THE REGISTRAR GENERAL, HIGH COURT OF KARNATAKA AND ANR.

v.

SRI M. NARASIMHA PRASAD

(Civil Appeal Nos. 2519-2522 of 2019)

APRIL 10, 2023

[V. RAMASUBRAMANIAN AND PANKAJ MITHAL, JJ.]

Service Law – Respondent was appointed as a Civil Judge (Junior Division) – Respondent was suspended from service on allegations of gross misconduct, followed by the initiation of disciplinary proceedings – As per the enquiry reports, some charges stood proved and the other charges were not proved – Full Court of the High Court resolved to impose the penalty of dismissal from service upon the respondent – Based on the resolution, respondent was dismissed from service – Respondent challenged the findings of the enquiry officer and the order of dismissal from service by filing writ petitions before the High Court – High Court dismissed the same – The respondent filed intra-court appeals against the same – Division Bench of the High Court set aside the order of penalty and the findings of the enquiry officer and also directed that no further inquiry can be held against the respondent – On appeal, held: Some of the charges against the respondent were very serious in nature, such as pronouncing the operative portion of the judgment in open court without the whole text of the judgment being ready, and similarly the conduct of auction sale of properties seized during the investigation – Judicial Officer pronouncing the concluding portion of his judgment in open court without the entire text of the judgment being prepared/dictated would amount to gross misconduct – Such conduct is completely unacceptable and unbecoming of a judicial officer – High Court was not justified in setting aside the penalty and in ordering that there shall be no further enquiry against the Respondent – Judgment of High Court set aside.

Allowing the appeals, the Court

HELD: 1. Once those charges which revolve around the manner of disposal of certain cases are ignored, what remains

are certain serious charges that revolve around pronouncement of operative portion of the judgment in open court without the whole text of the judgment being ready. Take for instance, Charge Nos. 1, 2, 4 and 5 in DI No.3/2005. These Charges are very serious in nature, where the respondent is alleged to have pronounced the operative portion of the judgment in open court without the whole of the judgment being ready. Similarly Charge No.1 in DI No.5/2005 related to the conduct of auction sale of properties, seized during the investigation. These are very serious in nature and the reply given by the respondent to these charges is wishy washy. [Para 12][59-D-E]

2. A judicial officer cannot pronounce the concluding portion of his judgment in open court without the entire text of the judgment being prepared/dictated. All that the respondent has done in the departmental enquiry is just to pass on the responsibility to the inefficient and allegedly novice stenographer. This Court does not know how the findings with regard to such serious charges have been completely white-washed by the High Court in the impugned judgment. A look at the impugned judgment of the High Court shows that the Division Bench of the High Court was swayed away unduly by the animosity attributed by the respondent to a member of the local Bar and the Assistant Public Prosecutor. If it is assumed for a minute that the charges were on the basis of complaints initiated by persons bearing ill-will and motive against the respondent. Even then, such ill-will and motive may not make the conduct of the respondent in not preparing judgments but pronouncing the outcome of the case, a condonable conduct. It is true that some of the charges revolve around judicial pronouncements and the judicial decision-making processes and that they cannot *per se*, without anything more, form the foundation for departmental proceedings. Therefore, this Court is ignoring those charges. But the charges which revolve around gross negligence and callousness on the part of the respondent in not preparing/dictating judgments, but providing a *fait accompli*, is completely unacceptable and unbecoming of a judicial officer. [Paras 13, 14, 15][59-F-H; 60-A-B]

3. The defence taken by the respondent that the lack of experience and the inefficiency on the part of the stenographer has to be blamed, for the whole text of the judgment not getting ready even after several days of pronouncement of the result in open court, was entirely unacceptable. But unfortunately, the High Court not only accepted this panchatantra story, but also went to the extent of blaming the administration for not examining the stenographer as a witness. Such an approach is wholly unsustainable. If it was the case of the respondent that the entire blame lay upon the stenographer, it was for him to have summoned the stenographer as a witness. The High Court unfortunately reversed the burden of proof. [Para 16][60-C-D]

Himachal Pradesh State Electricity Board Limited vs. Mahesh Dahiya **(2017) 1 SCC 768 : [2016] 9 SCR 879;** *Union of India vs. Tulsiram Patel* **(1985) 3 SCC 398 : [1985] 2 Suppl. SCR 131;** *Union of India and Ors. vs. E. Bashyan* **(1988) 2 SCC 196 : [1988] 3 SCR 209;** *Union of India and Ors. vs. Mohd. Ramzan Khan* **(1991) 1 SCC 588 : [1990] 3 Suppl. SCR 248;** *The Managing Director, ECIL, Hyderabad and Ors. vs. B. Karunakar and Ors.* **(1993) 4 SCC 727 : [1993] 2 Suppl. SCR 576 – referred to.**

Case Law Reference

[2016] 9 SCR 879	**referred to**	**Para 20**
[1985] 2 Suppl. SCR 131	**referred to**	**Para 21**
[1988] 3 SCR 209	**referred to**	**Para 21**
[1990] 3 Suppl. SCR 248	**referred to**	**Para 21**
[1993] 2 Suppl. SCR 576	**referred to**	**Para 21**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2519-2522 of 2023.

