SUPREME COURTOF INDIA

Union of India

Vs.

Jeewan Ram

C.A.No.379 of 1956

(S. R. Das, C.J.I., T. L. Venkatarama Ayyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ.)

13.03.1958

JUDGEMENT

S. K. DAS, J.:

1. This is an appeal on behalf of the Union of India which has been brought to this Court on a certificate granted by the learned Judicial Commissioner of Ajmer and is directed against the Judgment and decree of the said Judicial Commissioner, dated 15-2-1954. By that judgment the learned Judicial Commissioner reversed the decision of the courts below and made a declaration in favour of the respondent to the effect that the order of removal from service passed against him on 16-3-1949, was illegal and ineffective. The facts giving rise to the appeal are these.

2. The respondent, who was the plaintiff in the court of first instance, was appointed an assistant booking clerk at Ajmer in the then B. B. and C. I. Railway system on 15-7-1947. He was permanent on 26-5-1948. On 7-2-1949, the respondent received a memorandum from the Station Master, Ajmer, to the effect that he had been placed under suspension from that date under the orders of the Traffic Superintendent, Ajmer. It was alleged against the respondent that on that date he had refused to issue forty-eight third class tickets for Makrana to a passenger, unless the latter paid Rs. 2-1-0 per ticket as against the correct charge of Rs. 1-15-0 and that he had further refused to issue all the forty-eight tickets for that station. A charge sheet was drawn up against the respondent on 21-2-1949, with regard to the allegations referred to above, and he was directed to show cause why he should not be punished with dismissal from service under R. 1702 of the Indian Railway Establishment Code, Vol. 1. This charge sheet was served on the respondent on 22-2-1949, and he was asked to submit his written explanation within seven days. The respondent submitted his explanation on 28-2-1949, and in that explanation he denied the allegations made against him. On 16-3-1949, an order was passed against the respondent stating that he would be given one month's pay in lieu of notice of removal from service with effect from 18-3-1949. This was the order impugned by the respondent in his suit and must be quoted in full.

"B. B. and C. I. Railway.

Notice of imposition of the penalty of removal from service under item (8) of Rule 1702.

From D. T. S. BKI.

To Jeewan Ram, Y 2093

R. A. B. C. AII

No. EY. 2093A.

You are hereby informed that in accordance with the orders passed by me you are given one month's pay in lieu of notice of removal from service with effect from 18-3-1949 A/N.

Date 16-3-49. Sd. D. T. S. BKI.

N. B. Please see reverse. P. T. O."

3. On the reverse appear the following notes :

"(b) Settlement of your dues will be made at Ajmer C/o. S. M.

(c) You will be given a subsistence grant at the rate of 1/2 of your pay for the period you remained under suspension i.e., from 8-2-49 to 18-3-49, both dates inclusive.

(d) Under Rule 1717 an appeal against these orders lies to T. S. Ajmer".

4. The Respondent preferred an appeal against the order, which was dismissed on 3rd August 1949. Then, on 17-10-1949, the respondent served a notice under S. 80 of the Code of Civil Procedure on the General Manager, B. B. and C. I. Railway, and on 9-1-1950, the respondent brought a suit against the then Dominion of India in which he asked for the following reliefs :-

"(i) a declaration that the discharge of the plaintiff from service is illegal and arbitrary and that the plaintiff is entitled to the compensation claimed for;

(ii) for payment of Rs. 1120-9-7;

(iii) for payment of such amount as may fall due from the date of suit to the date of his re-instatement; and

(iv) for costs of the suit".

The learned Additional Subordinate Judge, Ajmer, dismissed the suit on the findings (1) that the notice under S. 80, Civil Procedure Code, was not in accordance with law, (2) that the order of removal of the respondent from service was not illegal, and (3) that the respondent was not entitled either to claim re-instatement or damages. The learned Additional Subordinate Judge pronounced his judgment on 5-11-1952. The respondent then preferred an appeal which was heard by the learned District Judge, Ajmer. The learned District Judge affirmed in effect the findings of the learned Additional Subordinate Judge, by his judgment dated 24-3-1953. The respondent then preferred a second appeal to the learned Judicial Commissioner who reversed the decision of the courts below and held (1) that the notice under S. 80 Civil Procedure Code, was a valid notice (2) that the order of removal dated 16-3-1949, was clearly an order of punishment, and (3) that it was illegal and ineffective, because the order was passed in contravention of the provisions of S. 240(3) of the Government of India Act, 1935.

