

(1989) 04 BOM CK 0063

In the Bombay High Court

Case No : Writ Petition No. 1552 of 1988

Conservator of Forests, Yavatmal

APPELLANT

Vs

Shamrao Ramkrushna Deshmukh

RESPONDENT

Date of Decision : 26-04-1989

Acts Referred:

Trade Unions Act, 1926 — Section 28

Citation : (1990) 2 BomCR 57 : (1991) 2 LLJ 356

Hon'ble Judges : A.A. Desai, J

Bench : Single Bench

Judgement

1. This petition raises a question whether Govt. Circulars dated August 20, 1984 and September 18, 1974 respectively, in the matter of departmental enquiry and investigation relating to a conduct of Govt. employee under suspension, are statutory in nature and also form a part of condition of service.

2. The respondent Shamrao Deshmukh has been in the employment of the forest Department as a Round Officer (Forester). The Anti-Corruption Bureau on 28th January 1986 filed a chargesheet for the offences punishable u/s 5(1)(D) read with Section 5(2) of the Prevention of Corruption Act, against the respondent along with others. The Department thereupon by order dated 18th February, 1986 placed the respondent under suspension. The Special Judge Buldana, is trying the respondent for the offences.

3. The respondent file a complaint u/s 28 read with items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act. According to him, the action of placing him under suspension amounts to victimisation as he is a member of the Central Executive Committee, Maharashtra Forest Guards. He further made out a grievance that continuing him under suspension of more than 6 months is violative of condition of service. He, therefore, sought declaration that the Department has indulged in an unfair labour practice and further sought revocation of the order of suspension.

4. The Industrial Court held that the respondent complainant could not make out any case of victimisation as covered by item No. 5 of Schedule IV. However, it is observed that Circular dated August 20, 1974 requires the departmental enquiry of the Government servant under suspension to be completed within a period of 6 months. Circular dated September 18, 1974 emphasises revocation of suspension if investigation is not completed within a period of 6 months or within a period extended by the Chief Secretary. The Industrial Court has held that these Circulars have the force of law and form part of the condition of service of a Government Servant. It is further held that the suspension of the Respondent for a period more than 9 months is obviously non-implementation of service agreement as contemplated vide item 9 of Schedule IV. The Industrial Court, therefore, by order dated 17th November, 1987 declared that the petitioner department has engaged in an unfair labour practice and further directed to revoke the order of suspension and to permit the respondent to execute the duties.

The forest Department impugned the order of the Industrial Court raising the question as formulated.

5. Mr. Kamalakar, the Learned Counsel for the respondent, heavily placed reliance on a decision of Division Bench of this Court in case of Khushal Janbaji Gaidhane v. State of Maharashtra 1986 Mh.L.J. 235. The Division Bench considered the Circular dated September 18, 1974. The Government raised a question before the Division Bench that the Circular does not have the force of law. It merely lays down the principles for the guidance of the department. The Division Bench has observed, "We are not able to appreciate this argument. The Circular has been issued by the Government to protect the interest of the employees under suspension. It is expected of any welfare State that it should follow its Circular and provide the protection to be given under such Circulars. The principles underlying the Circulars seem to be that the Investigating Agency should move as expeditiously as possible in the matter of investigation particularly when an employee is under suspension". The Division Bench has not decided the question as raised before us whether the Circulars have the force of law. As observed by the Division Bench, it is expedient for an ideal employer to adhere to with the Circulars which render protection to its employees. The Division Bench does not hold that the Circular has a binding force.

6. Mr. Kamalakar, the Learned Counsel appearing for the respondent employee, invited my attention to the decision of Full Bench of this Court reported in case of Chandrakant Sakharan Karkhanis and Others Vs. State of Maharashtra and Others, . The Full Bench while examining the question whether Circular, resolution and orders are really in the nature of executive instruction or direction issued by the State Government or amount to statutory rules framed under the proviso to Article 309 of the Constitution laid down the following tests :-

(A) Subject matter

- (B) General applicability
- (C) Form and formality
- (D) Publication

Mr. Kamlakar made a submission that the Circulars deal with an aspect of suspension of Government employee which is also a subject matter of service condition, they are of general application and issued in the name of Governor. Mr. Kamlakar, therefore, made a submission that these Circulars partake the character of an action taken by the Government, in exercise of power under Article 309 of the Constitution.

7. The Circular are no doubt of a general applicability. They are also issued in the name of Governor. However, these aspects are not decisive to reach a conclusion that they are statutory in character.

8. It is pertinent to note that none of these Circulars admittedly has been published in the Official Gazette. On the contrary, Circular dated September 19, 1974 is specifically marked as "confidential".

Proviso to Article 309 confers power on the Governor of a State to frame rules regarding the condition of service of the employees. The Circulars do not contain any reference to exercise of the power of the Governor under the said Article. It does not also disclose the source of power. Absence of such reference in the body of the instrument, however, does not lead to any final conclusion that they are not in exercise of the constitutional power of the Governor. It is, therefore, necessary to ascertain as to whether the Governor in whose name and under whose authority the circulars have been issued, intended to be in exercise of the power under proviso to Article 309. It will have to be further ascertained that whether the Government intended to frame rules in the matter of suspension of a Government employee.

