

COMMITTEE OF MANAGEMENT
v.
SHAMBU SARAN PANDEY AND ORS.

OCTOBER 28, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

SERVICE LAW— Administrative Law— Natural Justice— Enquiry Proceedings— Procedure— Filing of charge sheet— Prayer for inspection of documents— In first instance delinquent to be given opportunity for inspection and thereafter conduct enquiry— Delinquent to be heard at time of conclusion of his enquiry.

The respondent, Principal of appellant's Institution was charged for misappropriating certain funds belonging to the institution. Therefore, a charge-sheet was given to the respondent, after appointing an enquiry officer. Respondent replied to the charge-sheet and wanted inspection of the documents mentioned in the charge sheet. The enquiry officer stated that since the respondent had already given the reply to the charge sheet, he was at liberty to inspect the documents at the time of final arguments. The respondent did not participate in the enquiry and the Enquiry Officer submitted his report, on the basis of which a show cause notice as to why he should not be dismissed from service was issued to the respondent. The respondent requested the Committee to convene a meeting in which he desired to submit his explanation. But, the same was not given to the respondent. Thereafter with the approval of the Vice Chancellor and the Chancellor, the appellant dismissed the respondent from service.

The respondent challenged the order of dismissal before the High Court. The order of dismissal was set aside by the High Court leaving open the holding of fresh enquiry, if necessary. Hence this appeal.

The appellants denied that the documents required by the respondent were not supplied nor was there any denial of opportunity to the respondent to examine his own witnesses; that the respondent did not co-operate in the conduct of the enquiry and he did not ask the enquiry officer for an opportunity to examine the witness on his behalf; that the question of hearing him by the Committee did not arise in the absence of any provision in the bye-laws of the Society or the rules, and as such there was not violation of principles of natural justice.

A Dismissing the appeal; this Court

B HELD : 1.1. It is settled law that after the charge-sheet with necessary particulars, the specific averments in respect of the charge shall be made. If the department or the management seeks to rely on any documents in proof of the charge, the principles of natural justice require that such copies of those documents need to be supplied to the delinquent. If the documents are voluminous and cannot be supplied to the delinquent, an opportunity has got to be given to him for inspection of the documents. If that opportunity was not given, it would violate the principles of natural justice. At the enquiry, if the delinquent seeks to support his defence with reference to any of the documents in the custody of the management or the department, then the documents **C** either may be summoned or copies thereof may be given at the request and cost of the delinquent. If he seeks to cross-examine the witnesses examined in proof of the charge he should be given the opportunity to cross examine them. In case he wants to examine his witness or himself to rebut the charge, that opportunity should be given. (272-C-E)

D **1.2.** In the instant case, at the earliest, the delinquent sought for inspection of the documents. It was stated by the enquiry officer that inspection of documents would be given at the time of final hearing. That obviously is an erroneous procedure followed by the enquiry officer. In the first instance he should be given the opportunity for **E** inspection and thereafter conduct the enquiry and then hear the delinquent at the time of conclusion of his enquiry. In this case that procedure was not adopted and the enquiry conducted was clearly in violation of the principles of natural justice. However, it would be open to the appellant to conduct an enquiry afresh and complete it within a period of six months. (272-F, H, 273- A, D)

F **CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 7674 of 1994.

G From the Judgment and order dated 5.2.93 of the High Court of Allahabad in CMWP No. 11542/83.

Raju Ramachandran, Prashant Kumar and Pradeep Misra for the Appellant.

Sunil Gupta and H.K. Puri for the Respondents.

H The following Order of the Court was delivered.

Leave granted.

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Admittedly, the respondent acted as a principal of the appellant's Institution. The charge levelled against the respondent was that he had misappropriated certain funds belonging to the Institution. Therefore, on March 22, 1991 (see 1981) a charge-sheet was given to the respondent, after appointing an enquiry officer. The respondent had given the reply on April 13, 1981 to the charge-sheet. At the earliest, he wanted inspection of the documents mentioned in the charge-sheet. Admittedly, neither the documents had been supplied nor an opportunity of inspection had been given to the respondent. Instead, the enquiry officer in his letter dated 18.5.1981 had given the reply stating that since the respondent had already given the reply to the charge-sheet item-wise, he was at liberty to inspect the documents at the time of final arguments on June 7, 1981. From time to time, the enquiry was postponed. Ultimately, the respondent did not participate in the enquiry. Consequently, the enquiry officer had submitted his report on 9.5.82. Based on that report, on 23.6.1982 the show cause notice as to why he should not be dismissed from service was given to the respondent. The respondent had not submitted his explanation. However, he requested the Committee to convene a meeting in which he desired to submit his explanation. But there being no provision to give hearing to an employee in the meeting of the committee, the same was not given to the respondent. The appropriate resolution has been passed by the appellant on 22.9.1982 to dismiss the respondent from service, subject to its approval by the Vice Chancellor and the Chancellor. The Vice Chancellor in his proceedings dated 27.1.1983 and the Chancellor in his proceedings dated 12.8.1983 had given their approval under the relevant provisions of the U.P. Universities Act. Thereafter the appellant dismissed the respondent from service.

