

MAN SINGH

v.

STATE OF HARYANA & ORS.
CIVIL APPEAL NO. 3186 OF 2008

MAY 1, 2008

(S.B. SINHA AND LOKESHWAR SINGH PANTA, JJ.)

Service Law:

Misconduct – Dereliction of duties and indiscipline – Police party headed by appellant, a sub inspector, in a Government vehicle entering in the State of Andhra Pradesh – Excise authorities recovering bottles of Indian Made Foreign Liquor in dicky of the vehicle driven by Head Constable – Initiation of criminal proceedings against erring Head Constable and departmental proceedings against the appellant and the Head Constable – Departmental proceeding resulting in exonerating the errant Head Constable mainly on ground of his acquittal in the criminal case, but appellant was found guilty of committing serious misconduct – Correctness of – Held : In the facts and circumstances of the case, order of the disciplinary authority imposing punishment upon appellant for dereliction of duties as also order of appellate authorities confirming the order are unfair – High Court failed to formulate the legal questions raised by the appellants and dismissed the second appeal by unreasoned judgment – Hence, the judgment of the High Court confirming the judgment and decree of the Courts below set aside – Code of Civil Procedure, 1908 – S.100 – Constitution of India, 1950 – Article 142.

Non-formulation of substantial question of law by High Court – Effect of – Discussed.

Constitution of India, 1950 – Article 14 – Scope of – Discussed.

A Doctrines:

Doctrine of 'equality and fair play' – Applicability of.

B Appellant, a Sub-Inspector in Haryana Police, deputed as incharge of the Police party comprising of one Assistant Sub-Inspector and two Head Constables for repair and fitting of Jammers in the Government vehicles at Hyderabad. One of the Head Constable who was driving the vehicle allegedly purchased 12 bottles of Indian Made Foreign Liquor (IMFL) at Kota (Rajasthan) and allegedly concealed the consignment of liquor in the dicky of the vehicle without the knowledge of the appellant. On checking the vehicle, Officers of the Excise Department of State of Andhra Pradesh recovered 12 bottles of liquor from the dicky of the vehicle and registered a case against the said Head Constable for transporting liquor in violation of the prohibitory orders of the State Government. In the departmental proceedings initiated against the appellant and the errant Head Constable, the Inquiry Officer found him guilty of the charges of dereliction of duties and indiscipline and a show cause Notice was issued to him. Authorities found him guilty of committing misconduct imposed punishment of stoppage of two annual increments with permanent effect upon him. Appeal filed thereagainst by the appellant was dismissed by the appellate authority and Revision petition was dismissed by the Director General of Police. Aggrieved, the appellant filed a declaratory suit with consequential relief of permanent injunction restraining the respondent from implementing the order of the authorities. The suit was dismissed by the trial Court. The appeal preferred thereagainst was dismissed by the first appellate Court. The second appeal preferred by the appellant was dismissed by the Single Judge of the High Court. Hence, the present appeal.

H Allowing the appeal, the Court

HELD: 1.1 On reading the judgment of the High Court, it becomes clear that the High Court has not framed the substantial questions of law as raised by the appellant before it in terms of proviso to Section 100, sub-section (5) of the Code of Civil Procedure and dismissed the Second Appeal in slip shot manner without assigning any independent reason. (Para – 16) [447-E, F]

1.2 This Court has independently examined the entire material on record and found that the appellant had filed a detailed reply to the show-cause notice dated 18.03.1997 and in support of his defence, he filed statement of the delinquent Head Constable dated 30.07.1996 about purchasing of 12 bottles of Indian Made Foreign Liquor (IMFL) and their seizure by the officers of the Excise Department of the State of Andhra Pradesh for violation of provisions under the Prohibition Act. (Para – 17) [455-F, G; 456-A, B, C]

1.3 In view of the factual backdrop and the statement of the delinquent Head Constable, this Court is of the opinion that the respondents cannot be permitted to resort to selective treatment to the appellant and another who was involved in criminal case besides departmental proceedings. The delinquent Head Constable has been exonerated by the appellate authority mainly on the ground of his acquittal in the criminal case, whereas in departmental proceedings the appellant has been found guilty by the disciplinary authority and was awarded punishment for serious misconduct committed by him as police personnel. (Para –18) [456-D, E, F]