From the Judgment and Order dated 02.08.2019 of the High Court of Karnataka at Bengaluru in WA Nos. 14, 1040, 1041 and 1042 of 2012.

A Basava Prabhu S Patil, Sr. Adv., V. N. Raghupathy, Geet Ahuja, Manendra Pal Gupta, Advs. for the Appellants.

Ms. Anitha Shenoy, Sr. Adv., Narendra Kumar, Ms. T S Shanthi, Sanjeev Kumar, Advs. for the Respondent.

B The Judgment of the Court was delivered by

V. RAMASUBRAMANIAN, J.

Leave granted.

2. Challenging a common order passed by the Division Bench of the High Court of Karnataka, setting aside a penalty of dismissal from C service imposed upon the respondent herein, who happened to be a Civil Judge (Junior Division), the Registrar General of the High Court of Karnataka has come up with the above appeals.

3. We have heard Mr. Basava Prabhu S. Patil, learned senior counsel appearing the appellant-High Court and Ms. Anitha Shenoy, D learned senior counsel appearing for the respondent.

4. The respondent was appointed as a Civil Judge (Junior Division) vide a notification dated 31.01.1995.

5. On certain allegations of gross misconduct, the respondent was E placed under suspension by an order dated 25.01.2005, followed by the initiation of disciplinary proceedings, with the issue of Charge Memos dated 23.03.2005 in DI No.2/2005; DI No.3/2005; DI No.4/2005 and DI No.5/2005.

6. Separate enquiries followed in connection with all the four F Charge Memos namely DI Nos. 2,3,4,5 of 2005, after the culmination of which, separate reports were submitted by the enquiry officer on 29.03.2007 and 27.04.2007. As per the enquiry reports, some charges stood proved and the other charges were not proved.

7. Therefore, second show cause notices were issued and thereafter the Full Court of the High Court of Karnataka resolved on G 04.10.2008 to impose the penalty of dismissal from service upon the respondent. Based on the resolution of the Full Court, an order of dismissal from service was passed by the Governor of Karnataka, *vide* order dated 19.03.2009.

8. Challenging the findings of the enquiry officer, the respondent H filed a set of three writ petitions and challenging the order of dismissal

from service, the respondent filed a separate writ petition. All these writ petitions were dismissed by a learned Judge, through a common order dated 30.11.2011.

9. Aggrieved by the same, the respondent filed intra-court appeals. Those appeals were allowed by the Division Bench of the High Court by a very strange order, not only setting aside the order of penalty and the findings of the enquiry officer but also directing that no further inquiry can be held against the respondent. It is against such a common order passed in a batch of four intra-court appeals that the Registrar General of the High Court has come up with these civil appeals.

10. Before we proceed to consider the correctness of the view taken by the High Court, in the light of the rival contentions, it will be useful to extract in a tabular column the charges framed against the respondent under each of the Charge Memos; his reply to each of the charges and the findings of the enquiry officer in respect of those charges.

Charges against the Judicial Officer

S. No.	Charge	Reply to Charge	Held to be proved/not proved by the Inquiry Officer
		Inquiry DI.2/2005	
1.	That the judicial officer had granted an order of status quo on an interlocutory application for temporary injunction in a civil suit and had further granted an ex-parte order of temporary injunction in yet another civil. suit against the State, which was represented by the defendants in violation of Section 80(2) of the Code of Civil Procedure.	**First suit-** Absence of the AGP (Mallaraja Gowda) on several occasions. Case was not adjourned unnecessarily. Within two months, the interim injunction granted was vacated. **Second suit-** Case of forcible eviction. Plaintiff had shown prima facie case, therefore order of status quo had been granted. This was as per procedure prescribed under Order 39, Rule 3. Open to the defendants to file application for vacating the same, or advance the same depending on urgency, no such application was filed.	Proved
2.	That the judicial officer had not examined the witnesses present in court in several cases and was merely adjourning the same even though it was possible for him to have recorded the evidence of those witnesses.	Court was engaged in hearing other cases, and engaged in Lok Adalat.	Not proved

