
(1978) 02 PAT CK 0023
In the Patna High Court
Case No : S.A. No. 491 of 1975

Chairman, Bihar State Road Transport Corporation and Others APPELLANT
Vs
Dharmendra Nath Gupta and Another RESPONDENT

Date of Decision : 22-02-1978

Acts Referred:

Constitution of India, 1950 — Article 1, 12, 311

Citation : (1978) 26 BLJR 633

Hon'ble Judges : Medini Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Medini Prasad Singh, J.—This is a defendants' Second Appeal. The plaintiff-respondent No. 1 was an Assistant Traffic Inspector under the Bihar State Road Transport Corporation (briefly "the Corporation"). Departmental action was taken against him for some alleged act of misconduct some time in the year 1963. He was asked to show cause against his removal from service. He showed cause in writing. A departmental enquiry was held by Sri R. N. Sinha, the then Chief of Administration. Eventually on the 29th September, 1967 he was discharged from service with immediate effect for misconduct and dereliction of duty. The order of discharge was passed by Sri S.C. Misbra the then General Manager of the Corporation. The plaintiff filed an appeal against the order of discharge which was also heard by the same officer Sri S.C. Misbra in his capacity as Chairman of the Corporation. The plaintiff invoked the writ jurisdiction of this Court (G. W. J. C. No. 224/68) and challenged the exercise of appellate power by the same officer (though in a different capacity) who passed the original order of discharge. The writ petition was allowed on 14th May, 1968. The appeal was then again heard by another Chairman, namely, Sri B. N. Basu. The appeal was dismissed and the order of discharge was confirmed on the 5th July, 1968.

2. The plaintiff brought the present suit for a declaration that the said two orders dated 29th September, 1967 and 5th July, 1968 passed by defendant Nos. 4 and

2 respectively, were void, illegal, without jurisdiction and unconstitutional and not binding on him and that he was still in service and entitled to full pay and prospect. The suit was contested by defendant Nos. 1 to 4 who are appellants here. They are all authorities of the Corporation. The defence was that the dismissal order was justified, that the plaintiff had full opportunity to defend himself and he was fully heard. The defendants also took a plea that the plaintiff was not entitled to any protection under Article 311(2) of the Constitution of India. The suit was decreed by both the courts below and the orders of dismissal were set aside.

3. The contention of the appellants is that the plaintiff was not holding a civil post under a "State" as contemplated under Article 311 of the Constitution and, therefore, he was not entitled to any protection under Article 311(2) of the Constitution. On the other hand, the learned Counsel for respondent No. 1 argued that the Corporation was a statutory body created under statute, namely, the Road Transport Corporation Act, 1950 and it was different from a company incorporated under the Companies Act which was not created by a statute and was not a statutory body. It is submitted that the Corporation being a statutory body is a "State" within the scope of the word "State" under Article 12 of the Constitution and the same meaning should be given to it under Article 311 of the Constitution. In my opinion, the contention has no merit. Undoubtedly, the Corporation, being a statutory body, would be included within the meaning of the word "State" as contemplated by Article 12 of the Constitution. *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, . ; Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, .*, but that meaning cannot be extended to Article 311 of the Constitution. I think that the definition of "State" in Article 12 does not apply for interpretation of the word "State" in Article 311(1). Article 12 of the Constitution runs as under:

In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India

From the above it is clear that the words "the State" include "other authorities" only for the purpose of Part III of the Constitution. The expression "in this part" in Article 12 is significant and the wider conception of the word "State" must be confined only for the purpose of that Part. Article 311 is in Part XIV of the Constitution. Obviously, therefore, the definition of the words "State" in Article 12 will not apply to the interpretation of that word in Article 311. According to Article 1 of the Constitution of "India", that is "Bharat" shall be an Union of States. Thus, the States have been specified in 1st schedule of the Constitution. I am of opinion that the meaning of the word "State" as used in Part XIV of the Constitution means the States as mentioned in the 1st Schedule of the

Constitution *Sher Singh Vs. The Vice Chancellor, Punjab University, Chandigarh and Others*, .

