K. C. Joshi

Vs

Union of India and Others

Civil Appeal No. 3187 of 1982

(Ranganath Misra, D. A. Desai JJ)

23.04.1985

JUDGMENT

D. A. DESAI, J. -

1. Another unequal fight between a giant public sector undertaking : Oil and Natural Gas Commission ('Corporation' for short) and a storekeeper which has been brought to this Court by the ultralegalist stand taken by the Corporation which lacks equanimity and smacks of victimisation.

2. The appellant was appointed as assistant storekeeper in April 1962 and was posted at Dehradun. Later on when the Corporation decided to recruit storekeeper, the appellant was selected in open competition and was appointed on December 7, 1963 as such. He was posted at Cambay, Gujarat and later on on December 24, 1963 sent back to Dehradun. The office order dated February 26, 1964 recites that the appellant has been appointed as storekeeper till further orders and the post is sanctioned for the period February 7, 1964 to February 29, 1964. In other words, a man selected in an open competition was offered the post which was to last for 22 days roughly. He was also told that his appointment was purely temporary and that other terms of service were those as set out in the letter dated December 7, 1963, one of which was that the appellant will be on probation for a period of six months from the date of the appointment and the same may be extended at the discretion of the appointing authority and that the appointment may be terminated at any time by a month's notice given by either side. On January 13, 1965, the appellant was informed in writing by the Memorandum No. PF/K-44-/64-ENT that the appellant on successful completion of the probation period of six months, is continued in service on regular basis until further orders. By office order dated April 6, 1967, the appellant who was described as storekeeper, Grade I, Mechanical Engineering Branch was transferred to Cambay-Nawagam project. This transfer order was challenged by the appellant on diverse grounds in a suit filed by him. He sought an interim injunction restraining the respondents from implementing the order of transfer. Interim injunction as prayed for was granted.

3. The Oil and Natural Gas Commission Employees Mazdoor Sabha (Union for short), Dehradun submitted charter of demands on May 15, 1967 and it was followed by a notice threatening direct action by the members of the Union. It appears that the appellant was an active worker of the Union. The usual management response emerged by a secret letter dated September 1, 1967. Shri R. P. Sharma, Chief Engineer under whom the appellant was at the relevant time working was told that the appellant is the main trouble maker and that he is being given free hand by his immediate superiors and that the Chief Engineer did not keep strict vigilance over the activities of the appellant. The employees of the Corporation went on strike on September 12, 1967. It was called off on September 24, 1967. On September 28, 1967, the Union submitted a list of workmen to the

Corporation requesting the Corporation to give them the status of protected workmen as required by Section 33(4) of the Industrial Disputes Act, 1947. Appellant's names appears at S. No. 2 in this letter. On December 27, 1967 the Union complained of victimisation of the active union workers including the appellant. On December 29, 1967 Office Order No. M(Engg.) 1(1)/67 was issued by which the services of the appellant were terminated with immediate effect in accordance with the terms and conditions of his service. A cheque in the amount of Rs. 317 accompanied the order being one month's pay in lieu of notice. The appellant challenged in Writ Petition No. 1395 of 1968 in the Allahabad High Court the legality and validity of the order terminating his services.

4. A Division Bench of the Allahabad High Court held that despite the order dated January 13, 1965 that on successful completion of the probation period, the appellant has been appointed on a regular basis as storekeeper, he was nonetheless a temporary employee of the Corporation till the date on which his services were terminated. The High Court further held that the Corporation is not an industrial establishment within the meaning of the expression in Industrial Employment (Standing Orders) Act, 1946 and therefore the Model Standing Orders enacted under the Act were not applicable to the undertaking of the Corporation. However, the High Court examined an alternative contention that assuming that the Industrial Establishment (Standing Orders) Act, 1946 does apply to the undertaking of the Corporation, yet in view of the provisions contained in Section 13-B of the Act, no provisions of the Act would apply to the undertaking of the Corporation. The High Court repelled the contention of the appellant that the order of termination of service is violative of Oil and Natural Gas Commission (Conduct, Discipline and Appeal) Regulations, 1964 observing that as the service of the appellant was not dispensed with on the allegation of misconduct, but as it was an order of termination of service simpliciter in accordance with the Regulation 25, no other regulation is shown to have been contravened by the impugned order. The High Court rejected the submission on behalf of the appellant that as the Corporation is a State or at any rate 'instrumentality of the State' as contemplated by Article 12 of the Constitution and therefore, the appellant is entitled to the protection of Articles 14 and 16 observing that "it is not be requirement of law that in order to dismiss one employee on the ground of unsuitability, the Government or the Corporation is required to dismiss all," an observation which has left us guessing for its content and meaning. The Division Bench finally concluded that as the service of the appellant were terminated not because of any personal bias of the officers of the Corporation but because of his unsatisfactory work, the allegation of mala fides cannot be upheld. Accordingly, the writ petition was dismissed with no order as to costs. Hence this appeal by special leave.

