IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9339 OF 2015

Senior Superintendent of Post
Offices & Ors. .. Petitioners
versus
Dadasaheb S. Satpute (since deceased)
through heirs Mrs. Premala D. Satpute
& Ors. .. Respondents

Ms Anjali Helekar with Mr. G. Hariharan i/b. A. A. Ansari for petitioners.
Mr. V. S. Talkute for respondents.

CORAM: D. H. WAGHELA, C. J. AND
M. S. SONAK, J.
DATE : 01 APRIL 2016

P.C.:

1] The challenge in this petition is to the order dated 15 June 2011 made by the Central Administrative Tribunal (CAT) setting aside major penalty of compulsory retirement imposed upon Dadasaheb Satpute (deceased original respondent), *inter alia* on the ground that the same was imposed by authority not competent to impose the same. The impugned order has however granted liberty to the petitioners to examine the matter afresh and to take appropriate decision in the matter of imposition of penalty.

2] Ms Helekar, learned counsel for the petitioners has submitted that the revisional authority which had made the order dated 19 July 2005 which was the subject matter of original application no. 501 of 2008 instituted by Satpute before CAT, was the competent authority to impose major penalty. The revisional authority, having confirmed the imposition of such major penalty, the irregularity, if any, in the original order dated 9 February 2005 was cured. Further, Ms Helekar submitted that since Satpute had not appealed against order dated 9 February 2005, CAT was not justified in making the impugned order dated 15 June 2011. For these reasons, Ms Helekar submitted that the impugned order dated 15 June 2011 be interfered with and set aside.

3] Having heard learned counsel for the parties and perused the record, we are satisfied that this is not a fit case for exercise of our extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India. The record indicates that Satpute was appointed as a Grade D packer with effect from 1 May 1992. Whilst working at Satara, Satpute remained absent between the period 27 December 2002 and 10 May 2003 i.e. for about 150 days or thereabouts. Charge memorandum was served upon Satpute, which was followed by the departmental enquiry. The enquiry officer submitted a report holding that Satpute was indeed absent during the period so indicated in the charge memorandum but it is doubtful whether such absence can be regarded as unauthorised. This was upon considering the circumstance that Satpute was not well and was undergoing treatment at his native place.

4] By order dated 9 February 2005, the Sub Divisional Inspector, Department of Posts, Kara, imposed upon Satpute, major penalty of compulsory retirement from service. There is no dispute that this Sub Divisional Inspector was not vested with any powers to impose major penalty upon Group D employees like Satpute. In these circumstances, CAT was right in observing that the order dated 9 February 2005, being issued by an authority who had no competence to issue the same, was null and void. Even otherwise, we are satisfied that the Sub Divisional Inspector, without due compliance with principles of natural justice, unnecessarily disagreed with the findings recorded by the enquiry officer and proceeded on the basis that absence of Satpute was unauthorised.

5] Satpute's case was thereafter taken up by the revisional authority in the exercise of its *suo moto* revisional jurisdiction. The revisional authority, which made the order dated 19 July 2005, in fact, accepted the position that the Sub Divisional Inspector who had made the order dated 9 February 2005 imposing upon Satpute the major penalty, in fact, had no authority to do so. The revisional authority however itself proceeded to confirm the imposition of such major penalty on the ground that it had the authority to originally impose such major penalty upon Satpute. In our opinion, such an exercise on the part of the revisional authority was without jurisdiction and in any case uncalled for. The CAT, has rightly interfered with the order made by the revisional authority. The revisional authority, has virtually deprived Satpute of the right to appeal. The approach of the revisional authority was in breach of the decision of the Jodhpur Bench of CAT in ***Anil Kumar Jain vs. Union of India***, in which it is held that a competent authority or higher authority cannot legalise an order which is void *ab initio.* There is nothing unreasonable or illegal in the view taken by CAT while making the impugned order. Accordingly, no case is made out to interfere with the impugned order in the facts and circumstances of the present case.

6] That apart, we must also note that Satpute was already made to retire in the year 2005. The said Satpute has now expired on 4 December 2012. The explanation offered by Sapute for his absence, had in fact, been accepted by the enquiry officer. Satpute was Group D employee and the absence, in facts and circumstances of the present case, was also not inordinate. Satpute had explained that he was suffering from internal bleeding and because he could not afford treatment in the city, he had returned to his native village in order to avail treatment from '*Vaidya*'. Satpute did report for duties and the explanation submitted by Satpute was substantially accepted by the enquiry officer. At this stage, therefore we do not deem it appropriate to interfere with the impugned order or to deprive the legal representatives of Satpute any terminal benefits, which may be due and payable to them.

7] For all these reasons, this petition is dismissed. There shall be no order as to costs.

CHIEF JUSTICE

(M. S. SONAK, J.)

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