State of Uttar Pradesh

Vs

Bhoop Singh Verma

Civil Appeal No. 252 of 1969

(Jaswant Singh, R. S. Pathak, A. P. Sen JJ)

24.01.1979

JUDGMENT

PATHAK, J. –

1. This appeal by special leave is directed against the judgment and order of the Allahabad High Court dated August 19, 1968 dismissing a second appeal arising out of a suit for declaration.

2. The respondent was appointed as a Sub-Inspector of Police in a temporary post in 1955. He was discharged from service on July 13, 1957. A writ petition filed by him in the Allahabad High Court was allowed on August 4, 1959, and accordingly on December 15, 1959 he was reinstated in service. Thereafter, on January 21, 1960 his services were terminated by the Deputy Inspector General of Police, Agra Range, Agra.

3. On March 13, 1960 the respondent instituted a suit for a declaration that the order dated January 21, 1960 was illegal and void and that he continued as Sub-Inspector of Police in the Uttar Pradesh Police Service. It was alleged that on a false complaint made against him in respect of the custody and detention of one Smt. Phoolmati, an enquiry had been made in consequence of which the appellant had been arbitrarily and illegally discharged from service on July 13, 1957. It was pleaded that although he was reinstated on the success of his writ petition in the High Court, his services were terminated a mere five weeks later although no ground had arisen since for doing so. It was asserted that the order of January 21, 1960 was passed as a simple order of termination in order to avoid a departmental enquiry under Section 7 of the Police Act, which enquiry if held would have enabled him to expose the falsity of the allegations levelled against him. The suit was contested by the appellant, who maintained that the termination of the respondent's services was not by way of punishment nor motivated by malice, and that it was a simple termination of the services of a temporary government servant on the ground that they were no longer required by the State. The suit was decreed by the learned Munsif, Etah and the decree was affirmed in appeal and second appeal. The High Court, in second appeal, took the view that where an enquiry was instituted by a superior authority into a misconduct alleged against a government servant, the resulting termination of service was by way of punishment because it attached a stigma or amounted to a reflection on the competence of the government servant and affected his future career. The High Court held that the findings recorded during the enquiry on the original complaint against the respondent were responsible for the order terminating the respondent's services, and it affirmed that the order was vitiated by mala fides.

4. Attacking the findings of the High Court learned counsel for the appellant contends that in the first place the order terminating the respondent's services had not been made by way of punishment,

but was an order of termination simpliciter passed in accordance with the rules applicable to temporary government servants. In the second place, it is said, if the order is attributed to the complaint against the respondent concerning his conduct relating to Smt. Phoolmati it was open to the Deputy Inspector-General of Police to take the circumstances of the case into account for the purpose of considering the suitability of the respondent for continuing in service. Learned counsel for the respondent points out that an enquiry had been originally instituted against the respondent which had resulted in an order terminating his services and, he urges, after the order of the High Court quashing his discharge on the ground of violation of Article 311(2) of the Constitution it was obligatory on the superior authority, in case it proposed to terminate the respondent's services, to institute a proper and complete departmental enquiry, providing an opportunity to the respondent to lead evidence and be heard in his defence, and only thereafter could it make an order against the respondent.

5. We are of the opinion that the appellant is right on both counts. Considered as an order made without reference to the earlier proceeding against the respondent, the impugned order cannot be regarded as one of punishment. After the original order of discharge was quashed by the High Court, the respondent was reinstated in service. He was even allowed an increment to his salary. The Deputy Inspector General of Police made the impugned order subsequently terminating his services on the ground that they were no longer required. The services were terminated on payment of one month's salary in lieu of notice under the "general rules for termination of service of temporary government servants". The Deputy Inspector General of Police was examined as a witness in the suit, and throughout he maintained that he terminated the respondent's services because they were not required any more and that in making the order he did not intend to punish the respondent. The evidence also discloses that no personal motive had influenced the order. It was open to the superior authority to terminate the respondent's services on the ground on which it did so.

