[2009] 13 (ADDL.) S.C.R. 348

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STATE OF U.P. & ANR.
v.
MAN MOHAN NATH SINHA & ANR.
(Civil Appeal NO. 5549 of 2009)

AUGUST 17, 2009

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[TARUN CHATTERJEE AND R.M. LODHA, JJ.]

CONSTITUTION OF INDIA, 1950:

C *Article 226 – Writ jurisdiction – Scope of – Held: It is not open to High Court to re-appreciate and reappraise, as a court of appeal, the evidence led before inquiry officer and examine findings recorded by him – In the instant case, High Court erred in scanning the evidence as if it was a court of appeal* D *– Order of High Court is set aside and matter remitted to it for consideration afresh in accordance with law and expeditiously – Judicial review – Service Law – Disciplinary proceedings – Sachivalaya Niyam Sangrah, Uttar Pradesh Shashan – Para 266.*

E **In a writ petition challenging the dismissal of the petitioner, who was the private secretary to a State Minister, consequent upon the report of the inquiry officer finding him guilty of misappropriation of public money fraudulently withdrawn by him from the account of the** F **State Minister, the High Court reappreciating the evidence produced before the inquiry officer entered into merits of the findings recorded by him, and quashed the order of dismissal. Aggrieved, the State Government filed the appeal.**

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Allowing the appeal, the Court

HELD: The power of judicial review is not directed against the decision but is confined to the decision

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A **making process. The Court does not sit in judgment on merits of the decision. It is not open to the High Court to re-appreciate and reappraise the evidence led before the Inquiry Officer and examine the findings recorded by him as a court of appeal and reach its own conclusions. In the instant case, the High Court fell into grave error in scanning the evidence as if it was a court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error, and the matter requires fresh consideration by the High Court in accordance with law. Resultantly, the order passed by the High Court is set aside; the matter is remitted to it for disposal of the writ petition afresh in accordance with law and expeditiously. [Para 12] [357-H; 358-A-C]**

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State of Orissa vs. Muralidhar Jena, **AIR 1963 SC 404;** *State of A.P. vs. Sree Rama Rao* **AIR 1963 SC 1723;** *State of Madras vs. G. Sundatram,* **AIR 1965 SC 1103 and** *State of Andhra Pradesh And Ors. vs. Chitra Ventaka Rao* **(1975) 2 SCC 557, relied on.**

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Case Law Reference:

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AIR 1963 SC 404	**relied on**	**Para 8**
AIR 1963 SC 1723	**relied on**	**Para 9**
AIR 1965 SC 1103	**relied on**	**Para 10**
(1975) 2 SCC 557	**relied on**	**Para 11**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5549 of 2009.

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From the Judgment & Order dated 23.05.2008 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No.1564 (SB) of 2003.

S.R. Singh, Garvesh Kabra, Alka Sinha, Anuvrat Sharma

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A for the Appellants.

Respondent No.1 In-Person.

The Judgment of the Court was delivered by

B **R.M. LODHA, J.** 1. Leave granted.

2. The question that this Court is called upon to determine in this appeal by special leave is: whether the High Court was justified in quashing the order dated November 24, 2003, whereby the respondent No. 1 was dismissed from service?

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3. Man Mohan Nath Sinha, respondent No.1, was posted as Private Secretary (Class II) to the then State Minister, Minor Irrigation, Shri Ram Asrey Paswan, where he worked from November 18, 1997 to April 24, 1999. He is said to have D misappropriated the government money while he was attached as Private Secretary to the then State Minister. The Vigilance Department after holding an enquiry against respondent No.1 sought his prosecution under Sections 408, 409, 420, IPC, as well as under Sections 13 (1) (b) read with 13 (2) of the E Prevention of Corruption Act, 1988. On October 9, 2001, the respondent No.1 was placed under suspension. The disciplinary proceedings were also initiated against him and he was served with the chargesheet on October 19, 2001. The principal charge against the respondent No.1 was that while F being attached as a Private Secretary to the State Minister, Minor Irrigation, he took undue advantage of the ignorance and disability of the Minister and acted in violation of his duties as a Private Secretary by drawing a total of Rs. 37,00,304/- from the State Minister's Saving Bank Account No. 8002, State Bank G of India, Secretariat Branch, Lucknow, and out of the amount so withdrawn, an amount of Rs.21,32,011/- was deposited by the delinquent in his own Saving Bank Account No. 8861 in the same bank. It was alleged in the charge that the State Minister received an amount of Rs.12,00,000/- on different dates; H payment for petrol etc. to the tune of Rs.3,68,293/- was also

