Khem Chand

Vs

Union of India

Civil Appeal No. 124 of 1962

(CJI B. P.Sinha, P. B. Gajendragadkar, J. C. Shah, K. N. Wanchoo, K. C. Das Gupta JJ)

25.09.1962

JUDGMENT

DAS GUPTA, J. -

This appeal by special leave raises the question of validity of r. 12(4) of the Central Civil Service (Classification, Control and Appeal) Rules, 1957, that were framed by the President and published by a notification dated February 28, 1957. Rule 12(4) is in these words :-

> "12(4). Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority on a consideration of the circumstances of the case, decides to hold a further inquiry against him, on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders."

The question arises in this way. On July 1, 1949, the appellant, who was a permanent Sub-Inspector of Co-operative Societies, Delhi, was suspended by the Deputy Commissioner, Delhi. On July 9, he was served with a charge-sheet under r. 6(1) of the Rules which had been framed by the Chief Commissioner, Delhi. On a consideration of the report made by the officers, who had held an enquiry into the several charges against him the Deputy Commissioner, Delhi, made an order on December 17, 1951, dismissing this appellant.

The appellant filed a suit on May 20, 1953, praying for a declaration that the order of dismissal made against him was invalid in law being in violation of Art. 311 of the Constitution of India and for a further declaration that he still continued to be in service of the Government.

The Trial Court decreed the suit on May 31, 1954, declaring that the plaintiff's dismissal was void and inoperative and that the plaintiff continued to be in service of the State of Delhi at the date of the institution of the suit.

The appeal by the Government of India was dismissed by the Senior Subordinate Judge, Delhi on December 31, 1954.

The decree was however set aside by the Punjab High Court on November 1, 1955, in Second

Appeal by the State and the suit was dismissed.

Against this decision of the High Court, the appellant preferred an appeal by special leave to this Court. This Court held that the provisions of Art. 311(2) had not been fully complied with and the appellant had not had the benefit of all the constitutional protections and accordingly, his dismissal could not be supported. The Court then passed the following order :-

> "We, therefore, accept this appeal and set aside the order of the Single Judge and decree the appellant's suit by making a declaration that the order of dismissal passed by the Deputy Commissioner on December 17, 1951 purporting to dismiss the appellant from service was inoperative and that the appellant was a member of the service at the date of the institution of the suit out of which this appeal has arisen. The appellant will get costs throughout in all courts. Under Order XIV Rule 7 of the Supreme Court Rules, we direct that the appellant should be paid his fees which we assess at Rs. 250".

The judgment of this Court was delivered on December 13, 1957, and is reported in [1958] Supreme Court Reports at page 1080.

On April 20, 1955, i.e., shortly after the Government appeal had been dismissed by the Senior Subordinate Judge, the appellant instituted a suit in the Court of the Senior Sub-Judge, Delhi, out of which the present appeal has arisen. The defendants in this suit are : 1. The Union of India; 2. The State of Delhi; and 3. The Collector and Registrar, Co-operative Societies, Delhi. In this suit the plaintiff claims, on the basis of the decree obtained by him in the earlier suit, a sum of Rs. 14,042/8/- as arrears of salary and allowances. The hearing of the suit was however stayed by the Trial Court on December 26, 1955, in view of the pendency of the appellant's appeal in this Court against the decision of the Punjab High Court dismissing the earlier suit. As already stated, this Court delivered the judgment in that appeal on December 13, 1957. On December 26, 1957, the appellant made an application to the Trial Court praying that the hearing of the suit be taken up. Before, however, the suit could be disposed of, the defendants made an application to the Subordinate Judge, on August 7, 1958, stating that the disciplinary authority had on a consideration of the circumstances of the case, decided to hold a further enquiry against this appellant on the allegations on which he had been originally dismissed and that, consequently, the appellant should be deemed to have been placed under suspension by the appointing authority from December 17, 1951, - the date of the original order of dismissal. Accordingly, it was contended by the defendants that the plaintiff's claim in the present suit was untenable.

