Uttar Pradesh Government

Vs

Sabir Hussain

Civil Appeal No. 174 of 1968

(V. R. Krishna Iyer, R. S. Sarkaria, A. C. Gupta JJ)

30.04.1975

JUDGMENT

SARKARIA, J. –

1. This appeal is directed against a judgment of the High Court of Allahabad declaring that the orders, dated 15-8-1949 and 18-5-1951, of the respondent's removal from service were illegal.

2. The respondent was employed as Assistant Jailor at the Central Prison, Benaras. Auditing of the accounts revealed certain shortages. The respondent was charge-sheeted in respect of the same, and dismissed from the post on 4-7-1942. He made representation to the authorities against his dismissal. Ultimately, the Government reinstated him on 15-6-1948 but by the same order suspended him with retrospective effect from the date of his dismissal. On the basis of the enquiry held earlier into the charges against him, he was removed from service on August 15, 1949. The respondent then filed suit No. 144/396 of 1952 in the Court of Munsif, Lucknow, claiming a declaration that the suspension order, dated June 15, 1948, and the removal order dated, 15-8-1949 and the Government Order, dated 18-5-1951, upholding the removal in appeal, were illegal, ultra vires and contrary to the rules. The plaintiff further stated that he would file a separate suit for the recovery of the arrears of pay, to which he was entitled in regard of the period from 4-7-1942 to 10-8-1949.

3. The suit was resisted by the State on various grounds. The trial Court dismissed his suit. The first Appellate Court dismissed his appeal.

4. The plaintiff preferred a second appeal in the High Court. Before the learned Judge of the High Court, who heard the appeal, it was contended, interalia that copies of the enquiry officer's report and findings were not supplied to the plaintiff and, therefore, he was not afforded a reasonable opportunity of showing cause in terms of Article 311(2) of the Constitution. In substance, the learned Judge seems to have accepted this contention when he concluded that in the absence of furnishing a copy of the report, it could not be said that the plaintiff had been afforded a reasonable opportunity to show cause.

He, however, rested this conclusion also on the ground that no cause could properly be shown without a copy of the proceedings being handed over as provided in Rule 5A of the Punishment & Appeal Rules for subordinate Services notified by the State Government under Notification No. 2627/II-266, dated August 3, 1932, (hereinafter referred to as the Appeal Rules). In the result, he allowed the appeal and declared the impugned order, dated 15th August 1949 and 18th September, 1951 to be void. He did not think it necessary to record any finding with respect to the suspension

order, dated June 15, 1948, as the same had merged in the removal orders. Hence this appeal by special leave by the State.

5. The plaintiff-respondent has not appeared before us despite notice. Mr. R. P. Aggarwala has assisted us as amicus curiae.

6. Shri Dikshit, learned Counsel for the appellant contends that the High Court was wrong in holding that the impugned order of removal violated the provisions of Rule 5-A of the Appeal Rules. It is pointed out that the application of Rule 5-A to the employees of Jail Department was expressly excluded by Rule 6 of the Appeal Rules. It is further submitted that since the removal in question was a pre-constitutional removal, no protection of Article 311(2) of the Constitution could be claimed by the respondent. Even Section 240(3) of the Government of India Act, 1935, according to the counsel, would not afford any protection because the word 'removal' did not find mention in that section.'Removal', says the Counsel, is something different from 'dismissal' and the authors of the Government of India Act were aware of this difference when they did not include it in the protective provisions of Section 240. Since the impugned order, dated 10th August, 1949, was only an order of removal as distinguished from dismissal, Section 240(3) was not attracted and no opportunity to show-cause against the intended removal was required to be given to the servant. It is further submitted that in any case, the respondent had no right to be supplied with a copy of the report and the findings of the enquiry officer on the ground that it was a requirement of natural justice. In support of his contentions, learned Counsel has cited Suresh Koshy George v. University of Kerala ((1969) 1 SCR 317 : AIR 1969 SC 1198); Satish Chandra Anand v. Union of India (1953 SCR 655 : AIR 1953 SC 250); and State of U.P. v. Mohammed Nooh (1958 SCR 595 : AIR 1958 SC 86)

