Managing Director, Uttar Pradesh Warehousing Corporation and Another

Vs

Vijay Narayan Vajpayee

Civil Appeal No. 274 of 1970

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

16.01.1980

JUDGMENT

SARKARIA, J. –

1. Utter Pradesh State Warehousing Corporation (for short, the Corporation), has preferred this appeal by special leave against an appellate judgment dated August 6, 1969 of a Division Bench of the High Court of Allahabad, it arises out of these facts :

2. V. N. Vajpayee, respondent herein, was employed as a Warehouseman with the Corporation and at the relevant time was posted at the Kanpur Warehouse. There was a complaint of theft, misappropriation of stocks and various other irregularities against the respondent. A preliminary inquiry was held by the Managing Director of the Corporation and charges were framed against him and served upon him on November 28, 1960, requiring him to submit his explanation and to indicate the evidence, if any. On receiving the charge-sheet, the respondent addressed a communication, requesting the Managing Director to furnish him with certain papers, which were accordingly furnished. Thereafter, the respondent submitted his explanation on January 19, 1961. In this explanation, he specifically demanded that he wanted to cross-examine certain witnesses, the particulars of which were mentioned by him. He further gave the names and particulars of certain other witnesses, stating that he wanted to examine them, in defence. Nothing happened thereafter till April 18, 1961, on which date the Managing Director passed an order dismissing the respondent from service with effect from the date of his suspension. Later on, a demand was made from the respondent, requiring him to remit a sum of Rs. 549.61 due to the Corporation on account of certain commodities said to have been misappropriated by the respondent on account of short realisation of storage charges by him.

3. The respondent then filed a Writ Petition (87 of 1962) under Article 226 of the Constitution, in the High Court praying for a writ of certiorari to quash the order of his dismissal on the ground that it was violative of the principles of natural justice, inasmuch as he had not been given an opportunity to cross-examine the witness and to establish his innocence. He further prayed for a direction that the Corporation be restrained from recovering the sum of Rs. 549.61 from him.

4. In the counter-affidavit, the appellant stated the respondent had admitted certain material facts during the preliminary inquiry and had also cross-examined the witnesses. It was further urged that there was no regulation provided for conducting an enquiry in a particular manner and, therefore, the remedy of the respondent was by way of a suit and he had no locus standi to invoke the extraordinary jurisdiction of the court under Article 226 of the Constitution. It was further pleaded that the writ petition was delayed and should have been thrown out on that score, also.

5. The writ petition was heard by a learned Single Judge of the High Court, who dismissed it, holding that the Corporation was not required to act in a quasi-judicial manner and that the provisions of Article 311 of the Constitution were not applicable to the facts of the case.

6. Aggrieved, the respondent carried a special appeal to a Division Bench of the High Court, which has reversed the judgment of the learned Single Judge, and has held that the Corporation was required to act in quasi-judicial manner and, therefore, the writ petition was maintainable. The Division Bench remanded the case for a decision on merits. After the remand, the learned Single Judge by his judgment, dated December 7, 1966, allowed the writ petition, holding that the principles of natural justice had been violated. He, therefore, quashed the order of the respondent's dismissal, but refused to grant an injunction restraining the appellant for realising Rs. 549.61 from the respondent. The Corporation again referred a Special Appeal, 4 of 1967, to a Division Bench of the High Court, which dismissed that appeal by a judgment, dated August 6, 1969. Hence this appeal by the Corporation.

7. The main contention of the learned counsel for the appellants is what at the relevant time Regulation 16 providing for an enquiry and giving an opportunity to the employee had not come into force; consequently, the respondent had no statutory status and had therefore no locus standi to maintain the writ petition. It is submitted that the only remedy of the respondent was to file a suit for damages on account of his alleged wrongful dismissal. Support for this contention has been sought from a decision of this Court in Executive Committee of U. P. State Warehousing Corporation Ltd. v. Chandra Kiran Tyagi ((1970) 5 SCR 250 : (1969) 2 SCC 838 : AIR 1970 SC 1244). Reference has also been made to Sirsi Municipality v. Ceclia Kom Francis Tellis ((1973) 3 SCR 348 : (1973) 1 SCC 409 : 1973 SCC (L & S) 207).