3.	That the judicial, officer had issued bailable and non-bailable warrants to witnesses in spite of the witnesses in spite of the witnesses having appeared and seeking to file applications for recalling of the warrants.	Court was engaged in hearing other/old matters	Not proved
4.	That the judicial officer had entertained a criminal case and issued a non-bailable warrant to six witnesses and when the witnesses not appeared, did not examine them and ordered that the said witnesses be bound over and insisted that they file applications to recall the warrants.	Court was engaged in hearing other/old matters.	Not proved
5.	That the judicial officer had granted bail to an accused in a case involving offences under the Karnataka Forest Act, 1963.	Forest offence - exclusively triable by magistrate. Not a violation of Section 86, 87 nor was it an ivory case. Was under Section, 104(A), bail was granted after hearing APP who was given opportunity to file objections. That evidence of the APP cannot be relied on has he is an interested witness, had reported an incident of misbehaviour of his after which contempt proceedings had been initiated against him, was now trying to falsely implicate him.	Proved
Inquiry numbered DI.3/2005			
1.	The judicial officer without preparing the text of the judgment had pronounced the operative portion of the judgment in open court and that the judgment was a actually prepared later.	Denied the charge. Stated that he had never pronounced a single judgment without dictating it in its entirety. He had a new stenographer, who was not in the habit of maintaining the stenographer book, frequently made mistakes and was irregular in taking dictation. The stenographer had admitted his shortcomings in a letter annexed to the reply, had resigned from service later. Stenographer was a novice, was negligent and inefficient in his work. Text had several typographical errors, on several occasions needed retyping. Inefficiency of stenographer, several memos issued to him, he had tendered apology in writing. No complaints from the parties in any of the cases, the complainant set up by Somasekhar and Mallaraja Gowda to falsely implicate him.	Proved

		Allegations pertain to three suits- two were money suits where no written statement was filed and defendants place ex-parte. Third suit, the judgment had been dictated, transcribed and pronounced in court. The text contained several mistakes and stenographer had been directed to retype the same. Signed judgment was kept in an almirah, key was with the stenographer, that he had deliberately reproduced the typed unsigned text instead of the signed judgment, was aiding the two advocates- trying to falsely implicate him.	
2.	That he had pronounced the judgment in a civil suit on 09.10.2002 whereas the judgment was actually dictated on 11.10.2002 which remained unsigned by the judicial officer.	Denied the charge. Had dictated judgment well in advance and signed it. Claimed that some mischief may have been played by vested interests. There was no complaint from litigants/ on advocates in this matter. That the present complainant is a fictitious person who is not a party in any of the cases mentioned, created by Advocate Somashekhar and the Assistant Public Prosecutor to take revenge against him. Stenographer was also new and not accustomed to taking dictation, had admitted his shortcomings.	Proved
3.	That the judicial officer prepared the judgment in O.S.31/2001 but did not sign the judgment.	Denied the charge. That he signed all judgments before pronouncement. There was never any complaint against him to this effect. That vested interests acting against him. His stenographer was new and irregular in taking dictation, made mistakes, and admitted his shortcomings in a letter.	Proved
4.	That the judicial officer prepared the judgment in a civil suit on 5.2.2002 and it remained incomplete.	Denied the charge. That vested interests may have played mischief by replacing the signed full judgment with partly printed judgment. No complaint from any persons. Fictitious person who filed the complaints. Stenographer new and unaccustomed to dictation.	Proved

