DELHI HIGH COURT

Union of India

Vs.

Gian Singh (Delhi)

Regular First Appeal Case No. 131-D of 1960
(S. N. Andley and P. S. Safeer, JJ.)

26.2.1970

JUDGEMENT

S.N. Andley, J.

1. One of the interesting questions that has been raised in this appeal is whether a temporary Government servant under suspension whose services are terminated by notice under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1949, without any order of reinstatement, can claim full salary for the period of suspension ?

2. The respondent filed the suit out of which this appeal arises for recovery of Rs. 8,950/- against the appellant. He was an Assistant in the office of the Chief Controller of Imports and Exports and worked as such till November 19, 1953, when he was suspended on account of his arrest in a criminal case. Nothing was done in the criminal case which appears to have been dropped. On January 21, 1958, the appellant issued a notice under Rule 5 of the said Rules to the respondent intimating that the services of the latter were no longer required and that the respondent would be paid one month's salary including allowances in lieu of notice. It is not disputed that one month's full pay and allowances in lieu of the notice were paid to the respondent. During the period of suspension from November 19, 1953, to January 21, 1958, when the said termination notice was issued, the respondent had been paid subsistence allowance in accordance with Fundamental Rule 53 which was undoubtedly much less than the full pay and allowances to which the respondent would have been entitled but for the suspension. In the suit that the respondent filed the validity of the order of suspension or the notice of termination of services was not challenged. Since the said notice was received on or about 26-1-1958, the respondent claimed full salary and allowances for the period of suspension (19-11-1953 to 26-1-1958) amounting to Rs.

8,950/-. The case of the appellant was that the respondent was not entitled to full pay and allowances for the period of suspension and was entitled only to the subsistence allowance fixed, which was admittedly paid. Without prejudice to this contention, the appellant submitted that the amount claimed by the respondent was not correct and that if the respondent were held entitled to full pay and allowances for the suspension period, the amount due to him would be Rs. 8,541.51 Paisa. The correctness of this amount of Rs. 8,541.51 Paisa was not disputed by the respondent as is clear from the statement to that effect made in paragraph 8 of the replication filed by him.

3. It may here be stated that the appellant did not raise any objection in his written statement that any part of the respondent's claim was barred by limitation. Later, however, upon an application by the appellant, an additional issue was framed on the basis of which the trial Court has gone into the question of limitation. The issues framed in the suit were these:

> "1. Whether the plaintiff is entitled to the full pay and allowances inclusive of the increments for the period 19-11-1953 to 26-2-1958 ?
> 2. Whether the plaintiff is entitled to any amounts as gratuity from the defendant?
> 2A. Whether the dates when the cause of action arose to the plaintiff as given in the plaint are correct ? If not when the cause of action arose to the plaintiff and to what effect?
> 3. Relief."

The trial Court came to the conclusion that the respondent was entitled to full pay and allowances and increments for the suspension period; that the respondent was not entitled to his claim for gratuity as it had been given up and the suit was within limitation. In the result, the trial Court granted the respondent a decree for Rs. 8,541.51 Paisa with proportionate costs.

4. It is contended on behalf of the appellant that no challenge has been made to the validity of the order of suspension and the respondent having admittedly been paid the subsistence allowance to which he was entitled, no claim for full pay, allowances or increments could be made by the respondent. On the other hand, it is contended on behalf of the respondent that the order of suspension must be taken to have been revoked by reason of the issue of the termination notice under Rule 5 of the said Rules and the further fact that the respondent was paid his full pay and allowances for the month of notice, which would not have been done if the order of suspension subsisted until the issue of the said notice.

5. The notice of termination is in these terms:-

> "Under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1949, the service of Sri G.S. Kadian is hereby terminated with effect from the date of service of this Order on him. He will be paid a sum equivalent to the amount of his pay plus allowances for one month, which is the period of notice due to him. The payment of allowances will, however, be subject to the conditions under which such allowances are otherwise admissible."