8. On the other hand, Shri A. K. Sen, appearing for the respondent submits that since the decision of this Court in U.P. State Warehousing Corporation ((1970) 2 SCR 250 : (1969) 2 SCC 838 : AIR 1970 SC 1244), the law has undergone a change. It is pointed out that the appellant is a Corporation constituted under a statute and is owned and controlled by the State Government and its employees, therefore, have a statutory status. It is argued that even in the absence of Regulation 16 providing for a departmental enquiry, the appellant was bound to hold an enquiry and to give, in compliance with the rules of natural justice, full and fair opportunity to the respondent to defend himself and repel the charges leveled against him. It is maintained that such an opportunity was denied to him because he was not allowed to examine witnesses cited by him, in defence. Reference in connection with the proposition propounded has been made to Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi ((1975) 3 SCR 619 : (1975) 1 SCC 421 : 1975 SCC (L & S) 101).

9. We will first notice Chandra Kiran Tyagi case ((1970) 2 SCR 250 : (1969) 2 SCC 838 : AIR 1970 SC 1244), which is the sheet-anchor of the appellants' arguments. The facts of that case were somewhat similar. Tyagi was a Warehouseman in the employment of the U.P. State Warehousing Corporation Limited. After receiving Tyagi's explanation, the Enquiry Officer did not take any evidence in respect of any charge. Instead, he met various persons and collected information, and gave his findings on the various charges on the basis of the enquiries made by him and the records. Even the information so collected was not put to Tyagi. On the basis of those findings of the Enquiry Officer, Tyagi was dismissed from service. Tyagi filed a suit challenging his dismissal. He prayed for a declaration for reinstatement on the ground that the relationship was one of personal service. Speaking through Vaidialingam, J. this Court held that a declaration to enforce a contract of personal service will not normally be granted. It was noted that there are three exceptions to this rule :

(i) appropriate cases of public servants who have been dismissed from service in contravention of Article 311;

(ii) dismissed workers under industrial and labour law; and

(iii) when a statutory body has acted in breach of mandatory obligation imposed by a statute.

It was further held that though the impugned order was made in breach of the regulation contrary to the terms and conditions of the relationship between the appellant (employer) and the respondent (employee), but, it would not be in breach of any statutory obligation, because, the Act does not guarantee any statutory status to the respondent; nor does it impose any obligation on the appellant in such matters. Therefore, the violation of Regulation 16(3) as alleged and established in that case, could only result in the order of dismissal being held to be wrongful, and in consequence, making the appellant liable for damages, but could not have the effect of treating the respondent as still in service or entitling him to reinstatement.

10. The authority of the rule in Tyagi case ((1970) 2 SCR 250 : (1969) 2 SCC 838 : AIR 1970 SC 1244), to the effect, that an employee of such a statutory body even if it be owned and managed by the government does not enjoy a statutory status, appears, to have been eroded by the later decisions of this Court, particularly the pronouncement in Sukhdev Singh case ((1975) 3 SCR 619 : (1975) 1 SCC 421 : 1975 SCC (L & S) 101). The statutory bodies in that case were; Oil and Natural Gas Commission, Industrial Finance Corporation and Life Insurance Corporation. All the three bodies were created under separate statutes enacted by the Central Legislature. It was clear from the Oil and Natural Gas Commission Act, 1954, that the commission created by it, acts as an agency of the Central Government. Similarly, by virtue of the Industrial Finance Corporation Act, 1948, the Finance Corporation is under the Control and Management of the Central Government. The Life Insurance Corporation is similarly owned and managed by the government and can be dissolved only by the government in view of the provisions of the Life Insurance Act, 1956. All the three statutes constituting the three statutory corporations enabled them to make regulations which provide, inter alia, for the terms and conditions of employment and services of their employees. Questions arose, (i) whether the regulations have the force of law, and (ii) whether the statutory corporations are 'State' within the meaning of Article 12 of the Constitution ? Ray, C.J., speaking for himself and Chandrachud and Gupta, JJ., held that the regulation framed by these statutory bodies for the purpose of defining the duties, conduct and conditions of its employees have the force of law. The form and content of the contract with a particular employee is prescriptive and statutory. The notable future is that these statutory bodies have no free hand in framing the conditions and terms of service of their employees. They are bound to apply the terms and conditions as laid down in the regulations. These regulations are not only binding on the authority but also on the public. They give the employees a statutory status and impose obligations on the statutory authorities, who cannot deviate from the conditions of service.

