Bishan Lal Gupta

Vs

The State of Haryana and Others

Slp (Civil) No. 3818 of 1976

(CJI M. H. Beg, P. N. Bhagwati, D. A. Desai JJ)

12.01.1978

JUDGMENT

BEG, C.J. -

1. The Special Leave Petition before us arises out of a suit in which a point arose which had been referred for decision by a learned Judge of the High Court of Punjab and Haryana to a larger Bench on the ground that it involved an important question of law of some difficulty. This court issued notices to the State of Haryana and other parties and we have heard Counsel for both sides. Although the case does not deserve grant of special leave, we purpose to dismiss the petition with a statement of the position which may clarify what seems to have troubled the Judges of the High Court.

2. The petitioner before us had joined the Haryana Civil Service (Judicial Branch) as a probationer on December 8, 1966. He was served with a show cause notice on October 22, 1968, asking him to explain certain allegations. He was served with another show cause notice on June 18, 1969, asking him to explain probably the same, or at any rate, similar allegations again. He replied to the first show cause notice on November 15, 1968, and to the second on July 4, 1969. The High Court considered his explanations and found that they were similar but belied by documentary evidence on record.

3. The High Court then made a recommendation to the State Government that the services of the applicant may be terminated.

4. On June 18, 1969, still another notice was served upon the applicant by the Chief Secretary to the Government which stated inter alia :

> It may be noted that both your earlier explanations and the one which you may submit now in pursuance of this revised notice, will be taken into consideration while determining your suitability for being retained in service. The reply to this notice should be sent through the Registrar, High Court of Punjab and Haryana, within the stipulated period.

5. After considering his further explanations the services of the applicant were terminated by an innocuously worded order dated September 11, 1969. The submission on behalf of the petitioner was that, although, the order of termination of his services was innocuous, he was entitled to a fuller enquiry contemplated by Article 311 of the Constitution as he was, in substance, punished. The petitioner relies strongly upon certain observations of this Court is Shamsher Singh v. State of

Punjab ((1975) 1 SCR 814 : (1974) 2 SCC 831 : 1974 SCC (L & S) which was also the case of a probationer whose services had been terminated.

6. Reliance is placed on behalf of the State on : State of Punjab v. Sukh Raj Bahadur (AIR 1968 SC 1089 : 1968 Lab 1286) and Ram Gopal Chaturvedi v. State of Madhya Pradesh ((1969) SLR 429) and S. P. Vasudeva v. State of Haryana (AIR 1975 SC 2292 : (1976) 1 SCC 236 : 1976 SCC (L & S). In the last mentioned case, Alagiriswami, J., speaking for the Court, observed :

> We may in this connection point out that where an order of reversion as in the present case, of a person who had no right to the post, does not show ex facie that he was being reverted as a measure of punishment or does not cast any stigma on him, the Courts will not normally go behind that order to see if there were any motivating factors behind that order. Certain cases of this Court have taken that view. Certain other cases have taken the view that it is open to the Court to go behind the order and find out if it was intended as a measure of punishment and if so whether the formalities necessary have not been followed. In cases where enquiries have been held before orders of reversion of a probationer to his former lower post or discharge of a probationer or discharge from service of a temporary servant were passed, certain decisions have taken the view that where the enquiry was held in order to find out the suitability of the official concerned the order would not be vitiated. In certain other cases it has been held that the enquiry was held with a view to punish and as the enquiry did not satisfy the requirements of Article 311 of the punishment we bad.

It was also pointed out :

> After all no Government servant, a probationer or temporary, will be discharged or reverted, arbitrarily, without any rhyme or reason. If the reason is to be fathomed in all cases of discharge or reversion, it will be difficult to distinguish as to which action is discharge or reversion simpliciter and which is by way of punishment. The whole position in law is rather confusing. We think if is time that the whole question was considered de novo and it would be better for all concerned and avoid a lot of avoidable litigation if it should be held that the reversion of a probationer, from a higher to a lower post, or the discharge of a probationer, or the discharge from service of a temporary servant cannot be questioned except on the basis of mala fides in the making of the order.

7. In our opinion, the confusion, if it is there, could be cleared up by considering what was exactly found, on facts, by the Court in each case.