6. Sub-rule (1) of Fundamental Rule 54 provides *inter alia*, that when a Government servant who has been dismissed, removed, compulsorily retired or suspended is re-instated; the authority competent to order the re-instatement shall consider and make a specific order regarding the pay and allowances to be paid to the Government servant for the period of suspension and whether or not the period of suspension shall be treated as a period spent on duty. Admittedly no such order was made in the case of the respondent. As we read the rule, it appears to us that the order regarding pay and allowances has to be made by the competent authority at the time of re-instatement. Instead of doing that the appellant merely terminated the services of the respondent as aforesaid but while doing so the appellant paid to him the full pay and allowances for the month of notice which would have been paid to the respondent if he had not been under suspension. The proviso to Rule 5 of the said Rules says:-

> "Provided that the service of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances, at the same rates at which he was drawing them immediately before the termination of his services, for the period of the notice or, as the case may be, for the period by which such notice falls short of one month or any agreed longer period."

The payment to the respondent of his full pay and allowances for the month of notice can only lead to one inference, namely, that the respondent was entitled to draw full pay and allowances for the period immediately before the termination of his services and this could have been done only if the respondent was treated as not being under suspension. Therefore, there is a great deal of force in the contention on behalf of the respondent that such payment amounts to a revocation of the order of suspension. Any other conclusion would be unjust because in a given case a Government servant may be validly suspended under the Service Rules and kept under suspension, even as in this case, for years together and then issued a notice under Rule 5 of the said Rules with the result that even though no enquiry has been held against him, the punishment

of lesser pay in the shape of subsistence allowance is inflicted upon him.

7. There is abundant authority for the proposition that if a Government servant is suspended and his services are terminated without holding any enquiry against him, such termination would amount to a punishment which will attract the provisions of Article 311 of the Constitution.

8. In *V.P. Gidroniya v. State of Madhya Pradesh* [1] a Division Bench of that Court observed that:

> "where the appointing authority elects to dismiss or remove a temporary servant after holding a departmental enquiry and in accordance with Article 311 (2) of the Constitution, then, while the departmental enquiry is pending, neither the temporary Government servant nor the appointing authority can put an end to the services of the Government servant by passing an order in terms of the contract of employment or the relevant rule. The departmental enquiry has to be stopped first before the services of a temporary servant can be terminated in the exercise of the powers under the terms of the contract of employment or the relevant rule."

The principle laid down in this authority applies with greater force to a case where although there is an order of suspension not even a departmental enquiry is commenced against the Government servant concerned. In the case *Union of India v. T.L. Dakshinamurthy*, [2] the railway servant concerned was placed under suspension and his services were terminated without any enquiry into the charges and a month's salary was paid to him in lieu of notice. It was held that if the order was regarded only as terminating the services of the railway servant, the railway administration would not be entitled to withhold half the salary which it did by virtue of the order of suspension and that since the order of termination did not nullify the effect of the order of suspension in regard to the withholding of salary, it was by way of punishment and contravened Article 311 of the Constitution. In another case from the Madras High Court *General Manager, Southern Railway v. J.B. Purushottam*, [3] it was observed as under :-

Before parting with this case, it appears to us that in similar cases, the railway administration will be well advised to make up their mind at a sufficiently early stage of the proceedings against a delinquent or unsatisfactory subordinate, regarding the proper way to deal with him, whether it would be by way of punishment, or by way of termination of his service under Rule 148. When they choose the first course, but in

the middle of the proceedings there under, they change their mind and elect to follow the second course, it will be essential to see that no vestige is left of anything that can be construed as a punishment, and which can be substantially linked up with the order of termination of service under Rule 148 passed under the second course."

In the circumstances of this case, we cannot construe the notice of termination as one by way of punishment. It is implicit in this notice that the order of suspension must be deemed to have been revoked before the notice was issued. If it was not so, there was no reason why the appellant would have paid the respondent his full pay and allowances which, in view of the language of the proviso to Rule 5 of the said Rules, were payable on the basis that the respondent was entitled to draw them immediately before the termination of his services. The respondent could not draw full pay and allowances immediately before the termination of his services if the order of suspension was subsisting. The inevitable conclusion, therefore, is that the services of the respondent were terminated on the basis that the order of suspension stood revoked and was ineffective. If that is the correct conclusion, then the respondent would be entitled to claim his full pay and allowances for the period of suspension, which would admittedly be the sum of Rs. 8,541.51 Paisa.

9. Counsel for the appellant contended that even if the respondent was entitled to his full pay and allowances his claim in respect of the period beyond three years and two months immediately preceding the filing of the suit would be barred by time. In view of the decision of the Federal Court in *Punjab Province v. Tara Chand,* [4] and the decision of the Supreme Court in Vaikunthe's case AIR 1962 SC 8, it cannot now be disputed that a suit by a Government servant for salary is governed by Article 102 of the Indian Limitation Act, 1908, which provides a period of three years from the time when the wages accrue due. It is, therefore, contended that the respondent's claim would be within limitation only with respect to a period of three years and two months immediately preceding the institution of the suit.

