

A UTTARANCHAL ROAD TRANSPORT CORPN. AND ORS.

v.

MANSARAM NAINWAL

JULY 28, 2006

B [ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Precedents:

C *Departmental proceedings as also prosecution in criminal court of a bus driver involved in a bus accident—Found guilty in disciplinary inquiry and dismissed from service—Labour Court upheld dismissal—High Court placing reliance on a decision of Supreme Court, set aside dismissal order and directed reinstatement holding that delinquent was acquitted in criminal case—Held, reliance on a decision without looking into factual background of*
D *the case is clearly impermissible—Postulates of precedent—Explained—As the High Court did not indicate as to how the case relied on by it applied to the facts of the case, matter remitted to it for consideration afresh.*

Service Law—Disciplinary inquiry—Dismissal from service—Acquittal in criminal case—Effect of.

E Respondent was a bus driver in the service of the appellant-Corporation. His bus met with an accident. A disciplinary inquiry was initiated against him. The charges leveled against him were found to have been proved and he was dismissed from service. His departmental appeal was rejected. The Labour Court also found him guilty and held the
F termination order not unjustified. He challenged the award before High Court. A criminal case was also filed against the respondent wherein he was acquitted. The High Court, relying on the judgment of the Supreme Court in *Anthony's case**, allowed the writ petition, set aside the termination order and directed reinstatement of the respondent holding
G that he had been acquitted in the criminal case.

In the present appeal it was contended for the appellant-Corporation that the ratio in *Anthony's case** was not applicable to the facts of the instant case; and that, even otherwise, acquittal in a criminal case would not lead to an automatic reinstatement nor would it render the

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departmental proceedings invalid.

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Allowing the appeal and remitting the matter to the High Court, the Court

HELD: 1.1. Reliance by a court on a decision without looking into the factual background of the case before it is clearly impermissible. According to the well-settled theory of precedents, every decision contains three basic postulates – (i) findings of material facts, direct and inferential; an inferential finding of fact is the inference which the Judge draws from the direct or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. Enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. [173-G; 174-A-C]

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State of Orissa v. Sudhansu Sekhar Misra and Ors., AIR (1968) SC 647 and *Union of India and Ors. v. Dhanwanti Devi and Ors.*, [1996] 6 SCC 44, relied on.

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1.2. The position in law relating to acquittal in a criminal case and question of re-instatement has been dealt with in *Sidhana's case***. As the High Court did not deal with the factual scenario and as to how the *Anthony's case** helped the respondent, it would consider the matter afresh.

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[171-F; 174-E-F]

**Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr.*, [1999] 3 SCC 679 and ** *Union of India and Anr. v. Bihar Lal Sidhana*, [1997] 4 SCC 385, referred to.

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Quinn v. Leatham, (1901) AC 495 (H.L.), referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3179 of 2006.

From the Judgment and Order and dated 9.8.2005 of the High Court of Uttaranchal at Nainital in Writ Petition No. 673 (M/S) of 2003 (Old No. 13150 of 1996.

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Pradeep Misra for the Appellants.

A.S. Rawat and K.S. Rana for the Respondent.

The Judgment of the Court was delivered by

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A **ARIJIT PASAYAT, J.** Leave granted.

Appellants call in question legality of the judgment rendered by a learned Single Judge of the Uttaranchal High Court. By the impugned judgment, the learned Single Judge set aside the order of termination passed by appellant No.2 and directed re-instatement of the respondent in service with continuity of service, but without back wages.

Factual background needs to be noted in brief.

C The respondent was appointed as Driver in appellant No.1-U.P. State Road Transport Corporation (hereinafter referred to as the 'Corporation'). On 10.10.1990 while the respondent was plying the bus No.UGA 938 on Mussoorie road, all of a sudden the vehicle met with an accident and fell into a ditch. Thereafter, a disciplinary enquiry was initiated against the respondent in which the charges against the respondent were found proved and the appellant vide its order dated 31.3.1993 dismissed the respondent from service. Thereafter, the respondent filed an appeal before appellant No.2, which was rejected on 30.6.1993. Thereafter, the respondent raised an industrial dispute under Section 4-K of the U.P. Industrial Disputes Act, 1947 (in short the 'Act'). The industrial dispute decided by the award was referred in the following terms:-

E "Whether the termination of the services of applicant/workman Sri Mansaram Nainwal s/o Visheshware Dutt Nainwal, driver by the employers from 31.3.1993 is unjustified and/or illegal? If so, to which benefit/compensation the applicant/workman is entitled and to what extent?"

