide order dated 08.03.1988. It is also his case that notice which was sent to the respondent was deliberately sent on wrong address. Aggrieved against the orders dated 15.11.1984 and 08.03.1988, the respondent filed a writ petition in the High Court in the year 1991 i.e. after a gap of about 3 years.

Learned Single Judge of the High Court though endorses that the respondent did remain absent for about 3 years and that there was no satisfactory explanation to justify absence of 3 years still proceeded to reduce the punishment of removal into compulsory retirement with consequential retrial benefits. It is useful to reproduce the concluding portion of the order passed by the learned Single Judge which is as follows:-

> "However, it goes without saying that the Petitioner remained absent for about 3 years. He was asked time and again to join duties. There are hardly any medical certificates placed on record even if the enquiry would have been conducted in accordance with law after giving proper opportunity, the admitted fact of absence was borne out from the record and in such situation, in my opinion, even if the Petitioner would not have been present in the enquiry, it would not have made any difference at all as the Petitioner himself has admitted that he was absent for about three years for the period mentioned above though the only circumstances which he could have brought on record was his justification for remaining absent or producing the medical certificate which were in any case not attached with the leave applications and in such situation, he could have prayed for some lesser punishment.
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> Viewing all the aspects of the case and in the circumstances, in my opinion for the reason that he has put in already 18 years of service, a lesser punishment could have been imposed. It is a fit case where in view of the above circumstances, instead of reinstatement in service, the lesser punishment of compulsorily retiring the Petitioner can be passed and he can be retired as if he has qualified the minimum service to obtain retiral benefits which may be available to him.
>
> It is a fit case where in view of the above circumstances, the Petitioner can be deemed to have retired after seeking of service of 20 years with all retiral benefits, which may be available to him.
>
> With the above said observations, the writ petition is disposed of."

The Division Bench in Letters Patent Appeal refused to interfere and the appeal filed by the appellant was dismissed in limine. The order passed by the Division Bench in Letters Patent Appeal reads as follows:-

> "The only grievance made out by the learned counsel for the appellants is that the direction of the learned Single Judge for giving a lesser penalty to the respondent was not called for. We find no reason to interfere. The appeal fails and is, dismissed."

Aggrieved by the above judgment, the State has come in appeal before this Court. We heard Mr. Aruneshwar Gupta, learned counsel for the appellant and Mr. Surya Kant, learned counsel for the respondent.

Mr. Aruneshwar Gupta, learned counsel for the appellant, submitted that in order to mitigate the rampant absenteeism and wilful absence from service without intimation to the Government, Rule 86(3) was inserted in the Rajasthan Service Rules which contemplated that if a Government servant remains wilfully absent for a period exceeding one month and if the charge of wilful absence from duty is proved against him, he may be removed from service. Arguing further learned counsel submitted that in this case the person has wilfully been absent for a period of about 3 years and this fact is not disputed even by the learned Single Judge of the High Court. Still the learned Single Judge has interfered in the punishment of removal from service and replaced with compulsory retirement with all consequential benefits. He would further submit that the doctrine of proportionality is not applicable while deciding the quantum of punishment as it acts as the Court, acts as a secondary review and that the Court can only intervene if there is any breach of Wednesbury principle which is secondary and not primary. It was further submitted that the High Court cannot interfere with the decision of imposing punishment once the High Court finds the finding of the delinquent being absent for a period 3 years as correct. It was further stated that the High Court cannot reduce the punishment even it if finds that the delinquent had committed an act which warranted a particular imposition of penalty and commission of that act is not being assailed by the High Court in its decision. Thus, he submitted that the High Court without any justifiable reason interfered with the decision of the disciplinary authority and affirmed by the Appellate Authority simply on the basis that facts and circumstances warrant a lesser punishment. He would also further submit that the learned Single Judge has erred in coming to the conclusion that no proper opportunity of hearing was given to the respondent during the disciplinary proceedings. In fact, the respondent was given ample opportunity of hearing including paper publication but the respondent failed to avail of the same.

