Ch. Somaraju Vs Union of India (UOI) and Others

Court: Andhra Pradesh High Court

Date of Decision: Nov. 22, 2002

Acts Referred: Constitution of India, 1950 â€" Article 141, 142, 144

Citation: (2003) 1 ALD 667 : (2003) 1 ALT 264

Hon'ble Judges: D.S.R. Varma, J; Bilal Nazki, J

Bench: Division Bench

Advocate: G. Ramachandra Rao, for the Appellant; Gowari Shankar Sanghi, SC for Railways for Respondent Nos. 1 and 3, for the Respondent

Judgement

Bilal Nazki, J.
The controversy is very short in this case but the point raised is important. The petitioner was working as a Teacher with the

respondents from 1967. He was placed under suspension by an order dated 3-10-1985. The allegations against the petitioner were that while he

was working as Graduate Assistant in the Railway High School, Bitragunta he had misbehaved with a girl student who was studying in 9th class

during the interval on 26-7-1985. He was asked to give his explanation. After he gave explanation a charge memo dated 18-10-1985 was served

on him. There was no action for some time but the charge memo dated 18-10-1985 was cancelled by an order dated 8-4-1986. Thereafter, a

fresh charge memo was issued on 25-4-1986. The earlier charge memo had been issued under Rule 11 of Railway Servants (Discipline and

Appeal) Rules, 1968 which would attract a minor penalty, but the latter charge memo issued on 25-4-1986 was under Rule 9 of Railway Servants

(Discipline and Appeal) Rules which would attract major penalty. This charge also alleged that while he was functioning as a Teacher he had

committed misconduct and misbehaved with a student on 26-7-1985. The case of the petitioner was that, although occurrence was same but the

allegations levelled in the earlier charge memo were altogether different than the allegations levelled in the second charge memo. The petitioner

submitted his explanation on 15-6-1986 denying the charges. The respondents appointed Assistant Personnel Officer (Mechanical), South Central

Railway, Vijayawada as Enquiry Officer to enquire against the, charges levelled against the petitioner. Enquiry was held. Statement of witnesses

had been recorded. The petitioner also produced two witnesses. The statement of the petitioner was also recorded. The Enquiry Officer was of

the opinion that the charge against the petitioner was proved and he submitted his report on 29-10-1986. Thereafter an order of removal from

service was passed against the petitioner on 3rd December, 1986. Aggrieved by the order of removal the petitioner preferred an appeal to the

Divisional Manager, South Central Railway, Vijayawada on 14-12-1986 under Rule 22 of the Railway Servants (Discipline and Appeal) Rules,

1968. The said appeal was also rejected by an order dated 30th December,1986. Against the order of removal and order passed in the appeal a

review petition was filed by the petitioner under Rule 25 of the Railway Servants (Discipline and Appeal) Rules. The review petition was dismissed

on 14-6-1987. Thereafter the petitioner approached Central Administrative Tribunal, Hyderabad Bench through O.A.No.428/87. The O.A was

contested by the respondents. This O.A was dismissed by Central Adminsitrative Tribunal on 7-8-1987. A ground had been taken in the O.A that

the authority who had removed the petitioner from service was not competent to remove him from the service. This ground had not been

addressed to by the Tribunal in its judgment dated 7-8-1987. Therefore, the petitioner filed a review application No.31/87 before the Central

Administrative Tribunal, Hyderabad seeking review of the judgment. This application was allowed by the Central Administrative Tribunal,

Hyderabad and the order of removal as confirmed by the authorities in appeal and review was set aside. Though the order was set aside the

petitioner was not taken back into service. He filed a contempt petition being CC.No.23/ 88 before the Tribunal. The contempt petition was

disposed of by the Tribunal on 22-8-1988 directing the respondents to implement the order dated 29-2-1988 within a period of two months from

the date of receipt of the order. Although the petitioner was not reinstated to his job but the respondents issued proceedings on 1-11-1988

allowing him to draw his salary on the basis of notional reinstatement with effect from 1-11-1988 at the rate at which he was drawing salary at the

time of removal from service. He was not given any work to perform. In the mean time, it is submitted that the respondents approached the

