

Hari Shanker Sharma

Vs

Commissioner, Agra Division, Agra and Others

Civil Appeal No. 4371 of 1986

(E. S. Venkataramiah, M. M.Dutt JJ)

15.12.1986

JUDGMENT

DUTT, J. -

1. This appeal by special leave is directed against the judgment of the Allahabad High Court dismissing the writ petition of the appellant whereby he challenged the order of termination of his service.
2. The appellant was appointed the Waterworks Supervisor of Town Area Committee, Sadabad, District Mathura. On June 13, 1977, the Town Area Committee was superseded and the Sub-Divisional Officer was appointed the prescribed authority. The appellant was suspended on November 13, 1977. An inquiry was made by the Tehsildar who in his report dated February 4, 1978 found that the appellant was not guilty of the charges levelled against him and that, accordingly, he should be reinstated in service with back wages. It appears from another report of the Tehsildar that the Sub-Divisional Officer directed him to prepare a charge-sheet. He, however, reported that in view of the earlier report, it would not be proper to prepare the charge-sheet. The Sub-Divisional Officer directed the Tehsildar to reconsider his report on certain points and to submit a fresh report by September 15, 1979. The appellant remained under suspension throughout.
3. On June 15, 1978, a charge-sheet was served upon the appellant containing 5 charges against him. It was alleged that by encashing cheques issued to him, the appellant had withdrawn from the bank certain amounts in the months of April to September, 1975 on account of pay and wages, but he did not make payment to respondent 3, Shri Banwari Lal, Secretary, and some other employees of the Town Area Committee for the aforesaid months. In other words, the appellant was charged with embezzlement. The Tehsildar, who made an inquiry, found that the charge of embezzlement of the amount of pay of respondent 3 for the aforesaid months was proved. He, however, found that the other employees had, in fact, received their wages. The Sub-Divisional Officer, who is the prescribed authority, by the impugned order dated May 5, 1981 agreed with the findings of the Inquiry Officer that the appellant had not paid the amount of the salary of respondent 3 for the aforesaid months and, accordingly, terminated his services with immediate effect. Against the said order of the Sub-Divisional Officer, the appellant preferred an appeal to the Commissioner, Agra Division, who, however, by his order dated February 21, 1985 dismissed the appeal. The writ petition preferred by the appellant against the impugned order of termination was, as stated earlier, dismissed by the Allahabad High Court.
4. In this connection, it may be stated that during the pendency of the inquiry proceedings against the appellant, respondent 3 lodged an FIR with the police alleging that an offence under Section 409

IPC had been committed by the appellant. The police, however, ultimately submitted a final report holding that the allegation against the appellant that he had committed an offence under Section 409 IPC was not made out.

5. It has been found by the Inquiry Officer as also by the Sub-Divisional Officer and the Appellate Authority that the revenue stamps which were affixed to the pay bills, had been pulled off and in some places parts of the signature of respondent 3 were there. It is now admitted by the Sub-Divisional Officer in his counter-affidavit affirmed on April 21, 1986 that all the concerned persons except respondent 3 have admitted in writing that they had received their pay. It has also been admitted by him that the pay of these employees was distributed by the appellant.

6. It does not appear from the record that any complaint was made by respondent 3 or by any employee of non-payment of salary or wages by the appellant. It is curious that respondent 3 remained silent and did not make any complaint till July 15, 1980 when he lodged an FIR with the police. After the appellant was suspended on November 13, 1977, an inquiry was held by the Tehsildar in regard to charges which were that he was not making bills for waterworks, not making list of defaulters, not taking charge, not giving missing number of connections and not obeying orders. There was no charge against him that he had embezzled the amount of salary and wages of respondent 3 and other employees. After the Tehsildar found that the charges were baseless, and that the appellant should be reinstated with back wages he was directed to prepare a charge-sheet which, however, was declined to be made by him in view of the findings made earlier. In spite of that a charge-sheet was issued by the Sub-Divisional Officer and served upon the appellant alleging embezzlement by him of the amount of pay of respondent 3 and of some other employees of the Town Area Committee.

7. In our opinion, the Sub-Divisional Officer did not act fairly in the matter. We are not at all impressed with the reasons given by him in the impugned order of termination. It is manifestly clear on the face of the records that the charges against the appellant were not substantiated and in spite of that, the services of the appellant were terminated by the impugned order. The materials on record show that the appellant had made payments to respondent 3 for the months of April to September, 1975. The prescribed authority was not at all justified in initiating departmental proceedings against the appellant in spite of the report of the Tehsildar. The Appellate Authority and the High Court did not properly consider the case of the appellant that he could not be held guilty of embezzlement in the facts and circumstances of the case.

8. In view of the discussion made above, we set aside the judgment of the High Court, the order of the Appellate Authority and also the order of the Sub-Divisional Officer terminating the services of the appellant. The respondents are directed to reinstate the appellant immediately with all back wages.

9. The appeal is allowed. There will, however, be no order as to costs.

</html