2.1 The settled point of law is that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as

A well not only when he is discriminated against in the matter
of exercise of right, but also in the matter of imposing
liability upon him. Equals are to be treated equally even
in the matter of executive or administrative action. As a
matter of fact, the doctrine of equality is now turned as a
B synonym of fairness in the concept of justice and stands
as the most accepted methodology of a governmental
action. The administrative action is to be just on the test
of 'fair play' and reasonableness. (Para – 19) [456-F, G, H;
457-A, B]

C 2.2 The case of the appellant is examined in the light
of the established doctrine of equality and fair play. The
principle is the same, namely, that there should be no
discrimination between the appellant and the other
delinquent Head Constable as regards the criteria of
D punishment of similar nature in departmental proceedings.
Both were similarly situated, in fact, the delinquent Head
Constable was the real culprit who, besides departmental
proceedings, was an accused in the excise case filed
against him by the Excise Staff of the State of Andhra
Pradesh for violating the Excise Prohibition Orders
E operating in the State. The appellate authority exonerated
the said delinquent Head Constable mainly on the ground
of his acquittal by the criminal court in the Excise case
and after exoneration, he has been promoted to the higher
post, whereas the appeal and the revision filed by the
F appellant against the order of punishment have been
rejected on technical ground that he has not exercised
proper and effective control over the delinquent Head
Constable at the time of commission of the Excise
offence by him. The order of the disciplinary authority
G would reveal that for the last about three decades the
appellant has served the Police Department of Haryana
in different capacity with unblemished record of service.
(Para –19) [457-B, C, D, E, F]

H 2.3 In the backdrop of the above-mentioned facts and
circumstances of the case, this Court is of the view that

the order of the disciplinary authority imposing punishment upon the appellant for exhibiting slackness in the discharge of duties during his visit to Hyderabad when the delinquent Head Constable found involved in Excise offence, as also the orders of the appellate and revisional authorities confirming the said order are unfair, arbitrary, unreasonable, unjustified and also against the doctrine of equality. The High Court has failed to appreciate and consider the precise legal questions raised by the appellant before it and dismissed the Second Appeal by unreasoned judgment. The judgment of the High Court, therefore, confirming the judgments and decrees of the first appellate court and that of the trial Court is not sustainable. (Para – 20) [457-F, G; 458-A, B]

3. In normal course this Court could have remitted the case to the High Court for taking fresh decision, but in a case of this nature, this Court should in exercise of our extra-ordinary jurisdiction under Article 142 of the Constitution of India decided the case on merits to avoid further delay in deciding the Regular Second Appeal by the High Court. The judgment dated 20.03.2006 of the High Court confirming the judgments and decrees of the courts below shall stand set aside. (Para – 21 & 22) [458-B, C, D]

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 3186 of 2008.

From the Judgment and Order dated 20.3.2006 of the High Court of Punjab and Haryana at Chandigarh in R.S.A. No. 4272/2006.

Kamal Mohan Gupta and P.K. Bajaj for the Appellant.

Arvind Kumar Gupta, Addl. Advocate General, Vipin Bihari and T.V. George for the Respondents.

The Judgment of the Court was delivered by

LOKESHWAR SINGH PANTA, J. 1. Special leave

A granted.

B 2. This appeal is directed against the judgment and order dated 20.03.2006 passed by a learned Single Judge of the High Court of Punjab and Haryana, Chandigarh, whereby and whereunder Regular Second Appeal No.4272 of 2005 filed by the appellant-plaintiff from the judgment and decree dated 01.09.2005 passed by the learned Additional District Judge, Sonapat, in Civil Appeal No.21 of 2005, was dismissed.

C 3. Facts, in brief, giving rise to the filing of this appeal are that the appellant-plaintiff (hereinafter referred to as 'the appellant') was serving as Sub-Inspector in Police Department, Rohtak. In July 1996, the appellant was deputed as Incharge of the police party comprising of ASI Sucha Singh, HC Suraj Bhan and HC Vijay Pal for taking two Government vehicles bearing Nos. HR 22 0020 and HR 03A 7880 respectively from D Chandigarh to Hyderabad (Andhra Pradesh) for repair and fitting of Jammers. HC Vijay Pal was driving one of the vehicles. He purchased 12 bottles of Indian-Made Foreign Liquor [IMFL] at E Kota (Rajasthan) and concealed the consignment of the liquor in the dickey of the car without the knowledge and consent of the appellant. On checking of the vehicles by the Excise Staff of F Adilabad in the State of Andhra Pradesh, 12 bottles of IMFL were recovered from the luggage boot of the car being driven by HC Vijay Pal, which gave rise to registration of a case PR No.470/95-96 dated 31.07.1996 against HC Vijay Pal for transporting liquor in violation of prohibitory orders of the State Government.

