P. Kasilingam

Vs

P. S. G. College of Technology

Civil Appeal No. 493 of 1980

(CJI Y. V. Chandrachud, A. S. Sen, Baharul Islam JJ)

08.01.1981

JUDGMENT

A. P. SEN, J. -

1. This appeal by special leave is directed against a judgment of the Madras High Court dated October 11, 1979 quashing an order of the State Government of Tamil Nadu dated December 20, 1978 passed in appeal preferred by the appellant under Section 20 of the Tamil Nadu Private Colleges (Regulation) Act, 1976, hereinafter referred to as 'the Act', by which the Government held that the resignation submitted by him on March 19, 1976 from his post as Lecturer in the Department of Electronics in P.S.G. College of Technology, Coimbatore, was not voluntary and, therefore, directed his reinstatement with immediate effect.

2. The facts giving rise to the appeal are these : On February 28, 1976, the appellant while he was on probation as a Lecturer in the Department of Electronics in P.S.G. College of Technology, Coimbatore, was subjected to a departmental enquiry for dereliction of duty and irresponsible conduct by the Principal and the two charges levelled against him were (1) on February 18, 1976 he did not allow one batch of students of III-B Technology Class to complete their laboratory experiments in the test that was being held from 1.45 p.m. to 4.30 p.m. and further that he left the college before 4.30 p.m. without collecting the answer books of the students who had carried out their laboratory experiments in that test and without signing the attendance register, and (2) he failed to conduct the laboratory class for III-B Technology students which was to be held on February 25, 1976. On March 3, 1976, the appellant submitted his explanation refuting the charges framed against him and prayed that an oral enquiry be held. The Principal accordingly appointed an enquiry officer who was to commence the enquiry on March 13, 1976, but at his request it had to be adjourned to 9.0 a.m. on March 19, 1976.

3. On March 19, 1976 at 8.30 a.m., i.e., just as the departmental enquiry was to commence, the appellant accompanied by the Principal of the Collage came to the Correspondent's residence and handed over two letters addressed to the Principal, first was a latter of apology and the other a letter of resignation. The letter of apology submitted by him was virtually an admission of guilt and contained a promise that he would reform in future and give no further cause for complaint. It reads : "I apologize sincerely for these lapses on my part. I assure you that hereafter I will conduct myself in conformity with the rules and the regulations of the institution and to the satisfaction of my superiors." The letter of resignation submitted along with the written apology signified his intention to leave the service of the respondent with a request that his services may be retained for six months. It was in these terms : "I hereby tender my resignation as Lecturer. I request that I may be relieved of my duties on September 19, 1976." There is an endorsement of even date by the

Principal at the foot of the letter of resignation by which he accepted the resignation but directed that the appellant as desired by him, be relieved from duties with effect from September 19, 1976. He further directed that the enquiry into the charges levelled against the appellant be dropped. On April 5, 1976, the Principal, However, issued a relieving order dispensing his services forthwith on payment to him salary for a period of six months by a cheque for Rs. 5,165.53 i.e., up to the period ending on September 19, 1976 because the date September 19, 1976 fell in the midst of the academic session 1976-77 and would have disrupted the normal working of the College.

4. The appellant preferred an appeal under Section 20 of the Act to the Government on September 27, 1976.

5. The Tamil Nadu Private Colleges (Regulation) Act, 1976 is enacted, inter alia, for the regulation of the conditions of service of teachers employed in private colleges. The avowed purpose and object of the Act is to confer protection to the teachers of private educational institutions against arbitrary action of or victimisation by the management of such educational institutions. Section 20 of the Act, insofar as material, provides :

> 20. Any teacher or other person employed in any private college -
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> (a) who is dismissed, removed or reduced in rank or whose appointment is otherwise terminated,
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> by any order, may prefer an appeal against such order to such authority or officer as may be prescribed ....

6. The Government directed the Additional Director of Technical Education to hold an enquiry into the allegations made by the appellant that his letter of resignation was not voluntary but had been obtained by the respondent by coercion. It appears that the Additional Director, Technical Education held an enquiry and afforded the parties an opportunity to lead their evidence and ultimately submitted a report holding that the allegations made by the appellant were baseless. The Government, however, by their order dated December 20, 1978 did not accept the report of the Additional Director of Technical Education and held that the letter of resignation submitted by the appellant was not voluntary. The Government, accordingly, allowed the appeal and directed the reinstatement of the appellant with immediate effect. The respondent challenged the impugned order of the Government by a writ petition. The High Court by its judgment under appeal quashed the order of the Government.

7. There is no manner of doubt that the circumstances attendant upon the submission of the letter of resignation and the letter of apology on March 19, 1976 are somewhat strange. The manner in which the letter of resignation was obtained from the appellant on that day at 8.30 a.m. together with his letter of apology, just before the departmental enquiry was to commence at 9.0 a.m., clearly suggests that they were integral parts of the same transaction. It was somewhat unusual for a delinquent officer to be called to the residence of the Correspondent of the College along with the Principal and to have the two documents signed by him, as a condition for dropping the enquiry. It appears that the submission of letter of apology, which virtually amounted to an admission of guilt, along with the unconditional letter of resignation, was part of a deal between the management and the appellant. It was meant to act as an inducement for the enquiry not to be proceeded with. One is left with the unfortunate impression that the management wanted to dispense with the services of the appellant. The Government was, therefore, justified in holding that if the appellant placed in

such circumstances submitted his resignation, it would not necessarily give rise to an inference that his act in doing so was voluntary. The Government in dealing with an appeal under Section 20 of the Act was, at any rate, entitled to come to that conclusion.