Mr. Surya Kant, learned counsel appearing for the respondent, submitted that the respondent was deprived to attend the enquiry proceedings without any fault on his part and that he was not allowed to sign the attendance register and not allowed to work. Supporting the finding of the learned Single Judge, learned counsel submitted that the learned Single Judge, after according the finding in favour of the respondent, was right in passing the impugned order on the basis of which the respondent was entitled to reinstatement with all back-wages. But the total relief was not granted and that the learned Single Judge has granted the lesser relief to the respondent. Even from the judgment and enquiry report, it is borne out that the respondent was absent on medical grounds and this situation cannot be treated as wilful absence from duty and that the High Court has not given a lesser punishment but in fact only a lesser relief and that the High Court after holding on merit that removal order cannot be sustained instead of reinstatement with full back-wages lesser relief of compulsory retirement has been granted and, therefore, the order passed by the learned Single Judge and as affirmed by the Division Bench does not call for any interference. It was further submitted that considering the 18 years period of service a lesser punishment has been imposed which does not call for any interference. Thus the present civil appeal raises the following questions of law:-

(a) Whether the High Court can interfere with the decision of imposing punishment once the High Court finds that finding of the delinquent being absent for a period of 3 years as correct;

(b) Whether the High Court is right in converting the punishment of removal into compulsory retirement with consequential retiral benefits after indorsing that the respondent did remain absent for about 3 years and that there was no satisfactory explanation to justify absence of 3 years.

We have carefully gone through the pleadings, annexures filed along with this appeal and the judgments passed by the High Court.

Absenteeism from office for prolong period of time without prior permission by the Government servants has become a principal cause of indiscipline which have greatly affected various Government Services. In order to mitigate the rampant absenteeism and wilful absence from service without intimation to the Government, the Government of Rajasthan inserted Rule 86(3) in the Rajasthan Service Rules which contemplated that if a Government servant remains wilfully absent for a period exceeding one month and if the charge of wilful absence from duty is proved against him, he may be removed from service. In the instant case, opportunity was given to the respondent to contest the disciplinary proceedings. He also attended the enquiry. After going through the records, the learned Single Judge held that the admitted fact of absence was borne out from the record and that the respondent himself has admitted that he was absent for about 3 years. After holding so, the learned Single Judge committed a grand error that the respondent can be deemed to have retired after seeking of service of 20 years with all retrial benefits which may be available to him. In our opinion, the impugned order of removal from service is the only proper punishment to be awarded to the respondent herein who was wilfully absent for 3 years without intimation to the Government. The facts and circumstances and the admission made by the respondent would clearly go to show that Rule 86(3) of the Rajasthan Service Rules is proved against him and, therefore, he may be removed from service.

This Court in Om Kumar and Ors. v. Union of India, [2001] 2 SCC 386 while considering the quantum of punishment/proportionality has observed that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to se if discretion exercised by the administrative authority caused excessive infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor any irrelevant fact taken into account nor any illegality committed by the authority nor the punishment awarded was shockingly disproportionate. The punishment was awarded in the instant case, after considering all the relevant material and, therefore, in our view, the interference by the High Court on reduction of punishment of removal is not called for.

It was argued by learned counsel for the respondent that this Court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrative authorities for a fresh decision as to the quantum of punishment. We are unable to countenance the said submission. In the instant case, the disciplinary proceedings were initiated

against the respondent in the year 1981 and that the Division Bench disposed of the LPA only in December, 2001. Therefore, there has been a long delay in the time taken by the disciplinary proceedings and in the time taken in the Courts and, therefore, in such rare cases, this Court can substitute its own view as to the quantum of punishment.

In this context, we can usefully refer to the case of B.C. Chaturvedi v. Union of India and Ors., AIR (1996) SC 484 (3 Judges) wherein this Court held thus:

> "Ramaswamy, J for himself and B.P. Jeevan Reddy, J.-Disciplinary authority and on appeals, appellate authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, - it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

Therefore, we do not propose to issue a direction to the disciplinary/appellate authority to reconsider the penalty imposed. As pointed out by this Court in the above judgment and in order to appropriately mould the relief and to shorten the litigation, we ourselves impose the punishment of removal from service which was imposed by the disciplinary authority in the instant case which, in our view, is the appropriate punishment.

