V. P. Gidroniya

Vs

The State of Madhya Pradesh and Another

Civil Appeal No. 990 of 1967

(CJI M. Hidayatullah, A. N. Grover, A. N. Ray, I. D. Dua, J. C. Shah, K. S. Hegde JJ)

29.01.1970

JUDGMENT

HEGDE, J. -

1. The appellant was a probationary Naib-Tehsildar. He had been appointed temporarily. While he was working at Bilaigarh in 1961, the Commissioner of Raipur Division directed an enquiry against him on as many as 13 charges. By this order dated August 3, 1961, the Commissioner placed him under suspension pending enquiry. Sometime later, the State Government taking the view that the enquiry ordered by the Commissioner may not be legal, revoked his orders, viz., the order directing a departmental enquiry against the appellant as well as the order placing him under suspension. But on the same day, it ordered a departmental enquiry against him and at the same time it placed him under suspension pending that enquiry. In this connection a show cause notice was issued to the appellant on August 1, 1964. But even before that show cause notice was issued, on June 6, 1961, the appellant gave a notice to the Government terminating his services. After the issue of the aforementioned show cause notice, he moved the High Court of Madhya Pradesh to quash the orders passed by the State Government on the ground that as he was no more in the service of the Government, the Government cannot take any departmental action against him.

2. The State Government resisted that application on two grounds, viz. : (1) the order of the State Government suspending the appellant during the pendancy of the departmental enquiry amounted to a suspension of the contract of service and hence the appellant could not have unilaterally terminated his services, and (2) the notice given by him on June 6, 1964 was invalid as it did not conform to the rules.

3. The High Court accepted the aforesaid contentions of the State Government and dismissed the writ petition. Hence this appeal by special leave.

4. Mr. Sanghi, learned Counsel for the appellant pressed for our acceptance the two contentions advanced on behalf of the appellant before the High Court. He urged that the view taken by the High Court both as to the effect of the order of suspension made on May 7, 1964 as well as to the validity of the notice issued by the appellant on June 6, 1964 as well as to law. According to him the impugned order of suspension merely forbade the appellant from rendering service and it did not amount to a suspension of the contract of service. As regards the notice issued by the appellant he urged that it was in accordance with rule 12 of the Madhya Pradesh Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960 (in short 'Rules').

5. The parties are agreed that the appellant was a temporary public servant at the relevant time. His

service was neither made permanent nor quasi-permanent. It is also admitted that the conditions of his service are exclusively governed by the 'Rules'. Therefore to find out the true effect of the order of suspension made on May 7, 1964, we must look to those 'Rules'.

6. Three kinds of suspension are known to law. A public servant may be suspended as a mode of punishment or he may be suspended during the pendancy of an enquiry against him if the order appointing him or statutory provisions governing his service provide for such suspension. Lastly he may merely be forbidden from discharging his duties during the pendancy of an enquiry against him which act is also called suspension. The right to suspend as a measure of punishment as well as the right to suspend the contract of service during the pendancy of an enquiry are both regulated by the contract of employment or the provisions regulating the conditions of service. But the last category of suspension referred to earlier is the right of the master to forbid his servant from doing the work which he had to do under the terms of the contract of service or the provisions governing his conditions of service, at the same time keeping in force the master's obligations under the contract. In other words, the master may ask his servant to refrain from rendering his service but he must fulfill his part of the contract.

7. The legal position as regards a master's right to place his servants under suspension is now well settled by the decisions of this Court. In The Management of Hotel Imperial, New Delhi and Others v. Hotel Workers' Union ((1960) 1 SCR 476.), the question whether a master could suspend his servant during the pendancy of an enquiry came up for consideration by this Court. Therein this Court observed that it was well settled that under the ordinary law of master and servant the power to suspend the servant without pay could not be implied as a term in an ordinary contract of service between the master and the servant but must arise either from an express term in the contract itself or a statutory provision governing such contract. It was further observed therein that ordinarily the absence of such a power either in express terms in the contract or under the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work he will have to pay the wages during the so called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay.

8. The same view was reiterated by this Court in T. Cajee v. U. Jormanik Siem and Another. ((1961) 1 SCR 750) The rule laid down in the above decision was followed by this Court in R. P. Kapur v. Union of India. ((1964) 5 SCR 431) The law on the subject was exhaustively reviewed in Balvantry Ratilal Patel v. State of Maharashtra. ((1968) 2 SCR 577) Therein the legal position was stated thus : The general principle is that an employer can suspend an employee of his pending an enquiry into his misconduct and the only question that can arise in such a suspension will relate to the payment of his wages during the period of such suspension. It is now well settled that the power to suspend, in the sense of a right to forbid an employee to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such a power either as an express term in the contract or in the rules framed under some statute would mean that an employer would have no power to suspend an employee of his and even if he does so in the sense that he forbids the employee to work, he will have to pay the employee's wages during the period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant

is not bound to render service and the master is not bound to pay. It is equally well settled that an order of interim suspension can be passed against the employee while an enquiry is pending into his conduct even though there is no such term in the contract of employment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which it could be withheld. The distinction pending him from performing the duties of his office on the basis that the contract is subsisting is important. The suspension in the latter case is always an implied term in every contract of service. When an employee is suspended in this senses, it means that the employer merely issues a direction to him that he should not do the service required of him during a particular period. In other words the employer is regarded as issuing an order to the employee which, because the contract is subsisting, the employee must obey.