5. Learned counsel for the appellant has contested before us the main finding of the learned Judicial Commissioner to the effect that the impugned order of 16-3-1949, was illegal and ineffective. He has referred us to Rs. 148, sub-rr. (3) and (4) of the Indian Railway Establishment Code, Vol. I (pp. 20, 21) and has contended that the service of the respondent was terminated in accordance with the terms and conditions of his contract of service; therefore, S. 240(3) of the Government of India Act, 1935, does not apply in the present case. It is necessary to refer here to some of the rules of the Indian Railway Establishment Code. Sub-rules (3) and (3) of R. 148, so far as they are relevant in this case, are in these terms :

"(3) The service of other (non-pensionable) railway servants shall be liable to termination on notice on either side for the periods shown below. Such notice is not however required in cases of summary dismissal or discharge under the provisions of service agreements, retirement on attaining the age of superannuation, and termination of service due to a mental or physical incapacity -

....

(d) Permanent Non-gazetted employees 1 month's notice.

(4) In lieu of the notice prescribed in this rule, it shall be permissible on the part of the Railway Administration to terminate the service of a railway servant by paying him the pay for the period of notice."

It is submitted on behalf of the appellant that the service of the respondent who was a permanent, non-gazetted employee was liable to termination on one month's notice and, under sub-r. (4) it was permissible on the part of the Railway Administration to terminate his service by paying him the pay for the period of notice. In regard to disciplinary matters, however, the relevant rules are to be found in Chap. XVII and R. 1702 states the items of penalties which, for good and sufficient reasons, may be imposed upon railway servants. Item (8) is 'removal from service' and item (9) 'dismissal from service' Rule 1706 states the circumstances in which a railway servant is liable to be dismissed from service and R. 1707 lays down the procedure to be followed for holding and enquiry when a railway servant is charged with an offence the maximum penalty for which is dismissal. Similarly, R.1708 states the circumstances in which a railway servant is liable to be removed from service and R. 1709 lays down the procedure for removal. Rule 1712 lays down the procedure for imposing other penalties, and under R. 1717 an appeal is provided from an order imposing any of the penalties specified in R. 1702. It is worthy of note that Cl. (b) of R. 1709 states that where the railway servant whom it is proposed to remove from service has not completed seven years' service, the procedure prescribed in R. 1712 shall be applied. Rule 1712 is in these terms :

"1712. Before an order imposing a penalty specified in items (2) to (6) of Rule 1702 or removal from service in the circumstances mentioned in Cls. (b) and (c) of Rule 1709 is passed against a railway servant, he shall be informed of the definite offences or failures on account of which it is proposed to impose the penalty and called upon to show cause why that or any lesser penalty should not be imposed. He should also be given three days' time in which to submit his explanation and be allowed reasonable facilities for the preparation of his defence." It should be noticed that R. 1712 also contemplates two stages in a disciplinary enquiry : the first stage is when the railway servant is informed of the definite offences or failures on account of which it is proposed to impose the penalty, and the second stage is when he is called upon to show cause why that or any lesser penalty should not be imposed.

6. The argument of learned counsel for the appellant is that, on a proper construction, the impugned order dated 16-3-1949, was not an order imposing a penalty under R. 1702, but was an order which terminated the service of the respondent in accordance with the conditions of his contract of service and therefore neither S. 240 (3) of the Government of India Act, 1935 nor R. 1712 applied in the case of the respondent. We are unable to accept this argument. Article 311(2) of the Constitution is in terms similar to S. 240(3) of the Government of India Act, 1935. These provisions were carefully considered by this Court in two recent decisions : Parshotam Lal Dhingra v. Union of India, Civil Appeal No. 65 of 1957 : (AIR 1958 SC 36) (A) and Khem Chand v. Union of India, Civil Appeal No. 353 of 1957 : (AIR 1958 SC 300) (B), decided on 1-11-1957 and 13-12-57, respectively. In Parshotam Lal Dhingra's case it has been held that the protection given to government servants by the provisions of Art. 311 is available "only in those cases where the Government intends to inflict the three forms of punishment", namely dismissal, removal and reduction in rank. When Government intends to inflict any of these three punishments, the government servant must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. It was then observed :

"It follows, therefore, that if the termination of service is sought to be brought about otherwise than by way of punishment, then the government servant whose service is so terminated cannot claim the protection of Art. 311(2)".