7. On the other hand, Shri R. P. Aggarwal submits that even if Rule 5-A of the Appeal Rules was not applicable, the respondent was entitled to the protection of Section 240(3) of the Government of India Act, 1935. According to counsel, the word 'dismissal' used in Section 240(3) was wide enought to cover a case of removal as a punishment. It is maintained that 'removal' and 'dismissal' in the context of Section 240(3) were synonymous terms. The argument proceeds that since the respondent was not furnished with a copy of the enquiry report and the findings recorded therein, the opportunity, if any given, was not a 'reasonable opportunity' as required by the mandatory provisions of Section 240(3). Even after making the order of removal, it is stressed, the authorities despite written requests made by the respondent, did not supply a copy of those documents to enable him to file an effective appeal representation under the service rules to the appropriate authority. This intransigent attitude, says, the learned counsel amicus curiae, was also violate of the procedure prescribed in Government Circular No. 47 B8EC, dated 13th December, 1947 (Ex. PW 1/2) and the fundamental principles of natural justice embodied therein, Reliance in the behalf has been placed on High Commissioner of India v. I. M. Lall ((1948) 75 IA 225 : AIR 1948 PC 121 : 1948 FCR 44); Parshotam Lal Dhingra v. Union of India (1958 SCR 828 : AIR 1958 SC 36 : (1958) 1 LLJ 544); Khem Chand v. Union of India (1958 SCR 1080 : AIR 1958 SC 300 : (1958) 1 LLJ 167); State of Gujarat v. R. G. Teredesai ((1969) 2 SCC 128). Counsel further distinguished the decision in Suresh Koshy George's case (supra).

8. The first point to be considered is whether the safeguard in Section 240(3) of the Government of India Act, 1935, was available to a civil servant in a case of 'removal' from service as a punishment. In other words, was the protection afforded by Section 240(3) less extensive than the one given by Article 311(2) of the Constitution ?

9. Section 240(3) was in these terms :

> No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :
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> Provided that this sub-section shall not apply –
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> 19. where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
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> (b) where an authority empowered to dismiss a person or reduce him in rank is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause.

10. Article 311(2) (after the 15th Amendment) runs thus :

> No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being a heard in respect of those charges and where it is proposed after such enquiry to impose on him any such penalty, able opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry :
>
> Provided that this clause shall not apply –
>
> 19. where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
>
> (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded reasonably practicable to hold such inquiry; or
>
> (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

11. A comparative study of Section 240(3) and Article 311(2) would show that the protection afforded by these provisions, is in nature and extent, substantially the same. Of course, the word 'removed', which appears in Article 311(2) does not find mention in Section 240(3). But this does not mean that Section 240(3) did not cover a case of 'removal'. It is by now well settled that from the constitutional stand point 'removal' and 'dismissal' stand on the same footing except as to future employment. In the context of Section 240 (3), 'removal' and 'dismissal' from service, are synonymous terms, the former being only a species of the latter. Moreover, according to the principle of interpretation laid down in Section 277 of the 1935 Act, the reference to dismissal in Section 240 would include a reference to removal [see High Commissioner of India v. I. M. Lall (supra); Shyam Lal v. State ((1955) 1 SCR 26 : AIR 1954 SC 369); Parshotam Lal Dingra v. Union of India (supra); Khem Chand v. Union of India (supra)].

12. It is thus clear that despite the non-mention of the word 'removed' in Section 240(3), it was obligatory for the removing authority, as soon as it was tentatively decided, as a result of the enquiry, to inflict the punishment of 'removal', to give to the employee a 'reasonable opportunity' of showing cause against the action proposed to be taken in regard to him.

