Supreme Court of India
State Of U.P vs Abhai Kishore Masta on 1 December, 1994
Equivalent citations: 1995 SCC (1) 336, JT 1994 (7) 748
Author: B Jeevan Reddy
Bench: Jeevan Reddy, B.P. (J)

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
ABHAI KISHORE MASTA

DATE OF JUDGMENT01/12/1994

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
SEN, S.C. (J)

CITATION:
1995 SCC (1) 336 JT 1994 (7) 748
1994 SCALE (5)57

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by B.P JEEVAN REDDY, J.- Leave granted. Heard counsel for both the parties.

2.The appeal is directed against the judgment of a Division Bench of the Allahabad High Court (Lucknow Bench) allowing the writ petition filed by the respondent.

3.While the respondent was working as an Executive Engineer at Etawah he was suspended pending enquiry on 13-10-1983 into certain charges. He challenged the said order by way of writ petition in the Allahabad High Court which was dismissed. Though the enquiry commenced, it was not concluded by the year 1988 when the respondent filed another writ petition (No. 4116 of 1988) challenging the continuation of the order of suspension pending enquiry. The High Court suspended the order of suspension pending enquiry on 8-8-1988.

4.While the said enquiry was pending, the respondent was retired compulsorily under Fundamental Rule 56(j) by an order of the Government dated 28-12-1989. The respondent then filed Writ Petition No. 1518 of 1990 questioning the same. While this writ petition was pending before the High Court, final orders were passed in the aforementioned disciplinary proceedings on 18-7-1990, imposing the punishment of reduction in rank, to be given effect to in case the order of compulsory retirement is set aside. Thereupon the respondent amended his writ petition (No. 1518 of 1990) to question the order of punishment as well. The main ground urged in support of the attack against the order of punishment was the failure of the disciplinary authority to furnish a copy of the enquiry report to him before imposing the punishment.

5.The High Court allowed the writ petition and quashed the order of compulsory retirement made under Fundamental Rule 56(j) on the ground that the order having been passed during the pendency of disciplinary proceedings must be deemed to be penal in nature. This was so held following an earlier decision of the said Court in J.N. Bajpai v. State of U.R 1 So far as the order of punishment is concerned it was quashed on the ground of non-supply of enquiry report, purporting to follow the decision of this Court in Union of India v. Mohd. Ramzan Khan2. The High Court observed that it shall be open to the disciplinary authority to furnish a copy of the enquiry report to the respondent and proceed with the enquiry from that 1 (1990) 8 Lucknow Civil Decisions 149 2 (199 1) 1 SCC 588 :1991 SCC (L&S) 612: AIR 1991 SC 471 stage onwards. The decision of the Tribunal (sic High Court) on both the grounds is questioned in this appeal.

6. We shall first take up the quashing of the order of punishment made in the disciplinary enquiry. The decision in Mohd. Ramzan Khan2 has been explained by a Constitution Bench of-this Court in Managing Director ECIL v. B. Karunakar3. It has been held that where the order of punishment is made earlier to the date of the decision in Ramzan Khan2, non-supply of enquiry report does not vitiate the enquiry. Following the said decision, the order of the High Court quashing the punishment on the said ground is set aside.

7. So far as the order of compulsory retirement under Fundamental Rule 56(i) is concerned, we are of the opinion that the principle enunciated by the High Court in J.N. Bajpai1 and followed in the judgment under appeal is unsustainable in law. It cannot be said as a matter of law nor can it be stated as an invariable rule, that any and every order of compulsory retirement made under Fundamental Rule 56(j) (or other provision corresponding thereto) during the pendency of disciplinary proceedings is necessarily penal. It may be or it may not be. It is a matter to be decided on a verification of the relevant record or the material on which the order is based.

8. In the State of U.P v. Madan Mohan Nagar4 it has been held by a Constitution Bench that the test to be applied in such matters is "does the order of compulsory retirement cast an aspersion or attach a stigma to the officer when it purports to retire him compulsorily ?" It was observed that if the charge or imputation against the officer is made the condition of the exercise of the power it must be held to be by way of punishment otherwise not. In other words 'If it is found that the authority has adopted an easier course of retiring the employee under Rule 56(j) instead of proceeding with and concluding the enquiry or where it is found that the main reason for compulsorily retiring the employee is the pendency of the disciplinary proceeding or the levelling of the charges, as the case

may be, it would be a case for holding it to be penal. But there may also be a case where the order of compulsory retirement is not really or mainly based upon the charges or the pendency of disciplinary enquiry. As a matter of fact, in many cases, it may happen that the authority competent to retire compulsorily under Rule 56(j) and authority competent to impose the punishment in the disciplinary enquiry are different. It may also be that the charges communicated or the pendency of the disciplinary enquiry is only one of the several circumstances taken into consideration. In such cases it cannot be said that merely because the order of compulsory retirement is made after the charges are communicated or during the pendency of disciplinary enquiry, it Is penal in nature.

9. It is true that merely because the order of compulsory retirement is couched in innocuous language without making imputations against the 3 (1994) 4 SCC 727: 1993 SCC (L&S) 1184 :(1993) 25 ATC 704: JT (1993) 6 SC 1 4 (1967) 2 SCR 333 : AIR 1967 SC 1260 government servant, the court need not conclude that it is not penal in nature. In appropriate cases the court can lift the veil to find out whether, in truth, the order is penal in nature vide Rain Ekbal Sharina v. State of Bihar5.

10.We may mention that even in the case of termination of a temporary employee this Court has adopted the very same tests as are indicated hereinabove.

11.We may also mention that the ,rounds on which an order of compulsory retirement can be interfered with has been set out by this Court in Baikuntha Nath Das v. Chief District Medical Officer6 affirming the principles enunciated in Union of India v. J.N. Sinha7.

12.We are, therefore, of the opinion that the High Court was in error in holding that merely because the order of compulsory retirement was passed during the pendency of a disciplinary enquiry, it must be necessarily deemed to be penal in nature, is unsustainable in law. The judgment of the High Court is accordingly set aside and the matter is remitted to the High Court to determine, in the right of the observations made herein, whether the order of compulsory retirement is, in truth, penal in nature? There shall be no order as to costs.