Mazharul Islam Hashmi

Vs

State of U. P. and Another

Civil Appeal No. 2125(N) of 1969

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

07.02.1979

JUDGMENT

SARKARIA, J. –

1. Appellant, Mazharul Islam Hashmi, was appointed as Sanitary Inspector on June 8, 1936 by the Municipal Board of Moradabad. He was confirmed in that post in 1937, and was further promoted to the post of permanent Chief Sanitary Inspector in the service of the Board on June 4, 1957.

2. Both the U.P. Nagar Mahapalika Adhiniyam, 1959 and the U.P. Municipalities Act, 1916 empowered these local bodies to employ their employees subject to certain regulatory control by the State Government.

3. Subsequently, in 1964, the State legislature enacted the U.P. Nagar Mahapalika (Sanshodhan) Adhiniyam, which added Section 112-A to the U.P. Nagar Mahapalika Adhiniyam, 1959. Similarly, by Section 37 of the U.P. Municipalities (Amendment) Act, 1964, Section 69-B was added to the U.P. Municipalities Act, 1916, which was identical, in terms, to Section 112-A. Section 112-A empowered the State Government to provide by rules for the creation of one or more services to be known as Centralised Palika Services, as it may deem fit and proper, common to all the Municipal Corporations and Municipal Boards, and authorised the same to prescribe the method for recruitment and conditions of service of persons appointed to any such service. Section 112-A of the Adhiniyam of 1959, reads thus :

> 112-A. Centralization of services. - (1) Notwithstanding anything contained in Sections 106 to 110, the State Government may at any time by rules provide for the creation of one or more services of such officers and servants as the State Government may deem fit, common to the Mahapalikas or to the Mahapalikas and Municipal Boards of the State, and prescribe the method of recruitment and conditions of service of persons appointed to any such service.
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> (2) When any such service is created, officers and servants serving on the posts included in the service, as well as officers and servants performing the duties and functions of those posts under sub-clause (1) of clause (ee) of Section 577 may, if found suitable, be absorbed in the service, provisionally or finally, and the services of others shall stand determined, in the prescribed manner.
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> (3) Without prejudice to the generality of the provisions of sub-sections (1) and (2), such rules may also provide for consultation with the State Public Service

Commission in respect of any of the matters referred to in the said sub-section.

4. Acting under Section 112-A of the Adhiniyam of 1959 and Section 69-B of the Municipalities Act, 1916, the State Government framed the U.P. Palika (Centralised) Services Rules, 1966, which were promulgated under notification dated July 9, 1968, published in the Government Gazette on that date and came into force on the same date. Rule 6 dealt with recruitment to the Centralised Palika Services, which were created by these Rules.

5. These Rules of 1966 brought under the Centralised Services, the services of the Chief Sanitary Inspector and Sanitary Inspectors of Nagar Mahapalikas of Classes I, II, and III and a number of services of other officers of Nagar Mahapalikas and Palikas of Uttar Pradesh. The Municipal Board, Bareilly, is a Class I Board constituted and established under the U.P. Municipalities Act.

6. On July 9, 1966 under these Rules, the appellant was transferred from Municipal Board, Moradabad to Municipal Board, Bareilly as the Chief Sanitary Inspector, and since his transfer, he was working there in that capacity.

7. Rule 6 was not properly drafted in conformity with the requirement of Section 112-A and Section 69-B, and its clause (i) provided for automatic final absorption of officers and servants provisionally absorbed under Section 577(e) contrary to the provisions of Section 112-A of the Adhiniyam and Section 69-B of the Municipalities Act.

8. On September 5, 1966 the Government promulgated the U.P. Local Self-Government (Amendment) Ordinance, 1966, which was repeated and replaced by the U.P. Local Self-Government Laws (Amendment) Act, 1966. Section 19 of this Amendment Act, reads as under :

> 19. Deeming, validation etc. - The Uttar Pradesh Palika (Centralised) Service Rules, 1966, shall be deemed to have been made under the provisions of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959, and the U.P. Municipalities Act, 1916, as if the amendments made by this Act to the said Acts were always in force and be deemed to be and always to have been valid and shall, subject to any amendments made thereto, continue in force, and notwithstanding anything contained in the said Acts, the power to make amendments to the said rules may, during the period ending on September 4, 1967, be exercised retrospectively.

