



2024 INSC 61

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2024
(Arising from SLP(Civil)No(s).15023/2022)

D. GANESAN

APPELLANT(S)

VERSUS

UNION OF INDIA

RESPONDENT(S)

J U D G M E N T

Leave granted.

Rejoinder affidavit of the appellant is not on record.

Ms. Mohana, learned senior counsel, appearing for the appellant, however, submits that she won't rely on the rejoinder affidavit and wants to proceed with the hearing of this matter on the basis of available pleadings.

The appellant, who was working with Bhabha Atomic Research Centre (BARC), is aggrieved by the judgment and order of the High Court passed on 28.04.2022 in Writ Petition No.54 of 2020 imposing the punishment of compulsory retirement upon him. The operative part of the order of the High Court reads:-

"17. In the result, this Writ Petition is disposed of. The Applicant / 1st Respondent is imposed with the punishment of Compulsory Retirement, which will take effect from today. The Applicant / 1st Respondent is entitled to only 40% of the pensionary benefits. Though an order of Compulsory Retirement is passed, it cannot be construed as a punishment, as he will be enjoying the benefit of pension to which he is not at all entitled to. This Court ought not to have granted even this relief to the Applicant, had the Department approached the Court well within time. It is made clear that the Applicant / 1st Respondent is not eligible for any other terminal benefits, such as gratuity, DCRG and the like, excluding the PF contribution, if any made by the Applicant. The Government should also think of amending the Rules to

enable the Department to proceed against the employee even after retirement / superannuation. No costs. Consequently, connected Miscellaneous Petition is closed."

The allegation against the appellant is of misrepresenting his caste status. Proceeding was initiated against him for posing as a candidate from the scheduled Caste category at the time of obtaining appointment to the post of Trainee Fitter (Tradesman / C) in BARC. It is specifically alleged that he had availed the benefit of age relaxation at that point of time, i.e. at the time of his appointment. It is the respondent's case that he belongs to "Thuluva Vellalar", which is listed as a Backward community. We are not going into that question in this appeal as we do not find any effective determination of the caste status of the appellant in any of the proceedings which were taken against him till the decision of the High Court was rendered. It appears that the authorities initiated disciplinary proceeding against him on 06.05.2013. Simultaneously, FIR No.343/2012 dated 21.10.2012 was also registered against him at the instance of an individual with Kalpakkam Police Station, Kanchipuram, Tamil Nadu, alleging commission of offences under Sections 420, 468 and 471 of the Indian Penal Code.

The appellant applied before the Central Administrative Tribunal, Madras Bench, questioning the legality of continuance of the disciplinary proceeding during pendency of the criminal action. The Tribunal, by its judgment delivered on 06.09.2013, *inter alia*, held:-

"....In our opinion, we are convinced that the

disciplinary proceedings can be kept in abeyance till a finality is reached in the criminal proceedings initiated against the applicant. For the reasons stated above, the application is allowed and there will be a direction to the respondents to keep the disciplinary proceedings initiated in pursuance of the charge memo dated - 06.05.2013 as against the applicant in abeyance till the criminal case in Crime No.343/2012 on the file of the Judicial Magistrate Thirukkazhukundram is finally decided. However, there will be no order as to costs."

The authorities challenged the decision of the Tribunal after seven years, in the year 2020, and approached the High Court of judicature at Madras for invalidating the Tribunal's decision. The High Court entertained the aforesaid writ petition in spite of the issue of delay being raised by the appellant and ultimately disposed of the same with the observations and directions which we have quoted above. It has been argued by Ms.Mohana, learned senior counsel, that as the criminal proceeding and the disciplinary proceeding/action were pending and there was no determination on the question of using a fake caste certificate, the High Court ought not to have determined that question in the judgment under appeal and the imposition of punishment thereon was also not warranted. According to the appellant, the task of imposition of punishment is within the domain of the employer / disciplinary authority, after finding guilt on the part of a delinquent employee.

Appearing on behalf of the respondent - Union of India, Mr.Banerjee, learned Additional Solicitor General, assisted by Ms. Priyanka Das, learned counsel, argued that the high-power committee set up in terms of the judgment of this Court in the

case of *Kumari Madhuri Patil & Anr. vs. Additional Commissioner, Tribal Development & Ors.* reported in 1994 (6) SCC 241 came to a finding on the caste status and there was no flaw in the judgment of the High Court in directing the appellant to undergo compulsory retirement.

In our opinion, however, in the impugned judgment, the High Court assumed the role of a disciplinary authority and imposed punishment also. To that extent, we accept the submission of Ms.Mohana, learned senior counsel, that such a finding and the consequential decision were not warranted. Having gone through the judgments of the High Court as well as the Tribunal, we do not find any exercise for determination of the caste status claim of the appellant at the time of his appointment to the service. In our opinion, it would be for the disciplinary authority to determine that question. We are also of the opinion that in the facts of the given case, the disciplinary proceeding could continue simultaneously with the criminal inquiry. There is no legal bar on running such parallel proceedings though in certain situations, this Court has not permitted continuance of dual proceedings.

We, accordingly, set aside the impugned judgment and order appealed against and direct the authorities to complete the disciplinary proceeding within a period of six months from today. The order of compulsory retirement shall stand revoked. The appellant shall participate in such inquiry and not take unnecessary adjournments. To that extent, the order of the Tribunal shall stand modified. As we are setting aside the

judgment and order of the High Court, we hold that the appellant shall be entitled to such benefits as would be permissible under the law. These benefits shall be released to him expeditiously, after adjusting any monetary benefit which may have been given to him.

The present appeal stands allowed in the above terms.

Pending application(s), if any, shall stand disposed of.

There shall be no order as to costs.

.....J.
[ANIRUDDHA BOSE]

.....J.
[SANJAY KUMAR]

New Delhi;
January 23, 2024.

ITEM NO.32

COURT NO.5

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 15023/2022

(Arising out of impugned final judgment and order dated 28-04-2022 in WP No. 54/2020 passed by the High Court Of Judicature At Madras)

D. GANESAN

PETITIONER(S)

VERSUS

UNION OF INDIA

RESPONDENT(S)

(FOR ADMISSION and I.R. & IA No. 128546/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 23-01-2024 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ANIRUDDHA BOSE
HON'BLE MR. JUSTICE SANJAY KUMAR

For Petitioner(s) Mrs. V Mohana, Sr. Adv.
Mr. Karthik Sundar, Adv.
Ms. Bhavya Pandey, Adv.
Ms. Sneha Botwe, Adv.
Mr. Vijay Kumar, AOR
Mrs. N C Kavitha, Adv.

For Respondent(s) Mr. Vikramjit Banerjee, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Ms. Rukhmini Bobde, Adv.
Ms. Priyanka Das, Adv.
Mr. Pranay Ranjan, Adv.
Mr. Sachin Sharma, Adv.
Ms. Divya Jyoti Singh, Adv.
Mr. Suyash Pandey, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed judgment, which is placed on the file.

Pending application(s), if any, shall stand disposed of.

(NIRMALA NEGI)
COURT MASTER (SH)

(VIDYA NEGI)
ASSISTANT REGISTRAR