8. It appears from the detailed findings given by the trial Court upon issues of fact in the case before us that the petitioner was given a reasonable opportunity to be heard in reply even assuming that his services had been terminated for faults found with his conduct in the course of either performance of his duties or relating to other matters relevant for assessing his suitability to serve as a Sub-Judge. He had ample opportunity to answer in writing whatever was alleged against him. No rule was shown to us to support the view that anything more was needed if the intention was not to hold a full departmental trial to punish but a summary inquiry to determine only suitability to continue in service. The High Court was no satisfied with his explanations. It is difficult to see how a fuller enquiry, as contemplated by Article 311 of the constitution, which also only requires a "reasonable opportunity of being heard" in respect of the charges made, could improve his position. If may be

that, of the petitioner had acquired a right to the post and was not a mere probationer whose services were being terminated, he could have, technically speaking, claimed a formally fuller process of hearing before he could be punished for a fault. But, in the case before us, the petitioner had no right to continue in service despite adequate reasons for terminating his services. He could, therefore, only claim a hearing which was reasonably sufficient and appropriate for determining whether there were adequate reasons to continue him in service, even if he could not be removed by way of punishment without a fuller inquiry.

9. It was observed in Champaklal Chimanlal Shah v. Union of India (AIR 1964 SC 1854 : (1964) 1 Lab LJ 752) in the case of a temporary Government servant :

> The contention on behalf of the appellant is that this memorandum really amounted to a charge-sheet against the appellant and he was asked to give an explanation thereto and also to state why disciplinary action should not be taken against him. Stress is laid on the last sentence of the memorandum where the appellant was asked why disciplinary action should not be taken against him. It may be conceded that the way in which the memorandum was drafted and the fact that in the last sentence he was asked to state why disciplinary action should not be taken against him might give an impression that the intention was to hold a formal departmental enquiry against him with a view to punishing him. But, though this may appear to be so, what is important to see is what actually happened after this memorandum for the Courts are not to go by the particular name given by a party to a certain proceeding but are concerned with the spirit and substance of it in the light of what preceded and succeeded it. It is true that in the written statement of the respondent it is stated that from December 1953 onwards a departmental enquiry was being conducted against the appellant, though the written statement went on to say that that departmental enquiry was not pursed as the evidence was not considered to be conclusive. In actual fact however it is not even the case of the appellant that any enquiry officer was appointed to hold what we have called a formal departmental enquiry in which evidence was tendered from both sides in the presence of the appellant. This is clear from para 8 of the plaint in which it is said that some enquiries appeared to have been held after the memorandum of December 1953 but were not pursued further. It is however clear that no formal departmental enquiry as contemplated under Article 311(2) read with the relevant Central Services Rules was ever held after the notice of December 29, 1953, as otherwise the appellant would have taken part in such an enquiry and would have been entitled to cross-examine witnesses produced against him and would also have been entitled to lead evidence. It seems therefore clear that though this memorandum was issued and the appellant was asked therein to state why disciplinary action should not be taken against him, no departmental enquiry followed that memorandum and the matter was dropped.

10. We think that the position before us also is very similar. No full-fledged departmental inquiry followed any show cause notice. Proceedings for punishment could be deemed to have been "dropped". The only result of what happened was an innocuous order of termination of service without stating any ground for the termination. If this, in itself, involved some reflection upon the petitioner's capabilities it cannot be helped. It was not undeserved. Therefore, there could be no question of injustice.

11. The Division Bench to which the case was referred for hearing considered the rules applicable to

termination of services of a probationer and found that they had been fully complied with. It also examined cases which laid down that the form of the order is not decisive but the Court can go behind the ostensibly innocuous order and investigate the real nature of the proceedings. The cases mentioned in this connection were : The State of Punjab v. Sukh Raj Bahadur (supra), and the State of Bihar v. Shiva Bhikshuk Mishra (AIR 1971 SC 1011 : (1970) 2 SCC 871). It then relied on cases in which the position of a probationer had been considered. These were : Parshotam Lal Dhingra v. Union of India (AIR 1958 SC 36 : 1958 SCR 828 : (1958) 1 Lab LJ 544); The State of Orissa v. Ram Narayan Das (AIR 1961 SC 177 : (1961) 1 SCR 606 : (1961) 1 Lab LJ 552); and Ranendra Chandra Banerjee v. The Union of India (AIR 1963 SC 1552 : (1964) 2 SCR 135 : (1964) 1 SCJ 578); State of Uttar Pradesh v. Akbar Ali Khan (AIR 1966 SC 1842 : (1966) 3 SCR 821 : (1967) 1 LLJ 708); The State of Punjab v. Sukh Raj Bahadur (supra); Shamsher Singh v. State of Punjab (supra); and S. P. Vasudeva v. State of Haryana (supra). The decision in each of these cases turned upon its own facts. It is only the principle laid down which can be binding law.

