Union Of India vs Y.S.Sadhu.Ex-Inspector on 22 September, 2008

Equivalent citations: AIR 2009 SUPREME COURT 161, 2008 (12) SCC 30, 2008 AIR SCW 7073, 2009 LAB. I. C. 1269, 2009 (2) AIR JHAR R 72, (2008) 5 CTC 285 (SC), 2009 (1) SERVLJ 472 SC, (2008) 71 ALLINDCAS 51 (SC), (2009) 1 ALLMR 455 (SC), (2009) 1 SERVLJ 472, 2008 (12) SCALE 748, 2008 (5) CTC 285, 2008 (71) ALLINDCAS 51, (2008) 119 FACLR 395, (2008) 4 LAB LN 622, (2008) 4 SCT 296, (2008) 12 SCALE 748, (2008) 5 ESC 689, (2008) 8 MAD LJ 1116, (2009) 1 SERVLR 434

Author: Arijit Pasayat

Bench: Mukundakam Sharma, Arijit Pasayat

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2008
(Arising out of S.L.P.(C) No.12115 of 2007)

Union of India ...Appellant

Versus

Y.S. Sadhu, Ex-Inspector ...Respondent

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Heard learned counsel for the parties.

2. Leave granted.

3. Challenge in this appeal is to the judgment of a Division Bench of the Gauhati High Court dismissing the writ appeal filed by the appellants.

4. Challenge in the writ appeal was to the judgment and order dated 04.12.2003 passed by learned Single Judge directing re-instatement of the writ petitioner (respondent herein) in service without payment of back wages. The reasons for which learned single Judge interfered with the order of dismissal from service was that the witnesses examined earlier were not produced for cross examination. Punishment was awarded by the Disciplinary Authority by taking into account the report submitted by the enquiry officer recording establishment of charges. The Division Bench concurred with the findings of the learned Single Judge.

5. In support of the appeal learned counsel for the appellant submitted that the view taken by learned Single Judge and the Division Bench is contrary to what has been stated by this Court in several cases. Learned counsel for the respondent, on the other hand, submitted that because the requisite principles of natural justice were not followed, learned single Judge and the Division Bench had passed the orders in favour of the respondent-writ petitioner.

6. In Hiran Mayee Bhattacharyya Vs. Secretary, S.M. School for Girls and Ors. (2002 (10) SCC 293) this Court has observed as follows :

> "We, therefore, direct the disciplinary authority to furnish a copy of the enquiry report to the appellant and then permit her to submit her representation/explanation to the same and pass final orders thereafter. However, this will not lead to reinstatement or to back wages inasmuch as this Court had decided in the case of Managing Director, ECIL, Hyderabad Vs. B. Karunakar (1993 (4) SCC
>
> 737) that there need be no reinstatement nor back wages need be paid when the Court directs that the principles of natural justice should be followed.

We, therefore, remit the matter to the disciplinary authority, being Secretary, Shibarampur Madhyamik High School for Girls, Shibarampur, Calcutta 700061 for the aforesaid purposes. The termination order already passed will remain, but subject to the result of the fresh consideration as directed above".

7. Similarly, in U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Anr. (2005 (8) SCC 264), it was noted as follows:

> "The residual question is what would the appropriate direction in such a case. Stand of the employer is that it could have justified the order of termination by adducing any evidence even if it was held that there was some defect in the departmental proceedings. The solution is found in what was stated by this Court in Managing Director, ECIL v. B. Karunakar, [1993] 4 SCC 737. In paragraph 31, it was observed as follows:
>
> "In all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals 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 non-supply of the report. If 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 re-instatement 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 re-instatement 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 re-instated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the re-instatement and to what benefits, if any and the extent of the benefits, he will be entitled. The re-instatement made as a result of the setting aside the inquiry for failure to furnish the report, should be treated as a re-instatement 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."

In view of above, we set aside the order of learned Single Judge as affirmed by the Division Bench by the impugned judgment and direct that within a period of four months, the enquiry shall be completed by starting from the stage of service of show cause notice and consideration of the reply, if any, filed in accordance with the standing orders holding the field. The respondent No. 1 shall be re- instated to service but without any back wages and other service benefits and his re-instatement shall be solely for the purpose of completing the departmental proceedings. His entitlements, if any, would be adjudicated by the authorities depending upon the result of the disciplinary proceedings."

8. Keeping in view the aforesaid position of law indicated in the aforesaid decisions, we are of the view that the course adopted in the two cases above, is to be followed. There shall not be any reinstatement but the proceedings shall continue from the stage where it stood before the alleged vulnerability surfaced.

9. Learned counsel for the writ petitioner-respondent submitted that he has already retired and, therefore, he is not interested in pursuing the remedy. He may be given the chance of moving the authorities for varying the order of termination to one of compulsory retirement. If any representation in this regard is made to the concerned authority, the same shall be considered in its proper perspective. We express no opinion in that regard.

10. The appeal is allowed to the aforesaid extent.

.....J. (Dr. ARIJIT PASAYAT) .....

.....J. (Dr. MUKUNDAKAM SHARMA) New Delhi:

September 22, 2008