9. In effect, Section 19 amended Section 112-A of the Adhiniyam and Section 69-B of the Municipalities Act. Section 4 of the Act provided that U.P. Palika (Centralised) Services Rules, 1966 shall be deemed to be valid. The Act further provided that amendments made to the rules, may be given retrospectively effect. The power of making retrospective rules was, however, limited to a period of one year from the commencement of the Ordinance.

10. By a notification dated October 18, 1966, published in the State Gazette of that date, the Governor promulgated the Uttar Pradesh (Centralised) Services (Amendment) Rules, 1966. These Rules repealed and re-enacted Rule 6 with retrospective effect from July 9, 1966. Under clause (ii) of Rule 6(2) the State Government had to pass a final order of absorption in respect of all officers and servants of the erstwhile Municipal Boards, if they were found suitable, in accordance with Section 112-A of the Adhiniyam. Clause (iii) provided that such orders had to be made on or before March 31, 1967. By clause (iv), if no orders of final absorption were passed till then, then the officer or servant concerned was to be deemed to have been finally absorbed. Since work of final

absorption of the employees could not be completed by March 31, 1967, the State Government promulgated the U.P. Palika (Centralised) Services (Amendment) Rules, 1967 on March 30, 1967, whereby clause (iii) of Rule 6(2) was amended and the date of passing he necessary orders in that behalf was shifted to June 3, 1967. A new clause (iii) was accordingly substituted by this amendment would come into force from April 1, 1967. This created a serious legal infirmity because on the expiry of March 31, 1967, the legal fiction provided in clause (iv) would automatically result in absorption of the employee, if no orders in respect of him were passed by that date.

11. To remove this infirmity, the State Government made the last amendment to the rules by promulgating U.P. Palika (Centralised) Services (Amendment) Rules, 1967 on June 26, 1967 in supersession of the U.P. Palika (Centralised) Services (Amendment) Rules 1967, that had been earlier promulgated on March 30, 1967. This amendment of June 1967, substituted a new clause (iii) to Rule 6(2) in place of the old clause (iii) and thus the last date of passing the orders was shifted from March 31, 1967 to August 31, 1967, with retrospective effect from July 9, 1966.

12. The State Government issued three circulars laying down the procedure, by which an officer or servant provisionally absorbed under Section 577(e) or temporarily appointed under Section 577(ee) was to be finally absorbed, if found suitable under Section 112-A. Those circulars are dated January 11, 1967, January 31, 1967 and February 23, 1967 addressed to the Divisional Commissioners. By virtue of these circulars, Divisional Committees were to be constituted for making necessary recommendations to the State Government. In the first circular, the Government enacted its policies in the matter in these terms :

> Government desires that all officers and servants whose services are proposed to be determined on ground of unsuitability, may be given an opportunity of personal interview of the Committee.

After such interviews, the Committees were to finalise their recommendations and further furnish the same to the Government.

13. By the second circular, the State Government reconstituted the Committee, so far as the five Municipal Corporations were concerned, and directed that these Divisional Committees were to make selections for all Centralised Services except those whose starting salary was Rs. 500 and above. Selection for the posts in the latter category were to be made by the State Selection Committee. Thus, the Government divided the officers and servants into two categories, and their cases were to be dealt with at two different levels for purpose of final absorption under Rules 6(2)(iii) read with Section 112-A.

14. By its third circular, the State Government without disturbing the earlier categorisation of officers and servants into two classes, laid down certain broad criteria, with a view to secure a reasonable uniformity in the standard to be applied by the Divisional Committee in making the selection. The Government reiterated its declared policy that all such officers and servants, whose services were proposed to be determined on the ground of unsuitability, be given an opportunity of personal interview by the Committee and the official concerned should be given a chance to clerk up his position with reference to any adverse entries appearing in his service record. It was also desired by the Government that only those adverse remarks may be considered against the official concerned which were found to have been only communicated to him.

