

Jagdish Parsad

Vs

Sachiv, Zila Ganna Committee, Muzaffarnagar and Another

Civil Appeal No. 821 of 1986

(B. C. Ray, A. P. Sen JJ)

11.03.1986

JUDGMENT

RAY, J. -

1. Special leave granted.
2. Heard arguments of the counsel for both the parties. The first question that poses itself for consideration in this appeal is whether the impugned order of termination of service of the appellant is an innocuous order of termination simpliciter in accordance with the terms and conditions of the appointment or it casts any stigma or aspersion on the service career of the appellant thereby prejudicially affecting his service career. The second question is whether before passing the impugned order any opportunity of hearing as required under the service regulations was given to the appellant to the making of the said order.
3. The appellant Jagdish Parsad was employed as a Clerk in the office of Zilla Ganna Adhikari, Muzaffarnagar in a temporary capacity. By an order dated October 28, 1976 his service was terminated. The said order of termination is quoted herein below :

Shri Jagdish Parsad, Clerk, Co-operative Cane Development Society Limited, Muzaffarnagar while working in Roadways was caught in corruption on June 6, 1967 and his services were terminated from there. Shri Jagdish Parsad obtained his appointment in service in the Society, by concealing the above facts. On receiving a complaint this fact was verified from the Roadways Department. In this way Shri Jagdish Parsad, having been removed on charge of corruption, is not suitable for employment in this Society.

Therefore, the services of Shri Jagdish Parsad, Clerk, Cane Society, Muzaffarnagar are terminated with immediate effect.

4. Prior to the making of this order by the Secretary, District Cane Committee, Muzaffarnagar, a show cause notice was issued to the following effect :

Having received a complaint against you, (sic) Transport Corporation, Muzaffarnagar, it has been learnt that you worked up to June 6, 1967 in that department as a Conductor, and during that period you were caught in corruption case, and your services were terminated by giving one month's notice. Since you were removed from the Roadways Department on corruption charges there, it was

not justified to keep you in this department. Thus it seems that you procured employment in Cane Society, Muzaffarnagar, by concealing the above facts. Therefore, show cause, why you be not removed from the services.

5. This notice was issued on October 13, 1976 under the signature of Secretary, District Cane Committee, Muzaffarnagar. On receipt of this show cause notice, the appellant sent a letter to the Secretary, District Cane Committee, Muzaffarnagar requesting him to supply him all the findings of the enquiry in order to enable him to submit his reply to the show cause notice. As the said document asked for by him was not given to him, the petitioner-appellant by his letter dated August 30, 1976 asked for the said document. It was also stated in the said letter that in spite of his earlier request for the documents, he was merely shown a letter dated July 1, 1976 relating to the Roadways Department and another petition of complaint of Shri Shahi Ram, Clerk. Besides these documents, neither the findings pertaining to the show cause notice, nor any other documents were made available to him. It has been further stated therein that he was a temporary employee under the U.P. Government Roadways, Muzaffarnagar, and his temporary service was terminated by letter No. 3396 dated May 18, 1967 by the Assistant General Manager. In the said letter it was clearly mentioned that his services were no more required after offering him one month's salary in lieu of notice. The relevant terms of the letter are as follows :

Services of Shri Jagdish Parsad, son of Shri Baru Singh, appointed as a Conductor and posted at Muzaffarnagar Station is hereby terminated with immediate effect as he is no longer required. In terms and conditions of his service, he will get one month's salary in lieu of the notice.

6. The appellant sent another letter on October 26, 1976 wherein he stated that since his former service under the U.P. Government Roadways was terminated by the aforesaid order of the Assistant General Manager, U.P. Roadways, Meerut steps should be taken to ascertain from the Assistant General Manager as to whether the service of the appellant was terminated by giving one month's wage in lieu of notice as a measure of retrenchment or he was removed from service on the allegation of corruption. Immediately thereafter, on October 28, 1976 the impugned order of termination of service of the appellant was made by the Secretary, District Cane Committee, Muzaffarnagar.

7. The petitioner-appellant moved against this order before the High Court of Judicature at Allahabad questioning the legality and validity of the said order on the ground that he has not been given the proper opportunity of hearing, nor the procedure prescribed by Regulation 68 of the U.P. Cane Co-operative Service Regulations, 1975 was complied with. As such the entire order of termination is wholly illegal, arbitrary, being violative of the aforesaid Regulation 68 as well as denying the further opportunity to show cause against the proposed punishment as provided under the said regulation. Learned judges of the High Court of Judicature at Allahabad dismissed the writ petition holding that there was no merit in the submission of the learned counsel as no disciplinary departmental proceedings were taken against the petitioner-appellant. It was also found that the service of the appellant was terminated by U.P. Government Roadways on charge of corruption as he concealed this fact while obtaining service in the District Cane Office. He was issued a show cause notice and he showed the cause. The Cane Officer after considering his reply passed the impugned order terminating his service. There was no procedural flaw or breach of statutory rules.