Supreme Court and filed an SLP being SLP No. 13455/88 challenging the order passed in Review by the Tribunal. This S.L.P was entertained by

the Supreme Court on 16-1-1989 but no stay was granted. Leave was granted and the SLP was numbered as Civil Appeal No. 175/89. The

Appeal was ultimately dismissed by the Supreme Court by an order dated 30th March, 1995. Even after the dismissal of the Appeal by the

Supreme Court the consequential benefits arising out of quashing of the review order were not given to the petitioner in spite of his making

representations on 7-4-1995 and 7-6-1995. Therefore, he filed a Miscellaneous Application No.767/95 before the Central Administrative

Tribunal seeking directions to implement the judgment dated 29-2-1988 in Review Application No.31/87. This was disposed of by the Tribunal on

8-9-1995 directing the respondents to dispose of the representations made by the petitioner within a period of one month. In spite of this no action

was taken. Although the Supreme Court had passed the order on 30-3-1995 nothing was done by respondents till 26-2-1996 when an order had

been passed by the 1st respondent in proceedings NO.P.90/D&A/BZA/CHSR/701 removing the petitioner from service on the charges on which

he had been removed from service earlier. Aggrieved by the order of removal the petitioner again filed an appeal before the Railway Board. This

appeal was rejected on 17-4-1997. Thereafter, the petitioner again came to the Tribunal challenging the order of removal and rejection of his

appeal through O.A.No.849/97. This O.A. has been dismissed by the Tribunal therefore this Writ petition has been filed.

2. The facts have been mentioned in detail so that the controversy that is required to be settled by this Court is appreciated in its correct

perspective. The learned Counsel for the petitioner has only raised one question which relates to the legality or otherwise of the action of

respondent No. 1 in reopening the matter after it had been decided by the Supreme Court and ordering removal of the petitioner from service. It is

contended that once the matter was finally decided by the Supreme Court no authority, judicial or administrative had any power to reopen the

matter. On the other hand the submission made by the learned Counsel for respondents was that the Tribunal had found a technical fault with the

order of removal, the fault being that it had not been passed by a competent authority, therefore the disciplinary proceedings till the time of

completion of enquiry and submission of report of enquiry was valid and only the order of termination had been vitiated as it had been passed by

an incompetent authority, therefore the competent officer in the department could pass a fresh order based on the enquiry report.

3. Now, in the light of the argument of the Counsel for the petitioner and the counter argument of the respondents, Counsel the orders passed by

the Tribunal and the Supreme Court will have to be looked into. The operative portion of the order of the Tribunal in R.A. No. 31 of 1987:

We have heard the learned Counsel for the applicant and Sri N.R. Devaraj, learned Standing Counsel for the Railways. Learned Counsel for the

applicant contends that the applicant had raised this contention in the main application and that this tribunal while disposing of the main O.A had

held that the Sr. D.P.O had the power of appointment but it had not held or determined that he was the competent disciplinary authority to impose

the penalty of removal from service on the applicant. It is further contended that the matter is covered by Full Bench judgment dated 4-12-1987 of

this Tribunal in T.A. No. 470/86 (WP 8948/82) and Batch no doubt rendered subsequently, wherein this Tribunal had held that only the highest

among the appointing authorities is competent to impose a major penalty specified in Rule 6 of the Railway Servants (Discipline and Appeal) Rules,

1968, The powers of the Senior Divisional Personnel Officer who has imposed the punishment of removal in the instant case have been derived by

way of delegation by the General Manager. In view of the decision rendered by the Full Bench in the above case viz., that the delegate of the

General Manager is not an appointing authority, it would follow that the orders passed by the Senior D.P.O. is illegal. The impugned order of

removal dated B/227/IV/ 86/1, dated 3-12-1986 of the Senior Divisional Personnel officer, South Central Railway, Vijayawada is accordingly

quashed. Since the applicant had raised in his original application this question viz., the Sr. D.P.O is not the competent authority to impose the

penalty of removal from service upon the applicant and since this point was not dealt with by us in our order dated 7-8-1987 in O.A. No. 428/87,

the matter is reviewed as prayed for and the main application is allowed as indicated above. There will be no order as to costs.

