Iftikhar Ahmad Siddiqui Vs U.P. State Public Services Tribunal and Others

Court: Allahabad High Court

Date of Decision: Jan. 28, 1997

Acts Referred: Constitution of India, 1950 â€" Article 14
Uttar Pradesh Consolidation of Holdings Act, 1953 â€" Section 49A

Hon'ble Judges: B.S. Chauhan, J

Bench: Single Bench

Advocate: J.J. Munir and S.U. Khan, for the Appellant; S.C. and Sabhajeet Yadav, for the Respondent

Final Decision: Dismissed

Judgement

B.S. Chauhan, J.
The Petitioner, who was holding the post of Consolidation Officer, was given a charge-sheet on 19.8.87 contained in

Annexure 1 to the writ petition in which 20 charges had been levelled against him regarding his working as a quasi-judicial authority. According to

which the Petitioner had allegedly been favouring one of the parties and was not strictly adhering to the rules of procedure etc. and the same

reflected on the integrity of the Petitioner. The Petitioner filed the reply to the said charge-sheet and after concluding the enquiry, the enquiry report

was submitted. On the basis of which the Petitioner was awarded the punishment of loss of six increments vide order dated 19.11.88, Annexure 3

to the writ petition. It was further provided that Petitioner shall not be given any amount except the subsistence allowance for the suspension period

and a notice was given to him in this regard.

2. Being aggrieved and dissatisfied the Petitioner approached this Court against the order dated 19.11.88 by filing Writ Petition No. 24367, of

1988, which was allowed by this Court as the appointing authority had not made the copy of the enquiry report available to the Petitioner before

passing the impugned order as was mandatorily required as per the law laid down by the Supreme Court in Union of India and others Vs. Mohd.

Ramzan Khan, . However, the Respondent No. 3 was directed to pass a fresh order after complying with the requirement of law. The copy of the

judgment dated 10.7.91 has been filed as Annexure 2 to the writ petition.

3. The copy of the enquiry report was made available to the Petitioner on 31.12.91 and after considering the reply of the Petitioner, though

Petitioner alleged that it was merely a preliminary objection on pure question of law, the Respondent No. 3 passed the order dated 15.1.92

contained in Annexure 7 to the writ petition, by which the following punishments were awarded to the Petitioner:

1. Reduction of the payscale to the initial payscale of the Consolidation Officer.

2 Forfeiture of entitlement to any amount except subsistence allowance for the period for which the Petitioner had been under suspension and for

the same a show cause notice was issued to him.

3. The integrity of the Petitioner having been found to be doubtful was not certified and an adverse entry was awarded to the Petitioner to the

effect ""that Shri Iftikhar Ahmad Siddiqui, the then Consolidation Officer, Allahabad was given three charge-sheets and the disciplinary proceedings

were initiated. There had been altogether 20 charges in the said charge-sheets and the enquiry officer has found all of them to be true and the same

were proved. The Petitioner was served the show cause notice along with a copy of the enquiry report, but Shri Siddiqui failed to defend himself

from the said charges. It makes clear that Shri Siddiqui is indisciplined, negligent towards his duties, habitual to disobey the courts orders and used

to pass illegal orders beyond his Jurisdiction. The Gaon Sabha has suffered irreparable loss because of his conduct and for his personal gain he has

given benefit to tenure-holders by unholy alliance. His integrity is found doubtful and for the same he is reprimanded.

4. Being aggrieved and dissatisfied the Petitioner challenged the said order dated 15.1.92 before this Court by filing Writ Petition No, 6849 of

1992. Which was disposed of by this Court vide order dated 15.7.93 contained in Annexure 8 to the writ petition on the ground of alternative

remedy and the Petitioner was directed to approach the U.P. Public Services Tribunal. The Petitioner subsequently filed Claim Petition No. 1108

of 1993 before the U.P. Public Services Tribunal, which was dismissed by the Tribunal vide order dated 28.3.95 contained in Annexure 9 to the

writ petition. Hence this petition.

