

Shahoodul Haque

Vs

The Registrar, Co-Operative Societies, Bihar and Another

Civil Appeal No. 1788 of 1969

(P. Jagmohan Reddy, M. H. Beg, A. Alagiriswami JJ )

09.08.1974

JUDGMENT

BEG, J. -

1. The appellant had challenged an order of his removal from service, dated March 11, 1966 by means of a Writ Petition dismissed by a Bench of Patna High Court on September 29, 1967. He asserted that, although he had been appointed temporarily as a routine Clerk in the office of the Co-operative Societies, Bihar, he had been confirmed by an order, dated April 6, 1956 in that post. That order, however, merely says that he was allowed to continue in the post held by him until further order. We do not think that it could amount to his confirmation in service. On November 21, 1961, he was "appointed on the post of Local Auditor of Co-operative Societies from the date of his joining on starting pay in the scale of Rs. 75-2-85-EB-xxx" together with the usual cost of living allowance and fixed D.A. of Rs. 40 p.m. sanctioned by the Government from time to time. Learned Counsel for the appellant now relies on this order as sufficient for showing that the applicant was appointed permanently as Local Auditor although the order is somewhat dubious.

2. Other facts, relating to the service of the appellant are not material until we come to November 15, 1963, when the applicant applied for leave to go on pilgrimage to Mecca. It appears that the applicant had left without grant of any leave, but had applied, on April 27, 1964, from Mecca, for an extension of a leave which was, in fact, never granted. He came back nearly a year afterwards. He alleges that he resumed duty on October 8, 1964 and was then compelled to take leave. He says that he fell ill on November 7, 1964 and could not attend to work until he got the order of his removal retrospectively from January 4, 1964. He asserted that he had been dismissed contrary to the Constitutional guarantee conferred upon him by Article 311 of the Constitution inasmuch as he had been dismissed "without giving him any opportunity to show cause, without any proceeding, and without any enquiry".

3. It is true that the order of removal says that :

. . . . it is clearly proved that Shri Haque has continuously, of his own sweet will, been on leave from January 4, 1964, without obtaining previous permission, that his work as Local Auditor, Co-operative Society, has always been quite unsatisfactory and that he was given sufficient opportunity to make improvement in his work but still it did not produce any effect on him.

The order further says :

As Haque has been an old (?) Local Auditor, his services are, in view of the above facts terminated with effect from the forenoon of January 4, 1964.

But, a glance at the counter-affidavit filed on behalf of the respondent shows that the appellant had been given a number of chances to improve his work about the unsatisfactoriness of which he had been informed, that he had probably deserted his post of duty because he was unable or unwilling to work, that he had made a number of representations, and also that before any action was taken against him, the District Audit Officer, Co-operative Societies, Gaya, had asked him to explain, by means of a Memo dated January 11, 1964, why he had been absent for so long from work without permission. It is stated in the counter-affidavit that the communication sent to him by registered post was returned as he could not be found. After that, two other communications dated September 5, 1964 were sent to him asking him to explain his conduct, but he did not care to reply to them. Hence, he had to be removed from service for having left his post of duty without any authority for a very long period. The appellant did not attempt to explain his omissions satisfactorily even in his affidavits filed in the High Court. In reply to the counter-affidavit filed on behalf of the respondent, he merely stated, in an affidavit, that he reaffirmed his previous assertions. This is really no explanation. It is not even a specific denial.

4. Learned Counsel for the appellant has cited cases on the protection of Article 311 of the Constitution to Government servants including temporary Government servants. He has relied especially on Jagdish Mitter v. The Union of India (AIR 1964 SC 449), as he had done in the High Court also. It is true that the High Court found that the unsatisfactory record of the appellant was merely a motive for the termination of his service and that he was not actually punished. After having been taken through the assertions made by both sides, we have no hesitation in coming to the conclusion that, even if the appellant was being punished, so that Article 311 could apply, he had been, in the circumstances of the case, given sufficient opportunity to explain his conduct. He had failed to avail of that opportunity. It could not, therefore, be said that the requirements of natural justice or of Article 311 of the Constitution had been contravened. In any case, on the facts before us, we think that it will be useless to afford any further opportunity to the appellant to show cause why he should not be removed from service. The undenied and undeniable fact that the appellant had actually abandoned his post of duty for an exceedingly long period, without sufficient grounds for his absence, is so glaring that giving him further opportunity to disprove what he practically admits could serve no useful purpose. It could not benefit him or make any difference to the order which could be and has been passed against him. It would only prolong his agony.

5. On the view we have adopted on the facts of this case, it is not necessary to consider the further question whether any notice for termination of services was necessary or duly given on the assumption that he was not punished. We do not think that there is any question involved in this case which could justify an interference by us under article 136 of the Constitution with the judgment of the High Court. That power is exercised only on showing substantial injustice and not for merely technical flaws in a proceeding. Consequently, we dismiss this appeal. But, in the circumstances of the case, we make no order as to costs. The appellant shall pay the Court fees which would have been paid by him if he had not been permitted to appeal as a pauper.

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