This is clear from the order that the main application was allowed and the order of removal was quashed, no liberty was given to the other side to

pass a fresh order. Thereafter the matter went to the Supreme Court. Before the Supreme Court passed the orders, the order of the Tribunal was

given effect to and the petitioner was reinstated, though notionally as no work was allotted to him but he was paid his salary. The Supreme Court

passed the following order:

Even though the conduct of the respondent is reprehensible yet the Tribunal having interfered on a technical ground that he was dismissed from the

service by the Authority who was not the Disciplinary Authority, it is not expedient to decide this appeal on merits at this distance of time when no

interim order was granted by this Court and the respondent is working now for more than five years.

In the result, the appeal fails and is dismissed. There shall be no order as to costs.

Now, the Tribunal did not give any liberty to the respondent to pass a fresh order. The judgment of the Tribunal was given effect to and this was

noted by the Supreme Court in its order when it stated that "no stay had been granted". The Supreme Court also recorded that the respondent

(who is petitioner in this Writ Petition) was working for more than five years. The intention with which the Supreme Court passed the order is

manifestly clear. The Supreme Court did not want that the petitioner should be removed from service although they did not go into the merits of the

case, they noted that they are not going into the merits of the case because the respondent (present Writ Petitioner) was working for the last five

years. They found the conduct of the Writ Petitioner reprehensive but all the same closed the matter. Since the Supreme Court had finally

concluded the matter we do not think that any authority judicial or administrative had any power to reopen the matter. The Supreme Court had not

merely dismissed the Civil Appeal but it had also given the reasons for dismissing the appeal. Therefore, it was incumbent upon the authorities to

understand the order of the Supreme Court in its correct perspective. The Tribunal also failed to understand the order of Supreme Court in its

correct perspective and on the other hand took a clearly unacceptable view that they could not interpret the order of Supreme Court. The Tribunal

in paras-14 and 15 of the order in O.A. No. 849/97 held;

14, Before we go into the contentions raised above, we want to make it clear that this Tribunal cannot interpret the orders of the Hon''ble

Supreme Court as this is a Subordinate Tribunal. If the applicant is of the opinion that the case is not to be proceeded further in view of the Apex

Court judgment he should have approached the Apex Court for necessary clarification/ interpretation of the orders of the Apex Court. We refrain

from giving any interpretation on the orders of the Hon''ble Supreme Court. The applicant may approach the Hon''ble Supreme Court for

necessary clarification if so advised.

15. Having said so we proceed only to the extent of deciding the case in regard to the legality of passing the removal orders by R-1 and the

appellate order by R-2 which are challenged in this O.A. We make it clear that the orders in this O.A. in no way interprets the orders of the Apex

Court and as stated earlier the applicant may obtain necessary interpretation to the judgment of the Apex Court, if so advised, and approach the

respondent authorities for implementation of that order even if this OA is dismissed.

This is clearly unacceptable because the orders of the Supreme Court are needed to be implemented by each authority in the country whether

judicial or otherwise and unless the orders are interpreted in order to understand the import of the orders the Supreme Court orders would be

rendered useless. Article 144 of the Constitution of India lays down:

