

Mohammad Abdul Salam Khan

Vs

Sarfaraz Ahmad Khan and Others

Civil Appeal No. 1200 of 1974

(K. K. Mathew, V. R. Krishna Iyer, A. C. Gupta JJ)

05.03.1975

JUDGMENT

KRISHNA IYER, J. -

1. A single legal issue presents itself for solution in this appeal. The question is whether a public servant dismissed for misconduct is not ipso jure disbarred from employment under the State. If 'yes', the first respondent is ineligible for the public office of Chairmanship of Town Area Bugrasi from where he has been removed on the ground of dismissal from government service, resulting in the eruption of this election dispute. If 'no', restoration to the lost office inevitably follows.
2. The appellant and first respondent were rivals for Chairmanship of Town Area Bugrasi in U.P. The latter, a dismissed police constable, was returned by the electorate and the former, chagrined by the defeat, successfully petitioned the Election Tribunal.
3. The appellant and the first respondent were two of the three candidates for Chairmanship of the Town Area of Bugrasi. The first respondent secured the highest number of votes and was declared elected by the Returning Officer. Thereupon the appellant moved the statutory tribunal by an election petition which was allowed on the score of disqualification for being chosen as Chairman by virtue of Section 6-K of the U.P. Town Areas Act (Act II of 1914). The disqualification stemmed from dismissal of the first respondent on September 26, 1963 from the Delhi Police Force. When the Election Tribunal set aside the first respondent's election and declared the appellant as the Chairman, the unseated candidate invoked the writ jurisdiction of the High Court. The learned single Judge who heard the petition affirmed the order of the Tribunal substantially but in relation to the relief directed against the declaration of the appellant as Chairman, the order was vacated. That question was left to be decided afresh in the light of certain observations of the learned Judge. Dissatisfied by the result, both the appellant and the first respondent filed writ appeals before a Division Bench of the High Court which ended in the allowance of the claim of the first respondent to be Chairman and consequential dismissal of the appeal of the other. The aggrieved appellant has, therefore, come up to this Court by special leave for relief based on the construction of two slightly ambiguous rules having some impact on this village election.
4. Before opening a political chapter, respondent No. 1 had ended his official career as police constable under dismissal order dated September 26, 1963 :

Constable No. 3048 Sarfraz Ahmad Khan is dismissed from the forenoon of September 25, 1963 of having been in illicit relation with Mrs. Chatterjee and her daughter. The conduct of the constable is most reprehensible, adulterous and

unworthy of a Police Officer who is supposed to protect the society from such vices.

He ran for panchayat Chairmanship and won, defeating the appellant and the second respondent. The disability for election in the present instance is said to spring from the dismissal of the first respondent from government service as aforesaid.

5. Let us examine the relevant legal texts. The pertinent part of Section 6-K, relied on by the appellant as fatal disqualification, reads :

6-K. Disqualification for members and Chairman - A person notwithstanding that he is otherwise qualified, shall be disqualified for being chosen as, and for being, a member or Chairman of a Committee, if he -

(a) is a dismissed servant of a local authority, the State or Central Government and is debarred from re-employment therein,

Is the contesting respondent 'a dismissed servant of the State Government and is debarred from re-employment therein' ? That is the question. The statute is of 1914 vintage, but amended from time to time, and we have to interpret it in the light of legal provisions and constitutional developments. Does 'dismissal' automatically spell 'disbarment from re-employment' ? The argument which weighed with the High Court is that Section 6-K speaks of two components (a) dismissal; (b) and being debarred from re-employment. The second ingredient is not present in the terminal order against the constable and so the formula for disqualification is not fulfilled.

6. We are not impressed with this dualism. If dismissal simpliciter carries within it the ban on re-employment as a necessary jural incident, then both the elements are present implicitly in the order. It is not as if the interdict against re-employment should be separately stated in the rule or order if by force of law an effective bar in that behalf can be read into the order cashiering the constable. So we are thrown back on the order itself which, admittedly, is silent on prohibition of re-employment.

7. Counsel for the contestant, Shri Goyal strenuously argued that the Police Act and the relevant rules bearing on disciplinary action are telling and must be treated as decisive. Brushing aside the ripples of confusion raised in the course of arguments about the source of power for framing these rules - no party, at any stage, has challenged the vires of the rules - we may reproduce Rule 16(2)(iii) which governs the situation. Before that, a glance at Section 7 of the Police Act :

Subject to the provisions of Article 311 of the Constitution and to such rules as the State Government may from time to time make under this Act, the Inspector General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents of Police may at any time dismiss, suspend or reduce any police officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty or unit for the same.

8. It is clear that Section 7 speaks of dismissal as a single category of punishment, not as two twigs from the same branch i.e., dismissal without and with embargo on re-entry into State. It may however, be noticed that there is no specific reference to removal from service, a recognised form of punishment sanctified by the Constitution Acts, including Article 311. Since Section 7 expressly subjects itself to the paramount law of the Constitution it is obvious that the power to remove is not eroded and vests in the appointing authority apart from the power to dismiss. Indeed, the Central and State rules regulating disciplinary control, all over the country, have for a long period, made distinction between dismissal and removal, the former carrying the more injurious incident or

removal plus refusal of future re-employment. Anyone conversant with disciplinary control of government servants in India will agree that this fundamental difference between mere removal and dismissal exists. Article 311 enumerates dismissal and removal as two different punishments, one more serious than the other. It is perfectly plain that, understood in this environment of legal control of government servants prevalent historically in this country, Section 7 of the Police Act, when it uses the expression 'dismissal' must be deemed to have conveyed the official semantics attached to the expression, viz., removal from service plus a ban on re-employment by the State. The non-enumeration of 'removal' as a distinct form of punishment does not divest the appointing authority from exercising, subject to legal restrictions, the power to remove from service without inflicting the more serious punishment of dismissal.

