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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
HEMANT GUPTA; J., SUDHANSHU DHULIA; J.
Civil Appeal No.1567/2019; 1st September, 2022
THE STATE OF UTTAR PRADESH & ORS. *versus* **PRABHAT KUMAR**

Disciplinary Proceedings - Once the Court set aside an order of punishment on the ground that the enquiry was not properly conducted, the Court should not preclude the employer from holding the inquiry in accordance with law. It must remit the case concerned to the disciplinary authority to conduct the enquiry from the point that it stood vitiated, and to conclude the same in accordance with law. *Referred to Anant R. Kulkarni v. Y.P. Education Society, (2013) 6 SCC 515. (Para 6)*

Disciplinary Proceedings - If the Court finds that furnishing of the enquiry report would have made a difference to the result, in such case it should set aside the order of punishment. Where the Court sets aside the order of punishment, the proper relief which 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 back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. *Referred to ECIL v. B. Karunakar, (1993) 4 SCC 727. (Para 7)*

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For Respondent(s) Mr. Raj Kishor Choudhary, AOR Mr. Gaurav Goel, AOR Mr. Satya Prakash Yadav, Adv. Mr. Rajesh Kumar, Adv.

O R D E R

1. Heard learned counsel appearing for the parties and perused the material available on record.

2. The challenge in the present appeal is to an order dated 25-8-2017 passed by the High Court of Judicature at Allahabad, Lucknow Bench, whereby the Writ Petition filed by the State against the order of the State Public Service Tribunal dated 19-11-2014 was dismissed.

3. The respondent was imposed the punishment of dismissal from service vide order dated 23-12-2006. The departmental appeal against the said order was dismissed on 22-11-2007 and the revision was dismissed vide order dated 31-12-2008.

4. The appeal preferred by the respondent before the State Public Service Tribunal was allowed on the ground that no inquiry was conducted after the employee was charge-sheeted. Thus, it is a case of no evidence of misconduct. The order of punishment was passed for the reason that the delinquent has chosen not to appear in the departmental proceedings.

5. It is not disputed that no evidence was led by the department to prove the misconduct against the respondent. In the absence of any proof of misconduct, the order of punishment of dismissal from service was rightly interfered with by the Tribunal as affirmed by the High Court.

6. The allegation against the respondent is of absence from duty for more than 327 days which was made the basis for issuing the charge-sheet. Even after the charge-sheet was served, the respondent failed to participate in the departmental proceedings or to join duties. This Court in *Anant R. Kulkarni v. Y.P. Education Society*, (2013) 6 SCC 515 held that once the Court set aside an order of punishment on the ground that the enquiry was not properly conducted, the Court should not preclude the employer from holding the inquiry in accordance with law. It must remit the case concerned to the disciplinary authority to conduct the enquiry from the point that it stood vitiated, and to conclude the same in accordance with law. This Court held as under:

"13. It is a settled legal proposition that once the court sets aside an order of punishment on the ground that the enquiry was not properly conducted, the court should not severely preclude the employer from holding the inquiry in accordance with law. It must remit the case concerned to the disciplinary authority to conduct the enquiry from the point that it stood vitiated, and to conclude the same in accordance with law. However, resorting to such a course depends upon the gravity of delinquency involved. Thus, the court must examine the magnitude of misconduct alleged against the delinquent employee. It is in view of this that courts/tribunals are not competent to quash the charge-sheet and related disciplinary proceedings before the same are concluded on the aforementioned grounds. (Vide *ECIL* v. *B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : AIR 1994 SC 1074] , *Hiran Mayee Bhattacharyya* v. *S.M. School for Girls* [(2002) 10 SCC 293 : 2003 SCC (L&S) 1033] , *U.P. State Spg. Co. Ltd.* v. *R.S. Pandey* [(2005) 8 SCC 264 : 2006 SCC (L&S) 78] and *Union of India* v. *Y.S. Sadhu* [(2008) 12 SCC 30 : (2009) 1 SCC (L&S) 126 : AIR 2009 SC 161])"

7. This Court in a Constitution Bench judgment reported as *ECIL v. B. Karunakar*, (1993) 4 SCC 727 held that if the Court finds that furnishing of the enquiry report would have made a difference to the result, in such case it should set aside the order of punishment. Where the Court sets aside the order of punishment, the proper relief which 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 back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome.

8. Therefore, the matter is remitted back to the disciplinary authority to conduct the departmental proceedings from the stage prior to the order of punishment. The period from the date of the order of punishment till the consequent action after the fresh proceedings shall be decided after the disciplinary proceedings are concluded.

9. The appeal is accordingly allowed with the direction to the disciplinary authority to complete the inquiry from the stage prior to the order of punishment passed against the respondent.

10. We hope that the disciplinary authority will complete the inquiry against the respondent expeditiously and preferably within a period of three months from the date of communication of a copy of this order.