

(FULL BENCH)

Before J. S. Sekhon, R. S. Mongia and N. K. Kapoor, JJ.

D. L. KATYAL, ACCOUNTS EXECUTIVE, INDIAN DRUGS AND PHARMACEUTICALS LTD., DUNDAHERA, (GURGAON),—
Petitioner.

versus

THE INDIAN DRUGS AND PHARMACEUTICALS LIMITED,
DUNDAHERA, GURGAON, HARYANA AND OTHERS,—Res-
pondents.

Civil Writ Petition No. 5567 of 1989.

17th December, 1992.

*Constitution of India, 1950—Art. 226—Indian Drugs and Pharmaceu-
ticals Limited Conduct, Discipline and Appeal Rules, 1978—Rl. 5—
Doctrine of prospective application—Judgment rendered by Supreme
Court in Mohd. Ramzan's case—Furnishing a copy of enquiry report
to delinquent made essential—Direction given as to its prospective
effect—Supreme Court followed Mohd. Ramzan's case in several
cases—Punitive orders passed against delinquent prior to Mohd.
Ramzan's judgment—Held, such orders are not coverable under the
law laid down in Mohd. Ramzan's case—Judgment also not applicable
to matters sub-judice on that day.*

*Held, that in view of the observations of the Supreme Court as
noticed, the law laid down by the Supreme Court in Mohd. Ramzan's
case is to apply prospectively. The impugned orders in the present
case cannot be set aside on the ground that enquiry report had not
been supplied to the petitioner before the Punishing Authority passed
the impugned order. (Paras 10 & 11).*

*Held further, that the judgment of this Court in Madan Lal's
case holding that the law laid down by the Supreme Court in Mohd.
Ramzan's case would also be applicable to the matters which were
sub-judice in some Courts of law is no more good law in view of
later judgments of the Apex Court. (Para 10)*

*Civil Writ Petition under Articles 226/227 of the Constitution of
India praying that :—*

- (i) Records of the case be summoned;
- (ii) a writ in the nature of certiorari quashing the order dated 26th May, 1988, Annexure P/3 and the order dated 2nd February, 1989, Annexure P/5, by which the penalty has been imposed on the petitioner and his appeal against the order imposing the penalty has been rejected with all consequential benefits including arrears of pay etc., be issued;

- (iii) *It is further prayed that this Hon'ble Court may be pleased to issue any other appropriate writ, order or direction that it deems fit in the peculiar circumstances of the case.*
- (iv) *issuance of advance notices to the respondent under the High Court Rules and Orders may kindly be dispensed with;*
- (v) *filing of certified copies of Annexures P/1 to P/2 may kindly be dispensed with ;*
- (vi) *Costs of the petition may kindly be granted to the petitioner.*

(Case referred by the Divisional Bench consisting of Hon'ble Mr. Justice R. S. Mongia, Mr. Justice J. L. Gupta, on 24th January, 1992, to a larger Bench for deciding on points of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice J. S. Sekhon, Hon'ble Mr. Justice R. S. Mongia and the Hon'ble Mr. Justice N. K. Kapoor, decided the case finally on 17th December, 1992, and remitted the case to the Division Bench (as initially the case was admitted to D.B.), for deciding any other point that may be raised by the petitioner).

P. S. Patwalia, Advocate, for the Petitioners.

Munishwar Puri with Miss Deepali Puri, Advocate, for the Respondents.

JUDGMENT

R. S. Mongia, J.

The petitioner is an employee of the Indian Drugs and Pharmaceuticals Limited, Dundahera, (Gurgaon) (in short I.D.P.L.). A departmental enquiry was initiated against him, while he was working as Accounts Executive, under Rule 5 of the I.D.P.L. Conduct, Discipline and Appeal Rules, 1978, for imposing a major penalty. The enquiry was conducted by Senior Personnel Manager, I.D.P.L., who submitted his report to the Punishing Authority, i.e., the Director, Finance. The Punishing Authority,—*vide* order dated 26th May, 1988 (Annexure P. 3) imposed the punishment of reduction of pay to the lower stage in the time scale for a period of two years. The petitioner remained unsuccessful before the Appellate Authority. The present writ petition was filed challenging the orders of imposition of punishment and rejection of appeal.

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(2) The Motion Bench admitted the writ petition on 26th April, 1989, by passing the following orders :—

“Cites *J. C. Mehta, S.E. PGI v. P.G.I. Chandigarh*, 1984(4)
S.L.R. 768.

Admitted to D.B.

To be heard alongwith L.P.A. No. 1150 of 1988.”

(3) L.P.A. No. 1150 of 1988 was an appeal filed by the PGI against the judgment in *J. C. Mehta's* case, which was relied upon by the petitioner at the time of admission. The said Letters Patent Appeal was allowed and the judgment of the learned Single Judge was reversed. The judgment of the Letters Patent Bench is now reported as 1991(1) S.L.R. 127. The present petition somehow was not heard along with the said Letters Patent Appeal.

(4) After the judgment, the writ petition came up for hearing before a Division Bench. An argument was raised on behalf of the petitioner that the writ petition deserves to be allowed in view of the judgment of the Supreme Court in *Union of India and others v. Mohd. Ramzan Khan* (1), notwithstanding the judgment of the Letters Patent Bench in L.P.A. No. 1150 of 1988 (1991(1) S.L.R. 127).