5. Mr. B. Datta, learned counsel who appeared for the respondents did not press before us the contention that the Corporation is not an instrumentality of the State. In view of the numerous decisions of this Court and especially one in Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi ((1975) 3 SCR 619 : (1975) 1 SCC 421 : 1975 SCC (L&S) 101), a Constitution Bench of this Court in terms held that "the Oil and Natural Gas Commission is an instrumentality of the State and is comprehended in the expression 'other authority' in Article 12, and that any termination of service of the employee of the Corporation, if successfully questioned would permit the court to make a declaration that the employee continues to be in service".

6. Even if the employees of the Corporation, which is an instrumentality of the State, cannot be said to the members of a civil service of the Union or an all-India service or holds any civil post under the Union, for the purposes of Articles 310 and 311 and therefore, not entitled to the protection of Article 311, they would nonetheless be entitled to protection of the fundamental rights enshrined in Articles 14 and 16 of the Constitution. In other words, they would be entitled to the protection of equality in the matter of employment in public service and they cannot be dealt with in an arbitrary

manner. (See A. L. Kalra v. Project and Equipment Corporation of India Ltd. ((1984) 3 SCC 316 : 1984 SCC (L&S) 497))

7. The next question is : whether the service of the appellant was terminated in accordance with law or regulation or in a thoroughly arbitrary manner ? Factual matrix set out hereinbefore will affirmatively show that on successful completion of his probation period, the appellant was appointed on the regular establishment as storekeeper. Thus effective from (sic) 13, 1965, the appellant was appointed on regular basis as storekeeper. There is nothing to show in the order that on completion of the probation period, he was appointed as a temporary storekeeper. The words used are : "He is continued in service on a regular basis until further orders". The expression 'until further orders' suggests an indefinite period. It is difficult to construe it as clothing him with the status of a temporary employee. It is even worse than being a probationer because the apprehended further orders may follow the very next day. Therefore, the expression 'until further orders' being thoroughly irrelevant has to be ignored. It is even inconsistent with the appointment on regular basis as stated in that very order.

8. If the appellant was appointed on regular basis, his services cannot be terminated by one month's notice. If it is by way of punishment, as the High Court has found it to be so, it will be violative of the principles of natural justice in that no opportunity was given to the appellant to clear himself of the alleged misconduct which never found its expression on paper but which remained in the minds of those passing the order of termination of service. If it is discharge simpliciter, it would be violative of Article 16 because a number of storekeepers junior to the appellant are shown to have been retained in service and the appellant cannot be picked arbitrarily. He had the protection of Article 16 which confers on him the fundamental right of equality and equal treatment in the matter of public employment.

9. Mr. Datta however, contended that the earlier order dated December 7, 1963 recites that the appointment could be terminated by either side by one month's notice and that was the power invoked in terminating the service of the appellant. The order dated December 7, 1963 was at the time when the appellant was appointed on probation. On successful completion of probation, the appellant became a member of the regular establishment. The contract of service, if any, has to be in tune with Articles 14 and 16 and such unilateral power of termination of service without giving reasons is so abhorrent that it smacks of discrimination and therefore, violative of Article 14. The High Court brushed aside this aspect by merely observing that "in order to dismiss one employee on the ground of unsuitability, the Government or the Corporation is not required to dismiss all". If it is suggested that you can dismiss anyone without a semblance of an enquiry or without whisper of the principles of natural justice, then such an approach overlooks the well-established principle that where State action affects livelihood or attaches stigma, the punitive action can be taken after holding an enquiry according to the principles of natural justice. In other words, an unbiased Judge, and an opportunity to controvert the allegation and to clear oneself are the minimum principles of natural justice which must inform such drastic power of dismissal affecting livelihood of an employee. If the observation of the High Court was with reference to the contention of the order being violative of Articles 14 and 16, it overlooks the fact that the Corporation attempted to sustain its action on the ground that the services of the appellant were no more required which will certainly impel the court to enquire whether the post had been abolished or whether retaining the juniors, the inconvenient person was thrown out under the garb of being surplus. Therefore, the approach of the High Court in this behalf is not appreciable.

10. Accepting the finding of the High Court that the appellant was removed from service on the

ground of his unsatisfactory work, the same could not have been done without an enquiry in accordance with principles of natural justice. At any rate the action appears to be thoroughly arbitrary. If the facts are properly viewed this public sector corporation has disclosed the typical private employer's unconcealed dislike and detestation of an active trade unionist. From the facts stated in the earlier portion of the judgment, it appears that appellant was a protected workman. Add to this the fact that the secret letter of Mr. L. J. Johnson dated September 6, 1967 reveals the inner working of the mind of the top brass of the Corporation when Mr. Johnson states that Mr. Joshi (appellant) is the main trouble maker in the Corporation. Earlier on March 29, 1967, the Assistant Director wrote to the Director of Stores to transfer the appellant from Dehradun to Assam, the usual management response namely, to transfer the active trade union worker to weaken the trade union movement. Even a charge of victimisation qua the appellant was made in writing. The then Petroleum Minister, Mr. Ashok Mehta wrote to Mr. Natwarlal Shah, ONGC Employees Mazdoor Sabha wherein he assured that the Corporation would not be interested in victimising anyone and yet soon after within three months, the services of the appellant were terminated.