Dealing then with the problem as to when an order for the termination of service is inflicted as and by way of punishment, it was observed :

"Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by this Court in Satish Chander Anand v. Union of India, 1953 SCR 655 : (AIR 1953 SC 250) (C). Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Art. 311(2), as has also been held by this Court in Shyam Lal v. State of Uttar Pradesh, (1955) 1 SCR 26 : (AIR 1954 SC 369) (D). In either of the two abovementioned cases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under R. 52 of the Fundamental Rules. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla, C. J., has said in Shrinivas Ganesh v. Union of India, 58 Bom LR 673 : (S) AIR 1956 Bom 455 (E), wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Art. 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Art. 311 must be complied with."

In Khem Chand's case (B) (supra) it was held that the reasonable opportunity envisaged by the provisions of S. 240(3) of the Government of India Act, 1935 and Art. 311(2) of the Constitution included (a) an opportunity to the government servant to deny his guilt and establish his innocence which he can only do if he is told what the charges levelled against him are and the allegations on

which such charges are based; (b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority after the enquiry is over an after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant.

7. Let us now examine the question if the principles laid down in the aforesaid two decisions apply in the present case; for it is not disputed by learned counsel for the appellant that the respondent was not given an opportunity of making a representation as to why the proposed punishment should not be inflicted on him. In other words, it is not disputed that the provisions of S. 240(3) of the Government of India Act, 1935 were not complied with in this case. What is submitted by learned counsel for the appellant is that S. 240(3) does not apply at all. In an earlier part of this judgment we have quoted in full the impugned order of 16-3-1949. The order is headed : "Notice of imposition of the penalty of removal from service under item (8) of Rule 1702". Learned counsel for the appellant has submitted that the heading does not correctly indicate the true nature of the order, and he has emphasised the fact that the order itself talked of one month's pay in lieu of notice which according to him, meant that the order was an order under R. 148(3) and (4) of the Indian Railway Establishment Code. This argument or learned counsel completely overlooks certain other significant facts. The order itself stated in Cl. (c) that the respondent was deprived of half of his pay during his period of suspension, that is, from 8-2-1949 to 18-3-1949 both days inclusive. This makes it abundantly clear that the order was a penal order; because if the order were a termination of service in exercise of the contracted right only, no question of withholding part of the pay of the respondent for the period 8-2-1949 to 18-3-1949, could have arisen. Learned counsel for the appellant has drawn a distinction between suspension as a substantive punishment and suspension pending an enquiry. That distinction, however, does not affect the question at issue. The only question before us is if the order dated 16-3-1949, imposes penal consequences. It clearly does, because it withholds part of the pay of the respondent during the period of suspension. In cl. (d) the impugned order stated that the respondent had a right of appeal under R. 1717. That also shows that the order was clearly intended to be a penal order. Lastly, in the plaint the respondent pointed out further penal consequences which he had suffered. He pointed out that he did not get dearness allowance and house rent allowance from 8-2-1949 to 18-4-1949, etc. It is thus clear to us that the impugned order was a penal order, that is, an order only by way of punishment and the principles laid down in the two decisions in the cases of Parshotam Lal Dhingra and Khem Chand should apply in the present case. As the impugned order clearly contravened the provisions of S. 240(3) of the Government of India Act, 1935, it was illegal and ineffective, as was rightly held by the learned Judicial Commissioner.

8. The other submission of learned counsel for the appellant related to the validity of the notice under S. 80, Civil Procedure Code. The argument in the courts below was that the relief mentioned in the notice did not correspond with the relief actually claimed in the plaint. We are of the opinion that the leaned Judicial Commissioner was right in his view that there was no substantial difference between the two. In the notice the relief claimed was thus expressed in paragraph 18 :

"That my said client is entitled to be reinstated on his former post, and to be paid the amount due to him on the basis of his being treated as if he was not discharged from the date of his discharge upon the date of re-instatement".

In the plaint the main relief claimed was a declaration that the order of discharge or removal of the respondent was illegal and arbitrary. As we have already stated, in our view, there is no substantial difference between the two and the notice under S. 80, Civil Procedure Code, cannot be held to be invalid on the ground urged on behalf of the appellant.

9. The result, therefore, is that the appeal fails and is dismissed with costs.

Appeal dismissed.

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