

Dattatraya Mahadev Nadkarni (since deceased by his L.Rs.),

Vs

Municipal Corporation of Greater Bombay

Civil Appeal No.321 of 1979

(N. M. Kasliwal, R. C. Patnaik JJ)

07.02.1994

JUDGEMENT

KASLIWAL, J.:-

1. This appeal by special leave is directed against the judgment of the Bombay High Court dated 30th June, 1977. It is not necessary to mention the facts in detail, as this appeal succeeds on a short point. Dr. Dattatraya Mahadev Nadkarni (since deceased) - (hereinafter referred to as the 'appellant') was employed as Medical Assistant in the Municipal Corporation of Greater Bombay. He was served with a charged sheet dated 5-7-1961. The charges levelled against him were that while suspended from duty from 2-11-1960 he failed to give charge of the Registers of International Health Certificates sued in 1957, 1958, 1959 and up to March 1960. In spite of thorough search the Registers of the above Certificates were not found in the dispensary. The appellant was thus guilty of negligence (1) for the loss of the Registers and (2) for not giving proper charge of the dispensary. The Deputy Municipal Commissioner (Labour) agreeing with the report of the Inquiry Officer, issued a show cause notice to the appellant holding that the charges mentioned in the charge sheet were proved against the appellant. The appellant was directed to show cause as to why he should not be dismissed from municipal service for the charges proved against him? Thereafter by order dated 26-2-1962 the acting Municipal Commissioner imposed the punishment of removal from service on the delinquent i.e. the appellant. The order of dismissal was confirmed by the Appellate Authority on 18-5-1962. The appellant after serving a statutory notice, filed a civil suit challenging the aforesaid order of dismissal. It was prayed that all the orders of suspension, dismissal and appellate order be declared ultra vires, void, illegal and inoperative and the defendants be directed to reinstate the appellant in service with full back wages. It was also prayed that a decree for a sum of Rs. 11,314.55 paid towards the arrears towards salary up to the date of the suit and further salary and attendant benefits from the date of suit till reinstatement be passed. The suit was contested by the Municipal Corporation of Greater Bombay. The suit was dismissed by the trial Court and the appeal filed before the High Court was also dismissed. The appellant has come to this Court in appeal.

2. It may be mentioned that the appellant died during the pendency of the appeal before this Court and the appeal has been pursued by his legal representatives namely, his widow and two sons. Mr. M. Bhandare, Learned Senior Counsel has submitted that according to Clause (a) of proviso 2 of Section 83 of the Bombay Municipal Corporation Act, 1888 no officer whose monthly emoluments exceeded Rs. 400/- could be dismissed from service by the Commissioner without the previous approval of the Standing Committee. It was contended that in the present case the appellant was admittedly drawing monthly emoluments of Rs. 520/- and the order of dismissal was passed by

the Commissioner dismissed the appeal summarily without advertng to the above ground and the trial court wrongly held that the impugned order dated 26-2-1962 was merely an order of removal and not dismissal.

3. Learned counsel appearing for the Municipal Corporation submitted that the trial Court was, right in holding that and as such the condition of seeking approval from the Standing Committee was not necessary and the Commissioner had authority to pass such order.

4. We have considered the arguments advanced by Learned Counsel for both the parties and have thoroughly perused the record. Admittedly the appellant at the relevant time as drawing monthly emoluments of Rs. 520/- and there was no approval of the Standing Committee before passing the impugned order dated 26-2-1962. Section 83 of the Bombay Municipal Corporation Act, 1888 and proviso 2 (a) reads as under:

"Section 83. (1) Every Municipal Officer and servant may be fined, reduced, suspended or dismissed for any breach of departmental rules or discipline or for carelessness, unfitness, neglect of duty or other misconduct, by the authority by whom such officer or Servant is appointed:

(2) Provided that -

(a) No officer whose monthly emoluments exceed (rupees four hundred) shall be dismissed by the Commissioner without the (previous) approval of the standing committee (or in the case of an officer appointed for the purposes of clause (q) of Section 61, of the Education Committee);"