On February 14, 1959, the Trial Court made an order in these terms :-

> "It is hereby ordered that the proceedings in the case shall remain stayed until the time the order of suspension is revoked under Rule (5) of the Central Civil Service (Classification, Control and Appeal) Rules, 1957 referred to above or its being set aside by a competent tribunal or authority whichever event occurs earlier. The hearing of the suit is adjourned sine die and the proceedings shall be revived on the application of the plaintiff after the occurrence of any of the two events referred to above."

Against this order the appellant filed a revisional application in the Punjab High Court challenging the validity of r. 12(4) of the Central Civil Service (Classification, Control and Appeal) Rules, 1957.

A Division Bench of the High Court dismissed the revision petition rejecting the appellant's contention against the validity of r. 12(4). Against that decision of the High Court the appellant has filed the present appeal after obtaining special leave from this Court.

It is clear that if r. 12(4) of the Central Civil Service (Classification, Control and Appeal) Rules, 1957, is valid the appellant must be deemed to have been placed under suspension from December 17, 1951. For, it is not disputed that after the penalty of dismissal imposed on him had been rendered void by the decision of this Court, the disciplinary authority did in fact decide to hold a further enquiry against him on the allegations on which this penalty of dismissal had originally been imposed. It is equally clear that if the appellant be deemed to have been placed under suspension from December 17, 1951, the order made by the Trial Court staying the hearing of the suit and the order of the High Court rejecting the revisional application are not open to challenge. The sole question therefore is whether r. 12(4) is valid in law.

This rule forms part of the rules made by the President in exercise of the powers conferred on him by the proviso to Art. 309 and cl. 5 of Art. 148 of the Constitution. The main provisions of Art. 309 is that subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. The proviso to this Article makes it competent for the President or such other person as he may direct, in the case of services and posts in connection with the affairs of the Union, to make rules regulating the recruitment and the conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this Article. Clause 5 of Art. 148 makes a similar provision in respect of the conditions of service in the Indian Audit and Accounts Department and provides inter alia that subject to the provisions of the Constitution and of any law made by Parliament, the conditions of service of persons serving in the Indian Audit and Accounts Department shall be such as may be prescribed by rules made by the President after consultation with the Comptroller and Auditor-General.

Mr. Janardan Sharma rightly contends that this power of the President to make rules is subject to all the provisions of the Constitution and consequently if in making the rule the rule-making authority has contravened any of the provisions of the Constitution the rule is invalid to the extent of such contravention. According to Mr. Sharma r. 12(4) contravenes the provisions of Art. 142, Art. 144, Art. 19(1)(f), Art. 31 and also Art. 14 of the Constitution.

The argument that the impugned Rule contravenes Art. 142 and Art. 144 is practically the same. Article 142 provides inter alia that any decree passed by the Supreme Court in the exercise of its jurisdiction shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and until provision in that behalf is so made, in such manner as the President may by order prescribe. Article 144 provides that all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court. Mr. Sharma's argument as far as we could understand it is that under these provisions of Arts. 142 and 144 a duty lay on the President to do all that was necessary to give effect to the decree made by this Court in the earlier appeal and that by framing r. 12(4) the President has, in effect, gone against the directions of this Court as contained in that decree. In our judgment, there is no substance in this contention. If the decree of this Court had directed payment of arrears of appellant's salary and allowances and the effect of the rule made by the President was to deprive him of that right there might perhaps have been scope for an argument that the rule contravened the provisions of Art. 144. The decree made by this Court did not however contain any direction as regards payment of salary and allowances. It

