

Union of India

Vs

Agya Ram

Civil Appeal No. 1779 Of 1970

(A.C. Gupta, Syed M. Fazal Ali JJ)

17.08.1976

JUDGMENT

GUPTA, J. –

The only question that arises for decision in this appeal brought on a certificate of fitness granted by the Punjab and Haryana High Court is, whether respondent Agya Ram, a permanent employee of the Punjab Government, who held a temporary appointment as Settlement Officer in the office of the Regional Settlement Officer, Jullundur, under the Ministry of Works, Housing and Supply (Department of Rehabilitation), Government of India, was entitled to 15 days' notice before he was asked to go back to his parent department. The respondent was employed as Superintendent, Land Claims Organisation of the Rehabilitation Department of the Punjab Government at Jullundur when he was selected for appointment as Assistant Settlement Officer in the Ministry of Rehabilitation, Government of India, in a temporary capacity on the terms and conditions set out in a letter dated January 14, 1955 addressed by an Under Secretary to the Government of India, Ministry of Rehabilitation, to the Under Secretary to the Government of Punjab, Rehabilitation Department, Jullundur. One of the terms was :

His appointment will be purely temporary and may be terminated at any time after notice for a period of not less than 15 days, but without any reason being assigned. If he wishes to resign, he will have to give in writing 15 days' prior notice of his intention to do so.

The respondent worked as Assistant Settlement Officer till May, 1962 when he was appointed as Settlement Officer, again in a temporary capacity. The respondent took over as Settlement Officer on May 16, 1962. By a letter December 30, 1963 the Settlement Commissioner, Department of Rehabilitation in the Ministry of Works, Housing and Rehabilitation of the Government of India, informed the Director of Land Records, Punjab Government, Jullundur that

..... it has been decided to replace the service of Shri Agya Ram, a permanent Assistant of your Directorate and working as Settlement Officer in the office of the Regional Settlement Commissioner, Jullundur, on deputation, at your disposal, with immediate effect, and requested him to issue Agya Ram's posting orders immediately. This letter was followed by an office order made on January 6, 1964 by the Regional Settlement Officer asking the respondent to hand over charge of his office and report for duty to the Director of Land Records, Punjab, Jullundur, immediately. A copy of his order was served on the respondent. The respondent however did not report for duty but sent in his resignation to the Punjab Government

stating that his circumstances did not permit him to continue in government service any longer.

2. The respondent then instituted a suit in the court of the Senior Subordinate Judge, Jullundur, for a declaration that the order reverting him to his parent departmental was illegal and void, and for a decree for arrears of pay and allowances. The trial Court decreed the suit declaring that the order reverting the respondent from the post of Settlement Officer was illegal and ineffective and that the respondent continued to hold the post of Settlement Officer. The Trial Court found that the respondent was a direct recruit to the post of Assistant Settlement Officer by selection, not a transferee from the Director of Land Records, Punjab, as contended on behalf of the Union of India, and there was no 'parent department' to which the respondent could be sent back. It was held that the order of reversion was really an order terminating the services of the respondent which was void in the absence of a prior notice in accordance with the terms of appointment. The court also passed a decree for Rs. 2700 as terms of pay and allowances.

3. The Union of India preferred an appeal against the decision of the trial Court which was partly allowed. The Additional District Judge, Jullundur, who heard the appeal held that the order reverting the respondent to his parent department had been made in accordance with his terms of service, and was therefore valid, but as one of the terms, which we have quoted above, provided that the respondent's services might be terminated only after giving him "notice for a period of not less than 15 days", and as no such notice was admittedly given, he was entitled to his pay for these 15 days. The Additional District Judge disposed of the appeal accordingly giving the respondent a decree for Rs. 312.50 p. The respondent preferred a second appeal to the High Court of Punjab and Haryana questioning the correctness of this decision and a learned single Judge of the High Court allowed the appeal, setting aside the judgment and decree of the first appellate Court and restored those of the trial Court. The learned Judge was of opinion that in the absence of anything in the conditions of service to suggest that pay in lieu of notice would satisfy the requirement of serving 15 days' clear notice on the respondent before his services could be terminated, the order of reversion was illegal and void. It was observed that the view taken found support from two decisions of the Punjab and Haryana High Court; one of them was Mohan Singh Malhi v. State of Punjab [1968 SLR 881 (Punj and Har)]. A Division Bench of the High Court dismissed in limine the letters patent appeal preferred by the Union of India from the judgment of the single Judge but granted a certificate that the case was a fit one for appeal to the Supreme Court. This is how this appeal is before us.

4. It is clear even from the evidence of the respondent himself that he was one deputation in the Ministry of Rehabilitation, Government of India, though he sought to deny this fact. He admitted that he was a "permanent employee of the Punjab Government" in the "substantive rank of Superintendent" and that he had "lien in the Punjab State, Rehabilitation Department" even when he was working as Settlement Officer in the Central Rehabilitation Department. This shows that there was no basis for the view taken by the trial Court. Both the first appellate Court and the High Court thought that 15 days' prior notice was necessary before the order of reversion was made though they differed on the consequences of non-service of the notice. The High Court relied on its earlier decision in the case of Mohan Singh Malhi v. State of Punjab, where the question was whether under Rule 5.32(c) of the Punjab Civil Service Rules, the Government could retire an employee on or after he attained the age of 55 years by giving him 3 months' salary in lieu of 3 months' notice. It appears that the decision relied on was by a single Judge who held that failure to give notice would not be cured by giving the employee his salary for the period. The question was ultimately referred to a Full Bench, and the Full Bench of the High Court took a contrary view. The case came up to

this Court (Civil Appeal 1601 of 1970 decided on March 25, 1976 [Mohan Singh Malhi v. State of Punjab, (1976) 3 SCC 21 : 1976 SCC (L&S) 376]) and this Court agreeing with the Full Bench held that the validity of the order retiring the government servant was not affected if, instead of notice, a sum equivalent to the amount of his pay and allowances for the period of notice was paid to him.

5. Before us it was contended on behalf of the appellant. Union of India, (a) that the respondent's conditions of service as Settlement Officer did not require that he would be given any prior notice before reverting him to his parent department, and (b) that, even assuming that the respondent was entitled to a prior notice of 15 days before his services were terminated, sending him back to the Directorate of Land Records where he held as substantive post did not amount to termination of his services as Settlement Officer. We do not think it necessary to consider the second question as to whether in the circumstance of the case reverting the respondent to the parent department amounted to termination of his services, because we have not been able to find any basis for the claim that prior notice of 15 days was required before the respondent could be reverted from his temporary post as Settlement Officer to the Directorate of Land Records. The terms of service on which the courts including the High Court proceeded were applicable to the respondent as Assistant Settlement Officer. No such term appears from the order appointing the respondent as Settlement Officer, nor there is anything on record to suggest that the terms and conditions which regulated the services of the respondent as Assistant Settlement Officer would continue to apply to him as Settlement Officer. Reference to that term in this case, in our opinion, was misconceived. The appeal therefore must succeed. The appeal is accordingly allowed and the suit is dismissed. The parties will bear their own costs throughout.

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