15. The appellant's case, as laid before the High Court was that he had become finally absorbed in the Palika Centralised Services by the operation of the legal fiction contained in Rule 6(2)(iii). But on September 6, 1967 an order of the State Government dated August 26, 1967 was served upon him, intimating that his services had been terminated under the U. P. Palika (Centralised) Rules.

16. The appellant's further contention here as there is that this order terminating his services, was passed without giving him an opportunity to explain his position, or without giving him any show cause notice, whatever.

17. It was mainly on this ground that the appellant impugned the Government Order dated August 18, 1967, terminating his service, in the writ petition under Article 226 of the Constitution, filed in the High Court.

18. Several other employees, similarly situated, had filed writ petitions in the High Court to challenge the orders whereby their services were terminated. The learned single Judge, who tried these petitions, dismissed them by a common judgment, dated March 27, 1968.

19. The appellant and other writ petitioners preferred special appeals in the High Court. Those appeals were dismissed by a Division Bench of the High Court, by an order dated May 12, 1969.

20. Two of those writ petitioner, namely Mohamad Rashid Ahmed and Ashfaq Hussain filed Civil Appeal 1724 of 1969 and Civil Appeal 1732 of 1971 after obtaining special leave of this Court. Those appeals have been disposed of by a common judgment dated December 15, 1978 by this Court (Mohd. Rashid Ahmad v. State of U. P., (1979) 1 SCC 596 : 1979 SCC (L & S) 82). One of us (Sarkaria, J.) was a party to that judgment. The appeal of Mohamad Rashid Ahmed was allowed by this Court on the ground that no opportunity was afforded to him, before the State Government passed the impugned order dated July 18, 1967 terminating his services.

21. The appellant before us also impugnes the termination of his services precisely on the same ground.

22. Mr. Dixit, who appears for the respondents States does not dispute the appellant's allegation that no opportunity or notice was given to him to show cause against the contemplated termination of his services. But, it is submitted by him that the appeal has become infructuous because the appellant had superannuated long ago. In this connection, he has pointed out that when the impugned order dated August 28, 1967 was passed, the appellant, according to his own allegation was about 56 years old. He, therefore, must have attained the age of superannuation in August 1971. On the other hand it is submitted that the appellant has been continued in service first under the stay order issued by the High Court and after the filing of the petition for special leave in this Court, under an injunction issued by this Court.

23. As against this, learned counsel for the appellant points out that the interim order restraining the respondent from discontinuing his services initially passed by this court was vacated on December 9, 1969 and in consequence, the appellant has not been continuing in services thereafter. If age of superannuation under the Rules is 60 years, as has been asserted by the learned counsel for the appellant, then it means that the appellant's services were prematurely discontinued at a time when he had several months to serve before attaining the age of superannuation. In this view of the matter the appeal cannot be said to be infructuous.

24. The ratio of Mohd. Rashid Ahmed (Mohd. Rashid Ahmad v. State of U. P., (1979) 1 SCC 596 :

1979 SCC (L & S) 82) case therefore, squarely covers the case of the appellant.

25. It was observed in that case that it is fundamental rule of law that no decision must be taken which will affect the rights of any person without first giving him an opportunity of putting forward his case. The main requirements of a fair hearing, as pointed out by this Court earlier, are : (i) A person must know the case that he is to meet; and (ii) he must have an adequate opportunity of meeting that case. These rules of natural justice, however, operate in voids of a statute. Their application can be expressly or implicitly excluded by the legislature. But, such is not the case here. On the contrary, the two circulars issued by the State Government, to which a reference has been made earlier, expressly imported these principles of natural justice and required that in all cases in which the services of an officer or servant were to be determined on the ground of his unsuitability, they must be given an opportunity of personal hearing by the Committee. The whole purpose of the personal interview was that, when it was proposed to declare an official unsuitable for absorption, the Committee had to afford him an opportunity to appear before it and clear up his position. Since it is nobody's case that such an opportunity was afforded to the appellant, we would hold that the order dated August 26, 1967 (of termination of his services passed by the Stated) suffers from a serious legal infirmity and must be quashed. He will, therefore, have to be treated is having continued in service till the age of superannuation and entitled to all the benefits incidental to such a declaration.

26. In the result, the appeal succeeds and is allowed. In the circumstances of the case, there shall be no order as to costs.

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