5.	That the judicial officer pronounced the judgment in a civil suit on 23.10.2002 and a portion of the judgment was typed on the order-sheet and a formal judgment was prepared only six days later.	Denied the charge. That vested interests like sheristedar may have played mischief by replacing the original judgment. No complaint from any persons. Present complainant is a fictitious person created by Somasekhar, the APP for revenge. Stenographer new and unaccustomed to dictation.	Proved
Inquiry numbered DI.4/2005			
1.	The judicial officer had, in a case involving offences punishable under the Karnataka Forest Act, at the instance of the counsel for the accused, preponed the case and granted bail and at the request of the Additional Public Prosecutor, the case was again preponed and thereafter an order was issued for non-bailable warrant to the accused.	Somasekhar was the advocate appearing for the two accused, had a grievance against him. Conditional bail had been granted, application for cancellation of bail was filed, and counsel appearing for the accused did not refute allegations in the application on their failure to comply with the conditions, Did not file objections in writing or raise any objections orally. Non-bailable warrant issued in the interests of justice, acted in good faith.	Proved
2.	The judicial officer did not pass orders in a criminal case on the application filed u/s 457 of Cr.P.C. and released all the properties.	Counter-claim by complainant and accused for release of same property, therefore did not pass any order, and case was to be taken for enquiry or for trial	Not proved
3.	The judicial officer did not allow Somashekar, Advocate for the accused to examine a witness in a criminal case.	That the advocate started to put irrelevant questions to the witness, even though warned many times. When he persisted, case was adjourned	Not proved
4.	Application filed by Somashekar, Advocate who was not called out, but to the dismay of the advocate, it was found that the case had been adjourned earlier in the day without indicating any reasons.		Not proved
Inquiry numbered DI.5/2005			
1.	The judicial officer had brought properties for sale in public auction in criminal cases and while having brought to auction certain articles like choppers, sickles, etc. had not placed teak-wood plants and a motor cycle for such auction.	Account shreistedar and property clerk involved in preparing the sale list - all ground work done by these officers. These material witnesses were not examined. Motor cycle was old, parked in the open thus exposed to rain/ sunlight for more than 6 months - sold for Rs. 7000/-.	Proved

	But however, had recorded that the same was sold at auction to one Linga Raju who was related to court typist and this apparently was done in the chambers of the judge. While it was also alleged that the appellant had not prepared the estimated value of the properties before the same were sold.	Sheristedar misplaced auction records and thereafter tried to falsely implicate him to save himself. If subordinates had done something and he had affixed his signature due to oversight, should be pardoned for the lapses.	

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11. It is seen that among the charges held proved, some related to the judicial orders passed by the respondent. Therefore, we are prepared straightaway, to ignore those charges and see whether the order of penalty of dismissal from service was justified *qua* the other charges and whether the Division Bench of the High Court was right in setting aside the same.

C

12. Once those charges which revolve around the manner of disposal of certain cases are ignored, what remains are certain serious charges that revolve around pronouncement of operative portion of the judgment in open court without the whole text of the judgment being ready. Take for instance, Charge Nos. 1, 2, 4 and 5 in DI No.3/2005. These Charges are very serious in nature, where the respondent is alleged to have pronounced the operative portion of the judgment in open court without the whole of the judgment being ready. Similarly Charge No.1 in DI No.5/2005 related to the conduct of auction sale of properties, seized during the investigation. These are very serious in nature and the reply given by the respondent to these charges is wishy washy.

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13. A judicial officer cannot pronounce the concluding portion of his judgment in open court without the entire text of the judgment being prepared/dictated. All that the respondent has done in the departmental enquiry is just to pass on the responsibility to the inefficient and allegedly novice stenographer. We do not know how the findings with regard to such serious charges have been completely white-washed by the High Court in the impugned judgment.

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14. A look at the impugned judgment of the High Court shows that the Division Bench of the High Court was swayed away unduly by the animosity attributed by the respondent to a member of the local Bar and the Assistant Public Prosecutor. Let us assume for a minute that the charges were on the basis of complaints initiated by persons bearing ill-will and motive against the respondent. Even then, such ill-will and motive

H

may not make the conduct of the respondent in not preparing judgments but pronouncing the outcome of the case, a condonable conduct.

15. It is true that some of the charges revolve around judicial pronouncements and the judicial decision-making processes and that they cannot *per se*, without anything more, form the foundation for departmental proceedings. Therefore, we are ignoring those charges. But the charges which revolve around gross negligence and callousness on the part of the respondent in not preparing/dictating judgments, but providing a *fait accompli*, is completely unacceptable and unbecoming of a judicial officer.

16. The defence taken by the respondent that the lack of experience and the inefficiency on the part of the stenographer has to be blamed, for the whole text of the judgment not getting ready even after several days of pronouncement of the result in open court, was entirely unacceptable. But unfortunately, the High Court not only accepted this panchatantra story, but also went to the extent of blaming the administration for not examining the stenographer as a witness. Such an approach is wholly unsustainable. If it was the case of the respondent that the entire blame lay upon the stenographer, it was for him to have summoned the stenographer as a witness. The High Court unfortunately reversed the burden of proof.

17. While considering a challenge to an order of penalty imposed upon a judicial officer pursuant to the disciplinary proceedings followed by a resolution of the Full Court of the High Court, the Court is obliged only to go by established parameters namely, ***(i)*** whether the charges stood proved; ***(ii)*** whether the findings of the inquiry officer are reasonable and probable and not perverse; ***(iii)*** whether the rules of procedure and the principles of natural justice have been followed; and ***(iv)*** whether the penalty is completely disproportionate, especially in the light of the gravity of the misconduct, his past record of service and any other extenuating circumstances.