144. All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

There are number of judgments which need not be reproduced that this Article makes it obligatory on every authority in the country to follow the

directions and orders of the Supreme Court and also aid and assist in implementing the orders of the Supreme Court. Article 142 makes all

judgments of the Supreme Court binding on all Courts in India and Article 144 casts a duty upon authorities to act in aid of Supreme Court in

implementation of its orders. If the Courts start saying that they are not free to interpret the order of Supreme Court then the law of precedent

would be rendered useless. At each rime when a judgment of Supreme Court is cited as a precedent, the Courts can safely say that we cannot

interpret the judgment of Supreme Court therefore go to the Supreme Court. If the law is understood as the Tribunal had understood in the present

case, then all Courts in India except the Supreme Court would become unnecessary. It is the job of the Courts which are lower in hierarchy than

the Supreme Court to understand the judgment of Supreme Court in order to apply the law as is laid down by the Supreme Court. It is also

necessary for all Courts to understand the orders of Supreme Court in order to seek their implementation which is a mandate under Article 142

and 144 of the Constitution of India. We are clear in our mind that when the Supreme Court decided the Civil Appeal it was of the view that the

matter stood closed and after the order of Supreme Court no authority could have reopened the matter.

4. The learned Counsel for the respondents, however, relies on a judgment reported in Board of Management of S.V.T. Educational Institution

and another Vs. A. Raghupathy Bhat and others, , Board of Management of S.V.T. Educational Institution and another Vs. A. Raghupathy Bhat

and others, . In order to appreciate the law laid down in the judgment the admitted facts relating to that case are reproduced below:

The admitted position is that the respondent was suspended from service on 18-3-1989. Domestic enquiry was conducted and the order of

removal was passed. A petition was filed by the respondent against the said order before the Tribunal constituted under Karnataka Education Act,

1983. The Tribunal on finding that the respondent was not paid the subsistence allowance, set aside the order of termination and remitted the

matter for fresh enquiry. In revision, the High Court stayed the domestic enquiry and the civil petition was allowed by the High Court. Thus, this

appeal by Special leave.

Then, in para-5 the Supreme Court held:

Thus, it can be seen that the Rules provide for further enquiry to be conducted by the disciplinary authority. It is settled law that the employer has

power to conduct enquiry afresh from the stage at which the illegality in the proceedings is found vitiating the action. The High Court, is therefore,

not right in foreclosing further enquiry after upholding the order of the Tribunal which has held that there is need for further enquiry and the order of

removal was set aside because of non-payment of subsistence allowance. The question whether the order of removal was bad in law for non-

payment of subsistence allowance. The question whether the order of removal was bad in law for non-payment of subsistence allowance is left

open, as it has not been canvassed. The disciplinary authority''s proceeding further, as a consequence of remittance of order, is clearly adumbrated

under Rule 12(3) or Rule 12(4), as the case may be. It is now well settled by a Constitution Bench decision of this Court in Managing Director,

ECIL, Hyderabad, Vs. Karunakar, etc. etc., , that as a consequence of setting aside of order of termination or removal or dismissal further enquiry

is required to be undertaken from that stage. Pending enquiry, the employee must be deemed to be under suspension. Under these circumstances,

the High Court was not right in foreclosing the further enquiry. The appellants are directed to continue and complete the enquiry within a period of

four months from today and until the final order, the respondent must be deemed to be under suspension.

We have failed to understand how the facts of the case before the Supreme Court are relatable to the case in hand. The Supreme Court was

interpreting Rule 12(3) and 12(4) of the Rules framed under Karnataka Private Educational Institutions (Discipline and Control) Act. The learned

Counsel further submitted that in terms of the judgment of Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , no

liberty was required for passing a fresh order after it had been quashed on technical grounds. We are not going into that controversy because in

our view that controversy does not arise in this case. We are not concerned whether in the absence of liberty for fresh enquiry or fresh order by

the authority who quashes the order of removal or dismissal the Department can proceed again in the matter because in our view the Supreme

Court had finally concluded the matter and in terms of Article 144 of the Constitution of India no authority in the country could reopen the matter.

5. For these reasons, the Writ Petition is allowed. The order of the Tribunal is set aside. The order of removal dated 26-2-1996 and order in

appeal dated 23-5-1997 are also quashed. The respondents are directed to give full consequential benefits to the petitioner. We understand that

the petitioner would have reached the normal age of superannuation during the pendency of these proceedings. He should be treated to have

retired in the normal course without having been dismissed from service.