11. And now reasons for the termination of service of the appellant may be examined. The appellant is considered unsuitable for the job as found by the High Court. How he became unsuitable is an aspect not even examined by the High Court. On the contrary one has to refer to several communications eulogising the services of the appellant which have been placed on record. One Ganga Ram, Personnel Officer, ONGC, Tel Bhavan, Dehradun has certified on August 26, 1964 that Shri Joshi was found to be "very sincere, conscientious, dependable and hard working official and he is very much loyal to his duties as storekeeper and he has done exceedingly well". He also states that "Mr. Joshi knows his job thoroughly well". On April 15, 1965, the Controller of Stores and Purchase, the immediate superior of the appellant writes that "Mr. Joshi knows his work very well and he is very conversant with the purchase work, accounting and maintenance of stores. He is a very bright young man of blameless character and would do very well in any position of responsibility". This letter of appreciation was sent when the officer was relinquishing his charge of the post of Controller of Stores and Purchase. On January 16, 1968, the Chief Engineer Shri R. P. Sharma has issued a certificate in which it is stated that he found "Mr. Joshi sincere, intelligent and hard working young man fully trustworthy and dependable for any confidence that may be reposed in him". This will clearly show that the charge of unsuitability was either cooked up or conjured up for a collateral purpose of doing away with the service of an active trade union worker who because of his activities became an eyesore.

12. Accordingly we are unable to agree with the view taken by the High Court that the termination of service was legal, valid or justified. This appeal will accordingly succeed. The question then is : what relief we must grant ?

13. Ordinarily, where the order of termination of service is shown to be bad and illegal, the necessary declaration must follow that the employee continues to be in an uninterrupted service and he is entitled to full back wages. We would have been perfectly justified in giving the declaration and making that order. However, the appellant is out of service from December 29, 1967 till today. A period of nearly 18 years have rolled by and he will have to go back to some chagrined master. We therefore, enquired from the learned counsel appearing for the appellant whether substantial and adequate compensation would be more acceptable to him or reinstatement with back wages. The appellant opted for the former and Mr. former and Mr. B. Datta learned counsel for the Commission conceded that the Corporation would willingly pay Rs. 2 lacs as and by way of back wages and compensation in lieu of reinstatement.

14. This matter was adjourned to enable the learned counsel for the appellant to work out the spread over of back wages. Mr. A. K. Gupta, learned counsel for the appellant has submitted the calculation of back wages. The figures therein set out are not disputed. We accept the same and treat it as part of the judgment. A copy of it shall always be annexed to the copy of this judgment.

15. Accordingly this appeal is allowed and the judgment of the High Court is quashed and set aside and the rule is made absolute in the writ petition. The Oil and Natural Gas Commission is directed to pay Rs. 2 lacs to the appellant on the basis of the calculations herein submitted in lieu of back wages and compensation in lieu of reinstatement within a period of four weeks from today.

16. In view of the computation made in respect of back wages and compensation from year and year, we must make it abundantly clear whether the Commission would be entitled to deduct income tax while making the payment. In this connection we would follow the decision of this Court in Sant Raj v. O. P. Singla ((1985) 2 SCC 349). In tune with that decision we give the following directions.

17. Now that the amount is being paid in one lump sum, it is likely that the employer may take recourse to Section 192 of the Income Tax Act, 1961 which provides that any person responsible for paying any income chargeable under the head 'Salaries' shall, at the time of payment, deduct income tax on the amount payable at the average rate of income tax computed on the basis of the rates in force for the financial year in which the payment is made, on the estimated income of the assessee under this head for that financial year. If therefore the employer proceeds to deduct the income tax as provided by Section 192, we would like to make it abundantly clear that each appellant would be entitled to the relief under Section 89 of the Income Tax Act which provides that where, by reason of any portion of assessee's salary being paid in arrears or in advance or by reason of his having received in any one financial year salary for more than 12 months or a payment which under the provisions of clause (3) of Section 17 is a profit in lieu of salary, his income is assessed at a rate higher than that it would otherwise have been assessed, the Income Tax Officer shall on an application made to him in this behalf grant such relief as may be prescribed. The prescribed relief is set out in Rule 21-A of the Income Tax Rules. The appellant is entitled to relief under Section 89 because compensation herein awarded includes salary which has been in arrear for 18 years as also the compensation in lieu of reinstatement and the relief should be given as provided by Section 89 of the Income Tax Act read with Rule 21-A of the Income Tax Rules. The appellant indisputably is entitled to the same. If any application is necessary to be made, the appellant may submit the same to the competent authority and the Commission shall assist the appellant for obtaining the relief.

18. The appeal is allowed as herein indicted, with no order as to costs.

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