G 4. The Superintendent of Police, Sonapat, - respondent No.2 herein ordered a departmental inquiry against the appellant and HC Vijay Pal charging the appellant with improper control over his subordinates which amounts to dereliction of duties and for the lapses of indiscipline as Police Officer. The Inquiry Officer found the appellant guilty of the charge on the basis of H summary of allegations and submitted his report to the respondent No.2. The respondent No.2, on receipt of the inquiry

report, issued show-cause notice dated 18.03.1997 to the appellant calling upon him to show-cause why penalty of dismissal from service be not imposed upon him. The appellant was directed to file his reply within 15 days from the receipt of the show-cause notice and in default thereof, final order of the proposed penalty of dismissal from the service would be passed against him. The appellant, accordingly, filed a detailed reply to the show-cause notice denying the allegations of misconduct and dereliction of duties on his part. He submitted that he has unblemished service record to his credit and has never been found guilty of any acts of omissions and commissions in discharging his duties during his long service career of about 34 years in the Police Department of the State.

5. Respondent No.2, keeping in view the length of service and unblemished record of service of the appellant, imposed punishment of stoppage of two annual future increments with permanent effect upon the appellant.

6. The appellant filed statutory appeal dated 11.08.1999 to the Deputy Inspector General of Police, Rohtak Range – respondent No.3 herein, under Rule 16.29 of the Punjab Police Rules, 1934 against the order of respondent No.2. The Appellate Authority by an order dated 11.08.1999 rejected the appeal of the appellant.

7. The appellant preferred Revision Petition before the Director General of Police, Haryana – respondent No.4 herein, which came to be rejected by an order dated 15.06.2001.

8. The appellant thereafter instituted suit *inter alia* praying for declaration that the order of punishment dated 30.09.1997 passed by respondent No.2; order dated 11.08.1999 recorded by respondent No.3 in appeal vide which the order of punishment was upheld and the appeal of the appellant was dismissed and order dated 15.06.2001 passed by respondent No.4 upholding the orders of the authorities below being illegal, null and void, arbitrary and against the rules of natural justice with consequential relief of permanent injunction restraining the

A respondents from implementing the order of punishment to the detriment of the appellant.

9. The learned Additional Civil Judge (Senior Division), Sonapat, dismissed the Civil Suit No.571/1 of 2002 of the appellant by the judgment and decree dated 21.03.2005.

B 10. Being aggrieved against and dissatisfied with the judgment and decree of the trial court, the appellant carried the matter in appeal. The learned Additional District Judge, Sonapat, dismissed the said appeal on 01.09.2005.

C 11. The appellant preferred Second Appeal in the High Court of Punjab and Haryana, which was dismissed by learned Single Judge by the impugned judgment dated 20.03.2006. The relevant paragraphs of the judgment of the High Court are extracted as under:-

D "Both the Courts below have concurrently held that the order of punishment had been passed against the plaintiff after the due procedure had been followed by the department in conformity with the rules applicable to the plaintiff. It has also been held that principles of natural justice were also adhered to. Consequently, the suit filed by the plaintiff was dismissed by the trial court. The appeal filed by the plaintiff also failed before the learned First Appellate Court.

E F It is well-settled that the Civil Court cannot sit in appeal over the departmental proceedings or an order of punishment passed by the punishing authority.

G Shri Jai Vir Yadav, learned counsel appearing for the appellant has vehemently argued that another employee against whom the charges were primarily reflected, had been exonerated.

H I am afraid, the aforesaid argument of the learned counsel cannot be accepted by this Court sitting in second appeal. As noticed above, it is for the department to find out the

[LOKESHWAR SINGH PANTA, J.]

merits of the charges against each of the delinquent officials. Until and unless some mala fides are alleged and proved, the Civil Court has a very limited jurisdiction.

Nothing has been shown that the findings recorded by the Court below suffer from any infirmity or are contrary to the record.

No question of law, much less any substantial question of law arises in the present appeal.

Dismissed."

12. Now, the appellant has preferred this appeal challenging the correctness and validity of the judgment and order of the High Court.