(5) In *Mohd. Ramzan's* case (supra), it has been decided that in conformity with the Rules of natural justice, it is incumbent that before final decision is taken by the punishing Authority, a copy of the report of the Enquiry Officer must be supplied to the delinquent official. Since, according to the learned counsel for the petitioner, the enquiry report had not been supplied, the order of punishment was vitiated. On the other hand, the learned counsel for the respondents submitted before the Division Bench that the ratio of the Judgment of the Supreme Court in *Mohd. Ramzan's* case (supra) would only apply prospectively and would not affect the orders of punishment passed prior to the date of the judgment. He relied upon the following observations of the Supreme Court in *Mohd. Ramzan's* case (supra):—

“There have been several decisions in different High Courts which, following the Forty-Second Amendment, have

(1) AIR 1991 S.C. 471.

taken the view that it is no longer necessary to furnish a copy of the inquiry report to delinquent officers. Even on some occasions this Court has taken that view. Since we have reached a different conclusion the judgment in the different High Courts taking the contrary view must be taken to be no longer laying down good law. We have not been shown any decision of a co-ordinate or a larger Bench of this Court taking this view. Therefore, the conclusion to the contrary reached by any two-judge Bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective application and no punishment imposed shall be open to challenge on this ground."

(6) The judgment in *Mohd. Ramzan's case* (supra) was delivered on 29th November, 1990, and, since, according to the learned counsel for the respondents, the order of punishment in this case was passed prior to that, i.e. 26th May, 1988, the law laid down in *Mohd. Ramzan's case* (supra) would not be applicable.

(7) Learned counsel for the petitioner cited a Division Bench judgment of this Court in *Madan Lal v. Registrar Co-operative Societies, Punjab and others* (2), which held that the law laid down by the Supreme Court in *Mohd. Ramzan's case* (supra) would also be applicable to the matters which were *sub-judice* in some Courts of Law on that date. The Learned counsel for the respondents submitted that the Division Bench judgment in *Madan Lal's case* (supra) needed reconsideration by a Larger Bench in view of the observations of the Supreme Court in *Mohd. Ramzan's case*, referred to above. The Division Bench hearing the present petition, -- *vide* order dated 24th January, 1992, referred the matter to a Larger Bench as to whether *Madan Lal's case* (supra) laid down correct law or not. That is how we are sized of the matter.

(8) It has been fairly conceded by the learned counsel for the petitioner that the controversy, which was sought to be settled by the Full Bench, has since been set at rest by the Supreme Court itself. In *S. P. Viswanathan v. Union of India and others* (3), the Apex Court observed as under :—

"Learned counsel for the petitioner urged that since a copy of the inquiry report was not supplied to the petitioner

(2) 1991 (5) S.L.R. 430.

(3) Writ Petition No. 145 of 1989 decided on 6th March, 1991.

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the order of termination is vitiated. He placed reliance on the decision of this Court in *Union of India v. Mohd. Ramzan Khan*, A.I.R. 1991 S.C. 491. It is true that this Court has held that if inquiry report is not supplied to the delinquent employee before passing the order of punishment the order would be rendered illegal. But the decision of this Court is given a prospective effect, it will not affect the orders passed prior to the date of rendering the judgment (November 20, 1990) as would be clear from para 17 of the judgment.

The Apex Court (4), after quoting the above mentioned para, (i.e. para 17) in *Mohd. Ramzan's case* regarding its prospective application, observed as under :—

“The judgment in *Mohd. Ramzan's case* was delivered by this Court in November 20, 1990. The respondent was dismissed from service by the order dated February 2, 1989. It is, therefore, obvious that the respondent cannot take advantage of the law laid down by this Court in *Mohd. Ramzan's case*. The High Court therefore, fell into patent error in quashing the dismissal order.”

(9) Another Three Judge Bench of the Supreme Court in *Bhagirath Gramin Bank and others v. Brijinder Kumar Srivastava* (5), again after noticing the above quoted para from the Judgment of *Mohd. Ramzan's case* (supra), observed as under :—

“Now the judgment in *Mohd. Ramzan's case* was delivered on November 20, 1990, whereas the respondent was dismissed from service before that date on January 15, 1987. If the doctrine of prospective application is invoked, it is obvious that the benefit of the judgment cannot go to the respondent delinquent.”

(10) In view of the observations of the Supreme Court, as noticed above, it cannot be but held that the law laid down by the Supreme Court in *Mohd. Ramzan's case* is to apply prospectively. With due respect to the learned Judges of the Division Bench in

(4) S.L.P. No. 4155 of 1992 decided on 9th September, 1992.

(5) S.L.P. No. 7631 of 1992 decided on 23rd October, 1992.

Madan Lal's case (supra), we hold that the same does not lay down correct law.

(11) In view of what has been stated above, the impugned orders in the present case cannot be set aside on the ground that enquiry report had not been supplied to the petitioner before the Punishing Authority passed the impugned order.

(12) The learned counsel for the petitioner submitted that apart from the above point, there are certain other points also in the case, on the basis of which the impugned order cannot be sustained. Keeping in view the submission of the learned counsel for the petitioner, we remand the case to the Division Bench (as initially the case was admitted to D.B.), for deciding any other point that may be raised by the petitioner.

J.S.T.