18. Unfortunately, the High Court did not test the correctness of the order of penalty in this case, on the above parameters. Instead, the High Court has recorded a finding in Paragraph 26 of the impugned order, as though the learned judges had first hand information about the problems that the judicial officers faced at the lower level. The opinion of the High Court in Paragraph 26 of the impugned order that the acts of omission and commission attributed to the respondent do not constitute

grave misconduct, is very-very curious. Adding fuel to fire, the High Court has recorded in Paragraph 36 of the impugned order that "*dismissing him from service itself is very atrocious*". Such a finding is nothing but a veiled attack on the Full Court of the High Court. After holding so, the High Court has gone to the extent of certifying the respondent as an innocent and honest officer. We do not know wherefrom the High Court came to such a conclusion.

19. One more reason articulated in the impugned order of the High Court is that the second show cause notice indicated the penalty proposed and that therefore, the same was contrary to law. In this regard the High Court placed reliance upon the decision of this Court in ***Himachal Pradesh State Electricity Board Limited*** vs. ***Mahesh Dahiya***[1]**.**

20. But the decision of this Court in ***Himachal Pradesh State Electricity Board Limited*** (supra), is one where the disciplinary authority-cum-whole time members of the Electricity Board were found to have formed an opinion to impose a major penalty even before forwarding the copy of the enquiry report to the delinquent. But in this case the Full Court of the High Court did not consider the enquiry report and did not take a decision in advance to impose the penalty of removal from service.

21. As a matter of fact, the history of evolution of law relating to second show cause notice is almost forty years old. The requirement of a second show cause notice relating to the proposed penalty was removed from Article 311 of the Constitution by the Constitution (42nd Amendment) Act, 1976. The same was upheld by a Constitution Bench of this Court in ***Union of Indiaand Anr***. vs. ***Tulsiram Patel***[2]**.** However, a two-member Bench of this Court opened a small window in ***Union of India and Ors.*** vs. ***E. Bashyan***[3]**,** which led to the decision in ***Union of India and Ors.*** vs. ***Mohd. Ramzan Khan***[4]**,** wherein this Court held that the opportunity to respond to the findings of the inquiry officer is different from the opportunity to respond to the penalty proposed. Eventually, the issue got clarified in ***The Managing Director, ECIL***, ***Hyderabad and Ors.*** vs. ***B. Karunakar and Ors.***[5]**.**

[1] (2017) 1 SCC 768
[2] (1985) 3 SCC 398
[3] (1988) 2 SCC 196
[4] (1991) 1 SCC 588
[5] (1993) 4 SCC 727

22. It is not the case of the respondent that the Full Court of the High Court took a decision to impose the penalty of dismissal from service even before furnishing the copies of the enquiry reports to the respondent. The show cause notices enclosing the enquiry reports, are dated 11.10.2007. The representations made by the respondent are dated 26.10.2007. It is only thereafter that the Administrative Committee No.1 considered the matter on 28.08.2008 and it was placed before the Full Court on 04.10.2008. Therefore, the opinion of the High Court that the second show cause notices were in violation of the principles of natural justice is not factually and legally correct.

23. We have not come across a case where the High Court, while setting aside an order of penalty has held that there shall not be any further inquiry against the delinquent. But in this case, the High Court has done exactly the same, creating a new jurisprudence. The relevant portion of the impugned order of the High Court reads as follows:-

> "Writ Appeal is allowed. Impugned order passed by the learned Single Judge in W.P.Nos.10756/2009 & 11030-32 of 2009 (S.DIS) dated 30.11.2011 is hereby set aside. Punishment order dismissing the appellant from service is hereby quashed. All Inquiry reports are quashed. There shall not be any further enquiry against the appellant. The appellant is to be treated as if he had been in service till the date of superannuation and pay all consequential monetary benefits with interest at 8% p.a. The compliance shall be within a period of three months."

24. For all the above reasons, the appeals are liable to be allowed. Accordingly, they are allowed and the impugned order of the Division Bench of the High Court is set aside. The order of penalty imposed upon the respondent is upheld and the writ petitions filed by the respondent shall stand dismissed. No costs.

Ankit Gyan Appeals allowed.
(Assisted by : Sirgapoor Sahil Reddy and Aarsh Choudhary, LCRAs)