did contain a direction that the appellant will get his costs throughout in all courts. Quite clearly, however, the impugned rule does not in any way affect that right of the appellant. The only other relief granted by the decree was the making of a declaration that the order of dismissal passed by the Deputy Commissioner, Delhi, on December 17, 1951, purporting to dismiss the appellant from service was inoperative and that the appellant was a member of the service at the date of the institution of the suit out of which the appeal had arisen. Does the impugned rule go against this declaration ? The answer, in our opinion, must be in the negative. The provision in the rule that the Government servant shall be deemed to have been placed under suspension from the date of the original order of dismissal does not seek to affect the position that the order of dismissal previously passed was inoperative and that the appellant was a member of the service on May 25, 1953, when the first suit was instituted by the appellant. An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service inspite of the order of suspension. There was a termination of the appellant's service when the order of dismissal was made on December 17, 1951. When that order of dismissal was set aside the appellant's service revived; and so long as another order of dismissal is not made or the service of the appellant is not terminated by some other means, the appellant continues to be a member of the service and the order of suspension in no way affects this position. The real effect of the order of suspension is that though he continued to be a member of the Government service he was not permitted to work, and further, during the period of his suspension he was paid only some allowance - generally called "subsistence allowance" - which is normally less than his salary - instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that the order of suspension affects a government servant injuriously. There is no basis for thinking however that because of the order of suspension he ceases to be a member of the service. The provision in r. 12(4) that in certain circumstances the Government servant shall be deemed to have been placed under suspension from the date of the original order of dismissal and shall continue to remain under suspension until further orders, does not in any way go against the declaration made by this Court. The contention that the impugned Rule contravenes Arts. 142 or 144 is therefore untenable.

Equally untenable is the appellant's next contention that the impugned rule contravenes the provisions of Art. 19(1)(f) of the Constitution. The argument is that as a result of this Court's decree the appellant had a right to his arrears of pay and allowances. This right constituted his property; and as the effect of the impugned Rule is that he would not, for some time at least, get those arrears it restricts his right. It may be conceded that the right to arrears of pay and allowances constituted property within the meaning of Art. 19(1)(f) of the Constitution and further, that the effect of r. 12(4) is a substantial restriction of his right in respect of that property under Art. 19(1)(f). The question remains whether this restriction is a reasonable restriction in the interests of the general public. No body can seriously doubt the importance and necessity of proper disciplinary action being taken against government servants for inefficiency, dishonesty or other suitable reasons. Such action is certainly against the immediate interests of the Government servant concerned; but is absolutely necessary in the interests of the general public for serving whose interests the government machinery exists and functions. Suspension of a government servant pending an enquiry is a necessary part of the procedure for taking disciplinary action against him. It follows, therefore, that when the penalty of dismissal has been set aside but the disciplinary authority decides to hold a further enquiry on the same facts against him a fresh order of suspension till the enquiry can be completed, in accordance with law, is a reasonable step of the procedure. We have no hesitation in holding, therefore, that in so far as r. 12(4) restricts the appellant's right under Art. 19(1)(f) of the Constitution, it is a reasonable restriction in the interests of the general public. Rule

12(4) is therefore within the saving provisions of Art. 19(6), so that there is no contravention of the constitutional provisions.

Mr. Sharma drew our attention to the decision of this Court in Devendra Pratap v. State of Uttar Pradesh [[1962] Supp. 1 S.C.R. 315.] where the effect of r. 54 of the Fundamental Rules framed by the State of U.P. under Art. 309 was considered. It was held that while r. 54 undoubtedly enabled the State Government to fix the pay of a public servant where dismissal is set aside in a departmental appeal, the rule has no application to cases in which the dismissal of a public servant is declared invalid by a civil court and he is reinstated and that it would not in such a contingency be open to the authority to deprive the public servant of remuneration which he would have earned had he been permitted to work. This decision has however no application to a case like the present, where because of the operation of r. 12(4) of the Central Civil Service (Classification, Control & Appeal) Rules, 1957, the public servant is deemed to be placed under suspension from the date of the original order of dismissal.