made by the delinquent and the remaining amount was misappropriated. The second charge against the respondent No.1 was that being a senior public servant, he obtained undue advantage and by adopting criminal means and acting in contravention of the duties of the Private Secretary, he breached the Code of Conduct prescribed for Private Secretaries in Para 266 of the Sachivalaya Niyam Sangrah, Uttar Pradesh Shashan.

4. The delinquent denied the charges and put forth his version in his reply. The Inquiry Officer after recording the evidence, submitted his report on December 12, 2002. The Inquiry Officer recorded a finding that in his capacity as Private Secretary to the then State Minister, the delinquent took undue advantage, acted contrary to the duties and responsibilities of Private Secretary and he perpetrated fraud and deceit upon the State Minister for unlawful gains to himself. The Inquiry Officer found that the delinquent had misappropriated a portion of the amount so withdrawn from the Saving Bank account of the State Minister.

5. A copy of the enquiry report was furnished to the delinquent and after giving him a show cause notice, the Competent Authority passed an order on November 24, 2003, dismissing the respondent No.1 from service.

6. The respondent No.1 challenged the order of dismissal before the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow.

7. The Division Bench by its order dated May 23, 2008, set aside the order of dismissal dated November 24, 2003. The impugned order passed by the Division Bench depicts that it proceeded to consider the controversy by framing two questions namely; (one) whether in view of the evidence on record, two charges leveled against the delinquent stood proved and (two) whether in view of the findings recorded by the Inquiry Officer which have been accepted by the Disciplinary

A Authority/Appointing Authority, any punishment could have been awarded to the delinquent, much less any major punishment of dismissal from service. The formulation of first question and the discussion that has followed in the impugned judgment suggests that the Division Bench attempted to appreciate the evidence B which was produced before the Inquiry Officer. This is how the High Court proceeded to appreciate the evidence:

"The Minister himself admits that out of the aforesaid amount Rs.37,00,304/- he had received Rs.12 lacs. He did not and could not give any proof or evidence to the C contrary even the enquiry officer did not accept the admission of the Minister for establishing that he had received Rs.12 lacs, though it being admitted to the Minister that he has received Rs.12 lacs. The said amount thus, could not have been said to be either embezzled or D misappropriated by the petitioner."

The Division Bench went on to scan the evidence produced before the Inquiry Officer in the following manner:

E "The petitioner has though given an explanation for the aforesaid transactions, but even without accepting that the Minister has authorized him orally to make the payment from the account and, even assuming that on the denial of the Minister of such oral instructions, the petitioner could not have made the deposit in his own account and could F not have made the payment in cash to petrol firms, but the fact remains that the said amount was actually paid to the petrol dealers and, therefore, it cannot be a case of embezzlement, so far the government money is concerned.

G The minister himself admitted and it is also proved from the record that the signatures on the cheques were that of the Minister and the money was withdrawn from the bank on his instructions by the petitioner. It is a different matter that the Minister qualified his statement by saying H that the signatures were obtained on the blank cheques

without indicating the actual amount which was likely to be withdrawn on the ground that the actual amount would be confirmed from the register towards the price of petrol and then would be filled in, but the fact remains that the signatures on the cheques were that of the Minister, which signatures he put knowing that he was issuing the cheques for paying the price of petrol. It therefore, cannot be said that the petitioner had withdrawn the amount by obtaining the signatures of the Minister on the cheques fraudulently."

