SUPREME COURT OF INDIA

Om Prakash Gupta

Vs.

State of U.P.

C.A.No.85 of 1954

(Vivian Bose, N. H. Bhagwati, B. Jagannadhadas, T. L. Venkatarama Ayyar, B. P. Sinha and S. J. Imam, JJ.)

21.04.1955

JUDGEMENT

IMAM, J.:-

1. This is an appeal against the decision of the Allahabad High Court affirming the decision of the Civil Judge of Allahabad.

2. The appellant was appointed to the United Provinces Civil (Executive) Service in1940 and in due course was confirmed. He was posted to various stations and in 1944 he was posted to Lakhimpur Kheri, where he joined in July 1944. On 23-8-1944, the Deputy Commissioner of Lakhimpur Kheri received a telegram from Government informing him that the appellant was suspended forthwith pending inquiry into his conduct and that a copy of the telegram was forwarded to the appellant for information. On 26-8-1944, the Deputy Commissioner wrote to the appellant that he was required to appear before the Commissioner of the Lucknow Division on 28-8-1944, to answer the charges, a copy of which would be forwarded to him. He further informed the appellant that he could treat his case under rule 55 of the Civil Services (Classification Control and Appeal) Rules of 1930, published in the United Provinces Gazette of 28-6-1930.

The appellant was further informed that in view of his suspension his leave application was cancelled. On 28-8-1944, the appellant appeared before the Commissioner at Lucknow and protested against the procedure adopted by him for the inquiry. The Commissioner having completed the inquiry on 1-9-1944, submitted his report to Government. The Commissioner, however, recommenced the inquiry on 11-9-1944, and after completing the inquiry submitted, the papers to Government on 30-9-1944.

The Government of the United Provinces by an order dated 25-11-1944, dismissed the appellant from the United Provinces Civil (Executive) Service. This order was served on the appellant on 1-12-1944, and he submitted a memorial to the Governor on 7-8-1945, which was rejected on 28-5-1947. During the period of suspension the appellant was paid subsistence allowance at the rate of one-fourth of his salary which was then Rs. 310 per month.

3. The appellant gave notice under S. 80, civil P. C. of his intention to bring a suit and on 2-1-1948, he filed his suit. He asked for a declaration that the order of dismissal was wrongful, illegal, void and inoperative and that he still continued to be a member of the Civil Service entitled to full pay

with all increments as they fell due. He prayed for a decree for recovery of arrears of salary amounting to Rs. 16, 810-8-0 less subsistence allowance already drawn from 24-8-1944, to 31-12-1947.

In the alternative he prayed for a declaration that the order of dismissal was wrongful and that a decree to the extent of Rs. 1,20,000 with interest by way of damages may be passed in his favour. He paid the requisite court-fee on the valuation of Rs. 1,20,000. This alternative claim was deleted from the plaint as a result of an amendment having regard to a subsequent decision of the Privy Council which held that a person illegally dismissed from Government service could only get a declaration that the order was inoperative and that he still continued to be a member of the Service.

4. The appellant asked for refund of the extra court-fee paid which was rejected by the Civil Judge by a separate order. The Civil Judge, however, decreed the appellant's suit in part declaring that the order dismissing him from service was illegal and that he still continued to be a member of the United Provinces Civil (Executive) Service. The Civil Judge, however, declined to pass a decree for arrears of salary.

5. Against the decision of the Civil Judge the appellant appealed to the High Court and his appeal was dismissed. The respondent did not appeal against the decision of the Civil Judge or file a cross-objection. The appeal in the High Court proceeded on the basis that the order of dismissal made against the appellant was illegal and that it was rightly declared that he continued to be a member of the service of the United Provinces Civil (Executive) service.

The only two questions which were considered and decided by the High Court were as to whether the appellant was entitled to a decree for arrears of salary and a refund of the excess court-fee paid by him. Both these questions were decided against the appellant by the High Court which subsequently gave him a certificate for leave to appeal to this Court.

6. It may be stated at once that in view of the decision of this Court in - 'State of Bihar v. Abdul Majid', AIR 1954 SC 245 (A) there can be no question now that the appellant had the right to institute a suit for recovery of arrears of salary as he was dismissed illegally. It is unnecessary, therefore, to refer to the elaborate discussion of the law in this respect to be found in the judgment of the learned Judges of the High Court.

7. When this appeal came on for hearing before this Court and the appellant had been heard the Attorney-General in the course of his argument had contended that the order of suspension of August 1944 subsisted although the order of dismissal had been declared illegal by the Civil Judge and all that the appellant was entitled to was subsistence allowance and not salary so long as the order of suspension remained effective.

This plea was not taken in the written statement filed in the trial Court, nor was there any issue framed in this respect. The Attorney-General asked for time to file an additional written statement on behalf of the respondent. This Court allowed time for the respondent to do so and the appellant was also given time to reply to any additional written statement filed on behalf of the respondent. The respondent filed the additional written statement and the appellant filed his reply to it.

Thereafter the appeal came on for hearing again and the learned Advocate for the appellant made his submissions on the additional written statement and the Attorney-General replied to the same.