5. Heard Shri S. U. Khan, learned counsel for the Petitioner and Shri Sabhajeet Yadav, learned standing counsel on behalf of the Respondents

and perused the record of the case.

6. In fact the Petitioner had challenged the impugned order dated 15.1.1992 passed by the Respondent No. 3 before the Tribunal on a very

limited ground, i.e.. that the disciplinary proceedings cannot be initiated against him as the same orders had been passed in exercise of the quasi-

judicial power and Petitioner was entitled to the protection of Section 49A of the U.P. Consolidation of Holdings Act, 1953, which reads as under:

Protection of action taking under this Act or Rules made thereunder.--No suit, prosecution or other legal proceedings shall lie against any person

for anything which is in good faith done or intended to be done under this Act or Rules made therein.

7. Shri S. U. Khan has vehemently argued that even if Petitioner had passed the orders which cannot be Justified, the same can be corrected in

appeal, revision or in other judicial proceedings, but it is not permissible for the Respondents to initiate disciplinary proceedings in respect of the

same.

8. This issue was considered by the Supreme Court in Govinda Menon Vs. Union of India (UOI), wherein it was observed as under:

...It is not necessary that a member of the service should have Committed the alleged act or omission in the course of discharge of his duty as a

servant of the Government in order that it may form the subject matter of disciplinary proceedings. In other words, if the act or omission is such as

to reflect the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not

be taken against him for that act or omission....

The test is whether the act or omission has some reasonable occasion with nature and condition of his service or where the act or omission has

caused any reflection upon the reputation of the member of the service for integrity or devotion to duty as a public service....

...The proposition put forward was that quasi-judicial orders, unless vacated under the provisions of the Act, are final and binding and cannot be

questioned by the executive Government through disciplinary proceedings.... The charge is, therefore, one of misconduct and recklessness

disclosed by the utter disregard of the relevant provisions.... But in the present proceedings what is sought to be challenged is not the correctness

or the legality of the decision of the Commissioner but the conduct of the Appellant in the discharge of his duty as Commissioner. The Appellant

was proceeded against because in the discharge of his function, he acted in utter disregard of the provisions of the Act and the Rules. It is the

manner in which he discharges his function that brought up in these proceedings.... It is manifest, therefore, that though the propriety and legality of

the sanction to the leases may be questioned in appeal or revision under the Act, the Government is not precluded from taking disciplinary action if

there is proof that the Commissioner has acted in gross recklessness in the discharge of his duties or that he failed to act honestly or in good faith or

that he omitted to observe the prescribed conditions which are essential for the exercise of the statutory power.

Thus, the aforesaid judgment is an authority that disciplinary proceedings can be initiated against an employee in respect of the action even if it

pertains to exercise of Judicial or quasi-judicial powers.

9. While deciding the aforesaid judgment in S. Govinda Menon (supra), the Hon''ble Supreme Court had relied upon the judgment in Pearce v.

Foster (1966) 17 QBD 536, wherein it had been held as under:

If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which Justifies immediate

dismissal.

10. The Supreme Court in Union of India and Others Vs. K.K. Dhawan, , very heavily relied upon its earlier judgment in S. Govind Menon

(supra) and observed that the officer who exercises Judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue

favour on a person is not acting as Judge and in the disciplinary proceedings it is the conduct of the officer in discharge of his official duties and not

the correctness or legality of his decisions or judgments which are to be examined as the legality of the orders can be questioned on appellate or

revisional forum. In such case the Government cannot be precluded from taking the disciplinary action for violation of the conduct Rules. The

Court summarised some circumstances in which disciplinary action can be taken, which are as under:

(i) where the officer had acted in a manner as would reflect on his reputation or integrity or good faith or devotion to duty;

(ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a Government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party;

(vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago ""though the bribe may be small,

yet the fault is arrest.

The Court further observed that the said instances were not exhaustive. However, it was further observed by the Supreme Court that each case

would depend upon the facts and circumstances of that case and no absolute rule be postulated.