8. In *State of Orissa* vs. *Muralidhar Jena*[1], a Constitution Bench of this Court held :

"**14.** There are two other considerations to which reference must be made. In its judgment the High Court has observed that the oral evidence admittedly did not support the case against the respondent. The use of the word "admittedly", in our opinion, amounts somewhat to an over statement; and the discussion that follows this over statement in the judgment indicates an attempt to appreciate the evidence which it would ordinarily not be open to the High Court to do in writ proceedings. The same comment falls to be made in regard to the discussion in the judgment of the High Court where it considered the question about the interpretation of the word "Chatrapur Saheb." The High Court has observed that "in the absence of a clear evidence on the point the inference drawn by the Tribunal that Chatrapur Saheb meant the respondent would not be justified". This observation clearly indicates that the High Court was attempting to appreciate evidence. The judgment of the Tribunal shows that it considered several facts and circumstances in dealing with the question about the identity of the individual indicated by the expression "Chatrapur Saheb ". Whether or not the evidence on which the Tribunal relied was satisfactory and sufficient for justifying its conclusion would not fall to be considered in a writ petition. That in effect is the approach initially

A adopted by the High Court at the beginning of its judgment. However, in the subsequent part of the judgment, the High Court appears to have been persuaded to appreciate the evidence for itself, and that, in our opinion, is not reasonable or legitimate."

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9. In the case of *State of A.P. vs. Sree Rama Rao*[2], a three Judge Bench of this Court held:

"7. .... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over C the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural D justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a E petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the F rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be G influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some

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legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

10. The aforesaid decisions were noticed by a Constitution Bench of this Court in the case of *State of Madras vs. G. Sundatram*[3], and it has been held that it is not open to the High Court to re-appreciate the evidence before the Tribunal and record the conclusion that the evidence does not establish charges against the delinquent. In the words of the Constitution Bench:

> "**9.** It is therefore clear that the High Court was not competent to consider the question whether the evidence before the Tribunal and the Government was insufficient or unreliable to establish the charge against the respondent. It could have considered only the fact whether there was any evidence at all which, if believed by the Tribunal, would establish the charge against the respondent. Adequacy of that evidence to sustain the charge is not a question before the High Court when exercising its jurisdiction under Article 226 of the Constitution. This view was reiterated in *Union of India v. H.C. Goel, AIR 1964 SC 364*
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> **10.** It is therefore clear that the High Court was in error in reappreciating the evidence before the Tribunal and recording the conclusion that that evidence did not establish the charges against the respondent............."

11. The scope of judicial review in dealing with departmental enquiries came up for consideration before this Court in the case of *State of Andhra Pradesh And Ors. vs. Chitra Ventaka Rao*[4] and this Court held:

> "**21.** .... The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a

A departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is B some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an C independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or D where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable E person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter F which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226

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G **23.** The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ H proceedings. An error of law which is apparent on the face

of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See *Syed Yakoob v. K.S. Radhakrishna,* AIR 1964 SC 477.

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do."

12. The legal position is well settled that the power of judicial review is not directed against the decision but is

A confined to the decision making process. The Court does not sit in judgment on merits of the decision. It is not open to the High Court to re-appreciate and reappraise the evidence led before the Inquiry Officer and examine the findings recorded by the Inquiry Officer as a court of appeal and reach its own B conclusions. In the instant case, the High Court fell into grave error in scanning the evidence as if it was a court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error and, in our thoughtful consideration, the matter requires fresh consideration by the High Court in C accordance with law. On this short ground, we send the matter back to the High Court.

13. Resultantly, the appeal is allowed and the order dated May 23, 2008, passed by the High Court is set aside. Writ Petition is restored to the file of the High Court for fresh hearing D and disposal. Needless to say that the respective arguments of the parties are kept open to be agitated before the High Court which obviously will be considered on their own merit. We request the High Court to dispose of the matter as expeditiously as may be possible and preferably within four months. No order E as to costs.

R.P. Appeal allowed.