

The State of U. P. and Others

Vs

Ram Naresh Lal

Civil Appeal No. 463 of 1969

(S. M. Sikri, V. Bhargava, C. A. Vaidialingam JJ)

13.03.1970

JUDGMENT

SIKRI, J. -

1. This appeal by special leave is directed against the judgment of the Allahabad High Court, Lucknow Bench, dismissing the special appeal filed by the appellants against the judgment of the learned Single Judge, who had allowed the writ petition filed by Ram Naresh Lal, respondent before us. The learned Single Judge had quashed three orders : (1) the order of suspension, dated August 18, 1960 : (2) the order of dismissal, dated July 29, 1961 and (3) the order of the Government, dated September 22, 1962.

2. In order to appreciate the points which have been debated before us it is necessary to state the facts somewhat in detail. The respondent was appointed as temporary Accounts Supervisor in the Agriculture Department by the Director of Agriculture by his order, dated March 26, 1947. On February 19, 1949, he was transferred to the Agricultural Engineering Department as a temporary Assistant Accountant by the Director of Agriculture, U.P. With effect from August 24, 1952, the Agricultural Engineering Department was abolished and merged in the Irrigation Department. On June 29, 1954, the respondent was transferred on deputation as an Assistant Accountant in the Office of the Development Commissioner (Planning Department). On July 15, 1955, the Government issued G.O. No. B-810/XXXII-A. The whole of the G.O. is not available on the record. Two portions have been reproduced in the affidavits of the parties. One portion reads :

"The powers to order transfer and to award punishment to such staff during the period that it is on deputation with the Development Commissioner, will be exercised by the Development Commissioner himself."

The earlier portion reproduced in the rejoinder of the respondent reads :

"This staff together with that already placed by you earlier at the disposal of the Development Commissioner should be treated as on deputation with the Development Commissioner."

3. By order, dated September 10, 1955, of the Superintending Engineer, Agricultural Engineering Circle, the respondent was confirmed on a permanent pensionable post of Junior Clerk in the Workshop Service in the Irrigation Department, with effect from April 1, 1955. By this order, dated May 31, 1957, the Development Commissioner assigned to the respondent a temporary post Senior Clerk in the Minor Irrigation Section of his office with effect from April 1, 1957. On May 21, 1958,

in its letter No. 1195/XXXV-B - 587, addressed to the Development Commissioner the Government stated that :

"the Governor has been pleased to order that the entire staff on deputation with you from Irrigation Department for the execution of the Minor Irrigation Schemes should be treated to have been transferred to your control with effect from the date of issue of these orders."

The letter further stated :

"I am, therefore, to request that the staff at present on deputation may be given the option to elect their permanent transfer in the Planning set-up or go back to their parent department, viz., Irrigation Department. You may issue a fresh order or appointment of staff, who elect to remain in Planning Department. Their services will be deemed as continuous."

4. On July 7, 1958, the Deputy Development Commissioner directed Subordinate Offices to obtain the opinion of the staff transferred from Irrigation Department to the Planning Organization for execution of Minor Irrigation Schemes and the form of election and copy of this letter was endorsed to the respondent. The form of election was in the following terms :

"In accordance with the orders issued in Planning 'B' Department G.O. No. 1195/XXXV-B - 587-56, dated May 21, 1958, I, (Name and Designation), hereby elect

* (i) to be transferred in the Planning Set-up and re-appointed by the Development Commissioner

* (ii) to go back to my parent department.

#Date Signature Designation District###

On July 9, 1958, the respondent opted in the following terms :

"In accordance with the orders issued in Planning (B) Department G.O. No. 1195/XXXV-B - 587-56, dated May 21, 1958, I, R. N. Lall, Senior Clerk, hereby elect to be transferred in the Planning Set-up and re-appointed by the Development Commissioner."

It appears, however, that no order re-appointing the respondent was passed by the Development Commissioner.

5. On March 4, 1960, the Governor was pleased to order that the following officers shall, with effect from the date of issue of this notification, be the appointing authorities in respect of the posts noted against each created in connection with the execution of Minor Irrigation Schemes :-

#1. Development Commissioner, All posts carrying pay scales Uttar Pradesh : the Minimum of which does not exceed Rs. 200/- per month, including (i) Senior Mechanical Inspectors and (ii) Stores Superintendent (posted at Headquarters), in the scale of pay of Rs. 200-15-350".##

6. On April 7, 1960, an office order was passed appointing the respondent for duty in Establishment-II Section and his duties were prescribed. On August 18, 1960, the respondent was suspended by the Development Commissioner on a complaint having been received by him that the respondent had accepted bribe of Rs. 100/- with a view to help getting transferred another Government employee. Enquiry was held and after enquiry show-cause notice was issued and on July 29, 1961, the respondent was dismissed by the Development Commissioner. On September 22, 1962, respondent's appeal to Government was dismissed after consultation with the Public Service Commission.