11. The Hon''ble Supreme Court had examined this issue earlier in Union of India and others Vs. A.N. Saxena, and by taking the same view the

Court observed that where the actions of an officer ''indicate culpability, namely a desire to oblige himself or unduly favour one of the parties or

improper motive, there is no reason why disciplinary action should not be taken"",even if the officer was performing Judicial or quasi-Judicial

functions and the proceedings are in response to his actions in discharge or purported to discharge the said functions.

12. Similarly, in Union of India (UOI) and Others Vs. Upendra Singh, , the Hon''ble Supreme Court rejected the averment that disciplinary

proceedings cannot be initiated against an officer if it relates to his acts or omission which pertains to the exercise of his judicial or quasi-Judicial

powers.

13. Thus, there is no force in the contention raised by Shri S. U. Khan, learned counsel for the Petitioner and I am in conformity with the view

taken by the Tribunal.

14. Shri S. U. Khan, learned counsel for the Petitioner next urged that the Petitioner has been deprived of his substantive right to reply to the show

cause in respect of quantum etc. after receiving the Inquiry report. This contention has no force. In pursuance of the judgment and order of this

Court dated 10.7.1991, Petitioner was given an opportunity but for the reasons known to him, instead of filing a reply to the same, he adopted a

dilatory tactics and went on dilly-dallying and filed objections raising preliminary issues.

15. It is well settled law that if a delinquent employee avoids to submit the reply, he forgoes his right to submit the same, vide 1996 VII AD 821

(SC) Moreover, it is also settled law that unless the delinquent employee shows how the non-supply of inquiry report has adversely affected his

cause, the punishment order does not vitiate only for not supplying the inquiry report, vide S.K. Singh Vs. Central Bank of India and Others,

16. Therefore, the averment is rejected being without any force.

17. Shri Khan most vociferously raised the issue that once this Court had allowed the earlier writ petition of the Petitioner vide order dated

10.7.91 and quashed the punishment earlier awarded by the Respondent No. 3 vide order dated 19.11.88, it was not permissible for the

Respondent No. 3 to pass more severe penalty, than earlier while passing the punishment order on 15.1.92. In support of his contention Shri Khan

has placed reliance upon a Division Bench judgment of this Court in Dr. Jagveer Singh Sindhu v. Board of Management of the C.S. Azad

University and Ors. 1989 SCD 146, wherein this Court had observed as under:

Power to impose major or minor punishment under statute or rules postulates exercise of discretion reasonably on valid grounds and in good faith.

The public authorities or any person entrusted with responsibility to administer law must not loose sight of fact that all power has legal limits. It has

to be tested on touchstone of reasonableness. The line between exercise of discretion reasonably and otherwise is indeed thin but clear and

marked. Does the order of removal withstand this test? In 1982 when the Board passed the order it held that due to ''extent of defraudation'',

which could refer to incorrect disclosure of his Ph. D. degree the Petitioner was liable to minor punishment. But when it passed the order in 1985

the Board curiously enough on same material passed the order of removal. Why? was there any change in circumstances? Did the Management

come across any further material which justified the punishment? None could be pointed out. Even if the material had been disclosed and the

opposite party would have complied with natural justice is doubtful if Petitioner could have been removed from service and visited with more harsh

punishment. Without any further or additional material. Such action was violative of fairness and justness. If such actions are upheld it shall be

destructive of the right to approach higher authorities against minor punishment for fear of becoming worse. It is capable of breeding arbitrariness

as the disciplinary authority may become vindictive as in this case, if its order is set aside at the instance of delinquent by higher authority. An

aggrieved person approaches the appellate or revising or higher authority by the part he is aggrieved for sake of redress and not for loosing even

that which was in his favour in consequence of remand. May be that remand in certain circumstances may entitle authority to put in fresh order but

mere change of opinion and that also to disadvantage of delinquent without any further material cannot be countenanced. The order of removal,

therefore, is liable to be set aside even due to this infirmity.

