
(1957) 03 AHC CK 0030

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 1022, 1023, 1078 and 1641 of 1956

Benchey Lal

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 11-03-1957

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226, 309, 311

Citation : AIR 1959 All 614 : (1957) 27 AWR 445 : (1957) 2 LLJ 231

Hon'ble Judges : Mehrotra, J

Bench : Single Bench

Advocate : S.N. Misra, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Mehrotra, J.—The petitioner was employed as a clerk in the Collectorate of Shahjahanpur. He was recruited in the year 1921, and since 1927 he has been working as a permanent employee. The ministerial officials of the Collectorate have organised themselves into an association since 1929. One Radhey Lal Gupta was the Reader of the sub-divisional Magistrate, Jalalabad. He made a complaint that on or about Sunday, 5-2-1956 he was mal-treated by the Sub-divisional Magistrate and he filed a complaint in the Court of the Addl. District Magistrate, (Judicial) Shahjahanpur the next day against the Sub-divisional Magistrate. The complaint was rejected on the ground that previous sanction of the Government was necessary.

Thereupon it is contended by the petitioner that a meeting of the association was convened by the President of the association for the 7th February at 4-45 p.m. The matter was discussed before the meeting. The meeting is said to have decided to re-sort to a pen-down strike on the 10th February for two minutes from 12 noon. The resolution is said to have been passed unanimously and a copy of the proceedings was sent to the Collector, in charge of the district. The petitioner further alleges that the District Magistrate was away and so no reply was received by the association to the letter sent to the Addl. District

Magistrate. In the meantime the Provincial President of the Association sent instructions that there should be no strike.

There was, therefore, according to the petitioner, no strike as decided upon by the association. When the District Magistrate returned on duty on the 24th February, on the 27th February, he enquired from the office Superintendent in writing about the name of the person who had moved the resolution and also the name of the person who was the seconder of the resolution. According to the petitioner in reply the office Superintendent said that he was not in a position to know as to who was the mover as the resolution was passed unanimously. Thereupon he passed an order on 27-2-1956 in the following terms :

"Please find out the name and let me know within one hour".

On this two names were given out by the Superintendent in which it was stated that Banwari Lal Pan-dey was the mover of the resolution and Shri Bache Lal seconded it. Thereupon immediately a charge-sheet was given to the petitioner. On 29-2-1956 another meeting of the association was held in which the Collector was asked to withdraw the charge-sheet as no strike took place. On 5-3-1956 the petitioner made an application to the District Magistrate praying for the inspection of certain documents which was refused by the District Magistrate. On 9-3-1956, an order of the District Magistrate was communicated to the petitioner through the office Superintendent in which it was stated that inspection was allowed only in respect of original reports made by the office Superintendent dated the 27th February and regarding other documents inspection was refused.

On the 15th March an explanation was submitted by the petitioner. After the reply had been sent by the petitioner, the District Magistrate desired him to place documentary evidence about there being no pen-down strike. On 21-3-1956 the petitioner sent a reply saying that there was documentary evidence to show that there was no pen-down strike. The District Magistrate then by his letter of the same- date desired the petitioner to submit documentary evidence within two days. On 22-3-1956 the petitioner replied to the District Magistrate that he should be allowed to produce documentary evidence only after the prosecution evidence had been closed otherwise his case was likely to be prejudiced. On the 5th April the petitioner was asked to appear before the District Magistrate on the 7th at his residence.

On the 7th April Shri Anand Bahadur's evidence was recorded and according to the petitioner in his statement he admitted that no strike took place and further stated that there was no proposer or seconder. The petitioner on the 9th April made an application to the District Magistrate for summoning or certain records and witnesses in order to substantiate his defence. On 24-4-1956 an order was passed for the dismissal of the petitioner and calling upon the petitioner to show cause on or before 8-5-1956 as to why the proposed penalty of dismissal should not be carried out. On these facts the present petition has been filed by him under Article 220 of the Constitution for a writ of mandamus quashing the order

of enquiry and the notice to show cause dated 24-4-1956.

2. A counter affidavit has been filed on behalf of the opposite party in which the allegations made by the petitioner have been denied. Mr. Misra, who appears for the petitioner, has urged three points.

3. Firstly it is contended by him that the formation of an association is a fundamental right guaranteed to a citizen. The right to form an association carries with it a right to carry on the legitimate activities. In view of the provisions of Article 19 of the Constitution which carries such a right it was open to the petitioner and other members of the association to pass any resolution and mere discussions in the association about the conduct of an officer or even deciding upon some future course of action as a protest to the conduct of the officer concerned and in sympathy with employee, cannot amount to any misconduct and cannot be the basis of a charge against the employee.

