

R. K. Bhatt

v.

Union of India and Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE A.N. GROVER HON'BLE MR. JUSTICE J.C.  
SHAH

Civil Appeal No. 1734 Of 1966 | 25-09-1970

Grover, J.

1. This is an appeal by special leave from a judgment of a Division Bench of the Punjab High Court (Circuit Bench, Delhi) dismissing the writ petition of the appellant who had succeeded before a learned single Judge.

2. The appellant was appointed as an Upper Division Clerk in the office of the Central Claims Organisation, Ministry of Rehabilitation, Mussourie on December 24, 1956. According to him he received a telegram on November 8, 1958 from Aligarh to which place he belonged that his mother was ill. He took leave and while he was on leave he was arrested on November 15, 1958 in connection with a criminal case. On November 17, 1958, his father wrote to the authorities concerned to grant him more leave as the appellant was in police custody, On November 24, 1958 respondent No. 3 directed his suspension with effect from November 15, 1958. On January 3, 1959, his services were terminated. The appellant preferred an appeal but no orders were passed thereon. On July 2, 1959, he applied to the employment officer, Employment Exchange, 14, Darya Gunj, Delhi for allowing him priority in respect of employment assistance which under the directions of the Ministry of Home Affairs was admissible to Government servants whose services had been terminated under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1949. The appellant alleged that owing to the communication received from respondent No. 3 the employment Officer refused to accord the priority to him. The position taken up on behalf of the respondents was that the appellant was employed in a purely temporary capacity and that according to the terms of employment his services could be terminated at any time after one month's notice or on payment of a month's salary in lieu of notice. As the services of the

appellant were no longer required they were terminated on December 31, 1958, under Rule 5 of the aforesaid Rules. The appellant's allegation that his membership of the staff council of a certain organisation had offended respondent 3 was denied. It was maintained that the termination of the service of the appellant had not been effected by way of punishment.

3. S. B. Capur J., who heard the writ petition, held that the impugned order, while purporting to be one of the termination of services in exercise of the power conferred by Rule 5 of the Rules referred to before, was in reality one which amounted to removal from service on the ground that the appellant was involved in a criminal case. The matter was taken in appeal before the Division Bench by the respondents. The Division Bench on a consideration of certain decisions of this court observed that if a right existed under the Rule to terminate the services it was not relevant to consider the motive operating on the mind of the government in taking action under the Rules. That is what was said by S. K. Kapur J., who delivered the judgment of the Division Bench :

"It is fairly clearly that being involved in a murder case does not constitute a misconduct. It is, therefore, difficult to assume that the Government adopted a device to punish the respondent for something which is not punishable under the rules. That being the situation, I think, the Government could legitimately say to itself : 'Here is a man, who has been involved in a murder case, disposal of which may take a very long time, and, therefore, it is desirable to terminate the contract of his service in terms of the rules'. Even a perusal of the discharge order clearly shows that no stigma was attached on the respondent."

The appellant contends that he had been acquitted in the criminal case on June 11, 1959. Before that date the order of suspension had been made on June 4, 1959 (annexure B-11 to the writ petition) and this order had been made even after the termination of the services of the appellant. It is urged that the appellant has been deprived of substantial part of his salary during the period for which he was suspended and in that manner he has been visited with civil consequences without having any opportunity under Art. 311(2) of the Constitution to show cause against the termination of the services which were founded purely on the implication or involvement of the appellant in the criminal case in which he was ultimately acquitted. Our attention had also been invited to the correspondence which passed between respondent No. 3 and the

Employment Exchange and it has been suggested by the appellant that this correspondence fully demonstrated the real reason behind the termination of his services.

4. The High Court does not, with respect appear to have gone fully into all the circumstances and matters which required determination and investigation for finding whether the termination of services of the appellant had been ordered in the ordinary course because his services were no longer required or whether it was by way of punishment that that action was taken. In two recent decisions of this Court, i.e., *Union of India and Another v. R. S. Dhaba, Income-tax Officer, Hoshiarpur* (Civil Appeal 882/66 dt. 7th April 1969) and *State of Bihar & others v. Shiva Bhikshuk Mishra* (Civil Appeal 1363/66 dt. 14th Sep. 1970), since reported in [1970 - II L.L.J. 440], the tests laid down by this Court for decision of cases of the present kind have been restated and reiterated. It is for the High Court to reconsider the entire matter in the light of these tests and other relevant cases and give a fresh decision. The case is accordingly remanded to the High Court for the aforesaid purpose. In the circumstances there will be no order as to costs.