5. A perusal of the above provision clearly shows that it only provides for dismissal and there is no punishment like removal mentioned in it. In the present case even the show cause notice mentioned as to why the appellant should not be dismissed from municipal service after mentioning that the charges were held proved? The plaintiff paras 50 and 51 of the plaint had clearly pleaded that the dismissal contemplated under section 83 included the removal from service. The plaintiff further stated that if it was contended that the removal was separate from dismissal then the defendant had no authority in law to remove the plaintiff from service for which no provision was made in Section 83. It was further pleaded that before removal it was necessary to obtain the prior sanction of the Standing Committee inasmuch as the plaintiff was an Officer whose monthly emoluments exceeded Rs. 400/- at the time of his removal. It was submitted that the approval of the Standing Committee was a condition precedent to the removal of the plaintiff. In the written statement the corporation took the stand that the rules framed by the Municipal Commissioner under Section 83 came into force only from December, 1961 and were not applicable to the plaintiff's case. It was denied that there was no authority in law to remove the plaintiff from service as alleged. The defendants denied that it was necessary to obtain the prior sanction of the Standing Committee before removing the plaintiff from service or that it was a condition precedent as alleged. The defendants thus took the stand that in case of removal no prior sanction was at all necessary and as such the plaintiff's removal was valid.

6. We find force in the contention raised by the appellant. In *Shyamal v. State of Uttar Pradesh*, AIR 1954 SC 369, while dealing with the provisions of Article 311 of the Constitution of India it was held that under the Constitution removal and dismissal stand on the same footing except as to future employment. In this sense removal is but a species of dismissal. Removal, like dismissal, no doubt

brings about a termination of service but every termination of service does not amount to dismissal or removal.

7. In *S. R. Tewari v. District Board Agra*, (1964) 3 SCR 55 : (AIR 1964 SC 1680 at p.1686), it has been observed:

"It is settled law that the form of the order under which the employment of a servant is determined is not conclusive of the true nature of the order. The form may be merely to camouflage an order of dismissal for misconduct, and it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form merely of determination of employment is in reality a cloak for an order of dismissal as a matter of punishment, the Court would not be debarred merely because of the form of the order in giving effect to the rights conferred by statutory rules upon the employee."

8. The only difference in the punishment of dismissal and removal is that in case of dismissal the employee is disqualified from future employment while in case of removal he is not debarred from getting future employment. In the present case a perusal of Section 83 clearly shows that the punishments provided are : fine, reduction, suspension or dismissal from service. The appellant is right in his contention that Section 83 does not lay down any punishment of removal from service and it only provides for dismissal from service. The defendant themselves have come forward with a plea in the written statement that the rules framed by the Municipal Commissioner under Section 83 came into force only from December 1961 and were not applicable to the plaintiffs case. In this view of the matter the defendants cannot take help of any provisions of the rules providing punishment of removal from service apart from dismissal. That apart, it was never the case of the defendant's in the written statement that they wanted to impose the punishment of removal with an intention not to disqualify the appellant from future employment. As already mentioned above even the show cause notice clearly mentioned that the disciplinary authority wanted to impose the punishment of dismissal. We have to go behind the form and ascertain the true character of the order. The disciplinary authority had clearly affirmed the findings of the Inquiry Officer and after holding the charges proved against the appellant had imposed the punishment of removal from service. Thus, in the entire facts and circumstances of the case, we are clearly of the view that the impugned order of punishment was an order of dismissal from service, though the order may have used the term of removal from service. In this view of the matter the impugned order of dismissal from service was clearly wrong and illegal as the same was not approved by the Standing Committee and the Commissioner was not authorised to pass the order of dismissal without such approval.

9. As regards relief, the appellant having expired, there is no question of any reinstatement in service and so far as other reliefs of salary and other emoluments are concerned Mr. M. Bhandare, Learned Senior Counsel appearing for the legal representatives of the appellants frankly submitted that the legal representatives were only interested in getting the order of dismissal set aside which was based on false charges and to vindicate the lost prestige of the family. We have already set aside the order of dismissal and we also quash the charges levelled against the appellant. In the result, we allow this appeal, set aside the orders of the High Court as well as the trial Court and decree the suit filed by the plaintiff appellant to the extent of quashing the order of dismissal dated 26-2-1962 as well as the order of Appellate Authority dated 18-5-1962 and exonerate the appellant from all the charges levelled against him. In the circumstances of the case, no order as to costs.

Appeal allowed.

</html