In this connection it was further urged that there was nothing in the Government Employee Conduct Rules which makes s mere discussion or passing of certain resolutions by itself contrary to the Rules. Secondly it was urged that although it was decided upon in the meeting that the employees, in sympathy with Shri Radhey Lal Gupta will stop working for two minutes, the action which was proposed under the resolution cannot be regarded as a strike. Lastly it was contended that no strike, in effect, took place as will appear from the resolution passed on the 29th February and the instructions issued by the Provincial President.

A telegram containing those instructions was sent and a copy of that telegram was tiled. There was therefore, no evidence before the enquiry officer on which it could be held that any such strike did take place. In this connection it was also urged that the report of the Tahsildar Jalalabad that such a strike did take place was an afterthought and inasmuch as that has neither been the basis of the charge nor was any mention made in the charge sheet of that document, It was contended that no opportunity was given to the petitioner to substantiate his defence and to meet the charges inasmuch as this report was brought on the record at a later stage. Lastly it was contended that the order was mala fide.

4. It is contended that as a complaint had been filed against Shri Desraj Singh, who was also a senior officer, the District Magistrate was naturally inclined to uphold the prestige of Shri Desraj Singh and was annoyed with the petitioner and other mem-bers of the association who had agitated against the conduct of Shri Desraj Singh. The District Magistrate was, therefore, biased and he could not allow his impartial mind to bear upon the whole enquiry. The order is therefore mala fide and should be quashed. A counter, affidavit has been filed in which the allegations made by the petitioner in his affidavit had been denied. It is stated that the petitioner was the seconder of the resolution passed for resorting the pen-down strike on 10-2-1956 and he abetted the proposed strike.

It is also asserted that on the evidence produced before the District Magistrate

he came to the conclusion that the strike did take place in the Collectorate that day and that the petitioner participated in the strike. As regards the complaint made by the petitioner that the report of the Tahsildar Jalalabad was manufactured subsequently it is stated by the opposite party in the counter affidavit that the report was a genuine document and it was received earlier in the Collectorate but as the question involved was one of strike in the Collectorate of Shahjahanpur, the document was neither mentioned in the charge-sheet nor was it produced at the earlier stage of the enquiry. It was only when the defence witnesses made a statement regarding the telegram that no strike took place at Jalalabad that the report had to be produced to confront those witnesses. It is stated that sufficient opportunity was given to the petitioner and there was no violation of any principles of natural justice in making the enquiry. The charge-sheet which was given to the petitioner on 27-2-1956 is as follows :

"That you on 7-2-1956, attended the emergent meeting of the Shahjahanpur Collectorate, Ministerial Association, held at 4.45 p.m. in which you seconded a resolution calling on all the officials of the Collectorate and Tahsils, to observe a pendown strike for two minutes on the noon of February 10, 1956 as a mark of sympathy towards Sri Radhey Lal Gupta, a Collectorate Official. The right of going on strike is not conceded to the Collectorate and Tahsil officials. This action of yours shows that you abetted the strike and you yourself took part in the same when it actually came off on 10-2-1956. You have thus committed an act of gross indiscipline."

This charge consists of two parts. The first part deals with the petitioner seconding the resolution calling upon all the officials to observe a pendown strike for two minutes as a mark of sympathy to-wards Radheylal Gupta. The right to go on strike is according to the charge not conceded to the Collectorate and the tahsil officials. This action of participating in the meeting was abetting the strike. The second part of the charge expressly states that the petitioner took part in the strike when it actually came off on 10-2-1950.

5. The first contention raised by the petitioner is that under Article 19 of the Constitution a right is given to form an association and the formation of an association necessarily carries with it the right to continue to have the association and the continuation of an association has no meaning unless the members of the association are permitted to pass any resolution which itself is not illegal.

There is nothing according to the petitioner in the Government Servants Conduct Rules which lays down that the mere passing of a resolution to resort to a pendown strike in the sympathy of an employee is illegal. The argument is that even assuming that the strike may amount to indiscipline and an employee resorting to such a strike was liable to be dealt with for breach of discipline, it is not an offence under the Indian Penal Code so as to make its abetment also an offence. The Standing Counsel has referred to the Government Servants Conduct Rules framed by the Governor under provision to Article 309 of the Constitution.

A particular emphasis has been laid on clause (3) which provides that :

"Every government servant shall at all times maintain absolute integrity and devotion to duty."

The contention of the Standing Counsel is that if an employee passes a resolution to resort to a pen-down strike, the act of passing the resolution itself is a breach of the requirements of devotion to duty. In my opinion, the mere passing of a resolution in a properly constituted union cannot amount to a breach of the disciplinary rules. The question if in pursuance of such a resolution the/ members in fact resort to a strike, stands on entirely a different footing. Even accepting the contention of the opposite party that the right of strike has not been conceded to an employee it cannot be said that the right to discuss and pass a resolution to that effect has not been conceded.

