

STATE OF KARNATAKA AND ORS.

A

v.

V.B. HIREGOWDAR

JULY 19, 1996

[DR. A.S. ANAND AND K.T. THOMAS, JJ.]

B

Service Law—Departmental enquiry—Non supply of enquiry report to delinquent employee—Effect on punishment—Government of Karnataka—Department of Child Development—Employee—Charge of irregularities in the release of Government funds—Inquiry—Reduction in rank—Order dated 10th April 1990—Challenge before Tribunal—Ground that as the inquiry report was not furnished to employee punishment was vitiated—Tribunal holding that in view of the judgment in Ramzan Khan's case punishment imposed on respondent stood vitiated—Appeal by State—Held approach adopted by Tribunal was improper—Held, rule laid down in Ramzan Khan's case on 20th November, 1990 was prospective—No order of Punishment made before that was to be tested on the basis of law laid down in Ramzan Khan's case—Punishment on respondent imposed much before the judgment in Ramzan Khan's case was delivered—Law laid down in that case was inapplicable—Impugned order of Tribunal set aside.

C

D

**Union of India v. Mohd. Ramzan Khan, [1991] 1 SCC 588; Rangaswamaiah's case CA No. 4220 of 1992 decided by Supreme Court on 12th October, 1992 and State of Karnataka and Anr. v. Dr. M. Sathyanarayana Shetty Special leave petition decided by Supreme Court on 13th May, 1992, held inapplicable.*

E

Managing Director, ECIL, Hyderabad and Ors. v. B. Karunakar and Ors., [1993] 4 SCC 727, relied on.

F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9750 of 1996.

G

From the Judgment and Order dated 18.11.92 of the Karnataka Administrative Tribunal, Bangalore in Application No. 2241 of 1990.

M. Veerappa for the Appellant.

The following Order of the Court was delivered :

H

A Special leave granted.

The respondent who was serving as an officer of the Government of Karnataka in the Department of Child Development in Bid District in the year 1982-83 faced disciplinary inquiry on charges of certain irregularities in the release of Government funds. The Inquiry Officer, who conducted the inquiry found the respondent guilty of the charges framed against him. The disciplinary authority accepted the report of the Inquiry Officer and by its order dated 10 the April, 1990 imposed penalty of reduction in rank upon the respondent. The respondent approached the Karnataka Administrative Tribunal and challenged the order of the disciplinary authority. On 28th August, 1990 the Tribunal dismissed the application on merits holding the order of disciplinary authority to be vaild. After dismissal of the application, the respondent filed a review application before the Tribunal wherein he contended that the ground urged by him regarding non-furnishing of the inquiry report, which had vitiated the punishment imposed upon him, was not considered by the Tribunal while disposing of the Original Application on 28th August, 1990. The review application was allowed on 11th November, 1991 and the order dated 28th August, 1990 was recalled. The application was put up for fresh hearing. By its order dated 18th November, 1992, the Tribunal relying upon the judgment in *Union of India v. Mohd. Ramzan Khan*, [1991] 1 SCC 588 allowed the Original Application holding that the order of punishment stood vitiated on account of non supply of the copy of the report of the Enquiry Officer to the applicant. It is that order which has been put in issue in this appeal.

From a perusal of the record we find that the attention of the Tribunal was drawn by the appellant to the observations in *Union of India and Others v. Mohd. Ramzan Khan*, (supra) to the effect that the judgment in the said case would have only prospective application. The appellant also brought to the notice of the Tribunal another judgment of this Court in *Rangaswamaiah's case* (Civil Appeal No. 4220 of 1992 disposed of on 12th October, 1992) wherein this Court had clarified that the judgment delivered in *Ramzan Khan's case* (supra) was of prospective application and was not to apply to cases where disciplinary authority had imposed punishment on the delinquent employee earlier to 20th November, 1990, the date on which the judgment in *Ramzan Khan's case* (supra) was delivered. The Tribunal, however, "declined" to apply the said ruling and

instead relied upon an order of this Court in *State of Karnataka and another v. Dr. M. Sathyanarayana Shetty*, dismissing the Special Leave Petition against the judgment of the Karnataka High Court in *Dr. M. Sathyanarayana Shetty's* case (supra) had been dismissed, it followed that the non furnishing of copy of the inquiry report vitiated the punishment imposed by the disciplinary authority. The Tribunal apparently failed to take into consideration that this Court in *Dr. M. Sathyanarayana Shetty's* case (supra) did not specifically deal with the question whether the judgment in *Ramzan Khan's* case (supra) was to operate retrospectively or prospectively. The Tribunal it appears to us laboured hard to grant relief to the respondent ignoring the law laid down in *Ramzan Khan's* case (supra) itself as also in *Rangaswamaiah's* case (supra). The approach adopted by the Tribunal, to say the least, was improper.

The rule laid down in *Ramzan Khan's* case (supra) on 20th November, 1990 that non-furnishing of the copy of the inquiry report to a delinquent employee would render the final order void is only applicable prospectively after the date of the decision in *Ramzan Khan's* case (supra). Hence, no order of punishment passed on a delinquent employee before 20th November, 1990 is challengable on the basis of the judgment in *Ramzan Khan's* case (supra) and proceedings in such cases are to be decided on the basis of the law as it existed prior to the decision in *Ramzan Khan's* case (supra), except in cases where the service rules themselves provide for supply of copy of the report of the Inquiry Officer to the delinquent employee before imposing punishment.

A Constitution Bench of this Court in *Managing Director. ECIT, Hyderabad and Others v. B. Kanunakar and Others*, [1993] 4 SCC 727 while affirming the judgment in *Ramzan Khan's* case (supra) has set the controversy at rest and categorically laid down that the judgment in *Ramzan Khan's* case (supra) is of prospective application only and that no order of punishment made before 20th November, 1990 was to be tested on the basis of the law laid down in *Ramzan Khan's* case (supra).

In the instant case, the order of the disciplinary authority punishing the respondent was passed on 10th April, 1990, much before the date of judgment in *Ramzan Khan's* case was delivered. The law laid down in *Ramzan Khan's* case was delivered. The law laid down in *Ramzan Khan's*

A case (supra), therefore, had no application to the fact situation in the present case. The order of the Tribunal, therefore, cannot be sustained since it applied the law laid down in *Ramzan Khan's* case (supra) retrospectively.

B Consequently, this appeal succeeds and is allowed. The impugned order of the Karnataka Administrative Tribunal is hereby set aside. Since, the respondent in spite of being served twice has chosen to remain absent, there will be no order as to costs.

T.N.A.

Appeal allowed.