This brings us to the attack on the rule on the basis of Art. 14. According to Mr. Sharma the result of the impugned rule is that where a penalty of dismissal, removal or compulsory retirement from service imposed on a government servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority decides to hold a further enquiry against him on the allegations on which the penalty was originally imposed, the consequence will follow that the government servant shall be deemed to have been placed under suspension from the date of the original imposition of penalty, whereas no such consequence will follow where a similar penalty is set aside not by a court of law but by the departmental disciplinary authority. According to Mr. Sharma, therefore, there is a discrimination between a government servant the penalty of dismissal, removal or compulsory retirement on whom is set aside by a decision of a court of law and another government servant a similar penalty on whom is set aside on appeal by the departmental disciplinary authority. The argument however ignores the result of rule 30(2) and rule 12(3) of these rules. Rule 30(2) provides inter alia that in the case of an appeal against an order imposing any of the penalties specified in rule 13, i.e. the penalty of dismissal, removal or compulsory retirement and certain other penalties, the appellate authority shall pass orders : "(i) setting aside, reducing confirming or enhancing the penalty; or (ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case." Rule 12(3) provides that "where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further enquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders." Where a penalty of dismissal, removal or compulsory retirement imposed upon a government servant is set aside by the departmental authority on appeal, it may or may not order further enquiry; just as where a similar penalty is set aside by a decision of a court of law the disciplinary authority may or may not direct a further enquiry. Where the appellate authority after setting aside a penalty of dismissal, removal or compulsory retirement makes an order under r. 30(2)(ii) remitting the case to the authority which imposed the penalty, for further enquiry, rule 12(3) will come into operation and so the order of suspension which in almost all cases is likely to be made where a disciplinary proceeding is contemplated or is pending r. 12(3) shall be deemed to have continued in force on and from the date of the original order of dismissal and shall remain in force until further orders. There is therefore no difference worth the name between the effect of rule 12(4) on a government servant the penalty of dismissal, removal or compulsory retirement on whom is set aside by a decision of a court of law and a further enquiry is

decided upon and the effect of r. 12(4) on another government servant a similar penalty on whom is set aside in appeal or on review by the departmental authority and a further enquiry is decided upon. In both cases the government servant will be deemed to be under suspension from the date of the original order of dismissal, except that where in a departmental enquiry a government servant was not placed under suspension prior to the date when the penalty was imposed, this result will not follow, as r. 12(3) would not then have any operation. It is entirely unlikely however that ordinarily a government servant will not be placed under suspension prior to the date of his dismissal. Rule 12(1) provides that the appointing authority or any authority to which it is subordinate or any other authority empowered by the President in that behalf may place a government servant under suspension :-

> (a) where a disciplinary proceeding against him is contemplated or is pending, or
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> (b) where a case against him in respect of any criminal offence is under investigation or trial. Mr. Sharma does not say that ordinarily any cases occur where a government servant is visited with a penalty of dismissal, removal or compulsory retirement, in a departmental proceeding, without there being a previous order of suspension under the provisions of r. 12(1) and we do not think any such case ordinarily occurs. Consequently, the effect of r. 12(3) will be the same on a government servant a penalty of dismissal, removal or compulsory retirement on whom is set aside in appeal by the departmental authority as the effect of r. 12(4) on a government servant a similar penalty on whom is set aside by a decision of a court of law. The contention that r. 12(4) contravenes Art. 14 of the Constitution must therefore be rejected.

As we find that all the above attacks on the validity of r. 12(4) fail, the further attack on the Rule on the basis of Art. 31(1) of the Constitution also necessarily fails. For, whatever deprivation of property may result from r. 12(4) would be by authority of law - the law being r. 12(4).

We have therefore come to the conclusion that the High Court is right in holding that r. 12(4) is valid and consequently, in rejecting the appellant’s revisional application.

The appeal is dismissed. But, in view of the circumstances of the case we make no order as to costs. Though the appellant has failed in this appeal which was brought by him as a pauper, we make no order against him to pay the court-fee which would have been paid by him if he had not been permitted to appeal as a pauper.

Appeal dismissed.

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