

Town Area Committee, Jalalabad

Vs

Jagdish Prasad and Others

Civil Appeal No. 1459 of 1969

(Syed M. Fazal Ali, Jaswant Singh JJ)

07.04.1978

JUDGMENT

FAZAL ALI, J.

1. This appeal by special leave is directed against the judgment of the Allahabad High Court upholding the judgment and findings of the District Judge and the Sub-Judge decreeing the plaintiff's suit for wrongful dismissal. In the view we take it is not necessary to narrate the detailed facts which are contained in the judgments of the courts below. All the courts have concurrently found as a fact that the respondent 1 was not given any opportunity of showing cause against the action proposed to be taken against him viz. dismissal from service. This is a finding of fact and we cannot interfere with the same in special level. Mr. Agarwala has, however, raised two points before us. In the first place, he submits that Article 311 of the Constitution does not apply to respondent 1 and, therefore, it was not necessary for the Chairman to give detailed opportunity to the appellant to prove his defence. The Courts below have however, found that although the charge-sheet was submitted against respondent 1 and he had denied the same, yet no evidence was led by the department to prove the charges against him, nor was respondent 1 allowed to cross-examine the witnesses, nor was he given an opportunity for proving his defence and establishing his innocence. The notification dated March 19, 1947 spelt out the following rule :

No officer or servant shall be dismissed, removed or reduced without a reasonable opportunity being given to him of showing cause against the action proposed to be taken in regard to him. Any written defence tendered shall be recorded and a written order shall be passed thereon. Every order of dismissal, removal or reduction shall be in writing and shall specify the charge or charges brought, the defence and reasons for the order.

A perusal of this notification would clearly show that the notification undoubtedly contemplated a full and complete opportunity to be given to the delinquent employee before any action is taken against him. It may not have been necessary to apply the provisions of Article 311 of the Constitution, strictly, nevertheless the principle of audi alteram partem had to be complied with. A reasonable opportunity is a term of well-known legal significance and includes an opportunity given to the employee to cross-examine the witnesses examined against him and to led defence in support of his version. What the department did in the present case, was to submit a charge-sheet against him, get his explanation and thereafter it straightway passed an order of dismissal. This was clearly in violation of the notification referred to above and could not be considered to be a reasonable opportunity as contemplated by the rule contained in the notification. For these reasons, therefore, the first contention raised by the counsel for the appellant must be overruled.

2. It was, then, submitted that the suit could not be decreed because the order of dismissal had merged in the revisional authorities - the District Magistrate and the Government - and unless the orders of these authorities were set aside, the plaintiff cannot get the order of wrongful dismissal set aside. This point has been raised for the first time in special leave in this Court. The point was undoubtedly one which was a mixed question of fact and law and if raised at the first possible opportunity at the trial Court, could have been repelled by the plaintiff by amending his plaint and including a relief for setting aside the order of the revisional authorities. To allow the appellant to raise this point at this stage, would result in grave and substantial injustice to the plaintiff and to defeat his claim on a most technical ground which could not be pleaded because of gross negligence on the part of the appellant. For these reasons, therefore, we do not permit the appellant to raise this point at this stage. No other point was pressed before us. The appeal is without any merit and is accordingly dismissed but in the circumstances of the case, there will be no order as to costs.

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