State of U.P. and Another

Vs

Girish Bihari and Others

Civil Appeal No. 795 of 1997

(CJI A. M. Ahmadi, Sujata V. Manohar, K Venkataswami JJ)

14.02.1997

JUDGMENT

AHMADI, C.J.

1. Leave granted.

2. The respondent Dr. Girish Bihari, a member of the Indian Police Service, was to reach the age of superannuation on 5-3-1996 and therefore was to retire from service with effect from the afternoon of 31-3-1996 i.e. on the last date of the month in which he reached that age. On 20-3-1996, the Governor, State of Utter Pradesh by an order under Rule 16 of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 (hereinafter referred to as "the Rules") passed an order for extension of the service of Dr. Girish Bihari for 6 months front the date of his retirement i.e. 31-3-1996. On 23-3-1996, the Governor in exercise of powers under Section 21 of the General Clauses Act issued the impugned order cancelling the earlier order dated 20-3-1996 granting extension to the appellant.

3. The surrounding circumstances of the case are as under :

On 18-10-1995, under a proclamation issued under Article 356 of the Constitution by the President, the President assumed to himself all functions of the Government as well as the powers vested in or exercisable by the Governor. Having assumed powers under Article 356, the President by a further notification authorised the Governor to exercise all powers by himself on his behalf. On 19-3-1996, the Election Commission announced elections to the State Legislature and issued instructions known as "Model Guidelines for the Government". On 20-3-1996, the Election Commission sent out messages to the Chief Secretaries about announcement of general elections to the House of the People and Legislative Assemblies inter alia mentioning therein that the standing instructions of the Commission including ban on transfers, etc., have come into force. The Chief Electoral Officer was of the view that the order retaining the respondent beyond the date of superannuation required the prior consent of the Election Commission. The Election Commission directed that the order dated 20-3-1996, granting extension to the respondent be revoked as it was violative of the Model Code of Conduct issued by the Commission. The Governor sought advice from the Advocate General and thereafter by the impugned order cancelled the order dated 20-3-1996. The respondent challenged the impugned order before the Central Administrative Tribunal inter alia on the grounds that the Governor instead of acting on his fair judgment acted under pre-emptory direction of the Election Commission and therefore the impugned order was bad; that the order dated 20-3-1996 had created a right to continue for a period of 6 months and therefore the impugned order passed without an opportunity to the appellant of being heard was vitiated on account of violation of the principles of

natural justice. The petition was defended by the appellant State of Uttar Pradesh on the ground that there was no infirmity in the order as the Governor had used his own judgment and discretion in a fair manner after obtaining constitutional advice under Article 156(2) of the Constitution of India and that the impugned order was to be operative with effect from 1-4-1996 and therefore till then the order had not created any vested right of any kind in the respondent.

4. The Tribunal returned findings on all the substantial questions in favour of the appellant and against the respondent. The Tribunal held that the letter dated 20-3-1996 granting extension to the respondent did not create any vested right nor was the protection under Article 311(2) of the Constitution of India available in the circumstances of the case as the order of cancellation of extension was not passed by way of any disciplinary action. The Tribunal further held that the advice and direction of the Election Commission were not without jurisdiction, nor was the order of cancellation of extension based on extraneous considerations. The Tribunal held that the impugned order dated 23-3-1996 was not arbitrary or violative of Articles 14 and 16 of the Constitution. The Tribunal, however, observed that the principles of natural justice had not been observed before passing the order inasmuch as the respondent was not given a hearing before withdrawing the order of extension. The Tribunal observed that the principles of natural justice implied : (i) the principles of audi alteram partem and (ii) justice should not only be done but must also manifestly appear to be done. The Tribunal said :

> "It is well settled that an administrative decision which results in adverse civil consequences must follow the principles of natural justice. In the present case while it is true that any vested right did not accrue to the applicant, before 1-4-1996, it cannot be denied that the benefit which accrued to him by the order of extension dated 20-3-1996 was withdrawn rather abruptly within a period of three days on 23-3-1996 without giving him a show cause or an opportunity for hearing. We therefore, are of the considered view that there has been violation of principles of natural justice in the present case."

