

NON- REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.2768-2769 OF 2013
[ARISING OUT OF SLP (CIVIL) Nos.719-720 OF 2011]

Mohd. Yousuf

... Appellant

Versus

Director General of Fire Services, A. P. & Ors.

... Respondents

JUDGMENT

Aftab Alam, J.

1. Delay condoned.
2. Leave granted.
3. One of these two appeals is directed against the main judgment and order, dated March 23, 2005 passed by a division bench of the Andhra Pradesh High Court in writ petition No.3478 of 2004. By this judgment, the High Court, allowed the writ petition filed by the respondents, set aside the order of the Andhra Pradesh Administrative Tribunal and restored and confirmed the order of the appellant's dismissal from service. Against the

judgment passed in the writ petition, the appellant filed a review petition (Miscellaneous Petition No.12798 of 2005) which was dismissed by order dated April 13, 2010. The other appeal is filed against the order dismissing the review petition.

4. The appellant was working as a driver at Fire Station Sanathnagar under the Fire Service Department. He was dismissed from service following an *ex-parte* enquiry on charges of unauthorized absence. The order of dismissal was passed on January 12, 1994 but dismissal from service was made retrospective, with effect from December 29, 1992.

5. The case of the appellant was that on account of ill health and family issues, he had submitted an application for voluntary retirement from service with effect from December 1, 1992 under rule 43(1) of the Andhra Pradesh Revised Pension Rules, 1980. His application was neither accepted nor rejected, but on November 19, 1992, he was informed that a charge memo bearing No. 15/PR/89 was pending against him and, therefore, his request for voluntary retirement would be considered only after its disposal. On November 25, 1992, the appellant represented before the departmental authority that the charge memo was disposed of in the year 1990 itself and requested that action be taken on his application for voluntary retirement. On November 26, 1992, the appellant was advised by the Divisional Fire

Officer to perform his duties till further orders were received from the Regional Fire Officer. The matter stood at that stage when the appellant, while on duty on December 29, 1992 became ill and was admitted to the hospital where he was advised by the doctors complete bed rest for at least two months. While the appellant was unwell and was undergoing treatment, a charge memo, being Rc. 4/PR/A2/93 was issued against him on July 5, 1993. An *ex-parte* enquiry was held and the enquiry report was submitted to the Director General of Fire Services on November 27, 1993 and finally by order dated January 12, 1994, the appellant was dismissed from service without being given a copy of the enquiry report or any opportunity to show cause against the proposed punishment.

6. The appellant took recourse to departmental appeals. His appeals to the departmental officers were unsuccessful, but at the end of the hierarchy, the Home Minister passed the order on March 22, 1999 directing that the appellant's dismissal would be effective from the date of the order i.e. January 12, 1994 and not from the earlier date, December 29, 1992.

7. His dismissal order was revised accordingly.

8. Failing to get the desired relief from the departmental authorities, the appellant finally moved the Administrative Tribunal by O.A. No.4949/2000. The Tribunal by its order, dated March 11, 2003 found and held that the

enquiry was not conducted in accordance with the A.P.C.S. (CC & A) Rules 1991, and no enquiry report was furnished to the appellant. Further that on receipt of the Enquiry Officer's report, the Regional Fire Officer straightaway issued the order of punishment dismissing the applicant from service and, hence, his order was not in accordance with the A.P.C.S. (CC & A) Rules, 1991.

9. On a consideration of the material facts and circumstances, the Tribunal came to the conclusion that the order of the appellant's dismissal from service was wrongly passed. However, the Tribunal observed that the appellant had attained the age of 59 years in the year 2000 and had thus, retired from service in that year itself. Accordingly, while allowing the OA by order dated March 11, 2000, the Tribunal directed the respondents to pay to the appellant his terminal dues, including pension.

10. The respondents challenged the order of the Tribunal by filing a writ petition before the High Court and the High Court by its judgment and order dated March 23, 2005 allowed the writ petition and set aside the judgment and order passed by the Tribunal. The review petition filed by the appellant was also dismissed by order dated April 13, 2010. The appellant has finally brought the matter to this Court in appeal by special leave.

11. On hearing Mr. Devesh Singh, learned counsel appearing for the appellant and Mr. G.N. Reddy, learned counsel appearing for the respondents and on going through the materials on record, including the judgments of the Tribunal and the High Court, we are of the view that the Tribunal's judgment is well founded on a proper consideration of all the material facts and circumstances and we see no reason for the High Court to interfere with that judgment, particularly on issues of facts.

12. The High Court has taken the view that the *ex parte* enquiry held against the appellant could not be faulted as his whereabouts were not known and has also justified the non-supply of a copy of the enquiry report to the appellant for the same reason. However, the High Court seems to have overlooked that the notice with regard to the departmental enquiry was sent at the address of house No.147 but the correct address of the appellant was house No.177 and not No.147. Thus, the *ex parte* enquiry and the order of dismissal passed on that basis were quite vulnerable and the Tribunal has rightly held that the order of dismissal was passed on the basis of an enquiry which is untenable in law.

13. In the facts of the case, there was no occasion for the High Court to exercise its jurisdiction under Article 227 of the Constitution. We,

accordingly, set aside the impugned orders of the High Court and restore the order of the Tribunal.

14. In the result, the appeals are allowed but with no order as to costs.

.....J.
(Aftab Alam)

.....J.
(Ranjana Prakash Desai)

New Delhi
April 2, 2013.



JUDGMENT