A KENDRIYA VIDYALAYA SANGATHAN AND ANR.

v.

S.C. SHARMA

JANUARY 11, 2005

B [ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Central Civil Services (Classification, Control & Appeal) Rules, 1965; Rule 19(ii):

C *Application for earned leave with permission to go abroad submitted by employee, a Principal—Rejected by Sanctioning Authority—Employee did not report for duty for a long period—Disciplinary proceedings—Termination of services without holding regular enquiry—Correctness of—Held: Since no reasons recorded by the authorities for not holding the enquiry, the basic* D *requirements for application of Rule 19(ii) not complied with—Hence, Order of the Courts below in quashing the order of the authority terminating the services of the employee, does not suffer from any infirmity.*

Respondent-employee, a Principal in the appellant-Organisation, applied for sanction of earned leave with permission to go abroad. It was E **rejected by the sanctioning authority. However, the respondent did not report for duty for quite a long period. In the meantime, disciplinary proceedings against him was initiated by the authorities and he was declared absconding from duty and consequently his services were terminated by invoking Rule 19(ii) of the Central Civil Services (Classification, Control and appeal) Rules. Appeal against the order was** F **dismissed by the Appellate Authorities. Respondent challenged the decision of the Authorities by filing a petition before the Central Administrative Tribunal (CAT). CAT quashed the order holding that since basic requirements of Rule 19(ii) of the Rules were not complied with, authorities were not justified in imposing penalty on the respondent. However, liberty** G **was granted to the appellant-employer to initiate disciplinary proceedings from the stage of serving charge-sheet on the respondent and further directed them to reinstate the respondent in service with all consequential benefits including back wages. On appeal, the order was affirmed by the High Court. Hence the present appeal.**

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It was contended by the appellant that the respondent by giving false addresses avoided to receive notices; that since the respondent was not responding to various notices, it clearly shows that he had abandoned the job; that even though leave was not granted he did not report on duty in spite of directions to do so, thus holding a detailed enquiry was not necessary; that back wages can not be treated as a natural consequence whenever an order of termination is set aside by the Courts; that without any pleadings or evidence direction for back wages could not have been given and that direction for payment of back wages should have been made conditional. A B

Partly allowing the appeal, the Court C

HELD: 1.1. The basic requirement for application of Rule 19(ii) in the background of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules is that a conclusion has to be reccrded that it is not reasonably practicable to hold the inquiry proceedings. Such a finding does not appear to have been recorded. Therefore, the views expressed by CAT as affirmed by the High Court do not suffer from any infirmity. [378-F] D

1.2. When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard. Hence the respondent was not entitled to full back wages which according to the High Court was natural consequence. That part of the High Court order is set aside. [379-D-E] E F

P.G.I. of Medical Education and Research, Chandigarh v. *Raj Kumar,* JT (2001) 1 SC 336; *Hindustan Motors Ltd.* v. *Tapan Kumar Bhattacharya and Anr.,* [2002] 6 SCC 41; *Indian Railway Construction Co. Ltd.* v. *Ajay Kumar,* [2003] 4 SCC 579 and *M.P. State Electricity Board* v. *Jarina Bee, (Smt.),* [2003] 6 SCC 141, relied on. G

2. Since the present appeal arises from proceedings declaring the respondent as "Absconder" it is clarified that if the appellants are desirous of initiating any departmental proceedings in terms of CAT's order they can do so within two months, if not already done. The proceedings shall be completed within further period of three months. The respondent is H

directed to cooperate and participate in the departmental proceedings. If he fails to do so it shall be at his own risk and peril. The entitlement of the service benefits, if any, for the period from the initial order of dismissal till final decision is taken will be decided in the departmental proceedings. It is clarified that no opinion is expressed on the merits of the case, and/or on the question of entitlement of any service benefit. [379-F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 271 of 2005.

From the Judgment and Order dated 21.2.2003 of the Punjab and Haryana High Court in C.W.P. No. 2965-CAT of 2003.

S. Rajappa for the Appellant.

Sudhir Nandrajyog for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Heard learned counsel for the parties.

Leave granted.

Appellants call in question legality of the judgment rendered by a Division Bench of the Punjab and Haryana High Court dismissing the appellant's writ petition CWP No.2965-CAT of 2003. Appellants had questioned correctness of the order dated 27.11.2002 passed by the Central Administrative Tribunal, Chandigarh Bench (in short 'CAT') in OA No.124/HK/2001.

Background facts in a nutshell which are essential are as under:

Respondent joined service as Principal in the appellant-Kendriya Vidyalaya Sangathan. In December 1996 he applied for sanction of earned leave with permission to go abroad. He sent letter dated 6.3.1997 for grant of permission and sanction of leave from 10.3.1997 to 7.7.1997. His application for leave was rejected by appellant no.3 vide telegram dated 13.3.1997. His request for permission to go abroad was also declined by the Commissioner, Kendriya Vidyalaya Sangathan, New Delhi (appellant no.2 herein) vide letter dated 17.5.1997 on the ground that disciplinary proceedings were contemplated against him. Respondent no.1 did not report back for duty till 2.7.1997. In the meanwhile, proceedings under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short, the Rules) were initiated against

him and vide order dated 5.5.1999, he was declared as absconding from duty and his services were terminated by invoking Rule 19(ii) of the Rules. Appeal filed by him against the order of punishment was dismissed by appellant no.2 vide order dated 14/19.6.2000.