10. Article 102 of the said Limitation Act undoubtedly provides that a suit for wages has to be filed within three years of the time when they accrue due. The question, therefore, is whether the respondent did have a cause of action for claiming his full pay and allowances for the period 19-11-1953 to 18-7-1956 in the present suit which he filed on September 10, 1959. On 19-11-1953 the respondent was placed under suspension and the validity of the order of suspension is not challenged. That being so, the only wages to which the respondent would be entitled by reason of Fundamental Rule 53 would be the subsistence allowance granted to him and if he were to file a suit

for his full salary and allowances for any period between 19-11-1953 and 18-7-1956, the suit would have had to be dismissed on the ground that full wages had not accrued due and there was no cause of action for the suit. It was only on the date of the receipt of the notice of termination of services, that is, 26-1-1958 that the order of suspension stood revoked and it would be only on and after 26-1-1958 that the respondent could be entitled to claim full pay and allowances for the period of suspension. Full wages for the period of suspension would, therefore, accrue to him by reason of Fundamental Rule 53 only when the order of suspension is revoked or could be deemed to have been revoked. Prior to that the wages would not accrue and he would have no cause of action.

11. Reliance has been placed by the appellant upon a Division Bench judgment of the Punjab High Court [5] *In re Union of India v. Ram Nath Chitory.* In this case Ram Nath had been suspended on April 9, 1946 and he remained under suspension up to January 18, 1952. He was dismissed from service on January 19, 1952, after a departmental enquiry. He filed a suit challenging the order of his dismissal on March 5, 1957, and also claimed arrears of his pay from the date of his suspension till February 28, 1957, and future pay and allowances. In these circumstances, it was observed:-

> "Mr. Hardy then says that, so far as the suspension order is concerned, we should declare that it falls with the declaration of the dismissal order being held illegal, and consequently, the plaintiff should be allowed a decree for full salary and allowances during the period of suspension. The fate of the suspension order is not really linked with and is not dependent upon the decision as to validity or invalidity of the dismissal order. Validity of the suspension order must stand or fall on its own merits unaffected by the ultimate finding as to the legality or illegality of the dismissal order. The plaintiff, nowhere in the plaint, challenged the legality of the suspension order and it is hardly open to us to examine that question at this stage. The claim of the plaintiff was only based on the plea that the order of dismissal was illegal, and, therefore, he should be held entitled to his pay. In any case, the claim with respect to the suspension period would be barred by time on the construction of Article 102 of the Limitation Act, as discussed hereinabove. Mr. Hardy argues that the cause of action to challenge the suspension order would arise only after the dismissal is set aside. As I have said already, the fate of the suspension order has to be decided irrespective of the validity or invalidity of the dismissal order. It must, therefore, be held that the plaintiff's claim on this account is without merit."

It is clear from these observations that Ram Nath had not challenged the legality of the suspension order and the Court refused to examine it. The claim was based only on the plea that the order of dismissal was illegal and, therefore, he should be held entitled to his pay. There is an observation that the claim with respect to the suspension period would be barred by time on the construction of Article 102 of the Limitation Act and the argument that the cause of action to challenge the suspension order would arise only after the dismissal order is set aside was repelled on the ground that the fate of the suspension order has to be decided irrespective of the validity or invalidity of the dismissal order. The question that falls for determination in the appeal before us did not arise in this form before the learned Judges of the Division Bench who decided that case, because in the case before us the order of suspension was not followed by any illegal or invalid order of dismissal. The observations have to be construed in their context and, in our opinion; those observations are not applicable to the case before us. We are of the view that the cause of action for claiming full pay and allowances did not accrue to the respondent during the period of his suspension and it accrued to him only when the order of suspension stood revoked. We therefore do not find any substance in the plea of the appellant that a part of the claim is barred by time.

12. As a result this appeal is dismissed with costs.

Appeal dismissed.

Cases Referred.

1. AIR 1967 Madhya Pradesh 231,

2. AIR 1962 Madras 376,

3. AIR 1964 Madras 243,

4. AIR 1947 FC 23,

5. AIR 1966 Punjab 500,