Gajraj Singh

Vs

The State of Madhya Pradesh and Another

Civil Appeal No. 1259 of 1967

(CJI J.M. Shelat, Y.V. Chandrachud JJ)

28.03.1973

JUDGMENT

SHELAT, J. -

1. The appellant was in 1934 first appointed as a police constable in the erstwhile State of Gwalior and was promoted in March 1945 to the post of a sub-Inspector. In May 1948, the rulers of Gwalior, Indore and certain other States formed, under a covenant executed by them, a new State, called the United States of Madhya Bharat. The appellant was allowed to work as a Sub-Inspector in the new State of Madhya Bharat, but his name was entered from the very beginning, that is from May 1948, in the list of "provisionally absorbed servants", and remained so during all material times.

2. By a notification, dated December 15, 1948, the Madhya Bharat Government published rules, called the "Retrenchment Terms". As revised by another notification, dated July 9, 1949, these Retrenchment Terms so far as they are relevant for the purposes of this appeal read as under :

> "GOVERNMENT OF THE UNITED STATES OF MADHYA BHARAT
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> # * * * * *##
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> NOTIFICATION
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> After a careful consideration of the Mohan Rau Committee's recommendations regarding the retrenchment of surplus staff of the acceding States of the Madhya Bharat Union and compensation terms to be offered to such staff, the Government of Madhya Bharat have been pleased to sanction the following principles which will govern the selection of Government servants for discharge from service and the grant of compensation to them. Owing to wide diversity of rules to leave and pension in force in the various acceding Units of Madhya Bharat, the Government are constrained to frame a separate set of rules, modelled on the terms sanctioned by the Government of India to their retrenchment personnel. The Government are aware that cessation of employment is bound to cause distress and in order to soften the blow, as far as possible, they have kept in view the need for providing each retrenched servant with a reasonable subsistence which would enable him to tide over the period necessary for building up new associations :
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> 1. Principles to govern the selection of Government servants for retrenchment. - (a) The retrenchment should embrace the following categories :

(1) Those who have attained the age of superannuation.

Note : The age of superannuation shall be taken as 55 years for Government servants in superior service and 60 years for those in inferior service.

(2) Those whose record of service is consistently bad.

(3) Temporary and officiating Government servants.

(4) Those who do not possess the minimum qualification prescribed for the post held by them.

Note : It will be the right of Government to retain an exceptionally good person even though he may not be possessed of the minimum qualification prescribed.

(5) Those who have put in qualifying service for 30 years and more.

(6) Permanent Government servants who have less then 3 years' service.

(7) Government servants who are treated as surplus to requirements either because the posts held by them have ceased to exist, or because they cannot, for reasons considered adequate by the Government, be absorbed in Madhya Bharat service.

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These orders shall have effect from the 1st of July, 1948."

3. While the appellant was working at Bhilsa as the Sub-Inspector, he received an order signed by the Deputy Inspector-General, Central Range, to the effect that the appellant was "retrenched ..... for consistent bad record under retrenchment category 2" of the said Retrenchment Terms. The order, however, informed the appellant that he would be given all the benefits of leave, pension etc. due to him under the Rules. Aggrieved by the said order, the appellant filed an appeal before the Inspector-General of Police. The Inspector-General issued a notice to the appellant to show cause why the said order should not be made absolute under category 2, as also under categories 4 and 7, of the said Retrenchment Terms. The appellant submitted his explanation showing cause. By his order, dated January 2, 1954, the Inspector-General rejected the appeal and confirmed the said order, also under categories 4 and 7, of the said Terms, that is, besides the ground of a consistently bad record, also on the ground of the appellant not possessing the minimum qualification prescribed for the post, and the ground that the appellant, for reasons considered adequate by the Government, could not be absorbed in the Madhya Bharat service.

