The Managing Director, Non-Conventional Energy Development Corporation of A.P. Ltd. and Another Vs G. Tirupathi Rao

Writ Appeal No. 791 of 1996

Court: Andhra Pradesh High Court

Date of Decision: July 16, 1996

Acts Referred:
Constitution of India, 1950 â€" Article 226

Citation: (1996) 3 ALT 910

Hon'ble Judges: P.S. Mishra, C.J; Syed Saadatulla Hussaini, J

Bench: Division Bench

Advocate: Advocate General and A. Ramalingeswara Rao, for the Appellant; M. Kesava Rao, for the Respondent

Final Decision: Allowed

Judgement

P.S. Mishra, C.J.
This appeal Under-clause 15 of the Letters Patent has arisen from a proceeding under Article 226 of the Constitution of

India. The writ petitioner-respondent is working as Assistant Technician in the establishment of the appellant and it is said, while he was posted to

work under the Integrated Tribal Development Agency, he was subjected to a notice calling upon him to show cause why he be not subjected to

an enquiry into the alleged unauthorised absence from duty. Petitioner submitted a reply and disputed the said allegation. He was then put to a

regular memo of charges and although once again he disputed the allegations in his written statement, the appellant issued proceedings terminating

his services. Learned single Judge has found, however, that the termination of the service of the writ petitioner-respondent is fit to be set aside

being in gross violation of principles of natural justice. He has accordingly allowed the writ petition and set aside the order of termination of service

with full-back-wages and other attendant benefits.

2. It is seen from the facts and the impugned order that the Court has found fault with the proceeding against the writ petitioner-respondent as a

proper enquiry into the alleged misconduct of unauthorised absence has not been held and the proceeding under which he has been removed from

service has been found to be violative of the principles of natural justice. Will reinstatement be a consequence of setting aside the order of

termination of the contract of service with full back-wages? According to the learned Advocate-General, no. True. Whereas the illegality in the

proceeding leading to the termination of the service is fatal and learned single Judge has rightly found that the order of termination cannot be

sustained, yet, as it has been invariably held as a consequence of a mistake in either not affording opportunity of being heard or a violation of a

requirement of law in a disciplinary proceeding against an employee, reinstatement with all attendant benefits including back-wages is not a rule of

general application. Dealing with a case of wrongful dismissal from service, the Supreme Court in Managing Director, Uttar Pradesh Warehousing

Corporation and Another Vs. Vijay Narayan Vajpayee, posed the question whether the High Court had overleaped the bounds of its jurisdiction

under Article 226 of the Constitution by ordering reinstatement with full back-wages and answered the same as follows:-

There appears to be force in this contention. It must be remembered that in the exercise of its certiorari jurisdiction under Article 226 of the

Constitution, the High Court acts only in a supervisory capacity and not as an appellate Tribunal. It does not review the evidence upon which the

inferior tribunal proposed to base its conclusion, it simply demolishes the order which it considers to be without jurisdiction or manifestly

erroneous, but does not, as a rule, substitute its own view for those of the inferior tribunal. In other words, the offending order or the impugned

illegal proceeding is quashed and put out of the way as one which should not be used to the detriment of the writ petitioner. Thus, in matters of

employment, while exercising its supervisory jurisdiction under Article 226 of the Constitution, over the orders and quasi-judicial proceeding of an

administrative authority-not being a proceeding under the industrial/ labour law before an industrial/labour tribunal-culminating in dismissal of the

employee, the High Court should ordinarily, in the event of the dismissal being found illegal, simply quash the same and should not further give a

positive direction for payment to the employee full back wages (although as a consequence of the annulment of the dismissal, the position as it

obtained immediately before the dismissal is restored), such peculiar powers can properly be exercised in a case where the impugned adjudication

or award has been given by an Industrial Tribunal or Labour Court. The instant case is not one under Industrial/Labour law. The respondent-

employee never raised any industrial dispute, nor invoked .he jurisdiction of the labour Court or the Industrial Tribunal. He directly moved the High

Court for the exercise of its special jurisdiction under Article 226 of the Constitution for challenging the order of dismissal primarily on the ground

that it was violative of the principles of natural justice which required that his public employment should not be terminated without giving him a due

opportunity to defend himself and to rebut the charges against him. Further more, whether a workman or employee of a statutory authority should

be reinstated in public employment with or without full back wages, is a question of fact depending on evidence to be produced before the

Tribunal. If, after the termination of his employment the workman/employee was gainfully employed elsewhere, that is one of the important facts to

be considered in determining whether or not the reinstatement should be with full back wages and with continuity of employment. For these two-

fold reasons, we are of opinion that the High Court was in error in directing payment to the employee full back wages.