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The respondent challenged the order of dismissal in W.P. No. 11542/83 in the High Court at Allahabad. Pending its disposal the respondent retired on reaching the age of superannuation on 12.12.1992. It would appear that the respondent was re-appointed till the end of academic year as per rules and on the expiry of the academic year he stood superannuated according to rules w.e.f. 30.6.1993. The judgment was rendered on 5.2.1993 setting aside the orders of dismissal and leaving open the holding of fresh enquiry, if necessary. This appeal by Special Leave has been filed on 3.5.1993.

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It is contended by Shri Raju Ramachandran, the learned counsel for the appellant that the High Court was not right in its conclusion that the

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- A documents required by the respondent were not supplied nor is there any denial of opportunity to the respondent to examine his own witnesses. The respondent himself adopted dilatory tactics and he did not co-operate in the conduct of the enquiry. He did not ask the enquiry officer for an opportunity to examine the witness on his behalf. The question of hearing him by the Committee did not arise inasmuch as there is no such provision in the bye-laws of the society or the rules. Therefore, there was no violation of principles of natural justice, on the facts of this case. We have heard the learned counsel for the respondent also.

- C On the facts and circumstances, we are of the view that at the earliest the respondent sought for the inspection of documents mentioned in the charge-sheet and relied on by the appellant. It is settled law that after the charge-sheet with necessary particulars, the specific averments in respect of the charge shall be made. If the department or the management seeks to rely on any documents in proof of the charge, the principles of natural justice require that such copies of those documents need to be supplied to the delinquent. If the documents are voluminous and cannot be supplied to the delinquent, an opportunity has got to be given to him for inspection of the documents. It would be open to the delinquent to obtain appropriate extracts at his own expense. If that opportunity was not given, it would violate the principles of natural justice. At the enquiry, if the delinquent seeks to support his defence with reference to any of the documents in the custody of the management or the department, then the documents either may be summoned or copies thereof may be given at his request and cost of the delinquent. If he seeks to cross-examine the witnesses examined in proof of the charge he should be given the opportunity to cross-examine him. In case he wants to examine his witness or himself to rebut the charge, that opportunity should be given. In this case, at the earliest, the delinquent sought for inspection of the documents. It is now admitted in the affidavits filed in this Court and in the letter written by the enquiry officer, that some of the documents were seized by the police after the murder of the Manager of the appellant-institution on 31.7.80 for investigation. In that case the respondent was also one of the accused charged for the offences under Section 302 read with Sec. 120-B I.P.C. It is now an admitted fact that in Sessions Trial No. 228/81 dated 31.7.86 he was convicted for the said offence and was sentenced to undergo imprisonment for life. It would appear that he filed an appeal in the High Court and bail was granted to him.

- H It is stated in the letter written by the enquiry officer that inspection of documents would be given at the time of final hearing. That obviously is an

erroneous procedure followed by the enquiry officer. In the first instance he should be given the opportunity for inspection and thereafter conduct the enquiry and then hear the delinquent at the time of conclusion of his enquiry. In this case that procedure was not adopted and the enquiry conducted was clearly in violation of the principles of natural justice. Accordingly, we agree with the High Court, though for different reasons, in the setting aside of the order of dismissal passed by the Management as approved by the Vice-Chancellor and Chancellor on the respective dates referred to hererinbefore.

As observed by the High Court, it would be open to the appellant to conduct an enquiry afresh after supplying the documents and to give an opportunity to the respondent to inspect the documents and then take appropriate action according to law. Depending upon the result of the enquiry, the respondent has since been superannuated, his pensionary claims and other benefits are to be granted to him. Depending upon the fresh enquiry, the question of payment of back wages would arise and the management would take appropriate decision thereon. The appellant should conduct and complete enquiry within a period of six months from the date of receipt of this order. It is needless to mention that the respondent should co-operate in the enquiry to be conducted. In case he adopts dilatory tactics, a notice in that behalf be given before forfeiting his right to participate in the enquiry from that stage and to follow the procedure in conducting the enquiry and to pass appropriate orders on the result of the enquiry.

The appeal is accordingly disposed of. No costs.

A.G.

Appeal disposed.