12. After considering the cases mentioned above, the High Court reached the following conclusion :

> The members of the State Judicial Service sometimes do incur the displeasure of the litigants against whom they decide cases. Such litigants do not spare them and in many cases send a large number of complaints against them to this Court. If this Court were to act indiscriminately on such complaints without getting them verified by the District and Sessions Judges the members of the judicial service would be left with little or no security of tenure. It is precisely for this reason that this Court usually has an enquiry held into the matter before getting the explanation of the judicial officer concerned. Sometimes allegations of corruption are also levelled against judicial officers. Preliminary enquiries are also held to verify such allegations before deciding whether a full fledged enquiry should be held against the judicial officer who is probationer for awarding him a punishment or his explanation should be obtained for deciding whether he should be continued in service or not. In the latter class of cases the notices issued usually mention that explanation was being called for taking action under Rule 7(2) appearing in part D of the Haryana Civil Services (Judicial Branch) Rules, 1951, read with Rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules 1952. Such a mention of the rules gives a clear indication to the judicial officer concerned that no action of impose a punishment on him was envisaged. This is precisely what was done in the instant case and the appellant cannot contend with any justification that his rights under Article 311(2) of the Constitution have been violated.

13. In Shamsher Singh's case (supra) this Court said :

> No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination that that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for a similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution.

14. These observations must, we think, be meant to cover those cases where, even though the

probationer may have no right to continue in service, yet, the order terminating his services casts a stigma on his name. This means that the individual concerned must suffer a substantial loss of reputation which may affect his future prospects. In that case, justice requires a fuller hearing. If, however, after going into the particular facts and circumstances of a case, the Court finds, as seems to be the position in the case before us, that the enquiry conducted and notices given were intended only to arrive at a finding on the desirability of continuing a person in service, and more serious action was not contemplated, it means that no stigma was intended to be cast. It may be that, in some cases, the mere from does not indicate the exact nature and result of the proceeding judged by its nature and its effects upon a probationer. To some extent the Courts are bound to take into account what the incontrovertible evidence disclosed. It may conclude that, even if the reputation of a probationer was to same degree affected by what took place, yet, if those facts could not reasonably be disputed by him, it provided a sufficient ground for terminating his services. There is, in such cases, no injustice.

15. This Court would certainly not interfere under Article 136 of the constitution on a merely technical plea that the case deserved a fuller enquiry. It must be shown that such an enquiry could serve a useful purpose. The facts indicate that, if this fuller inquiry was held, the Government servant will be found to be blameless. Otherwise, further prolongation of such litigation is pointless.

16. It is impossible to lay down propositions which are so clear cut as to cover every conceivable case. Indeed, an attempt to do so may make the law too rigid. It is only of patent facts disclose a serious enough infringement of law as well as indubitably damaging and undeserved consequences upon a petitioner that the Court's conscience could be so moved as to induce it to interfere under Article 136 of the Constitution. We are quite certain that this is not one of those cases. On this ground alone this case could not be one in which we could grant special leave to appeal.

17. There is, however, another point of view also, already indicated above, from which the case could be considered. It is that the High Court held that this was not really a case of punishment. On this aspect of the case, the High Court rightly seems to us to have proceeded on the view that there should be at least some difference, as to the nature of or the depth of the inquiry to be held, as between a probationer whose services can be terminated by a notice and a confirmed Government servant who has a right to continue in service until he reaches a certain age. It is true that neither can be "punished" without a formal charge and inquiry. But, a less formal inquiry may be sufficient, as it was here, to determine whether a probationer, who has no fixed or fully formed right to continue in service (treated in the eye of law as a case of "no right" to continue in service), should be continued. A confirmed Government servant's dismissal or removal is a more serious matter. This difference must necessarily be reflected in the nature of the inquiries for the two different purposes. We are satisfied that, on facts found, the findings on petitioner's suitability to continue in service were rightly not interfered with. It was, in the eye of law, not a case of punishment but of termination of service simpliciter. The petitioner should be thankful that a more serious view was not taken of his shortcomings.

18. Consequently, we dismiss this petition.

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