If the association after passing the resolution had in fact not carried out the resolution, it could not be argued that in that event the mere passing of a resolution was itself a breach of the Disciplinary Rules so as to justify taking disciplinary proceedings against the petitioner. In this view of the matter the fact that the petitioner was a seconder, of the resolution or that he actively participated in sponsoring the resolution will not make any difference. Coming to the second part of the charge which deals with the question of actual participation of the petitioner in the pen-down strike the counsel for the petitioner has advanced two-fold argument in this connection. He has firstly contended that although the resolution has used the word "strike", the mere cessation of work in sympathy with the conduct meted out to one of the members of the association cannot be regarded as a strike. Reliance was placed on the definition of the meaning of the word "strike" in the dictionary.

6. It is contended that unless a person stops working as a protest it cannot be regarded as a strike; In my opinion there is not much force in this contention. In the Oxford dictionary the meaning of the word "strike" is also to refuse to continue work. Even if an employee resorts to a strike in sympathy with a particular employee that is nothing but a formal protest lodged against the conduct of an officer. The protest itself may take various forms and although the protest is in sympathy with a particular employee nonetheless when a concerted action is taken as a resentment against the conduct of an officer it can only be with a view to express a disapproval of such a conduct and it will be covered by the meaning of the word "strike".

7. The second argument advanced by the counsel for the petitioner was that the right to form an association guaranteed under Article 19 of the Constitution does not amount to a right to commence an association but also to continue which necessarily implies to carry on its activities in accordance with the rules framed by and under its Constitution. If any resolution is passed by such an association at its properly held meeting effect must be given to such a resolution and any act on the part of the officials to stop giving effect to a resolution will amount to

interference with the fundamental right guaranteed to a citizen to form an association under Article 19 of the Constitution. Reliance was placed on certain observation in the case of V.G. Row Vs. The State of Madras, . A particular reference was made to the following observation by Rajamannar C. J. at p. 179 of the report:

"The word "form" therefore must refer not only to the initial commencement of the association, but also to the continuance" of the association as such."

8. This observation, to my mind, only lays down that freedom to form an association necessarily carries with it the freedom to continue such association. But that does not mean that if an illegal action is taken in obedience to any resolution passed in the association, if that is stopped, it will amount to interference with the formation or even the continuance of the association. If, therefore, it is established as a fact that the petitioner did participate in the strike in accordance with the resolution, disciplinary proceedings could be taken against him and it cannot be said that the second part of the charge has no relation with any of the grounds on which such a proceeding could be started. Stopping of work by an individual by itself may be due to many reasons but when such an action is taken as a protest and as an organised action it may be regarded as a breach of the discipline and violation of the conditions of service.

A good deal of controversy in this case sets round the conduct of the enquiry officer in bringing on the record the report of the tahsildar which was never mentioned earlier. In the charge-sheet reference is made to the evidence which is proposed to be considered in support and the only evidence mentioned is the resolution to the report of the Office Superintendent dated the 27th February in which it is mentioned that the present petitioner was a seconder of the resolution. There is no reference to any other evidence in the charge-sheet. In the written explanation which was submitted by the present petitioner after denying the fact that the petitioner seconded the resolution and that the resolution passed did not ask the members to resort to any strike it is stated that the petitioner did not participate in the strike nor did any strike come off and it is specifically mentioned in the explanation that there is no reference to any evidence in the charge-sheet on which it was proposed to rely to establish the fact that the strike did take place on the 10th February and that the petitioner participated in it.

In the explanation it was stated that in case the enquiry officer had some doubts, the petitioner should be allowed to cross-examine Shri Anand Bahadur Office Superintendent in connection with the report, Shri Mukat Banwari, Secretary of the Shahjahanpur Collectorate Ministerial Officials Association and Shri K. N. Misra. The petitioner gave out that he would enter his defence after that was done. After this explanation was submitted, by a letter dated 19-3-1956 the petitioner was intimated that the Collector would like to know whether any documentary evidence was available to show that the pen-down strike did not take place on the 10th February.

The information had to be given within two days. On the first of March, a letter was written by the petitioner to the Collector in which he stated that there was evidence, documentary as well as oral to show that the pen-down strike did not take place on the 10th February. The Collector then on the same date wrote back to the petitioner to submit the documentary evidence mentioned by him in his letter of the date. On the 22nd March, the petitioner wrote back to the District Magistrate pointing out to him that he would want the closure of the evidence from the department against him before he was called upon to submit the documentary evidence to prove that no strike took place on the 10th February. After this date on 5th April the petitioner was called upon to appear before the enquiry officer, on 7-4-1956 at 3.30 p.m. at his residence.