8. So far as the payment of excess court-fee is concerned, the learned Advocate for the appellant did

not urge this point in his opening argument but urged it in reply after the Attorney-General had concluded his argument. Apart from the question as to whether the Advocate can be allowed to urge a point like this in reply when no submission had been made by him in his opening, it seems there is no merit in the submission made by the Advocate. The court-fee had been paid on Rs. 1,20,000/- which was claimed as damages.

At the time the suit was instituted the law as then understood permitted such a claim to be made. The decision of the Privy Council, however, made it clear that no such claim could be made and all that a Government servant could ask for was a declaration that the order of dismissal was illegal and that he still continued to be a member of the Civil service. The decision of the Privy Council clarifying the position could not be a ground for refund of court-fee when at the time it was paid it was in accordance with the law as then understood. Indeed the appellant did not appeal or file an application against the order of the Civil Judge refusing to pass an order of refund.

In the High Court he did not ask for this relief on the basis of any statutory provision. He invoked the inherent powers of the High Court. The Court-fees Act contains certain provisions for refund of court-fee paid by a party but admittedly the present case is not covered by any of those provisions. It seems, therefore, that the High Court in the circumstances of the present case rightly refused to order a refund of the excess court-fee paid by the appellant. It also does not appear that the Civil Judge acted illegally in refusing to order a refund.

9. On the additional written statement filed in this Court by the respondent a question has arisen whether the order of suspension was valid and during the period it was in force the appellant could recover arrears of salary. The learned Advocate for the appellant contended that an order of suspension is a penalty under R. 49 of the Classification Rules and it was against all sense of natural justice to impose a penalty upon a Government servant pending an inquiry against him under R.55 of the said Rules.

An order imposing the penalty of suspension was an appealable order under R. 56 of the Classification Rules and under R. 59 of the said rules, an appellate authority was bound to consider whether the facts on which the penalty was imposed had been established and whether those facts disclosed sufficient grounds for imposing such a penalty. Rule 54 of the Fundamental Rules authorise a revising or an appellate authority, when it finds that the penalty of suspension was unjustified or not wholly justified, to make an order granting to the Government servant his full pay and any allowance to which he was entitled if he was honourably acquitted and in other cases such proportion of pay and allowances as it may prescribe.

The penalty of suspension, it was urged, involved serious loss in the matter of salary and allowances and to impose this penalty pending an inquiry was to prejudge the case against a Government servant and in effect to make his right of appeal a meaningless remedy. It was pointed out that in some of the Rules framed by a Government or quasi-Government authority the penalty of suspension pending an inquiry was specifically provided for, such as R. 95 of the Bihar and Orissa Service Code referred to in Abdul Majid's case (A) and R. 1711 of the Indian Railway Establishment Code.

On behalf of the appellant reference was also made to certain decision to the effect that as between master and servant, the master had no power of suspension unless there was an express term to that effect in the contract between them.

10. The Attorney-General conceded that apart from the Classification Rules and the Fundamental Rules he was not aware of any other Rules under which the penalty of suspension could be imposed upon a Government servant. He also conceded that under the Classification Rules an order of suspension was a penalty. He further conceded that as between master and servant the former had no power of suspension unless the terms of the contract between them permitted it or a statute or a rule provided for it but this principle, he said, did not apply to a person in the service of the Crown in India.

He, however, contended that under R. 49 of the Classification Rules a penalty of suspension could be imposed pending an inquiry. There was nothing in the rule itself which enjoined that a penalty could only be imposed at the conclusion of an enquiry. The penalty could be imposed for good and suifficient reasons which may be based on materials already existing pending an inquiry. After the inquiry there may be the imposition of a severer penalty or a definite period of suspension may be fixed or there may be cancellation of the order of suspension.

No doubt there was a right of appeal against an order imposing a penalty of suspension pending an inquiry but the provisions of R. 54 of the Fundamental Rules did not necessarily lead to the conclusion that the penalty of suspension could only be imposed after an inquiry. Clause (a) of the said rule might contemplate a case where the penalty had been imposed after an inquiry but Cl. (b) could cover a case where the penalty had been imposed pending an inquiry. In the present case, he said, there was no contravention of any principle of natural justice as the appellant had an opportunity of explaining the accusation made against him.

The letter of the Commissioner of Lucknow Division with its annexure, marked Ex. A in the trial Court, clearly showed that the Deputy Commissioner Lakhimpur Kheri had recorded statements of persons with reference to three cases and the appellant saw him in connection therewith. He admitted the facts but tried to explain them. He, however, declined to give his statement in writing. The order of suspension made against him was based on materials of which he was fully aware.

11. In the alternative the attorney-General urged that in the year 1944 the appellant was a member of the Civil Service of the Crown in India holding office during the pleasure of the Crown. There was, therefore, inherent power in the Crown and its representative to pass an order of suspension against the appellant pending an inquiry. The Classification Rules and Fundamental Rules were merely directions for general guidance and they did not constitute a contract between the Crown and its servants.