4. Resort to departmental authorities for redress against the said order having failed, the appellant filed a writ petition in the High Court of Madhya Pradesh, pleading inter alia that the impugned order amounted to removal by way of punishment which attracted Article 311 of the Constitution. On October 22, 1959, the High Court dismissed the writ petition on the ground of delay. Nevertheless, the High Court went into the question whether the said order amounted to dismissal or removal and attracted Article 311. In doing so, the High Court observed that although the order was sought to be supported both on the ground of the appellants consistent bad record, as also on the ground of his not possessing the minimum educational qualification, the State had relied on the first ground only, the second ground not having been pressed either in its return or in the arguments

before the High Court. The High Court observed :

> "The result is that the administration having gone into the question of undesirability or consistent badness of the record, was, under the law, obliged to follow the procedure prescribed in Article 311. Having admittedly failed to do so, the removal order, though ostensibly one of retrenchment, would be bad."

The High Court also observed that had the appellant approached it without delay, it would have been possible to grant him relief.

5. In 1960, the appellant filed the suit, from which this appeal arises, in the court of the Additional District Judge, Indore for a declaration that the said order was bad by reason of failure to hold an inquiry under Article 311 and that he therefore continued to be in service and for a decree for the salary for the entire period. The Trial Judge decreed the suit relying upon the aforesaid observations of the High Court in the said writ petition. The State of Madhya Pradesh thereupon filed an appeal before the High Court against the said judgment and decree. The Division Bench of the High Court, which heard the appeal, had on it coincidentally Krishnan, J., who also was one of the judges on the Bench which had earlier dismissed the appellant's said writ petition in 1959.

6. The High Court allowed the State's appeal and set aside the decree passed by the Trial Judge. This was done on the ground that in "retrenching" the appellant the State had two grounds : (1) a consistent bad record, and (2) the appellant not possessing the minimum educational qualification. There being thus two grounds, although the impugned order could not be supported by the first ground by reason of the failure to comply with the provisions of Article 311, the second ground was a good ground and being a separate ground, the impugned order, on the basis of that ground, was justified. This appeal, by special leave, challenges the judgment of the High Court.

7. Two contentions were pressed upon us by counsel for the appellant :

(1) that on the construction of the said Retrenchment Terms the impugned order amounted to one of dismissal attracting the provisions of Article 311, and

(2) that since the ground of consistent bad record amounted to a stigma, and could not therefore be relied on in support of the order, the order fell and could not be sustained on the second ground.

8. The appellant, without doubt, was a permanent servant of the erstwhile Gwalior State and vis-a-vis that State, was, therefore, entitled to all the rights obtainable under the law of that State, whatever such rights there were thereunder. On the accession of Gwalior State to the United States of Madhya Bharat, his position, however, totally changed, in that, it was for the new State to absorb him or not into its service. It may be that the covenant, by and under which Gwalior State acceded to the newly formed State, might have provided for the continuance in the service of the new State of all the employees of the acceding States. The terms of the covenant were not placed before us, nor before the High Court. Assuming, however, that the convent did so provide, it being one between the high parties, no right accrued thereunder to an individual who was not a party to it. Obviously, the appellant could not claim any right to being absorbed or continued in the service of the new State, unless the new State had agreed to or absorbed or retained him in its service. In fact, the new State of Madhya Bharat had not done so. It would appear on the contrary, that while the question of how many and who amongst the ex-employees of the acceding States should be absorbed in the service of the new State was pending and under consideration, the appellant's name

was entered in the list of "the provisionally absorbed" employees.

9. It would seem from the said Retrenchment Terms that the problem before the new State was as to what to do with the surplus personnel who were the ex-employees of the various acceding States and how many of them could and should be absorbed in the service of the new State. To soften the blow would fall on those who could not be absorbed, the new State framed the said Retrenchment Terms which provided two things : (1) laying down principles for selection of those who were to be absorbed, and (2) to grant some benefit by way of a reasonable subsistence to those who would not be absorbed, which would enable them to tide over the period necessary for building up new associations. The Retrenchment Terms were framed on the basis of the recommendations made by the Mohan Rau Committee, appointed for going into the question of the surplus personnel, who until then were in the service of the erstwhile acceding States, such as Gwalior. In order to be fair and not to be arbitrary in the matter of election of those who were to be absorbed in the service of the new State, the Retrenchment Terms laid down seven categories of persons who were not to be absorbed.