Mr. Jaya Narain for the plaintiff-respondent relied upon the case of *Sukhdeo Singh v. Bhagat Ram Sardar Singh Raghuvanshi*, (supra). In that case the Supreme Court held that the rules and regulations framed by the statutory Corporations have force of law and the employees had a statutory status and are entitled to a declaration of being in employment when their dismissal or removal is in contravention of the statutory provision. The Supreme Court overruled its previous decision in *Indian Airlines Corporation Vs. Sukhdeo Rai*, . and in *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, . That was not a case of Article 311. The question in Article 311 is not whether a Corporation exercises statutory powers but where its employee can be held to be holding a civil post under the Union or a State Government. A statutory Corporation maintains its separate juristic intity even when it exercised statutory powers or is controlled by the *Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another*, ., It is not a Department of the Government. The Corporation has separate legal existence. Its business is carried on through a separate legal person and not through any Department of the Government as in the case of a Railway in which case an employee can be held to hold a post under the Government and not under any separate juristic intity. In the present case the Corporation has a separate legal existence. Service under it cannot be held to a service under the Government. In such a case the employee is a servant of a legal intity other than the Government. Article 311 applies to persons holding any civil post under the Government. The test to determine whether a post is held under the Union or a State is whether there is a relationship of master and servant between the Union or State (as the case may be) and the person holding a post under it. The existence of this relationship is indicated by the State's rights to select and appoint the holder of the post, its right to suspend and dismissing, its right of control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such relationship between the State and the alleged holder of a post *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, . The principle of this case was approved in another Supreme Court case in *The Superintendent of Post Offices and Others Vs. P.K. Rajamma*, . In the latter case it was also observed that a post under the State means a post under the Administrative control of the State. Accordingly, it must be held that the plaintiff-respondent being an employee under the statutory corporation which has separate juristic personality was not holding a civil post under the State and as such he was not protected by Article 311(2) of the Constitution. The view taken by the courts below on this point is, therefore, obviously erroneous. In *K.S. Bansal Vs. Indian Airlines and Others*, , it was observed: "It is well established that to an employee of a statutory Corporation Article 311 of the

Constitution does not apply " I entirely agree with this view. It must, therefore, be held that the plaintiff-respondent in present case was not entitled to any protection under Article 311(2) of the Constitution and both the courts below committed an error of law in holding that the plaintiff was protected by Article 311(2).

4. Mr. Jaya Narain appearing for respondent No. 1 raised a point that the services of respondent No. 1 were transferred from the Bihar Rajya Transport to the Corporation which was created in 1959 and there is nothing on record to show that he ceased to be a Government servant. It is pointed out that the plaintiff was previously appointed as a Time-Keeper in June, 1954 by the Bihar Rajya Transport Department of the Government of Bihar and when the Corporation was created on 1st May, 1959, his services were transferred to the Corporation and thereafter he was promoted as Assistant Traffic Inspector on 1st June, 1962. Counsel urged that the plaintiff was a Government servant when he was serving in the Bihar Rajya Transport Department and in absence of any terms and conditions of the transfer, it cannot be said that he ceased to be a so when the Corporation was created. In my opinion, the point has no force. Ext. F and the evidence of D. W. 1 clearly show that the staff of the Transport Department shall be servants of the Corporation with effect from the 1st May, 1959 and they shall cease to be Government servants. The lower appellate court has not referred to this evidence adduced on behalf of the defendants. Clearly, therefore, I am of the opinion that when the plaintiff came under the administrative control of the Corporation, he ceased to be Government servant and became a servant of the Corporation. The contention fails and is repelled.

5. Mr. Jaya Narain for the plaintiff-respondent further submitted that Article 311 had nothing to do with the orders of dismissal which were challenged in the suit. He said that those orders have been held to be illegal and void because the departmental enquiry was contrary to the rules and regulations applicable to the plaintiff and also because it was contrary to the rules of natural justice. Learned counsel contended that the orders have been held to be illegal and void independently on Article 311 of the Constitution and this Court, now, cannot touch the illegality of the orders. He urged that Article 311 was resorted to for the purpose of granting reinstatement and it cannot be said that the facts of the case hangs on Article 311. In my opinion, his contention is devoid of merit. None of the two courts below says that Article 311 was resorted to for the purpose of granting reinstatement. There is no foundation for this argument in pleading or any where in the records of the case. The lower appellate court in paragraph 9 framed the following points for adjudication of the appeal before it:

Whether the respondent held a civil post and whether he was entitled for protection under Article 311(2) of the Indian Constitution ?

In paragraphs 13, 15, 16, 17 and 21 the lower appellate court has dealt with Article 311(2) and ultimately it held that the respondent was holding a civil post and was entitled to protection under Article 311(2) of the Constitution. On a

perusal of the judgment of the lower appellate court it is clear that practically the whole of its judgment has been devoted to the consideration of the question as to whether or not the plaintiff-respondent No. 1 was holding a civil post under the State and as such he was entitled to protection under Article 311(2). The learned Execution Munsif also gave a finding in paragraph 28 of his judgment that the provisions as made out in Article 311 were applicable in the present case and as such the plaintiff was entitled to get relief claimed for. In this view of the matter, the contention of Mr. Jaya Narain has no substance and it must be rejected.

6. Mr. Lakshman Saran Sinha for the appellant contended that the judgment of the court below was very vague and was not at all clear and specific on the question of applicability either of the rules of procedure or the rules of natural justice. In my opinion, the contention is of substance. The lower appellate court has dealt with the point of applicability of the rules and regulations to the present case in paragraphs 19 and 20 of its judgment. In paragraph 19 it says that the rules and regulations applicable to the case of State Government employees were to be applied in case of Corporation employees till no such rules were framed. In paragraph 20 it says that the rules of procedure were not followed. It has not said as to what rules of procedure were contravened. His judgment is thus vague and his conclusion, therefore, that the rules of procedure were not followed, cannot be accepted.