18. However, this submission requires consideration of two main issues. Firstly, whether the punishment awarded by the competent authority is

commensurate to the gravity of the misconduct alleged and proved and secondly whether there are reasons or reasonable grounds of the

competent authority being biased.

So far as first is concerned, there can be no quarrel to the proposition of law that the punishment should be proportionate to the gravity of the

misconduct of the employee. If it is disproportionate, then the punishment order would become arbitrary and would be violative of the mandatory

provisions enshrined in Article 14 of the Constitution of India, vide Union of India and Ors. v. Giriraj Sharma 1994 Suppl. (3) SCC 755; S.K. Giri

v. Home Secretary, Ministry of Home Affairs and Ors. 1995 Suppl. (3) SCC 519; Bhagat Ram v. State of Himachal Pradesh 1993 (2) SCC 442

and State of U.P. and others Vs. Ashok Kumar Singh and anothers,

However, in Municipal Committee, Bahadurgarh Vs. Krishan Behari and others, the Hon''ble Supreme Court has held that in cases involving

corruption, there cannot be any other punishment than dismissal as any sympathy shown in such cases is totally uncalled for and opposed to public

interest.

19. So far as second issue is concerned, in Ranjit Thakur Vs. Union of India (UOI) and Others, , the Hon''ble Supreme Court has observed that

the test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely to

adversely affect the decision and the test of likelihood of bias is to be determined taking the relevant factor into consideration and what is relevant

is ""the reasonableness of the apprehension in that regard in the mind of the parties"" and if the Court having regard to the antecedent events, reaches

the conclusion of bias, in that case the Court may declare the proceedings coram non-judice. For reaching conclusion the Hon''ble Supreme Court

had relied upon various judgments particularly, in Allinson v. General Council of Medical Education and Registration (1894) 1 QB 750;

Vassiliades v. Vassiliades AIR 1945 PC 38 and Metropolitan Properties Companies (F.G.C.) Ltd. v. Lannon (1969) 1 QB 577. Thus, the ratio

remains that a Judgement which is the result of bias or want of impartiality, is a nullity and the proceedings ""coram non-judice"".

20. In International Airports Authority of India Vs. K.D. Bali and Anr, , the Supreme Court considered the aspect of bias and relied upon the

judgment in King (De Vesei) v. Justices of Queens County (1908) 2 IR 285, wherein it had been held as under:

There must...be reasonable evidence to satisfy...that there was a real likelihood of bias. I do not think that their vague suspicions of whimsical

capricious and unreasonable people should be made a standard to regulate our action here...Certainly mere flimsy ground elusively generated and

forbid suspicion should not be permitted to form a ground of decision.

After relying upon the aforesaid judgment the Hon''ble Supreme Court observed that purity of administration requires that the party to the

proceedings should not have an apprehension that the authority is biased and is likely to decide against the party, but at the same time it Is also

equally true that it Is not every suspicion felt by a party which must lead to the conclusion that the authority hearing the proceedings is biased.

The Supreme Court has approved and applied the law laid down in Ranjit Thakur (supra) in Ex-Naik Sardar Singh v. Union of India and Ors.

AIR 1992 SC 417 and Jiwan Kumar Lohia and Anr. v. Durgadutt Lohia 1992 SCC 183. The view has been taken in Tilak Chand Magat Ram

Obhan v. Kamla Prasad Shukla 1995 Suppl. (1) SCC 21.

21. If the aforesaid two tests are applied in the instant case it may be mentioned that the issue of apprehension of bias had never been raised at any

forum whatsoever, it is not even alleged either before the Tribunal or before this Court. There is no such ground in the writ petition. A bald

assertion has been made in paragraph 17 of the writ petition that at the relevant time some contempt proceedings were pending against Shri R. B.

Bhaskar, the then Consolidation Commissioner and he had told the Petitioner in plain words that he would see that the Petitioner would adequately

be punished for his insubordinate attitude. However, from the impugned order dated 15.1.92 it is apparent that Shri R. P. Bhasker and not Shri R.

