

Union of India and Another

Vs

Bihari Lal Sidhana

Civil Appeal No. 2668 of 1997

(K. Ramaswamy, D. P. Wadhwa JJ)

25.03.1997

ORDER

1. Leave granted. We have heard learned counsel on both sides.
2. This appeal by special leave arises from the judgment of the Division Bench, made on 12-9-1996 in LPA No. 215 of 1979 by the Delhi High Court. While the respondent was working as a Cash Clerk in Delhi Milk Scheme, temporary misappropriation of the funds on more than one occasion was discovered. When misappropriation of Rs. 17,744.91 on 2-4-1972 was reported, a prosecution was laid against the respondent. While the prosecution was pending, orders were passed by the competent authority on 24-4-1972 as under :

"In pursuance of the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I hereby terminate forthwith the services of Shri B.L. Sidhana, Cash Clerk (under suspension), Delhi Milk Scheme and direct that he shall be paid a sum equivalent to the amount of pay and allowances for a period of one month (in lieu of the period of notice) which he was drawing immediately before the date on which he was placed under suspension."

3. The respondent was acquitted of the charge in the criminal case and therefore, he filed a writ petition. In his order, the learned Single Judge held thus :

"The position of a Cash Clerk is one of confidence and responsibility. Even if the incidents averred against the petitioner were not proved, they were such, as to lead a prudent employer to terminate the services of the employee on the ground of his, not being desirable. The order of termination was passed, as noticed above, one year after the criminal case had started and two years after the enquiry. The enquiry appears not to have been completed, so, no definite opinion had been arrived at with regard to the guilt of the petitioner. No evil consequences were visited on the petitioner as a result of the order of termination. Nor has any stigma been attached. No penalties were inflicted on the petitioner despite the enquiries, and the start of the criminal case. In the circumstances the order of termination simpliciter is valid. Since the order is innocuous, there is no need to peer behind it, unless mala fides had been established."

4. On appeal, the Division Bench reversed it, holding that the order of removal does indicate that it was termination of the services of the respondent with stigma attached by mentioning "under suspension". Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 was exercised

with stigma attached in the order. The order does indicate that he was under suspension. It postulates that it was by way of a misconduct and thereby without conducting the enquiry, the termination of the service of the respondent was illegal. Consequently, instead of reinstating him into service the Court directed the appellant employer to pay him compensation in a sum of Rs. 2.50 lakhs. Aggrieved by that order, this appeal has been filed.

5. It is true that the respondent was acquitted by the criminal court but acquittal does not automatically give him the right to be reinstated into the service. It would still be open to the competent authority to take decision whether the delinquent government servant can be taken into service or disciplinary action should be taken under the Central Civil Services (Classification, Control & Appeal) Rules or under the Temporary Service Rules. Admittedly, the respondent had been working as a temporary government servant before he was kept under suspension. The termination order indicated the factum that he, by then, was under suspension. It is only a way of describing him as being under suspension when the order came to be passed but that does not constitute any stigma. Mere acquittal of government employee does not automatically entitle the government servant to reinstatement. As stated earlier, it would be open to the appropriate competent authority to take a decision whether the enquiry into the conduct is required to be done before directing reinstatement or appropriate action should be taken as per law, if otherwise, available. Since the respondent is only a temporary government servant, the power being available under Rule 5(1) of the Rules, it is always open to the competent authority to invoke the said power and terminate the services of the employee instead of conducting the enquiry or to continue in service a government servant accused of defalcation of public money. Reinstatement would be a charter for him to indulge with impunity in misappropriation of public money.

6. Under these circumstances, the Division Bench of the High Court was clearly in error in directing payment of the compensation which amounts to premium for misconduct.

7. The appeal is accordingly allowed. The judgment of the Division Bench stands set aside and that of the learned Single Judge stands confirmed. The writ petition stands dismissed. No costs.