7. On March 28, 1963/April 30, 1963, the respondent filed a petition under Article 226 of the Constitution. The learned Single Judge held that the respondent continued to remain a permanent employee of the Workshop Circle of Irrigation Department as no order or re-appointment was passed by the Development Commissioner. The learned Single Judge observed that the respondent had a lien on this post and consequently under the Punishment and Appeal Rules for Subordinate Services (Rule I-A), which applied to the respondent, it was only the appointing authority who could have suspended the petitioner and therefore it was only the appointing authority who would be competent to pass the order of dismissal. He held that the appointing authority was the Superintending Engineer and not the Development Commissioner.

8. The learned Single Judge then dealt with the other points raised before him, but those points have not been raised before us and we need not consider them. The learned Single Judge, accordingly, held that the order of dismissal had been passed by an authority which was not competent to dismiss the respondent.

9. In the special appeal by the State of Uttar Pradesh the Division Bench came substantially to the same conclusion. The Division Bench held that the respondent held a permanent post as a junior clerk in the Irrigation Department with effect from April 1, 1955 and as no formal order was issued by the Development Commissioner appointing the respondent to the Planning Department on a permanent basis the lien of the respondent in the Irrigation Department continued. The Division Bench further held that being an employee of the Irrigation Department, the respondent could not be dismissed by the development Commissioner. They relied on the notification, dated August 3, 1932, which reads :

"In exercise of the powers conferred by Rule 54 of the Civil Service (Classification, Control and Appeal) Rules made by the Secretary of State in Council the Government of the United Provinces hereby delegate, without prejudice to the provisions of any law for the time being in force, power to inflict the following punishments on members of the subordinate services to every officer who is competent under existing orders to appoint them with or without reference to or with or without the sanction of higher authority."

The Division Bench further held that the notification, dated March 4, 1960, had no direct bearing on the competence of the Development Commissioner to dismiss an official from service. The Division Bench further relied on clause (a) of Rule 14-A of the Fundamental Rules which reads :

"A Government servant's lien on a post may in no circumstances be terminated, even with his consent if the result will be to leave him without a lien or a suspended lien upon a permanent post."

The Division Bench observed that "the notification, dated 3-8-1932, must be read subject of Rule 14-A of the Fundamental Rules. It was not open to the Development Commissioner to put an end to the lien held by R. N. Lal to a post in the Irrigation Department."

10. The learned counsel for the appellant, Mr. G. N. Dixit, contends (1) that the respondent was permanently transferred to the Planning department by virtue of the order of Government, dated May 21, 1958 and the option exercised by the respondent not to go back to his parent department, and (2) that at any rate by virtue of the order, dated March 4, 1960, read with the notification, dated August 3, 1932 and May 21, 1958, the Development Commissioner was the competent authority to dismiss the respondent.

11. Regarding the first point, it seems to us that it was not necessary that the Development Commissioner should have issued a fresh order for appointment of the respondent. The respondent was a member of the Subordinate Service and by having been transferred to the Planning Department he had not ceased to be a member of the Service. If a person is a member of the Service and he is transferred from one department to another it is not necessary that he should be re-appointed to the Service or he should be appointed to the department to which he is transferred. As soon as he is transferred permanently he begins to hold the permanent post which he starts holding in the transferee department. It is true that the letter dated May 21, 1958, contemplated that a fresh appointment of staff who elected to remain in the Planning Department would be made but apparently later on the Government realised that it was not necessary to pass such an order of re-appointment. It seems to us that the respondent, having elected not go back to his parent department, became an employee in the Planning Department and therefore the Development Commissioner was entitled to dismiss the respondent.

12. Assuming that the respondent has not been permanently transferred and further assuming that he was still on deputation in the Planning Department, even then the Development Commissioner was entitled to dismiss the respondent by virtue of various orders. The order, dated May 21, 1958, which has been extracted above, clearly places the control over the entire staff on deputation from the Irrigation Department to the Planning Department with the Development Commissioner. The word "control" is a wide word and includes disciplinary jurisdiction. In the context there is no doubt that it was the intention to give disciplinary jurisdiction over the entire staff on deputation to the Development Commissioner. The previous order, dated July 15, 1956, had vested the power of transfer and punishment in the Development Commissioner. It seems to us that the later order in no way confers lesser powers on the Development Commissioner. There is nothing in the Constitution which debars the Government from conferring powers on an officer other than the appointing authority to dismiss a Government servant, provided he is not subordinate in rank to the appointing officer or authority. These three orders, viz., dates August 3, 1932, May 21, 1958 and March 4, 1960, which we have mentioned above, read together clearly confer powers on the Development Commissioner to dismiss person on deputation in the Planning Department.

13. In considering this question we have not been able to appreciate the relevance of clause (a) of Rule 14-A of the Fundamental Rules relied on by the Division Bench. Whether a person has a lien in one department or in other department, the Government is entitled, subject to the provisions of Article 311(1), to delegate power of dismissal to any officer. We are unable to understand how Rule 14-A has the effect of modifying the notification, dated August 3, 1932.

14. In the result the appeal is allowed. The judgment of the Division Bench and the learned Single Judge set aside and the writ petition dismissed. There will be no order as to costs throughout.

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