

Jai Shanker

Vs

State of Rajasthan

Civil Appeal No. 576 of 1964, Civil Appeal No. 576 of 1964

(CJI P. B. Gajendragadkar, M. Hidayatullah, K. N. Wanchoo, J. C. Shah, S. M. Sikri JJ)

16.09.1965

JUDGEMENT

HIDAYATULLAH, J. –

The appellant Jai Shankar who, appeals to this court by special leave against the judgment of the High Court of Rajasthan, dated 11 Dec. 1962, was a head warder, Central Jail, Jodhpur in 1950. He had started his service as a Warder in April 1940, was promoted as Head Warder in 1944 and was a permanent servant of the State. On 14 April 1950 he proceeded on leave for two months ending on 13 June 1950. He applied for extension of leave on medical grounds for twenty days, as he had fallen ill, and again for ten days. Later he asked for an extension by a month. He was due to join on 13 August 1950. On 14 August, 1950 he was told that no more leave would be granted and that his transfer to Jaipur, made while he was ill at Hyderabad, would not be cancelled.

Jai Shankar returned to Jodhpur from Hyderabad on 1 Sept. 1950 and applied for further leave. He made several applications. His last application was sent by registered post, supported by a medical certificate on 3 Nov., 1950. To his last and some of the earlier applications for leave he received no reply and on 8 Nov., 1950, he received a communication dated 2/4 November 1950 of the Deputy Inspector General, Prisons under endorsement Central Jail Jodhpur, the Superintendent, Central Jail Jodhpur that he was discharged from service from 13 August 1950. He preferred an appeal against that order to the Inspector General of Prisons Rajasthan but it was dismissed on 24 Sept., 1951. Jai Shankar submitted an appeal to the Home Secretary, Rajasthan Govt. He was informed by a letter dated 17 Dec., 1953, from the Home Secretary that the papers had been sent to the Inspector General, Prisons for necessary action. Jai Shankar alleges that he was called by the Personal Assistant to the Inspector General and was offered r

The Subordinate Judge, Jodhpur decided that Jai Shankar's allegation about his illnesses were true but he rejected the contention that the discharge from service was illegal. As a consequence the claim for back salary was disallowed and the suit was ordered to be dismissed. On appeal to the District Court, Jai Shankar succeeded in getting a reverse; of the decree of the trial Judge. The District Judge, Jodhpur, held that Jai Shankar was entitled to a declaration that his removal from service was illegal and was that he continued to remain in employment and was also entitled to all arrears of salary admissible to him under the rules. The State Govt. appealed against the judgment and decree of the District Judge and by the order under appeal the decree of the District Judge was set aside and the decree of the Subordinate Judge was restored. Jai Shankar was ordered to pay costs in the High Court and the two Courts below.

The short question on this appeal is whether Jai Shankar was entitled to an opportunity to show

cause against the proposed punishment as required by Cl. (2) of Article 311. It is admitted that no charge was framed against him. Nor was he given any opportunity of showing cause. The case for the State Govt. is that Govt. did not terminate Jai Shankar's service and that it was Jai Shankar who gave up to employment by remaining absent. It is submitted that such a case is not covered by Article 311. In support of this contention certain regulations of the Jodhpur Service Regulations are relied upon and we shall now refer to them. Regulation lays down that leave cannot be claimed as a right and that Govt. has discretion to refuse or revoke leave of any description. Regulation 11 lays down that an individual who has been granted leave on medical grounds for a period of one month or more may not return to duty without producing a certificate of fitness signed by an officer authorized by a general or special order to

"13. An individual who absents himself without permission or who remains absent without permission for one month or longer after the end of his leave should be considered to have sacrificed his appointment and may only be reinstated with the sanction of the competent authority.

Note :- The submission of an application for extension of leave already granted does not entitle an individual to absent himself without permission."

It is contended that this regulation operated automatically and no question of removal from service could arise, because Jai Shankar must be considered to have sacrificed his appointment. Under the regulation he could only be reinstated with the sanction of the competent authority. We have therefore, to determine whether this regulation is sufficient to enable the Govt. to remove a person from service without giving him an opportunity of showing cause against that punishment, if any.

It is admitted on behalf of the State Government that discharge from service of an incumbent by way of punishment amounts to removal from service. It is however, contended that under the regulations all that Govt. does is not to allow the person to be reinstated. Govt. does not order his removal because the incumbent himself gives up the employment. We do not think that the constitutional protection can be taken away in this manner by a side wind. While on the one hand, there is no compulsion on the part of the Govt. to retain a person in service if he is unfit and deserves dismissal or removal, on the other, a person is entitled to continue in service if he wants until his service is terminated in accordance with law. One circumstance deserving removal may be overstaying one's leave. This is a fault which may entitle Govt. in a suitable case to consider a man as unfit to continue in service. But even if a regulation is made it is necessary that Govt. should give the person an opportunity of showing cause why

In our judgment, Jai Shankar was entitled to an opportunity to show cause against the proposed his leave and as no such opportunity was given to him removal from service was illegal. He is entitled to this declaration. The order of the High Court must therefore, be set aside and that of the District Judge, Jodhpur restored. The question of what back salary is due to Jai Shankar must now be determined by the trial Judge in accordance with the rules applicable, for which purpose there shall be a remit of this case to the Civil Judge, Jodhpur.

The State Government shall pay the costs of Jai Shankar in this Court, High Court and the two Courts below, incurred so far. The appellant has been permitted to appeal in forma pauperis. The State will pay the Court fee payable on the memorandum. The Advocate for the appellant will be entitled to recover his costs.

Appeal allowed.

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