B. Bhasker was the then Consolidation Commissioner. No person has been impleaded by name and it appears that this allegation of bias in

paragraph 17 is after thought as had it been in reality, this particular issue would have been raised before the U.P. Public Services Tribunal. The

law has no application in vacuum. It is applied in factual matrics of a particular case and the person who makes such allegation must provide for a

sufficient and substantial factual foundation by making specific allegation and substantiating it by some evidence. In the instant case there is no other

allegation of bias. Particular dates etc. have not been furnished regarding the contempt proceedings against Respondent No. 3 and the Petitioner

after meeting his Waterloo in the departmental proceedings and subsequently before the Tribunal made in vain a half-hearted attempt to make an

allegation of mala fide and bias against the then Consolidation Commissioner and for the reason best known to the Petitioner, the then

Commissioner has not been impleaded by name. What is apparent from it is that the Petitioner lacked conviction and could not muster courage

even to raise the issue. No explanation has been furnished as to why this issue has not specifically been raised before the Tribunal. Neither the

claim petition nor the inquiry report which was supplied to the Petitioner on 31.12.1991, had been filed and the Petitioner cannot be permitted to

improve his case for the first time in writ jurisdiction as it is not permissible to do so as per the law laid down by the Supreme Court in Ratan Lal

Sharma v. Managing Committee, Dr. H.R. (Co-education) H.S.C. and Ors. 1993 (A) SCC 10 ; State of Uttar Pradesh and others Vs. Dr.

Anupam Gupta, etc., ; Bhanwar Lal Vs. T.K.A. Abdul Karim through N.K. Mohd. Mustafa, and Rajeswari Amma and another Vs. Joseph and

another, .

22. The writ jurisdiction is not meant for a party who is not diligent at the first available opportunity to protect its interest. Petitioner cannot be

permitted to use the writ jurisdiction to remedy his own faults.

23. Moreover, once the earlier awarded punishment has been quashed by a writ Court and the case is remanded to the competent authority to

decide it afresh, the earlier order stands washed away. Division Bench judgment of this Court in Dr. Jagveer Singh Sindhu (supra) is distinguishable

as in the instant case the issue of mala fide or vindictiveness has not been raised at all. This Court does not function as a court of appeal over the

findings of the disciplinary authority and it is not permissible for the Court to examine whether the punishment awarded is proportionate to the

misconduct or not as per the law laid down by the Supreme Court in Union of India (UOI) Vs. Parma Nanda, .

24. Similarly, in State of U.P. and others Vs. Nand Kishore Shukla and another, , the Supreme Court has observed as under:

It is settled law that the court is not a court of appeal to go into the question of imposition of punishment. It is for the disciplinary authority to

consider what would be the nature of punishment to be imposed on a Government servant based upon a proved misconduct against Government

servant. Its proportionality also cannot be gone into by the Court. The only question is : whether the disciplinary authority would have passed such

an order. It is settled law that even one of the charges, if held proved and sufficient for imposition of penalty by the disciplinary authority or by the

appellate authority, the Court would be loath to interfere with that part of the order.

(emphasis added)

25. In view of the above, I am of the considered opinion that there is no bar to bar to initiate disciplinary proceedings against the officer exercising

judicial or quasi-Judicial powers if the same pertains to his official work and his acts or omissions reflect upon the reputation or integrity or

devotion to duty. The measures of deprivation imposed in the instant case are commensurate to the gravity of charges of misconduct levelled and

proved against the delinquent officer. Pleadings in the writ petition fall short to make out any case that the Petitioner had an apprehension of the

competent authority being biased at any relevant time. An attempt was made in this direction in a most naive manner. No effort was ever made to

substantiate the same by any evidence. Petitioner is lucky that he escaped dismissal as in the impugned punishment order the adverse entries

awarded to the Petitioner reflect upon his integrity and devotion to duty. Persons of the conduct like the Petitioner deserve still severe punishment.

26. In view of the above, I find no substance in the writ petition and is accordingly dismissed. Parties are directed to bear their own costs.