

CASE NO.:  
Appeal (civil) 1251 of 2005

PETITIONER:  
Director, Town Planning Maharashtra and Anr.

RESPONDENT:  
Bhalchandra Vasantrao Kulkarni

DATE OF JUDGMENT: 10/07/2006

BENCH:  
ARIJIT PASAYAT & ALTAMAS KABIR

JUDGMENT:  
J U D G M E N T

ARIJIT PASAYAT, J.

Challenge in this appeal is to legality of the judgment rendered by a Division Bench of the Bombay High Court, Nagpur Bench, dismissing the writ petition filed by the appellant, thereby upholding the order passed by the Maharashtra Administrative Tribunal, Nagpur Bench, Nagpur (hereinafter referred to as the 'Tribunal').

The controversy lies in a very narrow compass.

The respondent was working as a Peon in the establishment of Director, Town Planning, Akola. An order of termination was passed taking note of several acts of misconduct by the respondent. The order of termination was passed dispensing with inquiry in terms of Article 311(2) of the Constitution of India, 1950 (in short the 'Constitution'). In the order dated 7.5.1986 fifteen charges of misconduct were referred to. The Deputy Director of Town Planning, Amravati, Division Amravati, passed the order indicating therein that the various acts of the respondent clearly demonstrated his unsuitability and the reasons as to why it would not be reasonably practicable to hold an inquiry as is referred to in clause (2) of Article 311 of the Constitution. Therefore, dispensing with the inquiry the concerned authority decided to terminate him from service after giving him one month's salary instead of one month's notice. It was noted that he was in police custody from 30.4.1986 to 8.5.1986. All the employees of the office were terrified due to his horrible acts and possibility his resorting to tumult and terrify members of the staff after release from police custody cannot be ruled out and suspension would not be an effective means to check his unlawful activities.

Legality of the order was challenged by the respondent by filing a writ petition before the Bombay High Court, Nagpur Bench, Nagpur. After creation of the Tribunal, the writ petition was transferred to the Tribunal.

The only ground taken by respondent before the Tribunal in support of the petition was that the reasons for dispensing with departmental inquiry were not recorded prior to the passing of the impugned order dated 7.5.1986 and, in fact, it had been recorded after the passing of the impugned order.

The Tribunal accepted this plea referring to the original file which was produced and the title of the order. The Tribunal observed that initially it was recorded as "Sheet showing reasons for removal of Shri B. Kulkarni" which was subsequently corrected as "Sheet showing reasons for removal of Shri B. Kulkarni, peon".

According to the Tribunal this change appears to have been made to show that it was recorded prior to passing of the order, but it was apparent that the same was corrected subsequently. Accordingly, the order of termination was set aside. The writ petition filed by the appellant before the High Court was dismissed by the Division Bench holding that the Tribunal's view was correct.

In support of the appeal, learned counsel for the appellant submitted that a bare reading of the entire order dated 7.5.1986 clearly shows that the reasons were recorded prior to the passing of the order. According to him even purported change on which great emphasis was laid by the Tribunal did not in any manner justify a different conclusion. It was pointed out that the reasons recorded have not been found inadequate by the Tribunal. The finding that the subsequent correction was made is without any basis and foundation.

Learned counsel for the respondent on the other hand submitted that the English translation as given does not reflect the correct position and the original order which was in a Marathi language has been referred to by the Tribunal to conclude that change was subsequently made to make it appear as if the reasons were recorded earlier.

The view expressed by the Tribunal as affirmed by the High Court is clearly unsustainable for the simple reason that as is rightly contended by the learned counsel for the appellant, the alleged change is inconsequential. A reading of the entire order makes the position crystal clear that the reasons were recorded before the order was passed. A few portions of the order would make the position clear beyond a shadow of doubt. Two illustrations would suffice. The English translation which is undisputed and is accepted to be correct reads as follow:

"I am fully satisfied about this and as regional competent officer I decide to terminate him from service"\005... "An order to that effect is being issued."

Above being the position, the order of the Tribunal as well as the impugned order of the High Court deserve to be set aside, and we direct accordingly.

The appeal is allowed. No costs.