8. The stand of the Government before the High Court is reflected in para 8 of its return, which reads : "As for averments contained in para 16 of the Affidavit it is submitted that a close examination and on comparison of the Exs. R-9 and R-10 with Exs. R-20 and R-21, it is seen that both the apology and resignation letters seem to have been typed by the management themselves. It is also clear that the correction in the apology letter was carried out in handwriting of the Advocate for the management. Therefore, these circumstances were taken into account and in view of the above position, the Government independently came to a conclusion on materials available that the resignation letter was obtained by force. Further, there will be no necessity to give resignation and apology letters simultaneously."

9. Regrettably the High Court has in allowing the writ petition converted itself into a court of appeal and examined for itself the correctness of the conclusion reached by the Government and decided what was the proper view to be taken or the order to be made. It adverts to the three circumstances relied upon by the Government for reaching the conclusion that the letter of resignation was not voluntary and not accepting the report of the enquiry officer. It observes that 'though Professor Shanmughasundaram, Head of the Department, had been examined during the enquiry, there was no specific question put to him during his cross-examination that the two letters had been typed by him'. It further observes that 'there was absolutely no evidence at all as to who typed the letters in question and on whose typewriter they were got typed'. It observes that 'the Government was also aware of the lack of evidence on this aspect of the case and it was for this reason they have not made any specific averment in the counter-affidavit. They merely say the letters seem to have been typed by the management themselves. This appears to be a mere conjecture and a finding based on such a conjecture cannot at all the supported as based on any acceptable evidence.' It then proceeds to refute the suggestion of the Government that the corrections made in the two letters were in the handwriting of the advocate appearing for the management, and goes on to say that 'the Government once again merely surmises that the letter contained corrections by the advocate for the management'. It also rejects the suspicion attaching to the submission of the letters of resignation and apology simultaneously by expressing that 'we do not see how the Government can delve into the mind of the management and find out whether there was necessity to give the letter of resignation and apology simultaneously'.

10. The Government was competent to come to the conclusion that it did upon the facts appearing on the record. The High Court could not speculate as to what were the 'circumstances' which outweighed the finding recorded by the Additional Director of Technical Education holding that the appellant had voluntarily submitted his resignation. The fact remains that the report submitted by him was not accepted by the Government and it came to the conclusion that the letter of resignation could not be treated to be voluntary. The Government was circumspect in viewing the circumstances surrounding the submission of the letter of resignation with certain amount of suspicion. The finding reached by the Government does not necessarily mean that the letter of resignation was obtained from the appellant under coercion. It may well be that the appellant was acting under an element of compulsion for he had become a victim of the situation brought about by the holding of a departmental enquiry and if the appellant placed in such circumstances submitted a letter of resignation it would not necessarily give rise to an inference that his act in doing so was voluntary.

11. The High Court has viewed the matter from a wrong perspective. In quashing the order of the

Government, the High Court observes that its finding is based on no evidence but proceeds on conjectures and surmises. In doing so, it ignores the long line of decisions starting from T. C. Basappa v. T. Nagappa ((1955) 1 SCR 250 : AIR 1954 SC 440 : 10 ELR 14), laying down that the supervision of the High Court exercised through writs of certiorari goes on two points. One is the area of jurisdiction and the qualifications and conditions of its exercise, the other is the observance of law in the course of its exercise. Such writs are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record and such act, omission, error or excess has resulted in manifest injustice. It was rightly observed in Basappa case ((1955) 1 SCR 250 : AIR 1954 SC 440 : 10 ELR 14) that a writ of cetiorari will not issue as a cloak of an appeal in disguise. It does not lie to bring up an order or decision for rehearing. It exists to correct error of law when revealed on the face of an order or decision or irregularity or absence of or excess of jurisdiction when shown.

12. It is clear beyond doubt that the High Court had transgressed its jurisdiction under Article 226 of the Constitution by entering upon the merits of the controversy by embarking upon an enquiry into the facts as to whether or not the letter of resignation submitted by the appellant was voluntary. The question at issue as to whether the resignation was voluntary was a matter of inference to be drawn from other facts. The question involved was essentially one of fact. It cannot be questioned that the Government undoubtedly had the jurisdiction to draw its own conclusions upon the material before it.