This Court in B.C Chaturvedi v. Union of India and Ors., (supra) further held that the Court/Tribunal cannot interfere with the findings of fact based on evidence and substitute its own independent findings and that where findings of disciplinary authority or appellate authority are based on some evidence Court/Tribunal cannot re-appreciate the evidence and substitute its own findings. Observing further, this Court held that judicial review is not an appeal from a decision but a review of the manner in which the decision is made and that power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. This Court further held as follows:-

> "When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts the evidence and the conclusion receives support there from, the disciplinary

> authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held that proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case."

V. Ramana v. A.P. SRTC and Ors., [2005] 7 SCC 338 [Arijit Pasayat and H.K. Sema, JJ.] The challenge in the above matter is to the legality of the judgment rendered by a Full Bench of the Andhra Pradesh High Court holding that the order of termination passed in the departmental proceedings against the appellant was justified. This Court in para 11 has observed thus:

> "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 improperty 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."

Bank of India etc. v. T.S. Kelawala and Ors. etc., [1990] 4 SCC 744.

In the above case, the Industrial Court accepted the evidence of the witness of the Company that the workmen had not worked for full 8 hours on any day in the month concerned and that they were working intermittently only for some time and were sitting idle during the rest of the time. According to the Company, the workers had worked hardly for an hour and 15 to 20 minutes per day on an average during the said months. The Industrial Court has recorded a finding that the pro rata deduction of wages made by the Company for the month did not amount to an act of unfair labour practice. The Company deducted wages on the basis of each day's production. In view of the fact that there is a finding recorded by the Industrial Court that there was a go-slow resorted to by the workmen and the production was as alleged by the Company during the said period, which finding is not challenged before this Court. It is not possible for the court to interfere with it in the appeal. All that was challenged was the right of the employer to deduct wages even when admittedly there is a go- slow which question had been answered in favour of the employer earlier. This Court said go-slow is a serious misconduct being a covert and a more damaging breach of the contract of employment. Hence once it is proved those guilty of it have to face the consequences which may include deduction of wages and even dismissal from service. This Court, applying the principle

`no-work no-pay' held that deliberate abstention from work, whether by resort to strike or go-slow or any other method, legitimate or illegitimate, resulting in no work for the whole day or days or part of a day or days, will entitled the Management to deduct, pro-rata or otherwise, wages of the participating workmen notwithstanding absence of any stipulation in the contract of employment or any provision in the service rules, regulations or standing orders. In the instant case, the respondent was deliberately absent for a period of about 3 years and, therefore, he has violated Rule 86(3) of the Service Rules which contemplated removal from service and, therefore, he will not be entitled to any back-wages or any other emoluments for the period for which he was absent.

Syndicate Bank and Anr. v. K. Umesh Nayak, [1994] 5 SCC 572 (5 Judges). This Court applying the `no-work no-pay' principle held that wages during the strike period payable only if strike is both legal and justified but not payable of strike is legal but not justified or justified to illegal.

For the foregoing reasons, we are of the opinion that a Government servant who has wilfully been absent for a period of about 3 years and which fact is not disputed even by the learned Single Judge of the High Court has no right to receive the monetary/retrial benefits during the period of question. The High Court has given all retrial benefits which shall mean a lumpsum money of lakhs of rupees shall have to be given to the respondent. In our opinion, considering the totality of the circumstances, and the admission made by the respondent himself that he was wilfully absent for 3 years, the punishment of removal imposed on him is absolutely correct and not disproportionate as alleged by the respondent. The orders passed by the learned Single Judge in S.B. Civil Writ Petition No. 2239/1991 dated 24.08.2001 and of the order passed by the Division Bench in LPA No. 1073 of 2001 dated 13.12.2001 are set aside and the punishment imposed by the disciplinary authority is restored. However, there shall be no order as to costs. The appeal stands allowed.