M.P. State Agro Industries Development ... vs Jahan Khan on 5 September, 2007

Equivalent citations: AIR 2007 SUPREME COURT 3153, 2007 (10) SCC 88, 2007 AIR SCW 5712, 2007 (10) SCALE 602, (2008) 1 SERVLR 5, (2007) 4 SCT 309, (2007) 10 SCALE 602, (2007) 6 SUPREME 172

Author: D.K. Jain

Bench: Arijit Pasayat, D.K. Jain

CASE NO.:
Appeal (civil) 4041-4042 of 2007

PETITIONER:
M.P. STATE AGRO INDUSTRIES DEVELOPMENT CORPORATION LTD. & ANR

RESPONDENT:
JAHAN KHAN

DATE OF JUDGMENT: 05/09/2007

BENCH:
DR. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:

J U D G M E N T CIVIL APPEAL NOS.4041-4042 OF 2007 (Arising out of SLP (C) Nos. 14853-14854 of 2005) D.K. JAIN, J.:

Leave granted.

1. The M.P. State Agro Industries Development Corporation (hereinafter referred to as 'the Corporation') has preferred these appeals, questioning the correctness of the two orders dated 4th August, 2003 and 19th January, 2005 passed by the learned Single Judge of the High Court of Judicature at Jabalpur, in a writ petition filed by one of its employees' (the respondent herein), and the review application filed by the Corporation respectively. By the former order, the High Court has set aside order dated 19th December, 1989 passed by the Managing Director, in his capacity as the disciplinary authority of the Corporation, imposing a penalty on the respondent in the form of recovery of an amount equivalent to the monetary loss suffered by the Corporation and stoppage of three increments with cumulative effect. By the latter order, the High Court has dismissed the application for review filed by the Corporation.

2. A few material facts, giving rise to the appeals, are as follows:

While working as the Branch Manager of the Corporation at its Satna Branch, the respondent entered into an agreement for letting out some machinery belonging to the Corporation, to one M/s. Universal Construction Company. It was alleged that the respondent failed to recover the rent/charges under the said agreement and thereby caused loss to the Corporation. Consequently, a notice was issued to the respondent to show cause as to why the loss of Rs.16,903.41 caused to the Corporation due to dereliction of duty on account of non-recovery of the estimated amount of rent and the interest be not recovered from him and a penalty of stoppage of three increments with cumulative effect be not imposed. In his reply to the show cause notice, the respondent, inter alia, stated that since he had been transferred from the said Branch and his successor had not taken any steps to recover rent etc. from the said Company, he was not responsible for the loss caused to the Corporation. The disciplinary authority, found the explanation to be unsatisfactory. He observed that the respondent had let out the machinery contrary to the instructions from the Headquarters as a result whereof the Corporation had suffered financial loss of the aforesaid amount. Accordingly, vide a composite order dated 19th December, 1989, he directed the recovery of Rs.16,903.41 from the salary of the respondent at 20% per month and stoppage of three increments with cumulative effect.

3. Being aggrieved, the respondent challenged the order by way of a writ petition filed under Articles 226/227 of the Constitution mainly on the ground that the penalty of stoppage of three increments with cumulative effect being a major penalty, it could not be imposed without holding a regular departmental enquiry as per the procedure laid down for imposition of a major penalty. The plea found favour with the High Court. The High Court was of the view that as per the Rules/Regulations, the stoppage of three increments with cumulative effect was a major penalty and, therefore, could not be imposed without holding a proper enquiry.

Accordingly, the order passed by the disciplinary authority was quashed. Nevertheless, leave was granted to the Corporation to proceed against the respondent, if so advised. Not being satisfied with the order, the Corporation moved an application for review of the said order but without any success. As noted above, both the said orders are under challenge in these appeals.

4. Learned counsel for the Corporation has submitted that under M.P. State Agro Industries Development Corporation Limited Service (Recruitment and Selection) Regulations of 1976 (for short 'the Regulations'), punishment of stoppage of increments with cumulative effect is a minor penalty and, therefore, no regular enquiry is contemplated thereunder. It is contended that the High Court, lost sight of the relevant Regulations and going by the general notions, without referring to any other statutory provision, has erred in holding that the penalty imposed on the respondent was a major penalty. Learned counsel has also urged that an efficacious alternative remedy by way of an appeal being available to the respondent, the High Court should not have entertained the writ

petition.

5. It is trite that the power of punishment to an employee is within the discretion of the employer and ordinarily the courts do not interfere, unless it is found that either the enquiry, proceedings or punishment is vitiated because of non-observance of the relevant Rules and Regulations or principles of natural justice or denial of reasonable opportunity to defend etc. or that the punishment is totally disproportionate to the proved misconduct of an employee. All these principles have been highlighted in Indian Oil Corporation Ltd. & Anr. Vs. Ashok Kumar Arora and Lalit Popli Vs. Canara Bank & Ors.