7. The learned Additional Subordinate Judge has said in paragraph 20 of his judgment that Sri R. N. Sinha the Chief of Administration who held enquiry against the plaintiff-respondent was not legally empowered to conduct the enquiry. He has not said as to how Mr. R. N. Sinha was not legally appointed to conduct the enquiry. He has not shown that the Corporation had either breached any statutory rule or contravened any principles of natural justice by appointing Mr. R. N. Sinha to conduct the enquiry. The finding of the court below on this point also cannot be supported. So far as the principles of natural justice are concerned, the courts below merely proceeded on the basis that not a single witness was examined during the course of enquiry in presence of the plaintiff nor any opportunity was given to the plaintiff to cross-examine them. The manner in which this point has been dealt with by the lower appellate court in paragraph 18 of its judgment clearly indicates that it did not consider the relevant evidence on this point. The trial court undoubtedly referred to the evidence on this point in paragraph 22 of its judgment but did not appreciate its importance because of the lack of understanding of the concept of natural justice. As observed by the Supreme Court in *Suresh Koshy George Vs. University of Kerala and Others*, and reiterated in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, „, what particular rule of natural justice be implied and what its content should be for a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law in which the enquiry is held and the constitution and nature of the duties of the tribunal or of the body of persons appointed for that purpose. (The underlines

are mine). In *Russel v. Duke of Norooik* 1949 (1)All E.R.109 at p. 18., Tucker, L. J. observed:

There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case.

In *The Keshav Mills Co. Ltd. and Another Vs. Union of India (UOI) and Others*, . the Supreme Court observed : The concept of natural justice cannot be put into a strait-jacket. It is futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably....Everything will depend on the actual facts and circumstances of a case." In *Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another*, ., it was held: "Principles of natural justice are not inflexible and may differ in different circumstances....The doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula and its application depends upon several factors" In that case the enquiry committee had collected evidence behind the back of the delinquents who had no opportunity to cross-examine the witnesses. It was argued on behalf of the delinquents before the Supreme Court that the order was bad because that the evidence was collected behind the back and opportunity of cross-examining the witnesses was denied and this amounted to infraction of the principles of natural justice. The argument was repelled. The Supreme Court held that the principles of natural justice are not inflexible and may differ in different circumstances. In a case dealing a Government servant in *R.C. Sharma Vs. Union of India (UOI) and Others*, ., it was observed:

...It is only when an opportunity denied is of such a nature that the denial contravenes a mandatory provision of law or a rule of natural justice that it could vitiate the whole departmental trial. Prejudice to the government servant resulting from an alleged violation of a rule must be proved.

This Supreme Court case is also useful because it has laid down principles to be followed in a civil suit challenging validity of departmental proceedings. It was observed:

A suit challenging the validity of departmental proceedings cannot be treated as an appeal from the findings in the departmental proceedings or the punishment inflicted upon the Government servant even if these are erroneous. A question

which could affect the result in a civil suit has to be of such a nature that it goes to the root of the jurisdiction and the conduct of the departmental trial and vitiates the result. It is only if the departmental proceeding is null and void that a plaintiff in such a suit could obtain the reliefs he had asked for. We are unable to see what point had been raised by the appellant which could have had that effect upon the departmental proceedings.

In my opinion these principles would also apply to the case of departmental trial of an employee under a statutory Corporation.

8. So far as the facts of the present case are concerned, admittedly the plaintiff had filed written explanation to the then General Manager Sri Baliram Singh, I.A.S. in the year 1963. He had also appeared before Sri Baliram Singh, I A.S. and was examined by him (vide Ext. C). Ext. A is the draft in the pen of the plaintiff on Ext. 10 showing that the plaintiff had stated that he had nothing to say except what had already been stated by him in the previous explanation. Ext. E showed that the plaintiff was informed regarding the date on which his appeal was to be heard. Ext. C/3 is a copy of order passed in appeal by Sri B.N. Basu, the then General Manager who re-heard the appeal preferred by the plaintiff against the order of discharge. This order shows that the plaintiff was present and contentions had been advanced on his behalf. These exhibits were noticed by the trial court but they were not properly considered. The trial court ignored them simply by saying that they were not material "in view of the discussions made above." The lower appellate court did not consider them at all. These documents had relevance on the question as to whether or not the general principles of natural justice were violated. I have already said that the essential thing to be determined was whether the plaintiff had a reasonable opportunity of presenting his case. The two courts below have got properly determined this question. The case, therefore, has to be sent back to the trial court for re-hearing the parties on the evidence already on record and for fresh disposal in accordance with law. The contention of the appellants that Article 311 of the Constitution does not apply to this case is accepted and this point shall not be re-agitated in the courts below. The trial court shall allow the parties to prove or disprove the alleged violation of the principles of natural justice. It shall also determine if any specific rule of procedure was contravened by the Corporation or by the Enquiry Officer the onus to prove shall lie on the plaintiff.

9. For the foregoing reasons I allow this appeal, set aside the judgments and decrees of the two courts below and remand the suit to the trial court for a fresh decision in accordance with law and in the light of the observations made above. In the circumstances of the case, there will be no order as to costs.