9. The Governor in exercise of power conferred by the proviso to Article 309 of the Constitution of India framed the Maharashtra Civil Services (Discipline and Appeal) Rules of 1979. Rule 4 reads as thus :-

"The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any authority empowered in that behalf by the Governor by general or special order may place a Government servant under suspension,

(a) where a disciplinary proceeding against him is completed or is pending.

(b)

(c) where a case against him in respect of criminal offence is under investigation, enquiry and trial".

These rules confer power on the authority to place the delinquent Government servant under suspension during the pendency of departmental enquiry,

investigation, enquiry or trial in any criminal offence. The rule does not prescribe the period of suspension, or limitation on its continuation.

In Circular of August 20, 1974, the Government has expressed its anxiety regarding expeditious completion of departmental enquiry. It mentions that the Government has issued instructions in that behalf from time to time for the guidance of disciplinary authority. The Government has observed that in order to avoid undue hardship to the Government servants (who are under suspension) it is essential to deal with the enquiries on priority basis so as the period is reduced to the barest minimum. The Government in this Circular, therefore, directed that such enquiries to be given high priority at all stages and completed within a period of 6 months as a rule. All the Enquiry Officers and Disciplinary Authorities are requested by the Circular to follow these instructions.

10. Another Circular of September 18, 1974 is also of the similar pattern. In this Circular, Government has expressed its anxiety for expeditious completion of investigation. It is observed :-

"In order to avoid undue hardship to the Government servant concerned, it is essential to ensure that the period of suspension is reduced to the barest minimum. Government is, therefore, pleased to direct that in cases of Officers under suspension the investigation should be completed and a chargesheet be filed in a Court of competent jurisdiction in cases of prosecution or served on the Government servant concerned in cases of departmental proceeding within 6 months as a rule. The Government has directed that if the investigation cannot be completed within a period of 6 months or during the extended period, the order placing the Government servant under suspension should be revoked and he should be permitted to resume duties. It is further directed that all the cases of Government servants who are already under suspension should be revoked in the light of instructions".

Mr. Kamlakar submitted that the Government under these Circulars directed to complete departmental enquiry or investigation within six months as a rule. It follows therefrom that the Government has a definite intention to lay down a rule of statutory character according to the Learned Counsel. However, I am unable to agree. Phraseology has not been used in that sense. The term "as a rule" as engaged denotes as a normal principle to be adhered to generally by the Authorities.

11. The Government also issued third Circular on November 3, 1980. The Government has observed that "However, it is not desirable to reinstate Government servants who are placed under suspension in cases relating to offences involving moral turpitude, such as misappropriation, defalcation, fraud, embezzlement or corruption, till the cases are finally decided." The Circular has, therefore, directed the Inspector General of Police and the Director of Anti-Corruption Bureau should see that in the cases relating to offences involving moral turpitude investigating police officers adhere to the prescribed time limit

laid down by the Government Circulars referred to above, (September 18, 1974) scrupulously. These Circulars emphasise on completion of departmental enquiry and also investigation. Circular dated September 18, 1974 directs the authorities to revoke the suspension, if the enquiry or investigation is not completed within the prescribed period. However, in substance these Circulars do not lay down a rule of statutory character giving overriding effect over the rule 4 of the Rules of 1979.

12. It is true that proviso to Article 309 of the Constitution does not prescribe any particular form for framing of the rule. However, entire text of the Circulars predominantly indicated the concern of the Government for expeditious completion of departmental enquiry or investigation. However, they do not lay down a rule to supplement or to incorporate a proviso to rule 4 which deals with the suspension.

13. The Circulars contain executive instruction which Government is entitled to issue as provided under Article 162 of the Constitution. Circulars accordingly contained administrative directions. Such administrative directions are provided under Article 166 can be issued in the name and by order of the Governor of State. I am, therefore unable to agree with Mr. Kamlakar that the Circulars bear the statutory character as they have been issued in the name and by order of Governor.

14. As discussed, the Circulars are of the nature of administrative instructions. They may be binding on the authorities concerned. However, they do not bear any statutory character and as such not enforceable by the Court of law.

15. As discussed above, the Circulars deal with completion of departmental enquiry and investigation. The Circular dated September 18, 1974 directs the revocation of suspension in case they are not completed within the prescribed time. However, it is pertinent to note that the continuation of the respondent under suspension is not due to pendency of enquiry or investigation. The petitioner is continued under suspension beyond the prescribed period owing to the pendency of the trial before Special Judge. The Circulars have, therefore, no application in the case of respondent. The Learned Industrial Court has lost sight of this pertinent aspect and reached the erroneous conclusion.

16. In view of the discussion, I hold that the Circulars have not been issued in exercise of powers under Article 309 of the Constitution. They, therefore, have no statutory force. The Learned Labour Court grossly erred in holding that the Circulars have the force of law. The Circulars are the administrative directions in the nature of guidelines. They are not enforceable by the Court of law. They do not form the part of the condition of service like rule 4 of the Rules of 1979. The complaint of the respondent of failure to implement the agreement made before the Industrial Court is completely misconceived. The complaint is, therefore, liable to be dismissed.

17. In the result, the petition is allowed, Impugned order of the Industrial Court

dated November 17, 1987 is hereby set aside. The complaint filed by the respondent is hereby dismissed with no costs.