Supreme Court of India
Additional District ... vs Prabhakar Chaturvedi & Anr on 8 January, 1996
Equivalent citations: 1996 SCC (1) 718, JT 1996 (1) 111
Author: S N.P.
Bench: Singh N.P. (J)

PETITIONER:
ADDITIONAL DISTRICT MAGISTRATE(CITY) AGRA

Vs.

RESPONDENT:
PRABHAKAR CHATURVEDI & ANR.

DATE OF JUDGMENT: 08/01/1996

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
AHMADI A.M. (CJ)
JEEVAN REDDY, B.P. (J)

CITATION:
1996 SCC (1) 718 JT 1996 (1) 111
1996 SCALE (1)142

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.B.. Majmudar. J.

Leave granted.

By consent of learned advocates of parties the appeal was finally heard and is being disposed of by this judgment. Respondent No.1 was an employee of the appellant. He was alleged to have misappropriated an amount of Rs.21,094.80. The said misconduct was detected on 8th December 1984. The amount was collected by him partly in March 1984 and partly in August 1984. The said amount was payable to Class III and IV employees of the appellant on account of bonus and other allowances after deduction from provident fund. This amount was required to be deposited in the Post Office Account of employees individually by respondent no.1 along with his associate and for that purpose he had taken this amount from the office of appellant. Instead of depositing the said

amount it was kept by respondent no.1 and on detection the amount was tendered only on 14th December 1984. Thus there was temporary misappropriation of this amount for a period of eight months and less. Respondent No.1 and his associate have admitted this fact in writing and deposited the amount on 15th December 1984. After a departmental enquiry the respondent no.1 was dismissed from service on 29th November 1985. Respondent No.1's statutory appeal before the appellate authority failed. He thereafter filed writ petition in the High Court of Judicature at Allahabad. His writ petition came to be allowed by the learned Single Judge on the ground that the authorities had not given adequate opportunity to respondent no.1 to defend as he was not permitted to examine witnesses nor was he supplied documents asked for by him. Accordingly the dismissal order was quashed and set aside Appellant was directed to reinstate respondent no.1 with full back wages. It is this order of the High Court which is brought in challenge by the appellant.

The learned counsel for the appellant vehemently submitted that when respondent no.1 had himself admitted in clearest terms that he had failed to deposit the amount entrusted to him and that it was due to his negligence, carelessness and fault, nothing further survived and he was rightly dismissed from service. So far as the non-supply of documents and non-examination of witnesses is concerned it was submitted that respondent himself had stated before the enquiry officer that he had not to give any documentary or oral evidence. There was no question of the enquiry getting vitiated on account of rejection of the subsequent request of the respondent no.1 to examine four witnesses. Learned counsel for the respondent on the other hand submitted that the decision rendered by the High Court was quite justified on the facts of the case and in addition he submitted that even the copy of the enquiry report should have been given to the respondent no.1 and as that was not done the order of dismissal had got vitiated. Learned counsel also filed his written submissions in support of the aforesaid oral submissions.

Having considered the rival contentions and also having gone through the written submissions filed on behalf of respondent no.1 we find that the order of the High Court cannot be sustained. So far as non-supply of Enquiry Officer's report is concerned it has to be kept in view that no such contention was raised in the writ petition before the High Court. The High Court has noted this aspect. Nothing could be pointed out to us by learned counsel for respondent to controvert this observation of the High Court. Whether the pleadings in the writ petition should be treated as pleadings in a suit or not is not relevant for deciding this question. Reliance placed in the written submission on R V. Barnsley Metropolitan Borough Council 1976 (3) All England Law Reports 452 also is of no avail to respondent no.1. The said decision cannot support the contention canvassed on behalf of the respondent no.1 that even if there is no grievance made in the writ petition the High Court is bound to consider the said grievance. So far as the grievance about the non-examination of witnesses and non- supply of documents is concerned, in our view, the High Court has erred in ignoring the salient features of the case, namely, that respondent no.1 himself by his statement dated 14th December 1984 admitted to have received an amount of Rs. 21,000/- and odd and which could not be deposited by him along with his associate on account of their carelessness and fault. It is difficult to appreciate how the said statement could be said to have been brought about by any coercion as tried to be submitted on behalf of respondent no.1. But even apart from that the order sheet of the Enquiry Officer clearly shows that respondent no.1 Prabhakar as well as Sajan Kumar had submitted that they have not to give any documentary or oral evidence and that is how their evidence was

closed. Under these circumstances the subsequent request by respondent no.1 to examine four more witnesses was rightly considered by the Enquiry Officer to be an after thought and accordingly such request was rightly rejected. In fact on account of the clear admission contained in writing given by respondent no.1 on 14th December 1984 the charge against him stood proved on admission and the only question that remained to be considered was about the nature of punishment to be imposed on him. When respondent no.1 was guilty of misappropriation of such a large amount of Rs.21,000/- and odd for couple of months it could not be said that the punishment of dismissal as imposed on him was in any way uncalled for or was grossly disproportionate to the nature of the misconduct proved against respondent no.1. For all these reasons the order of the High Court cannot be sustained and is, therefore, quashed and set aside. The writ petition filed in the High Court will stand dismissed. However, in the facts and circumstances of the case there will be no order as to costs.