11. It was further made clear that an ordinary individual, in the case of master and servant contractual relationship, enforces breach of contract, the remedy being damages because personal service is not capable of enforcement. In the case of statutory bodies, however, there is no personal element whatsoever because of the impersonal character of the bodies. In their case, the element of public employment and service and the support of statute require observance of rules and regulations. At page 634 of the Report, the learned Chief Justice significantly reiterated that,

whenever a man's rights are affected by decisions taken under statutory powers, the court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by statute.

The Court then referred to U.P. Warehousing Corpn. ((1970) 2 SCR 250 : (1969) 2 SCC 838 : AIR 1970 SC 1244) and Indian Airlines Corpn. (Indian Airlines Corpn. v. Sukhdev Rai, (1971) 2 SCC 192 : 1971 Supp SCR 510) cases and held that these decisions were in direct conflict with an earlier decision of this Court in Mafatlal Naraindas Barot v. Divl. Controller, S. T. C. ((1966) 3 SCR 40 : AIR 1966 SC 1364 : (1966) 1 LLJ 437) and were wrongly decided. The Court followed the decision in Sirsi Municipality ((1973) 3 SCR 348 : (1973) 1 SCC 409 : 1973 SCC (L & S) 207).

12. Mathew, J. in his separate but concurring judgment, pointed out how the concept of the State has undergone drastic changes in recent years. A State is an abstract entity and can act only through the instrumentality or agency of natural or juridical persons. With the advent of a welfare State the framework of civil service administration became increasingly insufficient for handling the new tasks which were often of a specialised and highly technical character. For this reason, a policy of public administration through separate Corporation, which would operate largely according to business principles and be separately accountable, was evolved. Such public corporations constituted under enactments, became a third arm of the government. The employees of public corporations are not civil servant. Insofar as public corporations fulfil public tasks on behalf of government, they are public authorities and, as such, subject to control by government. The public corporation being a creation of the State is subject to the constitutional limitation as the State itself.

13. The court thus with a majority of 4-1 held that the statutory bodies then under considerations were 'authorities' within the meaning of Article 12 of the Constitution and though their employees were not servants of the Union or of a State, yet they had a statutory status.

14. The appellant is a Corporation constituted under the Agricultural Produce (Development and Warehousing) Corporation Act, 1956 (Central Act 28 of 1956) which was subsequently replaced by Warehousing Corporation Act, 1962 (Central Act 58 of 1962). It is a statutory body wholly controlled and managed by the government. Its statute is analogous to that of the Corporations which were under consideration in Sukhdev Singh case ((1975) 3 SCR 619 : (1975) 1 SCC 421 : 1975 SCC (L & S) 101). The ratio of Sukhdev Singh case (1975) 3 SCR 619 : (1975) 1 SCC 421 : 1975 SCC (L & S) 101), therefore, squarely applies to the present case. Even if at the time of the dismissal, the statutory regulations had not been framed or had not come into force, then also, the employment of the respondent was public employment and the statutory body, the employer, could not terminate the services of its employee without due enquiry in accordance with the statutory regulations, if any in force, or in the absence of such regulations, in accordance with the rules of natural justice. Such an enquiry into the conduct of a public employee is of a quasi-judicial character. The respondent was employed by the appellant-Corporation in exercise of the powers conferred on it by the statute which created it. The appellants' powers to dismiss the respondent from service was also derived from the statute. The Court would therefore, presume the existence of a duty on the part of the dismissing authority to observe the rules of natural justice, and to act in accordance with the spirit of Regulation 16, which was then on the anvil and came into force shortly after the impugned dismissal. The rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means an includes an opportunity to cross-examine the witnesses relied upon by the appellant-Corporation and an opportunity to lead evidence in defence of the charge as also a show-cause notice for the proposed punishment. Such an opportunity was denied to

the respondent in the instant case. Admittedly, the respondent was not allowed to lead evidence in defence. Further, he was not allowed to cross-examine certain persons whose statements were not recorded by the Enquiry Officer (opposite party 1) in the presence of the respondent. There was controversy on this point. But it was clear to the High Court from the report of enquiry by the opposite party 1 that he relied upon the reports of some persons and the statements of some other persons who were not examined by him. A regular departmental enquiry takes place only after the charge-sheet is drawn up and served upon the delinquent and the letter's explanation is obtained. In the present case, no such enquiry was held and the order of dismissal was passed summarily after perusing the respondents' explanation. The rules of natural justice in this case, were honoured in total breaches. The impugned order of dismissal was thus bad in law and had been rightly set aside by the High Court.

