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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10089 OF 2013  
(Arising out of SLP(C) No. 10725 of 2012)

Krishnakumar R. Appellant.

Versus

The Union of India & Ors...Respondents.

O R D E R

1. Leave granted.
2. The Judgment dated 10th November, 2011 delivered in OP (CAT) No. 3529 of 2011 by the High Court of Kerala has been challenged in this appeal.
3. The short question, with which we are concerned, is whether the punishment imposed upon the appellant, by the respondent-employer, is legal and proper.
4. As we are concerned mainly with the legality of the punishment imposed, we need not go into the facts of the case in detail. Suffice it to state that the appellant-employee was held guilty of a misconduct and therefore, the following punishment was imposed upon him by an order dated 29th April, 2008:  
. The penalty of reduction to the lower post of Clerk/Typist on a permanent basis is imposed on him. Accordingly, the undersigned in exercise of the powers vested on him under CCS (CCA) Rules, 1965 hereby orders the imposition of the penalty of reduction to the lower post of Clerk/Typist in the scale of pay of Rs.3050-75-3950-804590 on Shri R. Kirshnakumar, Accountant with immediate effect. The reduction is on a permanent basis and his pay on reversion will be fixed at Rs.3050/-. He will not draw any increments during a period of 5 years and such non draw 1 of increment will have cumulative effect.
5. The learned counsel appearing for the appellant has submitted that the aforestated punishment could not have been imposed at all for the reason that there is no such provision under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as the Rules) for the aforestated punishment.
6. It has been submitted that there is no provision for any penalty of reduction to the lower post on permanent basis. He has drawn our attention to the provisions of Part 5 and more particularly Rule 11 of the Rules, which pertains to the nature of minor and major penalties which can be imposed upon an employee. He has brought to our notice the provisions of Rule 11 (vi), which pertains to one of the major penalties, whereby time scale of pay can be reduced for a particular period. The learned counsel has submitted that as the penalty imposed upon the appellant, does not find place in any of the penalties which could be imposed, the imposition of penalty is bad and therefore, the impugned order, imposing penalty and the orders confirming the penalty are required to be quashed and set aside.
7. On the other hand, the learned counsel appearing for the respondent-employer has made a feeble attempt to support the case of the employer by submitting that the penalty was imposed as per Rule 11 (vi) of the Rules which is one of the major penalties. The learned counsel could not become unfair and could not justify the punishment imposed because by virtue of the punishment imposed, the appellant has been placed in the lower post on permanent basis whereas there is no provision for reversion of an employee by way of punishment to a lower cadre on permanent basis.
8. Provisions of Rule 11 (vi) read as under:  
Rule 11 (vi): Reduction to lower time-scale of pay, grade, post or Service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post or service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period.  
(a) the period of reduction to time-scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and  
(b) the Government servant shall regain his original seniority in the higher time scale of pay, grade, post or service.

9. Upon perusal of the aforestated provision, it is very clear that by way of major penalty, a n employee can be placed in a lower time scale of pay, grade, post or service, for a period wh ich might be specified in the order of penalty but there is no provision with regard to revert ing an employee by way of punishment to a lower post on permanent basis.

10. In view of the aforestated clear legal position, in our opinion, the punishment imposed up on the appellant cannot be said to be legal and therefore, we quash the same and we also quash the order whereby the said punishment has been confirmed by the High Court.

11. In view of the nature of misconduct committed by the appellant, we feel that the responden t-employer was justified in imposing major penalty upon him but as the penalty imposed is not in consonance with the provisions of Rule 11 of the Rules, we remit the matter to the concerne d Disciplinary Authority so that the legal and proper punishment can be imposed upon the appel lant as per Rule 11 (vi) of the Rules. As the Disciplinary Authority had already decided to i mpose penalty under the aforestated Rule, we direct the Authority not to impose any other high er punishment but to use its discretion and impose punishment only under Rule 11(vi) of the Ru les by passing a fresh order which would be limited to the imposition of punishment only.

12. Looking at the peculiar facts of the case, though we quash and set aside the order of puni shment, we do not direct difference of payment of salary, if any, to be made to the appellant .

13. In view of the above order, the impugned order, imposing punishment as well as the order o f the High Court confirming the punishment are quashed and appeal is allowed with no order as to costs.

.....J.  
(ANIL R. DAVE)

.....J  
(DIPAK MISRA)

New Delhi  
October 29, 2013.  
ITEM NO.6

COURT NO.11

SECTION XIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).10725/2012

(From the judgement and order dated 10/11/2011 in OP No.3529/2011 of The HIGH COURT OF KERALA AT ERNAKULAM)

KRISHNAKUMAR R.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for permission to place addl. documents on record and prayer for interim relief and office report)

Date: 29/10/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ANIL R. DAVE  
HON'BLE MR. JUSTICE DIPAK MISRA

For Petitioner(s)Mr. Raju Ramachandran,Sr.Adv.  
Mr. G. Prakash,Adv.  
Mr. Shambo Nandy,Adv.

For Respondent(s)Ms. Gurkirat Kaur,Adv.  
Ms. Neelam Navjot,Adv.  
For Mr. D.S. Mahra,Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed with no order as to costs in terms of the signed order.

(Sarita Purohit)  
Court Master

(Sneh Bala Mehra)  
Court Master

(Signed order is placed on the file)