13. It is to be noted that section requires not only the giving of an opportunity to show-cause, but further enjoins that the opportunity should be "reasonable". What then is "reasonable opportunity" within the contemplation of Section 240(3)? How is it distinguished from an opportunity which is not reasonable? The question has to be answered in the context of each case, keeping in view the object of this provision and the fundamental principle of natural justice subserved by it. As pointed out by this Court in State of Gujarat v. Teredesai (supra) [SCC p. 131, para 5] the entire object of supplying a copy of the report of the enquiring officer is to enable the delinquent to satisfy the punishing authority that he is innocent of the charges framed against him and that even if the charges are held to have been proved the punishment proposed to be inflicted is unduly severe. If the enquiry officer had also made recommendations in the matter of punishment, that is likely to affect the mind of the punishing authority even with regard to Penalty or punishment to be imposed on such officer. The requirement of reasonable opportunity, therefore, would not be satisfied unless the entire report of the enquiry officer including his views in the matter of punishment are disclosed to the delinquent servant.

Thus the broad test of "reasonable opportunity" is, whether in the given case, the show-cause notice issued to the delinquent servant contained or was accompanied by so much information as was necessary to enable him to clear himself of the guilt, if possible, even at that stage, or, in the alternative, to show that the penalty proposed was much too, harsh and disproportionate to the nature of the charge established against him.

13. Now let us apply this test to the facts of the present case. The case of the defendant-State in the written statement (as extracted by the munsif in his judgment) was :

that the accounts of the Civil Prison Benaras for the years 1939 to 1947 were audited by the Senior Departmental Auditor who detected heavy shortage whereupon the matter was thoroughly investigated and the I.G. ordered charge-sheets to be framed against the plaintiff which was accordingly done and the Superintendent, Central Prison, Benaras submitted the proceedings of those charges along with his comments and explanation of the plaintiff where upon the I.G. of Prison found the plaintiff guilty of those charges and ordered his removal.

14. It is clearly discernible from what has been extracted above that the order of the removal in question proceeded on an acceptance of the report of enquiry proceedings and "comments" of the Enquiry Officer (Superintendent) Evidently the Inspector General who made the impugned order was influenced and guided both with regard to the proof of charges and the prescribing of the type of punishment by the report and "comments" (which term will cover "recommendations") of the enquiry authority.

15. Further, it is an uncontroverted fact found by the Courts below that no copy of the report findings and "comments" of the enquiring officer, was supplied to the delinquent servant. Another undisputed fact is that no copy of the enquiry report and allied documents was given to him, even when he applied for the same in order to file an appeal to the higher authorities against the order of removal. The servant was told that he was not entitled to those copies excepting a copy of the impugned order of punishment, and that to a payment of Rs. 3 as copying charges.

16. In view of these stark facts, the High Court was right in holding that the plaintiff (respondent) was not given a reasonable opportunity to show-cause against the action proposed to be taken against him and that the non-supply of the copies of the material documents had caused serious prejudice to him in making a proper representation. There was a disobedience of the mandate of S.

240(3) of the Government of India Act, 1935 and the impugned order stood vitiated on that score alone. Reference to Rule 5-A of the Appeal Rules, made by the High Court in support of its conclusion, was unnecessary because application of that Rule to the employees of the Jail Department had been expressly excluded by Rule 6 of the Appeal Rules. Moreover, Rule 5-A was inserted in 1953, while we are dealing with a removal order made in 1949.

17. It was contended before us by Mr. R. P. Aggarwal that the removal order dated 18-5-1951, passed by the Government on the respondents appeal was also invalid because in violation of the basic principles of natural justice and fair play, copies of the proceedings, report and findings of the enquiring officer were not supplied to the plaintiff to enable him to file an effective appeal. There is undoubtedly force in this contention but we think it unnecessary to decide this point as the order or removal dated 15-8-1949, being void ab initio due to non-compliance with the requirements of Section 240(3), the appellate impugned order would automatically fall with it.

18. Before parting with this judgment we place on record our appreciation of the valuable assistance rendered by the learned counsel on both sides, particularly the amicus curiae, Shri Aggarwala.

19. The appeal fails and is dismissed of without any order as to costs.

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