

THE HON'BLE SRI JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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WRIT APPEAL No.608 of 2007

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JUDGMENT: (Per Hon'ble Sri Justice Dilip B. Bhosale)

This Writ Appeal arises from the order dated 02.01.2007 passed in W.P.No.28689 of 1996, filed by the respondent, challenging his removal from service on the ground of unauthorized absence from office for the period from 09.02.1993 to 21.03.1993 without prior permission or seeking leave of absence.

The respondent was appointed as a casual labourer in the Visakhapatnam Port Trust. Subsequently, he was appointed as Khalasi on regular basis with effect from 14.03.1975. According to the respondent, he discharged his duties to the utmost satisfaction of his superiors and he never gave any occasion to have any grievance against him. He was, however, served with a charge sheet on 04.05.1993 by the second appellant and the charge was unauthorized absence. After conducting the enquiry, the appellants imposed penalty of removal from service, vide order dated 23.09.1993. The respondent preferred an appeal, and the same was dismissed by the appellate authority vide order dated 10.12.1993. Then he also preferred a review, which also came to be dismissed vide order dated 24.02.1994.

Against this backdrop, we have perused the entire record and we find that the respondent was imposed with ten penalties for unauthorized absence in past, his increments were postponed thrice, his pay was reduced five times by one or two stages each time, he was censured and finally, he was removed from service. This clearly shows that he was habitual absentee. In the circumstances, the learned Judge, though confirmed the order passed by the disciplinary authority holding him guilty for misconduct, keeping in view that he

served for more than 18 years, observed that the concerned authority ought not to have imposed penalty of removal from service, and taking such a view, he modified the punishment from removal to that of compulsory retirement.

The Supreme Court in **Om Kumar v. Union of India**, while considering the quantum of punishment/proportionality, has observed that in determining the quantum, role of administrative authority is primary and that of Court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. In the instant case, the authorities have not omitted any relevant materials nor any irrelevant fact taken into account nor any illegality committed while awarding the punishment. In any case, having regard to the conduct of the respondent, the punishment awarded cannot be stated to be shockingly disproportionate. The punishment was awarded in the instant case, after considering all relevant materials and, therefore, in our view, interference by the learned single Judge on reduction of punishment of removal to compulsory retirement was not called for.

In the circumstances, the appeal is allowed. The order of the learned single Judge is set aside. The miscellaneous petitions, if any, stand disposed of. No costs.

(DILIP B. BHOSALE, J)

(A.RAMALINGESWARA RAO, J)

16.04.2015

vs

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