13. In the view that we take of the case, the submission of the learned counsel for the appellant based on the majority decision in Union of India v. Gopal Chandra Misra ((1978) 3 SCR 12 : (1978) 2 SCC 301 : 1978 SCC (L&S) 303) does not really arise. It is urged that it is open to a civil servant to tender his resignation on a prior date to take effect on a subsequent date specified and, therefore, it could always be withdrawn before the expiry of such date. There can be no dispute with the proposition, but the decision on which reliance is placed is clearly distinguishable on facts. The letter addressed by Satish Chandra, J., as he then was, to the President signifying his intention to demit the office of a judge was couched in entirely different language. It ran thus :

> I beg to resign my office as Judge, High Court of Judicature at Allahabad.
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> I will be on leave till July 31, 1977. My resignation shall be effective on 1st of August, 1977.
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> The court in construing the words 'resign his office' in proviso (a) to Article 217(1) of the Constitution held that a High Court Judge's letter addressed to the President intimating or notifying his intention to resign his office of a judge on a future date, does not and cannot sever him from the office of the judge, or terminate his tenure. It may be conceded that it is open to a servant to make his resignation operative from a future date and to withdraw such resignation before its acceptance. The question as to when a Government servant's resignation becomes effective came up for consideration by this Court in Raj Kumar v. Union of India ((1968) 3 SCR 857 : AIR 1969 SC 180 : 1969 Lab IC 310). It was held that the services of a Government servant normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority, unless there is any law or statutory rule governing the conditions of service to the contrary. There is no reason why the same principle should not apply to the case of any other employee.

14. We are, however, constrained to observe that the Government acted in breach of the rules of natural justice inasmuch as there was on its part non-compliance of the requirements of clause (i) of sub-section (2) of Section 39 of the Act, which reads :

> 39. (2) On receipt of any such appeal, the appellate authority shall, after -
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> (i) giving the parties an opportunity of making their representations, make such order as it deems just an equitable.

It is contended on behalf of the respondent that the High Court instead of resting its decision on merits, should have directed the Government to rehear the appeal under Section 20 of the Act. It is submitted that there was a duty cast on the Government to hear the respondent since the Additional Director of Technical Education had on the basis of the evidence adduced, come to a definitive finding that the letter of resignation submitted by the appellant was voluntary, before it came to a contrary conclusion.

The contention has considerable force. It is needless to stress that ordinarily the Government must, in all such cases, as a matter of course, give the parties the opportunity of making their representations before taking a decision.

15. In our judgment it would however, really serve no useful purpose in remitting the appeal in this particular case to the Government for a rehearing. It is not seriously disputed before us that the charges levelled against the appellant were not of such a nature as would merit his dismissal from service. On the contrary, it can easily be visualised that even if the appeal were sent back to the Government, it would either exonerate the appellant or may let him off with a minor penalty. The better course would be to restore the order of the Government for the reinstatement of the appellant in service, having regard to the facts and circumstances of the case.

16. There still remains the question of back wages. It is sought to be urged on behalf of the appellant that upon such reinstatement he would be entitled under the terms of sub-section (1) of Section 40 of the Act to all his arrears of pay and allowances. We are afraid, we can make no such direction in this appeal. There is nothing on record to show that any such appeal has been filed by the respondent. Sub-section (1) of Section 40 makes deposit of arrears of salary and allowances upon reinstatement by the appellate authority referred to in Section 20 of the Act, a pre-condition to the preferment of an appeal by the management under Section 22. Only when such an appeal is preferred by the management the Tribunal is invested with jurisdiction to make a direction under sub-section (1) of Section 40 that the management shall deposit the arrears of pay and allowances due to the appellant within such time as it directs. In that event, it is of course, open to the management to raise a dispute according to sub-section (3) of Section 40 of the Act as to the amount to be deposited under sub-section (1). In the instant case, however, since there is no appeal filed by the respondent under Section 22 of the Act, the question of making a direction in terms of sub-section (1) of Section 40 of the Act does not arise.

17. It was, however, open to the Government while allowing the appeal preferred by the appellant under Section 20 of the Act to make a direction not only for his reinstatement but also for payment of all his arrears of pay and allowances. The words 'make such order as it deems just and equitable' read in the context of clause (iii) thereof : "(iii) considering all the circumstances of the case" occurring in sub-section (2) of Section 39 of the Act, are wide enough to include the power to make such a direction. Normally, the reinstatement of a person in service should carry a direction for

payment of his back wages. We regret to find that the Government has made no direction in that behalf. We are, therefore, constrained to remit the matter to the Government. While adjudicating upon the claim of the appellant to payment of all his arrears of pay and allowances, the Government shall give an opportunity to the respondent to have its say in the matter. The respondent is entitled, as a matter of law, to adjustment of equities between the parties by an account being taken of the salary earned by the appellant elsewhere or of any income derived by him from any source whatsoever, between the period from September 19, 1976 till the date of reinstatement. The appellant had a duty to mitigate his loss and it cannot be that during the aforesaid period he remained idle throughout.

18. In the result, the appeal succeeds and is allowed. The judgment of the High Court is set aside and the order of the State Government for reinstatement of the appellant in service is restored. We remit the appeal to the Government to decide as to whether the appellant is entitled to all his arrears of pay and allowances upon his reinstatement in service, and direct that while dealing with the question, it shall the parties full opportunity to raise all such contentions as they may be advised and lead their evidence thereon, for determination of the amount payable. There shall be no order as to costs.

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