6. Thus, the short question that arises for consideration is whether in the context of the Regulations governing the service conditions of the respondent, the recovery of the aforementioned amount and stoppage of three increments with cumulative effect is a major penalty and if so, the order of punishment is vitiated on any of the grounds noted above, warranting interference by the Court?

7. The Regulations relevant for the purpose of the instant case are as under:

> "If the Managing Director is satisfied about the charges levied, he shall grant a personal hearing to the employee concerned, and if necessary, take oral examination of the witnesses named by the employee in his reply before taking a final decision.
>
> An appeal shall
>
> (a) Against orders of the Managing Director to the Chairman.
>
> (b) Against the order of the Chairman to the Board.
>
> (c) An aggrieved employee shall have a right to appeal provided it is preferred within 30 days of the receipt of the order against which the appeal is preferred. The appellate authority (except Board) shall decide the case within, 2 months from the date of the receipt of the appeal.

The following punishments may be awarded for good and sufficient reasons, including breaches of any rules of conduct or for committing any of the offences mentioned in the Schedule according to gravity of each case:-

> "Class of misconduct Punishment Appealable or Non-appealable Minor Lapses and delinquencies
>
> (a) Warning
>
> (b) Reprimand
>
> (c) Fine upto 1/10th of pay

(d) Recovery from pay of whole or part of pecuniary loss caused to the corporation by negligence or breach of orders if within Rs.50/-

Non-Appealable Non-appealable if the amount is not more than Rs.5/-

Non-Appealable Acts of misconduct

(a) Recovery from pay of whole or part of pecuniary loss caused to the corporation by negligence or breach of orders if within Rs.50/-

(b)withholding increment for specific period

(c) stoppage of promotion

(d) reduction to a lower post or lower level pay

(e) termination of service

(f) removal

(g) discharge

(h) dismissal

(i) disqualifying the incumbent from any employment in the Agro Ind.

Corpn.

Appealable Appealable Appealable Appealable Appealable Appealable Appealable Appealable Appealable"

8. A bare reading of the scheme of the afore-extracted Regulations would show that there is a clear demarcation of quantum of punishment between the minor lapses, delinquencies and acts of misconduct. It is evident that having regard to the nature of acts of omission and commission, the punishment prescribed for minor lapses, and delinquencies, ostensibly not having perpetual effect, have been made non-appealable in comparison to the punishments for acts of misconduct, which include recovery of whole or a part of pecuniary loss, exceeding Rs.50/-, caused to the Corporation, withholding of increments for a specific period, termination of services, removal etc., which can all be characterized as major punishments. Precisely for this reason, all punishments falling in the latter category have been made appealable. The perceptive distinction in two sets of penalties, in our view, makes it abundantly clear that the Corporation has treated the punishments/penalties falling in the first category as minor punishments/penalties and the acts of misconduct, falling in the second category as major penalties. We may, however, hasten to add that it cannot be laid as a hard and fast rule that stoppage of increments, with or without hedge over it, is always to be treated as a

major penalty, necessitating regular enquiry. It would depend on the Rules and Regulations governing the service conditions of the employee, though ordinarily, in the absence of specific Regulations, withholding of increments with cumulative effect is treated as a major penalty because it has a perpetual effect on the entire tenure of service of the employee.

9. Be that as it may, we are of the opinion that in the light of our interpretation of the aforenoted Regulations, the imposition of penalty vide composite order dated 19th December, 1989, directing recovery of loss of Rs.16903.41 and stoppage of three increments with cumulative effect, is a major penalty, clearly envisaging a regular enquiry before punishing the respondent. Since admittedly this procedure was not followed, the High Court was justified in coming to the conclusion that imposition of the impugned penalty without holding enquiry was illegal and without jurisdiction.

10. Before parting with the case, we may also deal with the submission of learned counsel for the appellants that a remedy by way of an appeal being available to the respondent, the High Court ought not to have entertained his petition filed under Articles 226/227 of the Constitution. There is no gainsaying that in a given case, the High Court may not entertain a writ petition under Article 226 of the Constitution on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. The rule of exclusion of writ jurisdiction due to availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of the availability of an alternative remedy, a writ court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In these circumstances, an alternative remedy does not operate as a bar. (See: Whirpool Corporation Vs. Registrar of Trade Marks , Harbanslal Sahnia & Anr. Vs. Indian Oil Corporation Ltd. & Ors. , State of H.P. Vs. Gujarat Ambuja Cement Ltd. and Sanjana M. Wig Vs. Hindustan Petroleum Corporation Ltd.).

11. In the instant case, though it is true that the penalty order impugned in the writ petition was appealable in terms of the aforenoted Regulations but having coming to the conclusion that the order was per se illegal being violative of the principles of natural justice, it cannot be said that the High Court fell into an error in entertaining the writ petition filed by the respondent.

12. For the foregoing reasons, the appeals are devoid of any merit and consequently the same deserve to be dismissed, which we hereby do, leaving the parties to bear their own costs.