9. In support of the decision of the High Court, the learned Counsel for the respondent relied on the decision of this Court is State of West Bengal v. Nipendra Nath Bagchi ((1961) 1 SCR 771) and The State of Punjab v. Khemi Ram. (Civil Appel No. 1217/66, decided on 6-10-1969) He did not rely on the other decision referred to in the judgment of the High Court. Hence it is not necessary to examine them.

10. In Bagchi's case (supra), one of the questions that arose for decision was whether on the strength or Rule 75(a) of the West Bengal Service Rules, an officer may be retained in service even after his superannuation for the purpose of holding a departmental enquiry against him. This Court held that the rule in question was not designed to be used for the purpose of retaining a person in service for enquiry against him but to keep in employment persons with a meritorious record of service who although superannuated can render some more service and whose retention in service is considered necessary on public grounds. This decision does not beat on the point under consideration. In Khemi Ram's case (supra) the impugned suspension order was made on the strength of statutory rules governing the conditions of service. Hence this Court came to the conclusion that the order of suspension in that case amounted to suspending the contract of service.

11. In the present case, the 'Rules' do not provide for suspension during the pendancy of an enquiry. Therefore the impugned order of suspension cannot be considered as an order suspending the contract of service. From that conclusion it follows that when the appellant issued the notice terminating his services on June 6, 1964, the contract of service was in force and it was open to him to put an end to the same. For the reasons mentioned above, we, hold that the High Court erred in opining that the true effect of the order of suspension made by the State Government on May 7, 1964 was to suspend the contract of service.

12. This takes us to the legality of the notice served by the appellant on June 6, 1964. That notice was evidently issued under rule 12 of the 'Rules'. That rule reads :

> "12(a) Subject to any provision contained in the order of appointment or in any agreement between the Government and the temporary Government servant, the service of a temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant.
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> Provide that the services of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowance for the period of the notice; or as the case may be, for the period by which

such notice falls short of one month or any agreed longer period :

Provided further that the payment of allowances shall be subject to the conditions under which such allowances are admissible.

(b) The period of such notice shall be one month unless otherwise agreed between the Government and the Government servant."

13. There is hardly any room for dispute that the notice contemplated by the main cl. (a) of Rule 12 can be given either by the Government or its temporary servant. The rule in question specifically says so. It is not necessary for us in the present case to decide whether the two provisos to that rule or cl. (b) thereof apply to a notice given by a government servant. The appellant has assumed that those provisions also apply to a notice given under that rule. We shall for the purpose of this case proceed on the basis of that assumption and see whether the appellant has satisfied that part of the rule also.

14. The material portion of the notice given by the appellant on June 6, 1964 reads thus :

"Whereas the undersigned holds no charge this day and is not on duty and intends to bring the termination of his employment with the Government of M.P. forthwith on receipt of this writing; and

Whereas as required by the service rules the undersigned do hereby forfeit and relinquish his claim for one month's pay or allowance whichever is necessary. Now therefore this notice is hereby served as required under the rules on receipt whereof the Government of Madhya Pradesh and the undersigned shall cease to exist and consequently all rights, duties and obligations arising from and under the aforesaid relationship shall hereafter absolutely cease."

15. This notice was received by the Government on June 9, 1964. In that notice, the appellant has unequivocally informed the Government that he has terminated his services with the Government. This part of the notice satisfies the requirements of the main part of rule 12(a). In that very notice he has also intimated that any amount payable by him to government under the provisos to rule 12(a) may be forfeited from the amounts due to him from the Government. It may be noted that considerable amount must have been due to him towards his salary during the period of his suspension. By his notice he intimated to the Government that the amounts due from him to the Government under the provisos to rule 12(a) may be deducted from that amount. We fail to see how this notice is not in accordance with the requirements of Rule 12. In our opinion the High Court was wrong in holding that the notice in question did not comply with the requirements of the said rule.

16. No other ground was urged on behalf of the respondent in support of the order of the High Court.

17. From the above findings, it follows that ever since June 9, 1964, the appellant was not in the service of the Government. Therefore it was not open to the Government to take any disciplinary proceedings against him. Hence the impugned orders are liability to be quashed. We accordingly allow that appeal and quash those orders. No order to costs.

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