6. Assuming, however, that the impugned order was made in the background of the allegations against the respondent concerning his behaviour with Smt. Phoolmati, we see no reason in law why a departmental enquiry should be necessary before the respondent's services could be terminated. It appears from the material before us that it was merely a preliminary enquiry which was made by the Superintendent of Police into the allegations made against the respondent's conduct concerning the woman. No departmental enquiry by way of disciplinary proceedings was instituted, no charge was framed, and the formal procedure characterising a disciplinary proceeding was never adopted.

7. The Deputy Inspector General of Police passed the original order dated July 13, 1957 discharging the respondent from the police force on the ground that he had behaved in a reprehensible manner, was not likely to make a useful police officer and was unfit for further retention in a disciplined force. The original order plainly attached a stigma to the respondent's record of service, and it is because of the specific grounds set forth in the termination order that the High Court considered the respondent entitled to the benefit of Article 311(2) of the Constitution, and quashed the order. Now the order having been quashed, the position reverts to what it was when the Deputy Inspector-General of Police received the report of the Superintendent of Police on the preliminary enquiry made by him. There was nothing to prevent the Deputy Inspector General from deciding that instead of instituting disciplinary proceedings against the government servant he should consider whether the government servant was suitable for retention in service. The case law on the point has been considered elaborately by one of us (Jaswant Singh, J.) in State of U. P. v. Ram Chandra Trivedi ((1976) 4 SCC 52 : (1977) 1 SCR 462) and reference has been made in this behalf to Champaklal Chimanlal Shah v. The Union of India ((1964) 5 SCR 190 : AIR 1964 SC 1854 : (1964) 1 LLJ 752), Jagdish Mitter v. Union of India (AIR 1964 SC 449 : (1964) 1 LLJ 418) and State of Punjab v. Shri

Sukh Raj Bahadur ((1968) 3 SCR 234 : AIR 1968 SC 1089 : (1970) 1 LLJ 373). It is apparent from the facts of this case that if the impugned order be considered as made in the light of the allegations against the respondent concerning the woman, the conduct of the respondent constituted a motive merely for making the order and was not the foundation of that order. In this connection what has been stated by this Court in Union of India v. R. S. Dhaba ((1969) 3 SCC 603), State of Bihar v. Shiva Bhikshuk Mishra ((1970) 2 SCC 871 : (1971) 2 SCR 191) and R. S. Sial v. The State of U. P. ((1975) 3 SCC 111 : (1974) 3 SCR 754) appears relevant. That it was not intended to take punitive action against the respondent for his misbehavior with Smt. Phoolmati is evident from the circumstance that thereafter the respondent was allowed an increment to his salary and was regarded as in service for all purposes. The High Court, it seems to us, did not have regard to all the facts and circumstances of the case, and appears to have assumed that the respondent's services were terminated as a measure of punishment. The High Court relied on State of Bihar v. Gopi Kishore Prasad (AIR 1960 SC 689 : (1960) 1 LLJ 577) and Madan Gopal v. State of Punjab ((1973) 3 SCR 716 : AIR 1963 SC 531 : (1964) 1 LLJ 68). Both cases are distinguishable. In the former, the government servant was discharged from service because he was found to be corrupt and the order terminating his services branded him a dishonest and incompetent officer. In the latter, the government servant had been served with a charge-sheet that he had demanded and received illegal gratification and the Court found that the proceeding, consequent to which the termination order was made, was intended for the purpose of taking punitive action.

8. We are satisfied that the considerations which prevailed with the High Court in reaching its findings on the application of Article 311(2) of the Constitution and the bona fides of the superior authority in making the impugned order are not warranted in law and on the material before us.

9. Accordingly, the appeal is allowed, the judgment and decree of the High Court dated January 21, 1960 are set aside and the respondent's suit is dismissed, but in the circumstances without any order as to costs.

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