9. The expressions 'dismissal' and 'removal' look alike for the laity but in law they have acquired technical meanings sanctified by long usage in Service Rules. In *Khem Chand v. Union of India* (1958 SCR 1080, 1089 : AIR 1958 SCC 300 : (1958) 1 Lab LJ 167) this Court observed :

the expressions 'dismissed', 'removed' and 'reduced in rank' are technical words taken from the service rules where they are used to denote the three major categories of punishment.

As has been rightly pointed out in a recent book (*The Civil Servant under the Law and the Constitution* - by Dr. Narayanan Nair - The Academy of Legal Publications, Trivandrum-1 Kerala (1973)), the words 'dismissal' and 'removal' have one distinction, viz., that the former disqualifies from future employment while the latter does not. Likewise, there is reference to this distinction in *Shyamlal's case* (*Shyam Lal v. State of U. P. and Union of India*, (1955) 1 SCR 26, 40 : AIR 1954 SC 369) wherein it was said :

The position, therefore, is that both under the rules and according to the last mentioned decision of the Judicial Committee (*I. M. Lall's case* (High Commissioner for India v. I. M. Lall, AIR 1948 PC 121 : 75 IA 225) : AIR 1948 PC 121) there is no distinction between a dismissal and a removal except that the former disqualifies from future employment while the latter does not . . . and it may safely be taken, for reasons stated above, that . . . removal and dismissal stand on the same footing except as to future employment. In this sense removal is but a species of dismissal.

Rule 49 of the Civil Services (Classification, Control & Appeal) Rules, 1930 provides inter alia :

Removal is termination of service which does not disqualify from future employment. Dismissal is removal from service which ordinarily disqualifies from future employment.

It follows that 'dismissal' is 'removal with a prohibition super-added'.

10. Against this background, here is Rule 16(2)(iii) of the Punjab Police Rules which applied during the relevant time to the first respondent :

16(2)(iii). When a Police Officer is convicted judicially and dismissed, or dismissed as a result of a departmental enquiry, in consequence of corrupt practice, the conviction and dismissal and its cause shall be published in the Police Gazette. In other cases of dismissal, when it is desired to ensure that the Officer dismissed shall not be re-employed elsewhere, a full descriptive roll, with particulars of the

punishments, shall be sent for publication in the Police Gazette.

The submission made with some attractiveness by Shri Goyal receives verbal support from the text of the rule. It speaks of a police officer being dismissed in consequence of 'corrupt practice' in which case there is a mandate to the State Government that 'its cause shall be published in the Police Gazette'. 'In other cases of dismissal', the provision for publication in the Police Gazette is facultative. Counsel spins out the argument that if 'in other cases of dismissal' the authority intends to inflict the additional penalty of non-re-employment, it should also publish the punishment in the Police Gazette. In the present case there is no indication of any such publication and so the dismissal does not carry with it the forbidding factor regarding re-employment. Read with Section 6-K, which refers to dismissal together with debarment from re-employment, the conclusion is sought to be drawn that the first respondent's case does not attract the disqualification in Section 6-K.

11. We do not agree. The reasons are two-fold. As earlier explained, every 'dismissal' has a double consequence understood in its contextual connotation. It removes the man from his office and super-adds debarment from re-employment. Such being its meaning in the Indian Constitution, in the relevant rules which have been in force in the country over the decades and indeed has become part of our officialese, we have to understand the dismissal as punishment imposed upon the constable in this case as one which embodies the latent penalty of disability from being re-employed.

12. Secondly, even Rule 16(2)(iii) carefully scanned, refuses to yield the helpful inference drawn from it by Counsel for the first respondent. That rule does not state "in other cases of dismissal" the bar against re-employment operates only where there is publication in the Police Gazette to that effect. Dismissal, as such, carries with it this additional penalty in both classes of cases but in the first category covered by the rule, publication is a duty cast upon the authority while in the second type of cases the authority is left with the option to publish or not to publish. If the dismissing authority desires to ensure itself that unwittingly some other department may not employ the dismissed official, he may, by way of abundant caution, resort to publication of the punishment in the Police Gazette. The language is clear that to ensure that the officer dismissed shall not be re-employed the concerned authority shall send for publication the relevant particulars. Not that without such publication a right to re-employment inheres in the dismissed official, but that to make sure that any unknowing slip may not be committed by another department, the dismissing officer may taken care to forward the particulars of punishment for proper publication. It is enabling so far as the dismissing authority is concerned and is legally unnecessary to spell the two-in-one punishment of dismissal.

13. In this view of the matter, there is no escape from the conclusion that the first respondent was punished under the former part of Rule 16(2)(iii) and incurred the extreme wrath of the law including disbarment from re-employment. Logically therefore he suffered disqualification under Section 6-K of the Act and the Tribunal, in removing him from Chairmanship, acted legally.

14. No other point has been urged before us and therefore we allow the appeal and affirm the learned Single Judge's judgment. In the circumstances of the case we direct that the parties will bear their costs in this Court. The costs of the appellant in the courts below will be paid by the first respondent.

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