8. It appears from the order dated May 18, 1967 issued under No. 3396-E-11/67 by the Assistant General Manger, U.P. Government Roadways that the service of the appellant was terminated as he

was no longer required on offering him one month's salary in lieu of notice in accordance with the terms and conditions of his service. From this letter there is nothing to show that the service of the petitioner-appellant was terminated because he was involved in a corruption case. It also appears from the show cause notice dated October 30, 1975 that the appellant was caught in a corruption case and his former service under the Transport Corporation, Muzaffarnagar was terminated by giving one month's notice. It was further stated therein that since he was removed from the Roadways Department on corruption charges, it was not justified to keep him in this department. As such the said show cause notice was issued why he should not be removed from service. Two replies given to this show cause notice by the appellant have already been referred to previously wherein the appellant has categorically denied that he was proceeded against by the U.P. Roadways Department, Muzaffarnagar on a charge of corruption and he being a temporary employee was removed from the service by giving him one month's pay in accordance with the terms and conditions of his service. In the counter-affidavit sworn by P.L. Sharma, the Secretary of respondent 1 on behalf of respondents 1 and 2 it has been stated in paragraphs 1 and 2 of the said affidavit that the appellant was an ex-employee of U.P. Road Transport Corporation, and he did not intimate the Cane Development Union that his service was terminated by the U.P. Roadways on a charge of corruption and bribery on June 6, 1967. It was also stated therein that this fact was brought to the notice of the respondent on a complaint made by one Shri Shahi Ram, Clerk. A copy of the report of the Station Officer, U.P. Government Roadways, Muzaffarnagar was also filed along with the said counter-affidavit. Excerpt of the said report is quoted herein below :

Till June 6, 1966, he was employed as a Conductor. However on that date he was caught red-handed in a case of corruption. He was given one month's salary in lieu of notice and removed from the department on June 6, 1967.

9. The order of termination was made by the Secretary, District Cane Committee, Muzaffarnagar on October 28, 1976 immediately after the receipt of the reply to the show cause notice by the petitioner-appellant. There is nothing to show that the petitioner-appellant was provided with the relevant documents showing that a proceeding was started against him for his involvement in a corruption case while in the office of the U.P. Government Roadways, nor the Assistant General Manager of the said Roadways who passed the order of termination of service simpliciter on the basis of the terms and conditions of service after offering him one month's salary in lieu of notice was examined. It is needless to say in such circumstances that barring the issuance of the show cause notice, the elaborate procedure prescribed by Regulation 68 of the U.P. Cane Co-operative Service Regulations, 1975 was not followed. On a plain reading of this regulation, it is quite clear and apparent that the petitioner-appellant has to be communicated the charges in writing as well as the statement of allegations forming the basis of each of the charges and the evidence proposed to be considered in support of each of the said charges. Then the delinquent employee has to be called upon by the Enquiry Officer to submit his explanation in writing in respect of each of the charges within the prescribed time and he has to be asked whether he desires to be heard in person or to produce any evidence documentary or oral or to examine or cross-examine any witness in his defence. He will have to be given inspection of the relevant records if he so desires. The said regulation further provides that the delinquent employee has to be given a personal hearing and he will be allowed to cross-examine the witness if he so likes. The Enquiry Officer after hearing the delinquent employee and examination of the witnesses produced by him in his defence should submit his report to the disciplinary authority giving his findings on each of the charges and recommending the punishment. The Competent Authority if proposes to dismiss the officer or to remove or reduce him in rank, has to give him another opportunity against the proposed punishment. Thereafter the final order imposing the punishment can be made. This elaborate

procedure has not at all been followed or adhered to in the instant case. It is evident that the appellant was not given any opportunity of hearing at all before making the impugned order of termination of his service on the ground that he concealed the fact of his removal from the service under the U.P. Government Roadways on charge of corruption at the time when he applied for the post of Clerk under the Cane Society, Muzaffarnagar. This order of termination is not an innocuous order, but is an order which on the face of it casts stigma on the service career of the appellant and it is in effect an order of termination on the charges of concealment of the fact that he was removed from his earlier service under the U.P. Roadways on charges of corruption. This order undoubtedly is penal in nature having civil consequences and it also prejudicially affects his service career. Furthermore this order of termination if considered along with the show cause notice will clearly reveal that the order of termination in question is not an innocuous order made for doing away with the service of the temporary employee like the petitioner-appellant in accordance with the terms and conditions of his service. This order is, therefore, per se, illegal, arbitrary and in breach of the mandatory procedure prescribed by Regulation 68 of the U.P. Cane Co-operative Service Regulations, 1975. The order made is also in utter violation of the principles of audi alteram partem. The findings of the High Court that no disciplinary departmental proceedings had been taken against the petitioner-appellant and the petitioner was afforded opportunity before his service was terminated are liable to be set aside inasmuch as these findings were arrived at without at all considering the relevant materials produced before the court.

10. In the premise aforesaid, there is no other alternative, but to quash and set aside the impugned order passed by the court below. This will not prevent the authorities concerned to proceed against the appellant afresh in accordance with law. There shall be no order as to costs.

</html