13. We have heard Shri Kamal Mohan Gupta, learned counsel for the appellant, and Shri Arvind Kumar Gupta, Additional Advocate General for the respondents and perused the entire material placed on record. The facts narrated hereinabove are not in dispute to the extent that the appellant on 25.07.1996 was deputed as Incharge of police party comprising ASI Sucha Singh, HC Vijay Pal and HC Suraj Bhan to get technical repairs of two cars of the Government of Haryana at Hyderabad. On 31.07.1996 during the checking of the vehicles in the jurisdiction of District Adilabad (A.P.) by the Excise Staff of the Government of Andhra Pradesh, 12 bottles of liquor were found in the staff car No. HR 22 0020 which, at the relevant time, was being driven by HC Vijay Pal, against whom a criminal case was registered by the Police in District Adilabad. The appellant and HC Vijay Pal were also dealt with in departmental proceedings initiated against them under the Punjab Police Rules. The charge against the appellant was that the appellant did not exercise proper control upon HC Vijay Pal, driver of the official vehicle, when HC Vijay Pal was apprehended by the Excise Staff of Andhra Pradesh for concealing 12 bottles of liquor in the dickey of the official vehicle of the State of Haryana. In the departmental proceedings, the Inquiring Officer held the

A appellant as well as HC Vijay Pal guilty of misconduct,
indiscipline and dereliction of duties. The disciplinary authority,
on consideration of the reply submitted by the appellant to the
show-cause notice, imposed punishment of stoppage of two
annual future increments with permanent effect upon the
B appellant. The appellate authority as well as the revisional
authority both have concurred with the disciplinary authority and
accordingly dismissed the appeal and revision respectively filed
by the appellant. As noticed above, the trial court, the first
Appellate Court and the High Court in Second Appeal have
C concurrently held that the Civil Court cannot sit in appeal over
the departmental proceedings or an order of punishment passed
by the punishing authority. The High Court dismissed the appeal
of the appellant without framing the substantial questions of law
which were raised in precise terms before it in the Memorandum
D of Appeal.

14. On perusal of the judgment of the court of first appeal,
we find that the first appellate court has practically recorded
identical reasoning and finding as stated by the trial court in its
judgment and decree whereunder the suit of the appellant was
E dismissed. It was urged on behalf of the appellant as noticed by
the first appellate court in paragraph 8 of the judgment that the
appellant was discriminated by the respondents in dealing with
the departmental punishment recorded against him and against
HC Vijay Pal whose punishment was set aside by the appellate
F authority soon after his acquittal by the criminal court in the
Excise case, whereas the appeal and revision filed by the
appellant came to be rejected simply on the ground that the
appellant being in-charge of the police party had failed to take
proper supervision over the conduct of HC Vijay Pal who
G committed criminal offence as a police personnel in discharging
his official duties. The first Appellate Court, after noticing the
arguments of the learned counsel for the parties, has not
recorded any reason for rejecting the pleas of the appellant and
it dismissed the appeal by observing as under:-

H "The learned Lower Court has rightly discussed the

evidence and the various rules. The findings given under all the issues are correct and the same stands affirmed.”

A

15. Before this Court, the appellant has filed a copy of the Memorandum of the Grounds of Appeal preferred by him before the High Court. In paragraph 4 of the grounds of Second Appeal, the appellant contended as under:-

B

“The learned courts below have committed a patent illegality in not considering the case in its right perspective that the appellant was discriminated in the matter of awarding punishment. The main accused namely HC Inder Pal Singh (real name HC Vijay Pal) against whom the FIR was registered in Andhra Pradesh for being found in possession of liquor in the dickey of the car and he has also departmentally proceeded against and was punished with stoppage of two annual increments, but on an appeal, his punishment was set aside. Thus, when no punishment was awarded to the main accused, there is no justification to sustain the proceedings awarded to the appellant, who has been inflicted the punishment simply on the ground that he being incharge was negligent in keeping control over his subordinate.”

C

D

E

16. On reading the above-extracted judgment of the High Court, it becomes clear that the High Court has not framed the substantial questions of law as raised by the appellant before it in terms of proviso to Section 100, sub-section (5) of the Code of Civil Procedure and dismissed the Second Appeal in slip shot manner without assigning any independent reason.

F

17. We have independently examined the entire material on record and find that the appellant had filed a detailed reply to the show-cause notice dated 18.03.1997 and in support of his defence, he filed statement of HC Vijay Pal dated 30.07.1996. A copy of the said statement has been placed on record as Annexure P-1, which reads as under:-

G

“I, Vijay Pal Chaudhari S/o Madan Singh R/o *not legible*,

H

A Tehsil Jaggar, Distt. Rohtak Haryana states that he started
journey on Government duty from Panchkula to Hyderabad
on 25.07.96. I purchased [12] bottles of IML at "Quota
B Rajasthan" for "personal consumption" as I have to stay in
Hyderabad for 15 days to attend the Govt. work. I
purchased [12] bottles of IML at the rate of Rs.80/- each
bottle. I kept the above IML bottles in the dickey of the car
without the knowledge of Man Singh.

