

UNION OF INDIA AND ORS. A

v.

NARENDER SINGH

JULY 29, 2005

[ARIJIT PASAYAT AND H.K. SEMA, JJ.] B

Service Law:

Dismissal of an employee on ground of illegal gratification—Appeal dismissed by Appellate Authority—Reversed by Tribunal directing the authorities to reinstate the employee—Challenge to—Dismissed by High Court as infructuous—On appeal, Held: Merely because the order of reinstatement was implemented by the employer, that did not render petition infructuous—Hence the matter is remitted to High Court for disposal afresh on merits. C D

Words and Phrases:

'Infructuous'—Meaning of.

Respondent-employee was proceeded against departmentally on the charge of accepting illegal gratification from two Afghan nationals for clearing them through Customs without paying the Customs duty. He was ultimately dismissed by the disciplinary authority. The appeal preferred by him was also rejected by the appellate authority. Challenging these orders, the respondent-employee filed Original Application before the Central Administrative Tribunal. The Order was quashed by the Tribunal directing the employer to reinstate the respondent-employee forthwith. The order was questioned by the employer by filing a writ petition under Article 226 of the Constitution of India. The Petition was dismissed as infructuous by a Division Bench of the Delhi High Court. Hence the present appeal. E F

Allowing the appeal, the Court G

HELD: 1.1. The order of the High Court is clearly indefensible. Merely because the order of reinstatement had been implemented by the appellant, that did not render the writ petition infructuous as has been observed by the

A High Court. [901-F]

Union of India v. G.R. Prabhavalkar and Ors., [1973] 4 SCC 183, relied on.

B 1.2. The expression 'infructuous' means ineffective, unproductive and unfruitful. By implementing an order, the challenge to the validity of the order is neither wiped out nor rendered redundant. Hence, the matter is remitted to the High Court for disposal afresh on merits. It is clarified that no opinion has been expressed on the merits of the case. [902-B, C]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1813 of 2003.

From the Judgment and Order dated 5.12.2001 of the Delhi High Court in C.W.P. No. 5869 of 2001.

A. Sharan, Additional Solicitor General, S. Wasim A. Qadri, Amit Anand Tiwari, Mrs. Anil Katiyar and D.S. Mahra with him for the Appellants.

D Rajiv Dutta and Dr. Kailash Chand with him for the Respondent.

The Judgment of the Court was delivered by

E ARIJIT PASAYAT, J. The union of India and the Additional Commissioner of Police (OPS), New Delhi have questioned correctness of the order passed by a Division Bench of the Delhi High Court dismissing writ petition filed by the present appellants as infructuous.

The controversy lies within a very narrow compass and is as under:

F Respondent (herein referred to as the 'employee') was proceeded against departmentally on the charge that on 27/28.2.1996 while posted in the vigilance cell at the Indira Gandhi International Airport he accepted illegal gratification for getting two Afghan nationals cleared through Customs without paying the Customs duty payable. He was ultimately dismissed by the disciplinary authority by order dated 7.8.1997. The appeal preferred by him was also rejected by the appellate authority by order dated 20.11.1997. Challenging these orders the respondent-employee filed Original Application before the Central Administrative Tribunal, Principal Bench, New Delhi (in short the 'Tribunal'). By order dated 21.11.2000, the Tribunal quashed and set aside the order of dismissal dated 7.8.1997 passed by the disciplinary authority as also

G the order dated 20.11.1997 passed by the appellate authority. The respondent-

employee was directed to be reinstated forthwith. The order passed by the A Tribunal was questioned by the present appellant by filing writ petition under Article 226 of the Constitution of India, 1950 (in short 'the Constitution'). The Division Bench of the Delhi High Court by its order dated 5.12.2001 dismissed the writ petition as infructuous by observing as follows:

"We are informed that respondent stands already reinstated in B service pursuant to Tribunal order dated 21.11.2000 passed in OA.95/ 98 rendering this petition as good as infructuous. But L/C for petitioners still tried to justify the departmental action. We are not impressed as petitioner had already implemented Tribunal order.

Writ petition is, accordingly, dismissed as infructuous." C

Stand of the appellant in the present appeal is that the view taken by the High Court is clearly untenable. Merely because the respondent-employee had been reinstated in service pursuant to impugned orders that did not render the petition infructuous. D

In response, learned counsel for the respondent-employee submitted that Tribunal's order is without blemish and even on merits there is no scope for interference with the said order. Even otherwise as has been rightly held by the High Court after the order of reinstatement the writ petition had really become infructuous. E

The High Court's order is clearly indefensible. A writ petition questioning the Tribunal's order on merits does not become infructuous by giving effect to the Tribunal's order. Merely because the order of reinstatement had been implemented by the appellant, that did not render the writ petition infructuous as has been observed by the High Court. This position was F clearly stated in *Union of India v. G.R. Prabhavalkar and Ors.*, [1973] 4 SCC 183. In para 23 of the decision it was observed as follows:

"Mr. Singhvi, learned counsel, then referred us to the fact that after the judgment of the High Court the State Government has passed an order on March 19, 1971, the effect of which is to equate the Sales G Tax Officers of the erstwhile Madhya Pradesh State with the Sales Tax Officers, Grade III, of Bombay. This order, in our opinion, has been passed by the State Government only to comply with the directions given by the High Court. It was made during a period when the appeal against the judgment was pending in this Court. The fact that the H

A State Government took steps to comply with the directions of the High Court cannot lead to the inference that the appeal by the Union of India has become infructuous.”

B The expression infructuous means ineffective, unproductive and unfruitful. It is derived from the Latin word “fructus” (fruit). By implementing an order, the challenge to the validity of the order is not wiped out and is not rendered redundant.

C The inevitable result is that the appeal deserves to be allowed which we direct. The order of the High Court is set aside and the matter is remitted to it for fresh disposal on merits. We make it clear that we have not expressed any opinion on the merits of the case.

Appeal is allowed with no order as to costs.

S.K.S.

Appeal allowed.