It does not appear from the counter affidavit as to what happened after the 4th April and whether the petitioner was given an opportunity to produce documentary evidence or not after the department had closed its evidence and at what stage the report of the tahsildar was brought to the knowledge of the present petitioner. The department in the charge-sheet only referred to the resolution and the report of the Office Superintendent of the 27th February. No reference was made to the report of the tahsildar. From the evidence referred to in the charge-sheet, to my mind, it is clear that the department considered that the passing of the resolution and the participation of the petitioner in the passing of such a resolution was itself sufficient to make out a case for taking disciplinary action against the petitioner.

The department does not seem to have attached any importance to the fact whether any strike did take place and if so what was the circumstance under which the employees ceased to work on 10-2-1958 and whether the petitioner and others against whom action was taken did in fact participate in the strike. The petitioner relied upon the telegram which is as follows :

"Pen down strike as sympathy to aggrieved officials not observed under your instructions."

This was the telegram purported to have been sent by the officials of tahsil Jalalabad to Shri Anand Bahadur Collectorate Shalljahanpur. The District Magistrate in his order of the 24th April has held that the telegram is irrelevant because the charge was not regarding the pen-down strike in tahsil Jalalabad. He further expressed doubt about the genuineness of the telegram and held that the contents were contradicted by the report of the tahsildar Jalalabad. It can be legitimately argued by the petitioner that if the telegram which related to the strike at Jalalabad was irrelevant to the charge the report of the tahsildar Jalalabad was equally irrelevant to the charge.

It can be further rightly pointed out that the District Magistrate has thrown doubts on the genuineness of the telegram without giving sufficient opportunity to the petitioner to substantiate the fact that the telegram was a genuine document and without referring to any circumstance which points to the

contrary. Having stated that the telegram was not relevant to the charge, the District Magistrate was not right in observing that the genuineness of the telegram is also open to question and thus prejudicing the defence. If the report of the tahsildar is not taken into consideration to prove the fact that the strike did take place there was no evidence on the record referred to in the charge which went to establish the fact that the strike did take place and the petitioner participated in the strike. The observation made by the Collector in para 6 of his order is as follows :

"The circumstances undoubtedly show that in pursuance of the unanimous resolution dated 7-2-1956 a two minutes pen down strike took place on 10-2-1956 at noon. The strike was in the shape of quiet suspension of writing work in the Collectorate Offices for a short period of two minutes."

To my mind the only circumstance to which the District Magistrate has referred in the earlier part of his order is the fact that when he called Shri Anand Bahadur Pradhan on the morning of the 27-2-1956 and questioned him as to whether he had allowed this objectionable resolution to be passed and the strike to take place he expressed his regret in the matter of the resolution but did not mention even one word that the strike had not come off. From this circumstance he had drawn the conclusion that the case set up by the petitioner that no strike took place was a false defence. Before the charge could be established against the petitioner the fact that the strike did take place on the 10th February and the petitioner participated in it had to be established.

No evidence had been referred to in the charge sheet which would establish the fact of the strike having taken place on 10-2-1956. There is no reference to any evidence to prove that the officials stopped working in a manner that it could constitute a strike and that the petitioner participated in it. The District Magistrate, to my mind, assumed that as a resolution had been passed the strike; in fact, took place and the petitioner being the seconder of the resolution had participated in the strike. Such an assumption, to my mind, without referring to any evidence in the chargesheet and without thus giving an opportunity to the petitioner to rebut, amounts to the violation of the principles of natural justice.

As I have already held that the first charge by itself will not constitute any breach of discipline unless acted upon, in this view of the matter the order of the District Magistrate cannot be upheld unless I was satisfied that the petitioner was given sufficient opportunity to meet the second charge. No reference has been made to any evidence in the charge-sheet on which the department intended to rely to prove the fact that the strike did take place. No reference has also been made in the charge-sheet to the evidence on which the fact that the petitioner participated in the strike was to be established. If the department wished to rely upon the report of the Tahsildar not only for the purposes of casting doubt on the genuineness of the telegram but also for the purposes of establishing the fact that the resolution of strike was carried out and that the petitioner participated in the strike, a reference should have been made to that document in the charge-

sheet itself.

As I have already held earlier, stopping of work by an employee by itself may not amount to "a strike" but if it is done under certain circumstances it may amount to "a strike". In these circumstances it is also necessary to mention in the charge-sheet the evidence on which the department wished to rely to establish the circumstances which would go to make the act of the official stopping work a "strike".

9. I, therefore, allow this petition in so far that I quash the order of the District Magistrate dated 24-4-1956. In the circumstances I make no order as to costs.