NAGPUR HIGH COURT

Provincial Government

Vs

Shamshul Hussain Siraj Hussain

(Bose, J.)

09.02.1948

JUDGMENT

Bose, J.

1. This is an appeal by the Provincial Government in a case in which a Sub-Inspector of Police has sued for arrears of pay from 8th October 1937 to 10th November 1943, the date of the suit.

2. The plaintiff was appointed a Sub-Inspector of Police by the Inspector General of Police of the Central Provinces in 1917 after a period of preliminary training. He was confirmed in 2918.

3. On 27th October 1937 the District Superintendent of Police placed him under suspension, and after a departmental enquiry he was dismissed by the Deputy Inspector-General of Police on 10th November 1937.

4. The plaintiff's case is that as he was appointed by the Inspector-General he could not be dismissed by the Deputy Inspector General; and that is now conceded by the Grown because of the recent decision of the Federal Court reported in *Punjab Province v. Tara Chand*[1] The matter is also dealt with in earlier decisions of that Court : *Secretary of State for India v. I.M. Lall*[2] and *Suraj Narain v. N.W.F. Province*[3] It is also referred to by their Lordships of the Judicial Committee in *Rangachari v. Secretary of State for India*[4] These decisions are all based on Section 240(2), Constitution Act.

5. In this case the plaintiff appealed to the Inspector-General from his dismissal. The appeal was rejected and a petition to the "Provincial Government also failed. Because of the Federal Court's ruling in *Suraj Narain v. N.W.F. Province*[5] no attempt was made to argue that the action of the Inspector-General in dismissing the appeal was equivalent to an order of dismissal by him. It must, therefore, be accepted as Bottled that the dismissal here was, to use the language of the Privy Council in *Rangachari v. Secretary of State for India*[6] which the Federal. Court reproduce, "bad and inoperative."

[1] A.I.R. (34) 1947 F.C. 23
[2] A.I.R. (32) 1945 P.C. 47
[3] A.I.R. (29) 1942 F.C. 3, 5
[4] A.I.R. (24) 1937 P.C. 27
[5] A.I.R. (29) 1942 F.C. 3, 6
[6] A.I.R. (24) 1937 P.C. 27

6. In the latest Federal Court case *Punjab Province v. Tara Ghand A.I.R. (34) 1947 F.C 23(SUPRA)*, the plaintiff was given three years arrears of pay, their Lordships holding that

Article 102, Limitation Act, applied. The learned Government Pleader conceded that that would be proper in an ordinary case, but here he contended a factor arises which abrogates that rule. The plaintiff was placed under suspension on 27th September 1937. If the order of dismissal is "bad and inoperative", or just "a piece of waste paper" as the Federal Court ob serve, then that incident is blotted out and we are left with the position of the plaintiff as it existed on that date. He was then under suspension. That order has never been legally revoked nor is there anything by virtue of which he car be deemed to have been reinstated. Therefore he must be treated as still under suspension.

7. It was nest contended that when a Government servant is placed under suspension he is completely at the mercy of Government, and though Government can, if it so pleases, grant him a compassionate allowance up to one-quarter of his pay, it is not bound to do so and the plaintiff has no right to claim anything. It was made clear that in this case Government intended to give the plaintiff one-fourth of his pay for three years as a matter of grace after the case was over, but we were asked to decide the issue as it raises an important question of law.

8. Pushed to its logical consequences this would mean that the statutory safeguard provided by Parliament could be evaded. Instead of dismissing outright all Government need do is to suspend indefinitely and then refuse to pay subsistence allowance on the ground that that is a pure matter of grace. We cannot accept such an interpretation of the Act.

9. The learned Government Pleader argued that if that was our view then an anomaly would result. He said it is impossible to turn a void and inoperative order of dismissal into one of reinstatement. But, it is, we think, equally impossible to say that such an order can be taken to involve a revival of the period of suspension which had been definitely terminated. The truth is that the order of dismissal means neither. It is an illegal order, and is, as the Privy Council say, "void and inoperative." But it furnishes a cause of action and the subsequent rights and liabilities flow from that.

10. Section 240(1), Constitution Act, provides that civil servants of the Crown, and those holding civil posts under the Crown in India, are to hold office during His Majesty's pleasure "except as expressly provided by this Act." One such provision is given in Sub-section (2). It is the one which furnishes the plaintiff with his right of suit. No such person as aforesaid should be dismissed from the service of His Majesty by any authority subordinate to that by which he is appointed. That is the provision which the Federal Court and the Privy Council have interpreted.

11. But there is also another safeguard. It is the one embodied in Sub-section (3) which provides that, No such person as aforesaid should be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

12. When a man is suspended he is, in our opinion, reduced in rank. It is evident that suspension is not the equivalent of dismissal because, if it were, then the present contention would fall to the ground. But if the man continues in service what rank does he hold? Clearly not the rank he occupied at the date of suspension, He is not entitled to discharge any duties while under suspension. He is not entitled to draw his pay. It is evident then that he does not continue to hold his substantive rank because two of the fundamental attributes of rank, except when honorary, are

the right to discharge its duties and the right to draw its pay. If then he continues in service but ceases to hold the rank he did, then there must have been a reduction in rank and in our opinion an officer "under suspension," which is what he is officially called, means an officer whose rank has been reduced within the meaning of Sub-section (3).

13. Now Sub-section (3) provides that such person must be afforded a "reasonable" opportunity of showing cause. That imposes an obligation on the Crown to investigate the case with reasonable promptness and to reach a decision as early as may be, and in fact, the rules relating to depart-mental enquiries are framed on this basis. They cannot be evaded by the device of holding an enquiry, hearing the man, and then refusing to reach a decision. Any evasion, or breach of this safeguard would, in our opinion, give as much right of suit as a breach of the other. To hold otherwise would make the first safeguard wholly illusory. Indeed, that is the avowed object of Government in this case. Its learned Counsel concedes that an inoperative order of dismissal, when there is no suspension, give3 rise to a right of redress by suit in which arrears of pay up to a maximum limit of three years can be awarded, but he contends that if there is an order of suspension the Crown servant has no right in a Court of law for salary or suspension allowance. If he is dismissed lawfully and rightly then he has no cause of action. If he is "dismissed" by a void and inoperative ordereven if he is "dismissed" by his own subordinate--he has no redress because he continues under indefinite suspension and can only look to Government for such crumbs of mercy as it is in its gracious pleasure pleased to bestow upon him. He has been given a reasonable opportunity of showing cause against the action proposed to be taken against him and that is his only safeguard. We decline to place such an unreasonable interpretation upon Sub-sections (2) and (3). These safeguards were deliberately inserted in the Act. They are real and were meant to have effect. We decline to whittle them away by judicial decision.

14. As a matter of fact it would be wrong to pretend that the plaintiff had been afforded an opportunity of showing cause against an indefinite order of suspension. The "action proposed to be taken against him" was dismissal and not indefinite suspension. But that apart, we are not prepared to whittle away these fundamental safeguards by yielding to ingenious quibbles.

15. The lower Court has decreed a sum of L 8,280 on the basis that six years arrears of pay are claimable. It was conceded that if the contention we have just considered falls to the ground then the decree will have to be reduced by half because of the Federal Court's decision, allowing only three years.

16. The appeal succeeds to the extent of half. The decree of the lower Court will be modified by reducing the sum decreed to L 4,140. As success and failure has been exactly equal in both Courts each side will bear its own costs throughout.

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