10. It is clear from the said Retrenchment Terms themselves that they dealt with a two-fold problem : (1) of the surplus staff of the acceding States, and (2) of payment of a reasonable subsistence to such of the surplus personnel who could not to be absorbed. Though the said notification called its provisions "Retrenchment Terms", there was no question of any retrenchment in the sense in which that expression is ordinarily understood. The question of retrenchment could arise only in the case of persons who had already been absorbed and continued in the service of the new State. As aforesaid, the process of absorption was pending and under consideration. Until it was completed, the appellant's name figured in the list of the "provisionally absorbed persons". It was, therefore, not as if the surplus employees of the acceding States had already been absorbed or retained in the service of the new State and then were retrenched or removed from service.

11. The seven categories of persons classified in the said Retrenchment Terms also indicate that those persons were not to be absorbed and not that they were to be removed or retrenched from the service of the new State. There is nothing on record to show that the new State was bound to absorb in its service all the employees of the acceding States even if they were surplus. As aforesaid, even if the covenant under which the acceding States joined the new State so provided, the individual employees of such States did not thereunder acquire any right to be absorbed or continued in service of the new State. The non-absorption of persons falling in the seven categories could not, therefore, amount in law to removal or dismissal from service. They were simply not absorbed in the service of the new State and had, therefore, not yet become its employees. No question thus of removal or dismissal could possibly arise.

12. It is true that of the seven categories of persons, category 2 related to persons whose previous service record was consistently bad. The decision not to absorb such persons, however, could not amount to any punishment for the reason that they were not yet absorbed or continued in service of the new State had, therefore, not become its employees. It is true that these persons along with persons falling in the other categories continued to work in the new State after its formation. But that was only by way of a provisional arrangement, until the process of absorption was finalised. No question of paying subsistence or compensation also could have arisen if their non-absorption amounted to either removal or dismissal by way of punishment.

13. Category 1 consisted of those who had reached the age of 55 years, if they were in superior service, or 60 years, if they were in inferior service. Their non-absorption, surely, could not

constitute either removal or dismissal as and by way of punishment. The same would be the case of those categories 3, 5 and 6 namely, temporary and officiating Government servants, persons, who had put in service for 30 years and more, and permanent Government servants who had less than three years' service to their credit. These persons were placed in these categories presumably for the reason that their non-absorption would not work as a hardship or be unfair as against persons who were permanent Government servants and who had a long period to be in service. The classification of persons in the seven categories was thus clearly made to select persons from out of those who were in excess of the requirements of the new State. Since they were not to be absorbed, they could not be said to have been the employees of the new State and Article 311, therefore, could not apply to their cases. The claim of the appellant that the impugned order amounted to punishment or for that reason Article 311 was attracted misconceived.

14. The respondent State had relied upon categories 2, 4 and 7, as grounds for the impugned order. So far as category 4 was concerned, there can be no doubt that the appellant did not have the minimum educational qualification required for the post of a Sub-Inspector. Since that was so, he would fall in category No. 7, that is, as a person who could not, for reasons considered adequate by the Government, be absorbed in the service of the new State. Even if, therefore, category (2) could not for some reason or the other be taken into consideration, categories 4 and 7 were relevant and valid. The mere fact that the Government could not avail of category (2) did not mean that it could not rely on the other two grounds. The reason is that this was not a case of subjective satisfaction, where on failure of one of the grounds it would be impossible to predicate whether the relevant authority could have reached its satisfaction only on the basis of the rest of the grounds. The tests here were objective ones and if one of the several such tests failed, but the orders were sufficient, the order would still have to be sustained.

15. We agree, in the circumstances, with the judgment of the High Court, though for the reasons set out above. In the result, the appeal fails, but since the appellant is a person who was not absorbed in service, we make no order as to costs.

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