For this proposition he referred to the observations of Lord Hobhouse in the case of - 'Shenton v. Smith', 1895 A. C. 229 (B) . He also relied upon the following observations of Lord Roche in the case of - 'Venkata Rao v. Secretary of State, AIR 1937 P.C. 31 (C).

"Section 96-B in express terms states that office is held during pleasure. There is, therefore, no need for the implication of this term and no room for its exclusion. The argument for a limited and special kind of employment during pleasure but with an added contractual term that the rules are to be observed is at once too artificial and too far-reaching to commend itself for acceptance. The rules are manifold in number and most minute in particularity, and are all capable of change.

....Inconvenience is not a final consideration in a matter of construction, but it is at least worthy of consideration, and it can hardly be doubted that the suggested procedure of control by the courts over Government in the most detailed work of

managing its services would cause not merely inconvenience but confusion"

12. In the Courts below the principal question for consideration was whether the appellant could recover arrears of salary having been illegally dismissed. It was not pleaded that the order of suspension was valid and during the period it was in force the appellant could not recover arrears of salary and no specific issue was framed in this respect. If the decision of this Court in Abdul Majid's case (A) had been available to the Courts below, they would have held that the appellant was entitled to recover arrears of salary when he had been illegally dismissed and they would have had further to decide whether the order of suspension was valid and during the period it was in force the appellant could recover arrears of salary.

On the additional written statement filed by the respondent in this Court, the submissions of the Advocate for the appellant and the Attorney-General would require examination and it might have been necessary to consider whether the case should not be remanded to the Court of trial. It is unnecessary, however, to record a decision on these submissions having regard to the attitude adopted by the Advocate for the appellant. He objected to the case being remanded as such a course would involve the appellant in heavy expenditure and harassment.

The appellant preferred to give up his claim for arrears of salary less subsistence allowance paid to him from the date of the order of suspension until the date of the order of dismissal. He, however, contended that the order of suspension continued to be in force only until 25- 11-1944, the date of the order of dismissal. On that date the order of suspension cased to exist and the appellant was entitled to recover arrears of salary from 25-11-1944 to 31-12-1947, inclusive.

The Attorney-General strongly contended that it continued to be in force and that it was not at all affected by the declaration of the Civil Judge that the order of dismissal was illegal. In view of that decision the order of dismissal must be regarded as a nullity and non-existent in the eye of law. The inquiry, the outcome of which was the order of dismissal, had not therefore ended. It could only end with a valid order which would replace the order of suspension. Until that happened the accusation against the appellant remained and the inquiry had not ended.

He referred to the case of - 'Gopalkrishna Naidu v. State of Madhya Pradesh', AIR 1952 Nag 170 (D). On behalf of the appellant reliance was placed on the case of - 'Provincial Govt., C. P. and Berar v. Shamshul Hussain', AIR 1949 Nag 118 (E). The order of suspension made against the appellant was clearly one made pending an inquiry. It certainly was not a penalty imposed after an enquiry. As the result of the inquiry an order of dismissal by way of penalty had been passed against the appellant.

With that order, the order of suspension lapsed. The order of dismissal replaced the order of suspension which then ceased to exist. That clearly was the position between the Government of the United Provinces and the appellant. The subsequent declaration by a Civil Court that the order of dismissal was illegal could not revive an order of suspension which did not exist.

The case referred to by the Attorney-General is not directly in point and that decision does not conflict with the case relied upon by the appellant. The appellant is, therefore, entitled to recover arrears of salary from 25-11-1944, to 31-12-1947.

13. The appeal is accordingly allowed in part with costs throughout and the decree of the Courts below is set aside. The plaintiff's suit is decreed for arrears of salary from 25-11-1944 to 31-12-

1947, inclusive. The appellant had claimed Rs. 16,810-8-0 less subsistence allowance already drawn as arrears of pay front 24-8-1944 to 31-12-1947. As his claim for arrears of salary from 24-8-1944 to 25-11-1944, is given up, the total salary payable to him during this period less subsistence allowance already drawn, must be deducted from the sum of Rs. 16,810-8-0.

The judgment of the High Court as well as the additional written statement filed by the respondent in this Court show that subsequent to the decree passed by the Civil Judge the appellant was treated as under suspension until he was dismissed by a fresh order of dismissal and that he has been paid subsistence allowance for the entire period. Such subsistence allowance as has been paid to the appellant from 25-11-1944, to 31-12-1947, inclusive, must, therefore, be credited to the respondent and the same must be adjusted against the salary claimed by the appellant. A decree will accordingly be prepared stating the amount recoverable, by the appellant.

14. The appellant was permitted to appeal in forma pauperis. As he has succeeded in the appeal, the Registrar shall calculate the amount of court-fee which would have been paid by the appellant if he had not been allowed to appeal as a pauper and incorporate it in the decree. The court-fee shall be payable by the appellant but the Union Government will recover it from the Uttar Pradesh Government who will adjust the sum paid against the total amount payable under the decree.

It will be a first charge on the amount decreed to the appellant. Under R. 7 of O. 14 of the Rules of this Court the appellant will be allowed the fees paid by him to his Advocates in the taxation of costs.

Appeal partly allowed.

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