

THE HONOURABLE THE CHIEF JUSTICE SRI THOTTATHIL
B.RADHAKRISHNAN
AND
THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER

WRIT APPEAL Nos.156 and 158 of 2019

COMMON JUDGMENT: *(Per Hon'ble Dr.Justice Shameem Akther)*

These two writ appeals are filed aggrieved by the common order dated 31.12.2018 passed in Writ Petition Nos.21166 and 21514 of 2006 by the learned Single Judge of this Court, wherein the Single Judge was pleased to direct the appellants herein to pay all the consequential benefits to the respondents herein i.e, D.Pandu and to the legal representatives of K.Mallaiah, as though both the respondents were in service till they attained the age of superannuation.

2. Heard arguments of Smt.A.B. Lalitha Gayathri, learned counsel for the appellants and Sri B. Thimothi, learned counsel for the respondents.

3. Learned counsel for the appellants would contend that the respondents herein were appointed as Chowkidars in the Central Ware Housing Corporation on 12.07.1985 and 20.01.1984 respectively and in connection with the theft of six bags of rice from the godown of Central Ware House, Suryapet, they along with five other Chowkidars were suspended in the month of December, 1986. The police report was also lodged. On 08.01.1987, separate memos were issued to the respondents

directing them to show cause as to why action should not be taken i.e, removal from service, for which they submitted their explanation. On 27.02.1987, charge sheets were issued to the respondents and they submitted their explanation. Being not satisfied with the explanation, enquiry was conducted. Basing on the enquiry report, disciplinary authority passed orders dated 27.05.1988 imposing punishment of removal of the respondents from service. The appeals preferred by the respondents to the appellant No.2 were rejected vide orders dated 10.08.1990 and 28.02.1990 respectively. Aggrieved, the respondents in these appeals preferred Writ Petition No.9769 of 1988 before this Court and this Court dismissed the said writ petition granting liberty to file a review under Regulation No.69 before the 1st appellant. However, the review applications filed by the respondents were rejected. Challenging the same, Writ Petition Nos.3892 and 3897 of 2000 were filed and this Court vide order dated 07.02.2006, disposed of the said writ petitions setting aside the orders of reviewing authority and directing the 1st appellant to pass a reasoned order. However, again the 1st appellant rejected the case of the respondents vide order dated 05.04.2006. Questioning the said order, the subject Writ Petition Nos.21166 and 21514 of 2006 were filed. The learned counsel for the appellants would submit that the learned Single Judge erroneously, contrary to law and facts of the case was pleased to set aside the orders passed by the reviewing authority, appellate authority and disciplinary authority and granted the reliefs in the writ petitions. The orders passed by the learned Single Judge are

unsustainable in law. The respondents indulged in theft of six bags of rice and Criminal Case No.74/1987 on the file of Judicial First Class Magistrate, Suryapet, was also registered against them and numbered as C.C.No.74/1987. Though in the said C.C.No.74/1987 the respondents were acquitted, the disciplinary authority differed with the findings of the Criminal Court. The findings of the Enquiry Officer with regard to the commission of theft are based on record and sustainable in law and there is justification in passing the orders of removal from service. As there were no grounds to review, the review applications were dismissed and ultimately prayed to set aside the common order dated 31.12.2018 passed in Writ Petition Nos.21166 and 21514 of 2006.

4. On the other hand, learned counsel for the respondents would contend that absolutely there was no evidence to substantiate the accusation of theft of six bags of rice by the respondents. The trial Court has elaborately dealt with the matter and rightly acquitted the respondents. The charges in the course of domestic enquiry as well as before the criminal court are one and the same. The decision rendered by the Criminal Court has a bearing over the outcome of the enquiry. All the contentions raised by the appellants were elaborately dealt with by the learned Single Judge of this Court and the learned Single Judge is justified in setting aside the orders passed by the reviewing authority, appellate authority and disciplinary authority and directing the appellants to pay all consequential

benefits to the respondents i.e, D.Pandu and to the legal representatives of K.Mallaiah and ultimately prayed to dismiss the Writ Appeals.

5. In view of the above submissions made by both sides, the point for determination is:

“Whether the learned Single Judge is justified in setting aside the orders passed by the reviewing authority, appellate authority and disciplinary authority and directing the payment of all consequential benefits to D.Pandu and to the legal representatives of K.Mallaiah?”

6. POINT: There is no dispute with regard to the respondents being placed under suspension in the year 1986 on the allegations of theft of six bags of rice and facing criminal prosecution in C.C.No.74/1987 with regard to the alleged theft of six bags of rice. As per the records, the appellants conducted an enquiry during the year 1987-88 i.e, prior to the judgment rendered by the Hon'ble Supreme Court in Union of India v. Md. Ramzan Khan¹ and Managing Director, ECIL v. B.Karunakar². As per the Regulation No.64 of the Central Warehousing Corporation (Staff) Regulations, 1986, the orders made by the disciplinary authority under regulation 61, 62 or 63 shall be communicated to the employee concerned, who shall also be supplied with a copy of the report of the enquiry, if any, but the appellants have not furnished the copy of the enquiry report to the respondents. Learned Single Judge in his order observed that the role of the reviewing authority has paramount

¹ AIR 1991 SC 471

² AIR 1994 SC 1074

importance in delivering fairness and justice to the respondents herein. Though the earlier order of the reviewing authority was set aside vide order dated 07.02.2006 in Writ Petition Nos.3892 and 3897 of 2000 directing the reviewing authority to pass a detailed speaking order reposing confidence that the reviewing authority would do justice but the reviewing authority has reiterated the facts, gave certain reasons and again dismissed the review applications preferred by the respondents vide orders dated 05.04.2006. It is further observed that the reviewing authority did not look into the findings of the enquiry officer's report, in which the enquiry officer made an exercise of filling up the gaps in the judgment rendered by the criminal Court in C.C.No.74/1987 by relying upon certain confessions said to have been made by the respondents herein during enquiry and the statements collected behind their back and without examining the cases of other Chowkidars namely G. Narsi Reddy, Shaik Mansoor, B.Boloji and T. Shankaraiah, who were facing identical charges. When one of the said Chowkidars was let off with penalty of reduction in the time scale of pay for a period of two years, the same yardstick should have been applied even to the case of the respondents herein.

7. It is pertinent to state that the material placed on record demonstrate that the reviewing authority did not examine the report of the enquiry officer, wherein the enquiry officer had conducted some exercise of filling up the lacunas pointed out by the learned Judicial First Class Magistrate while acquitting the

respondents by way of judgment in C.C.No.74/1987. When the charges framed in the departmental enquiry as well as in the criminal case are one and the same and when the respondents are acquitted in the criminal case for commission of alleged theft, the reviewing authority ought to have taken into consideration the acquittal recorded in C.C.No.74/1984 and ought to have taken a similar view instead of holding that the charges levelled against the respondents were proved. The material placed on record had also been elaborately dealt with by the learned Single Judge in allowing the writ petitions. The findings recorded by the learned Single Judge are in consonance with the record and not perverse. So, we do not find any merit in the submissions made by the learned counsel for the appellants. Therefore, both the appeals are liable to be dismissed.

8. Accordingly, both the Writ Appeals are dismissed.

Miscellaneous petitions pending in these Writ Appeals, if any, shall stand closed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

SHAMEEM AKTHER, J

March 01, 2019.

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