In Managing Director, ECIL v. B. Karunakar AIR 1994 SC 1073 speaking for the majority of the Judges constituting the Bench, Sawant, J., has

stated that denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice and it

follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The

delinquent, will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the

subject and pointed out as follows:-

The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the

employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When

the employee is dismissed or removed from service and the enquiry is set aside because the report is not furnished to him, in some cases the non-

furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to

him. Hence, to direct reinstatement of the employee with back wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory

of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate

his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been

caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case.

Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to

permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to

stretching the concept of justice to illogical and exasperating limits. It amounts to an ""unnatural expansion of natural justice"", which in itself is

antithetical to justice.

Hence, in all cases where the enquiry officer"s report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and

Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the

Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report If after

hearing the parties, the Court/Tribunal comes to the conclusion mat the non-supply of the report would have made no difference to the ultimate

findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment The Court or Tribunal should not

mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The Court

should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for

setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of

the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Courts/Tribunals find that the furnishing of the report

would have made a difference to the result in the case that it, should set aside the order of punishment. Where after following the above procedure,

the Courts/Tribunals set aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with

liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage

of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his

dismissal to the date of his reinstatement, if ultimately ordered should in variably be left to be decided by the authority concerned according to law,

after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh enquiry and is directed to be

reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement

and to what benefits, if any, and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry

for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh enquiry from the stage of furnishing the

report and no more, where such fresh inquiry is held. That will also be the correct position in law.

In a more recent Judgment in State Bank of Patiala and others Vs. S.K. Sharma, it is pointed out that an order passed imposing a punishment on

an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/ regulations/statutory provisions governing such inquiries

should not be set aside automatically and where the enquiry is not governed by any rules/ regulations/statutory provisions and the only obligation is

to observe the principles of natural justice or for that matter, wherever such principles are held to be implied by the very nature and impact of the

order/action-the Court or the Tribunal should make a distinction between a total violation of natural justice (rule audi alteram pattern) and violation

of a facet of the said rule (as explained in the body of the Judgment). According to me Supreme Court in this judgment, in other words, a

distinction must be made between "no opportunity" and "no adequate opportunity" i.e., between "no notice", "no hearing" and "no fair hearing",

and in the case of the former, the order passed would undoubtedly be invalid (one may call it void or a nullity if one chooses to). In such cases,

normally, liberty will be reserved for the authority to take proceedings afresh according to law i.e., in accordance with the said rule (audi alteram

pattern). But in the latter case, the effect of violation (of a facet of the rule of audi alteram portent) has to be from the stand point of prejudice; in

other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not

have a fair hearing and the orders to be made shall depend upon the answer to the said query. In many situations, the Court may have to balance

public/State interest with the requirement of natural justice and arrive at an appropriate decision. Learned Counsel for the writ petitioner-

respondent has not been able to give to us any cogent reason to sustain on the facts of the case the order of reinstatement with back wages without

giving to the employer option to start a fresh proceeding or complete the proceeding from the stage the error has inflicted it fatally. He has also not

been able to give to us any satisfactory explanation why when the charge against him is of unauthorised absence and there is no rule or authority

under which even though he has not worked he would receive his emoluments, the Court should order for the payment of back wages to him i.e.,

the petitioner-respondent. We are of the considered view mat it is a fit case in which as a consequence of the setting aside of the order of

termination on the ground that adequate opportunity of being heard has not been given to the petitioner-respondent, reinstatement should be

ordered on the condition that the appellant shall be free to proceed against him i.e., the petitioner-respondent from the stage of the service of the

memo of charges and written statement having been received and back wages to be paid only when employer has no reason to hold against the

petitioner-respondent mat he was unauthorisedly absent and that his service should not be terminated on the said ground. The proper course would

have been for this Court to see on the basis of the materials available with the parties and filed in course of the proceeding whether, in fact, there is

a genuine grievance of any prejudice to the case of the petitioner-respondent before interfering with the order. Since, however, parties have not

chosen to bring on the record of the instant proceeding such materials and it has been found that enquiry is vitiated, the course that we would adopt

is the reinstatement but no back wages. In view of the above, the impugned order has to be modified in terms as above and the writ petition has to

be disposed of accordingly.

3. In the result the appeal is allowed to the extent indicated above, but without costs.