15. Before passing on to the next question we may in fairness mention, that Mr. Asoke Sen had cited two more decisions, also. The first was a recent judgment of the House of Lords in Malloch v. Aberdeen Corpn. ((1971) 1 WLR 1578 : (1971) 2 All ER 1278), wherein Lord Wilberforce in his speech (at pages 1595-1596 of the Report) observed that in cases in which there is an element of public employment or service, or support by statute or something in the nature of an office or a status which is capable of protection, then irrespective of the terminology used, and even though in some inter parties aspects the relationship may be called that of master and servant, there may be essential procedural requirement to be observed on grounds of natural justice. The second decision is Ramana Dayaram Shetty v. International Airport Authority of India (AIR 1979 SC 1628 : (1979) 3 SCC 489).

16. In Ramana Dayaram Shetty case (AIR 1979 SC 1628 : (1979) 3 SCC 489) Bhagwati, J. after making an exhaustive survey of the decisions of this courts, and of American Courts, summarised some of the factors which are considered to determine whether a corporation is an agency or instrumentality of government. We do not think it necessary to burden this Judgment by a detailed discussion of these cases because in the instant case all the material factors exist which show beyond doubt that the Uttar Pradesh State Warehousing Corporation constituted under the Central Act 58 of 1956 is an agency or instrumentality of the government, and the relationship between the Corporation and its employees is not purely that of master and servant, founded only on contract. Indeed, it was not seriously disputed that the respondent was in public employment and the Corporation is an authority within the meaning of Article 12 of the Constitution.

17. Further contention of the learned counsel for the appellants is that even if the dismissal of the respondent was wrongful, the High Court could only quash the same, but it could not in the exercise of its certiorari jurisdiction under Article 226 of the Constitution give the further direction that the employee should be reinstated in service with full back wages. It is maintained that in giving this further direction, the High Court had overleaped the bounds of its jurisdiction.

18. There appears to be force in this contention. It must be remembered that in the exercise of its certiorari jurisdiction under Article 226 of the Constitution, the High Court acts only in a supervisory capacity and not as an appellate tribunal. It does not review the evidence upon which the inferior tribunal proposed to base its conclusion; it simply demolishes the order which it considers to be without jurisdiction or manifestly erroneous, but does not, as a rule, substitute its own view for those of the inferior tribunal. In other words, the offending order of the impugned illegal proceeding is quashed and put out of the way as one which should not be use to the detriment of the writ petitioner. Thus, in matters of employment, while exercising its supervisory jurisdiction under Article 226 of the Constitution over the orders and quasi-judicial proceedings of an

administrative authority - not being a proceeding under the industrial/labour law before an industrial/labour tribunal - culminating in dismissal of the employee, the High Court should ordinarily, in the event of the dismissal being found illegal, simply quash the same and should not further give a positive direction for payment to the employee full back wages (although as a consequence of the annulment of the dismissal, the position as it obtained immediately before the dismissal is restored); such peculiar powers can properly be exercised in a case where the impugned adjudication or award has been given by an Industrial Tribunal or Labour Court. The instant case is not one under Industrial/Labour Law. The respondent-employee never raised any Industrial dispute, nor invoked the jurisdiction of the Labour Court or the Industrial Tribunal. He directly moved the High Court for the exercise of its special jurisdiction under Article 226 of the Constitution for challenging the order of dismissal primarily on the ground that it was violative of the principles of natural justice which required that his public employment should not be terminated without giving him a due opportunity to defend himself and to rebut the charges against him. Furthermore, whether a workman or employee of a statutory authority should be reinstated in public employment with or without full back wages, is a question of fact depending on evidence to be produced before the tribunal. If after the termination of his employment the workman/employee was gainfully employed elsewhere, that is one of the important factors to be considered in determining whether or not the reinstatement should be with full back wages and with continuity of employment. For these twofold reasons we are of opinion that the High Court was in error in directing payment to the employee full back wages.