C The said 12 bottles of IML have been recovered and seized
by the Excise Officer at prohibited excise check post –
ICP Bhorj on 30.07.96 at about 7.30 a.m. I am not aware
about the implementation of prohibition Act in the A.P.
State.

D Sd/-
Vijay Pal Choudhari
30.07.96"

E 18. In view of the factual backdrop and the above-stated
statement of HC Vijay Pal, we are of the opinion that the
respondents cannot be permitted to resort to selective treatment
to the appellant and HC Vijay Pal, who was involved in criminal
case besides departmental proceedings. HC Vijay Pal has
been exonerated by the appellate authority mainly on the ground
of his acquittal in the criminal case, whereas in departmental
F proceedings he has been found guilty by the disciplinary authority
and was awarded punishment for serious misconduct committed
by him as police personnel.

G 19. We may reiterate the settled position of law for the
benefit of the administrative authorities that any act of the
repository of power whether legislative or administrative or
quasi-judicial is open to challenge if it is so arbitrary or
unreasonable that no fair minded authority could ever have made
it. The concept of equality as enshrined in Article 14 of the
Constitution of India embraces the entire realm of State action.
It would extend to an individual as well not only when he is
H discriminated against in the matter of exercise of right, but also

in the matter of imposing liability upon him. Equal is to be treated A
equally even in the matter of executive or administrative action.
As a matter of fact, the doctrine of equality is now turned as a
synonym of fairness in the concept of justice and stands as the
most accepted methodology of a governmental action. The
administrative action is to be just on the test of 'fair play' and B
reasonableness. We have, therefore, examined the case of the
appellant in the light of the established doctrine of equality and
fair play. The principle is the same, namely, that there should be
no discrimination between the appellant and HC Vijay Pal as
regards the criteria of punishment of similar nature in C
departmental proceedings. The appellant and HC Vijay Pal were
both similarly situated, in fact, HC Vijay Pal was the real culprit
who, besides departmental proceedings, was an accused in
the excise case filed against him by the Excise Staff of Andhra
Pradesh for violating the Excise Prohibition Orders operating D
in the State. The appellate authority exonerated HC Vijay Pal
mainly on the ground of his acquittal by the criminal court in the
Excise case and after exoneration, he has been promoted to
the higher post, whereas the appeal and the revision filed by
the appellant against the order of punishment have been rejected E
on technical ground that he has not exercised proper and
effective control over HC Vijay Pal at the time of commission of
the Excise offence by him in the State of Andhra Pradesh. The
order of the disciplinary authority would reveal that for the last
about three decades the appellant has served the Police F
Department of Haryana in different capacity with unblemished
record of service.

20. In the backdrop of the above-mentioned facts and
circumstances of the case, we are of the view that the order of
the disciplinary authority imposing punishment upon the
appellant for exhibiting slackness in the discharge of duties G
during his visit to Hyderabad when HC Vijay Pal was found
involved in Excise offence, as also the orders of the appellate
and revisional authorities confirming the said order are unfair,
arbitrary, unreasonable, unjustified and also against the doctrine H

A of equality. The High Court has failed to appreciate and consider the precise legal questions raised by the appellant before it and dismissed the Second Appeal by unreasoned judgment. The judgment of the High Court, therefore, confirming the judgments and decrees of the first appellate court and that of the trial court is not sustainable. The appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-à-vis HC Vijay Pal, the driver of the vehicle.

C 21. However, in normal course we could have remitted the case to the High Court for taking fresh decision, but we are of the opinion that in a case of this nature, we should in exercise of our extra-ordinary jurisdiction under Article 142 of the Constitution of India decided the case on merits to avoid further delay in deciding the Regular Second Appeal by the High Court.

D 22. In the result, for the above-said reasons and discussions, the appeal is, accordingly, allowed. The judgment dated 20.03.2006 of the High Court in RSA No. 4272 of 2005 confirming the judgments and decrees of the courts below shall stand set aside. Consequently, Civil Suit No. 571/1 of 2002 on the file of the Additional Civil Judge (Senior Division), Sonapat, is decreed in terms of the relief sought for.

E 23. In the facts and circumstances of the case, the parties are left to bear their own costs.

F S.K.S.

Appeal allowed.