F The Labour Court issued notice to the parties. The appellants and the respondent filed their written statement/objection. The stand of appellants before the Labour Court was that the respondent was appointed as a Driver. On 10.10.1990 when he was plying the bus No. UGA 938 on Dehradun-Mussoorie Road, due to his rash and negligent driving, the bus fell into the ditch in which 12 persons died and some other persons got seriously injured and the bus was also got damaged as a result of which the Corporation suffered a huge loss of Rs.2,50,000/-. It was also pleaded that the respondent was charge sheeted and a departmental enquiry was held against him in which full opportunity of hearing was provided to the respondent. In the enquiry, the charges against the respondent were found proved and he was removed from the service.

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On the other hand, the respondent in his written statement accepted that he was served charge sheet and a departmental enquiry was also held against him. But he pleaded that the necessary documents were not being produced though demand was made several times. The Investigating Officer found him not guilty in the enquiry, even though he was dismissed from service.

Labour Court found the respondent guilty and held that the termination was not unjustified.

Challenging the order of Labour Court, the respondent filed a Writ Petition which, as noted above, was allowed by the impugned judgment. The foundation of the High Court's judgment was to the effect that in the criminal trial the respondent was acquitted and placing reliance on a decision of this Court in *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr.*, [1999] 3 SCC 679 the order of termination was set aside.

In support of the appeal, learned counsel for the appellant submitted that the ratio in *Anthony's* case (*supra*) has no application to the facts of the present case. It has not even been indicated as to how the factual position is similar. In any event, acquittal in a criminal case does not lead to an automatic re-instatement and also does not render the departmental proceedings invalid. It was, therefore, submitted that the High Court was clearly wrong in its conclusion.

On the other hand, learned counsel for the respondent submitted that the departmental authorities in the enquiry conducted against the respondent had clearly found that he was not responsible for the accident and there was no misconduct involved.

The position in law relating to acquittal in a criminal case, its effect on departmental proceedings and re-instatement in service has been dealt with by this Court in *Union of India and Anr. v. Bihari Lal Sidhana*, [1997] 4 SCC 385. It was held in paragraph 5 as follows:

"5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be re-instated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control and Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent

- A had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government
- B employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the
- C power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Re-instatement would be a charter for him to indulge with impunity in misappropriation of public money.”
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The ratio of *Anthony's* case (supra) can be culled out from paragraph 22 of the judgment which reads as follows:

“The conclusions which are deducible from various decisions of this Court referred to above are:

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- (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
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- (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
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- (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.
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(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

Though the High Court had not indicated as to how the decision of this Court in *Anthony's* case (supra) laid down as a matter of law that whenever there is acquittal in a criminal trial re-instatement is automatic, in all probabilities basis was para 36 of *Anthony's* case (supra) which reads as follows:

"36. For the reasons stated above, the appeal is allowed, the impugned judgment passed by the Division Bench of the High Court is set aside and that of the learned Single Judge, insofar as it purports to allow the writ petition, is upheld. The learned Single Judge has also given liberty to the respondents to initiate fresh disciplinary proceedings. *In the peculiar circumstances of the case, specially having regard to the fact that the appellant is undergoing this agony since 1985 despite having been acquitted by the criminal court in 1987, we would not direct any fresh departmental enquiry to be instituted against him on the same set of facts.* The appellant shall be reinstated forthwith on the post of Security Officer and shall also be paid the entire arrears of salary, together with all allowances from the date of suspension till his reinstatement, within three months. The appellant would also be entitled to his cost which is quantified at Rs.15,000/-."

(underlined for emphasis)

The High Court unfortunately did not discuss the factual aspects and by merely placing reliance on earlier decision of the Court held that reinstatement was mandated. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not

- A everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the *ratio decidendi*. According to the well-settled theory of precedents, every decision contains three basic postulates (i) findings of material facts, direct and inferential. An inferential finding of facts is the
- B inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what
- C logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: *State of Orissa v. Sudhansu Sekhar Misra and Ors.*, AIR (1968) SC 647 and *Union of India and Ors. v. Dhanwanti Devi and Ors.*, [1996] 6 SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges
- D in their judgments are not to be read as if they are words in an Act of Parliament. In *Quinn v. Leatham*, (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but
- E governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

- Unfortunately, the High Court has not discussed the factual scenario as to how the *Anthony's* case (supra) had any application. As noted above, the
- F position in law relating to acquittal in a criminal case and question of reinstatement has been dealt with in *Sidhana's* case (supra). As the High Court had not dealt with the factual scenario and as to how the *Anthony's* case (supra) helps the respondent, we think it appropriate to remit the matter back to the High Court for fresh consideration. Since the matter is pending for
- G long, it would be in the interest of the parties if the High Court is requested to dispose of the writ petition within a period of 4 months from the date of receipt of this order.

The appeal is allowed to the aforesaid extent with no order as to costs.

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Appeal allowed.