5. The Tribunal referred to a few judgments on the aspect of the application of the principles of natural justice in the context of administrative law. State of Maharashtra v. Lok Shikshan Sansatha [(1971) 2 SCC 410] was cited by the State. The two decisions which are referred to by the Tribunal in support of its decision are Shrawan Kumar Jha v. State of Bihar [1991 Supp (1) SCC 330 : 1991 SCC (L&S) 1078 : (1991) 16 ATC 937] and Scheduled Caste and Weaker Section Welfare Assn. (Regd.) v. State of Karnataka [(1991) 2 SCC 604]. In Shrawan Kumar case [1991 Supp (1) SCC 330 : 1991 SCC (L&S) 1078 : (1991) 16 ATC 937], 175 candidates were appointed as Assistant Teachers but before they could join the Deputy Development Commissioner cancelled the orders of appointment on the ground that the District Superintendent of Education, Dhanbad, who issued the orders of appointment, had no authority to make the appointments. A Division Bench of this Court comprising Kuldip Singh and K. Ramaswamy, JJ. observed that the candidates should have been given an opportunity of hearing before their appointments were cancelled. The Court accordingly directed the Solicitor General to ask the Secretary (Education), Government of Bihar to grant an opportunity of hearing to the candidates and to give a finding as to whether they were validly appointed as Assistant Teachers. The Court also ordered that if anyone had actually worked as a Teacher, he or she would be entitled to the salary for that period. It is interesting to note that this Court while directing that a hearing be given to those appointed as Assistant Teachers did not grant any relief in terms of actual appointment in pursuance to the appointment letters. Nor did the Court order for any pecuniary benefits being given to those appellants pursuant to the appointment letters. Salary, etc., were ordered to be paid only in case any one of those candidates had actually joined and

worked. The Tribunal, however, has gone much further by holding that the respondent would be deemed to have continued in service after retirement in pursuance to the extension order.

6. In Scheduled Caste and Weaker Section Welfare Assn. case [(1991) 2 SCC 604], the State of Karnataka had issued a notification in respect of certain area as the slum area under Section 3 of the Karnataka Slum Areas (Improvement and Clearance) Act, 1973 (33 of 1974) and subsequently after hearing objections declared the entire area as slum clearance area under Section 11 of the same Act but later after about three years cancelled the earlier notification and redeclared only a much smaller area as slum area. The residents of the area not covered by the last notification of slum area contended that they had been deprived of the benefits of the Act in violation of the principles of natural justice and Article 14 of the Constitution. One of the points which came up for consideration in the case was of the principles of natural justice. The notifications under Section 3 and Section 11 of the Karnataka Slum Areas (Improvement and Clearance) Act which provided for declaration of areas and as slum clearance areas respectively, affected the rights of the inhabitants of that area. This Court held that when any alteration was sought to be made in the original scheme, it became incumbent upon the authorities to give an opportunity to the persons who had been affected by the earlier order and were required to adopt a certain course of action. This case is clearly distinguishable on facts. The Tribunal itself has held that the order of extension of service did not create any right and had been cancelled before the date the order came into operation. Consequently, the respondent was not affected either by the order of extension or by the order cancelling the extension. In contrast, in Scheduled Caste and Weaker Section Welfare Assn. case [(1991) 2 SCC 604], the Court held that the rights of the inhabitants of the areas concerned were affected by declaration under Sections 3 and 11 as well as by any change in the declared policy.

7. In the face of the Tribunal's own findings that till the order of extension of service could become operative, no right under the order had vested in the incumbent, it is difficult to agree that there still was a necessity to grant him hearing before the extension order was cancelled. The respondent did not ask for an extension. It was an unilateral action on the part of the State/appellant. The respondent may or may not have accepted the offer. Till the order came into force, as correctly observed by the Tribunal, no vested right could have arisen. If the order of extension did not create any right, the cancellation order could not have withdrawn any such right. Hence, the question of right to hearing did not arise and we see no violation of rules of natural justice.

8. Before this Court, the principle of estoppel was pleaded on behalf of the respondent. Again there is no basis on which any such plea can be taken. There is no statutory estoppel in favour of the respondent. The respondent does not say that he altered his position in any way on account of the extension order dated 20-3-1996 and hence the subsequent order of 23-3-1996 could not have prejudiced him in any way. We do not see how the principle of estoppel can be attracted to this case.

9. On the above premises, the judgment of the Tribunal has to be set aside and the order dated 23-3-1996 must be upheld. The appeal is allowed but we make no order as to costs.