19. For the foregoing reasons while upholding the judgment of the High Court with regard to the quashing of the order of dismissal of the respondent on the ground of its being invalid, we delete the direction for payment to the respondent full back wages. Excepting this modification, the appeal is dismissed. However, in the circumstances, the appellants-Corporation shall pay the costs of the respondent in this Court.

Chinnappa Reddy, J. (concurring) - The respondent-employee was dismissed from service. The employer dismissed him, without observing the principles of natural justice. This has been found by the High Court who quashed the order of dismissal in a proceeding under Article 226 of the Constitution. The employer has appealed. The employer claims that a declaration to unfords a contract of personal service cannot be granted by the court. The only remedy of the employee, he pleads, is to file a suit for damages for wrongful dismissal. The answer of the employer is that the employer is a statutory Corporation whose employees have a statutory status, and that the employer is bound by the regulations made under the statute as also to observe the principles of natural justice. Breach of the regulations or failure to observe the principles of natural justice entitles the employee to invoke the jurisdiction of the High Court under Article 226 of the Constitution.

21. The question whether breach of statutory regulation or failures to observe the principles of natural justice by a statutory Corporation will entitle an employee of such Corporation to claim a declaration of continuance in service and the question whether the employee is entitled to the protection of Articles 14 and 16 against the Corporation were considered at great length in Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi ((1975) 3 SCR 619 : (1975) 1 SCC 421 : 1975 SCC (L & S) 101). The questions as to who may be considered to be agencies of instrumentalities of the government was also considered, again at some length, by this Court in Ramana Dayaram Shetty v. International Airport Authority of India (AIR 1979 SC 1628 : (1979) 3 SCC 489).

22. I find it very hard indeed to discover any distinction on principle between a person directly under the employment of the government and a person under the employment of an agencies or

instrumentality of the government or a corporation, set up under a statute or incorporated but wholly owned by the government. It is self-evident and trite to say that the function of the State has long since ceased to be confined to the preservation of the public peace, the exaction of taxes and the defence of its frontiers. It is now the function of the State to secure 'social, economic and political justice', to preserve 'liberty of thought, expression, belief, faith and worship', and to ensure 'equality of status and of opportunity'. That is the proclamation of the people in the preamble to the Constitution. The desire to attain these objectives has necessarily resulted in intense governmental activity in manifold ways. Legislative and executive activity have reached very far and have touched very many aspects of a citiznes's life. The government, directly or though the corporations, set up by it or owned and by it, now owns or manages, a large number of industries and institutions. It is the biggest builder in the country. Mammoth and minor irrigation projects, heavy and light engineering projects, projects of various kinds are undertaken by the government. The government is also the biggest trader in the country. The State and the multitudinous agencies and corporation set up by it are the principal purchasers of the produce and the products of our country and they control a vast and complex machinery of distribution. The government, its agencies and instrumentalities, corporations set up by the government under statutes and corporations incorporated under the Companies Act but owned by the government have thus become the biggest employers in the country. There is no good reason why, if government is bound to observe the equality clauses of the Constitution in the matter of employment and in its dealings with the employees, the Corporation set up or owned by the government should not be equally bound and why, instead, such corporations could become citadels of patronage and arbitrary action. In a country like ours which teems with population, where the State, its agencies, its instrumentalities and the corporations are the biggest employers and where millions seek employment and security, to confine the applicability of the equality clauses of the Constitution, in relation to matters of employment, strictly to direct employment under the government is perhaps to mock at the Constitution and the people. Some element of public employment is all that is necessary to take the employee beyond the reach of the rule which denies him access to a Court to enforce a contract of employment and denies him the protection of Article 14 and 16 of the Constitution. After all employment in the public sector has grown to vast dimensions and employees in the public sector often discharge as onerous duties as civil servants and participate in activities vital to our country's economy. In growing realisation of the importance of employment in the public sector, Parliament and the Legislatures of the States have declared persons in the service of local authorities, government companies and statutory corporations as public servants and, extended to them by express enactment the protection usually extended to civil servants from suits and prosecution. It is, therefore, but right that the independence and integrity of those employed in the public sector should be secured as much as the independence and integrity of civil servants.

23. I agree with what has been said by my brother Sarkaria, J. I have added a few lines to emphasis some aspects of the problem.

</html