Respondent challenged orders dated 5.5.1999 and 14/19.6.2000 before the CAT on the ground that no material was available with appellant no.3 which could justify invoking of Rule 19(ii) and he could not have passed the order of dismissal from service without holding regular enquiry in accordance with the procedure prescribed under the Rules. He also levelled allegation of *mala fides* against appellant no.3 and pleaded that all the actions taken by the said appellant should be declared nullity.

In their reply, the appellants justified the invoking of Rule 19(ii) on the ground that respondent no.1 did not respond to the notices issued by appellant no.3 and did not offer any explanation for his wilful absence from duty for a long period of more than 2 years.

CAT quashed the order of punishment as well as the appellate order by holding that the various provisions of Rules were not complied with. It was held that the appellants failed to prove that it was not reasonably practicable to hold the enquiry. With reference to Rule 19 it was held that the basic requirements of that provision were not complied with. Imposition of penalty was held to be not in order, in the absence of disciplinary enquiry proceedings. However, liberty was granted to the appellants to initiate disciplinary proceedings from the stage of serving a charge sheet on the respondent on the acts of misconduct which may be though fit for such proceedings and thereafter hold enquiry proceedings in accordance with the Rules. Tribunal further directed that respondent-employee was to be re-instated in service with all consequential benefits from the date of dismissal from service.

Before the High Court it was submitted by the present appellants that the authorities were justified in invoking Rule 19(ii) as the respondent did not respond to the notices issued and did not offer any explanation for his wilful absence from duty for a long period of more than two years.

High Court concurred with the views of the Tribunal that the disciplinary authority had not recorded reasons for dispensing with the enquiry and no material was produced to show that there existed reasons which justified dispensing with regular enquiry. The High Court further found that direction given for payment of back wages from date of dismissal was in order. It held

A that though the respondent-employee had not pleaded or produced any evidence that after dismissal from service, he was not gainfully employed, back wages can not be denied and it was not necessary to place any material, as payment of back wages was natural and consequential corollary whenever any order of termination is set aside.

B In support of the appeal Mr. S. Rajapa, learned counsel submitted that the view of the High Court is not in order. The fact that the respondent was not responding the various notices clearly shows that he had abandoned the job and by giving false addresses avoided to receive notice. Even though leave was not granted he did not join in spite of directions to do so. Therefore, C there was no justification or necessity to hold a detailed enquiry or to take a decision in the matter of imposition of penalty. Alternatively, it was submitted that back wages can not be treated as a natural consequence whenever an order of termination is set aside. Whether after dismissal a person is gainfully employed is within his special knowledge and without any pleadings or evidence direction for back wages could not have been given. It was further D submitted that the direction for payment should have been made conditional till the final decision in the disciplinary proceedings which the appellant intended to take.

In response, learned counsel for the respondent submitted that the order of CAT as affirmed by the High Court does not suffer from any legal infirmity E on the background facts as noticed by CAT and the High Court.

We find that for application of Rule 19(ii) in the background of Rule 14 of the Rules the basic requirement is that a conclusion has to be recorded that it is not reasonably practicable to hold the inquiry proceedings. Such a finding does not appear to have been recorded. Therefore, the views expressed F by the CAT as affirmed by the High Court do not suffer from any infirmity.

The residual question relates to direction for back wages.

In *P.G.I. of Medical Education and Research, Chandigarh* v. *Raj Kumar,* G JT (2001) 1 SC 336, this Court found fault with the High Court in setting aside the award of the Labour Court which restricted the back wages to 60% and directing payment of full back wages. It was observed thus:

> "The Labour Court being the final Court of facts came to a conclusion that payment of 60% wages would comply with the H requirement of law. The finding of perversity or being erroneous or

not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect." A

Again at paragraph 12, this Court observed:

"Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straitjacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety." B

The position was reiterated in *Hindustan Motors Ltd.* v. *Tapan Kumar Bhattacharya and Anr.*, [2002] 6 SCC 41, *Indian Railway Construction Co. Ltd.* v. *Ajay Kumar,* [2003] 4 SCC 579 and *M.P. State Electricity Board* v. *Jarina Bee (Smt.),* [2003] 6 SCC 141. C

Applying the above principle, the inevitable conclusion is that the respondent was not entitled to full back wages which according to the High Court was natural consequence. That part of the High Court order is set aside. When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard. D E

Since the present appeal arises from proceedings declaring the respondent as "Absconder" we make it clear that if the appellants are desirous of initiating any departmental proceedings in terms of CAT's order they can do so within two months, if not already done. The proceedings shall be completed within further period of three months i.e. within five months from today. The respondent is directed to cooperate and participate in the departmental proceedings. If he fails to do so it shall be at his own risk and peril. The entitlement of the service benefits, if any, for the period from the initial order of dismissal till final decision is taken will be decided in the departmental proceedings. We make it clear that we have not expressed any opinion on the merits of the case, and/or on the question of entitlement of any service benefit. F G

The appeal is allowed to the aforesaid extent with no order as to costs.

S.K.S. Appeal partly allowed.