
(1959) 02 BOM CK 0019
In the Bombay High Court
Case No : Writ Appeal No. 92 of 1954

Dorlikar

APPELLANT

Vs

M.V. Nagpur Corporation

RESPONDENT

Date of Decision : 27-02-1959

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1959) 02 BOM CK 0019

Hon'ble Judges : V.R. Datar, J;S.H. Naik, J

Bench : Division Bench

Judgement

Datar, J.—The appellant before us was originally a sanitary inspector under the Municipal Committee of Nagpur. A departmental enquiry was started against him, and on 12 December, 1949, the enquiry officer submitted his report. The enquiry officer held that the appellant was guilty of the charges for which the enquiry had been started, but recommended that as there were extenuating circumstances, only a warning be given to the appellant by way of punishment. The Officer-in-charge of the Municipal Committee however, took a different view on the question of punishment to be awarded to the appellant and accordingly passed an order on 22 February, 1950, terminating his services. It was necessary under the rules that this order of the Officer-in-charge had to be approved of by the Board of Revenue. It appears that the Board of Revenue also approved of this order and the same was communicated to the appellant on 27 April 1951.

2. The appellant thereafter approached this Court by a special application under the provisions of Art. 226 of the Constitution. On 20 November 1952, the High Court in its jurisdiction under Art. 226 of the Constitution set aside the order of dismissal as it had not been passed by a proper authority under the provisions of the City of Nagpur Corporation Act, 1948.

3. After the High Court's order was communicated to the Chief Executive Officer, the Chief Executive Officer, on or about 24 November, 1952, called upon the appellant to appear before him on 26 November, 1952, in connexion with the

departmental enquiry held against him. The Chief Executive Officer also informed him that pending final orders, he was "treated under suspension" from the date of his relief (1 May, 1951). On 27 November 1952, the Chief Executive Officer passed a final order to the effect that

"the services of Sri V. N. Dorlikar (appellant), sanitary inspector (under suspension), City of Nagpur Corporation, are dispensed with, with effect from forenoon of 27 November 1952."

4. Two appeals were thereafter filed by the present appellant to the Board of Revenue. Appeal No. 39/XXIV-2-A of 1952 was filed against the order of suspension which, as stated above, had been passed by the Chief Executive Officer on or about 24 November, 1952. Appeal No. 40/XXIV-2-A of 1952 was preferred against the final order dispensing with the services of the appellant passed by the Chief Executive Officer on 27 November, 1952. These appeals were disposed of by the Board of Revenue, Madhya Pradesh, on 11 May, 1954. The learned Member of the Board dismissed the first appeal on the ground that no objection could be taken in equity to the order of the Chief Executive Officer placing Dorlikar (appellant) pending inquiry, under suspension with effect from 1 May, 1951. In the second appeal, however, the learned Member held that the order of the Chief Executive Officer dispensing with the services of the appellant was too drastic, and he accordingly passed the following order :

"I set aside the order and direct that he (appellant) shall be reinstated in his post as sanitary inspector forthwith. The period from 1 May, 1951 till the date of his reinstatement shall be treated as a period of suspension. That will be an adequate punishment for the acts of omission and commission that are proved against him in the departmental enquiry. With this modification, the second appeal is also dismissed."

5. Although the two appeals were disposed of by two different orders though contained in the same judgment, surprisingly enough the appellant came to this Court by a special application under Art. 226 of the Constitution only against the order rejecting his appeal No. 39/XXIV-2-A of 1952. In the application he stated that he was aggrieved by the order rejecting his appeal No. 39/XXIV-2-A of 1952 and that he was moving for quashing the order of suspension passed by the Chief Executive Officer and confirmed by the Board of Revenue. In the prayer clause it was mentioned that the order of suspension passed by the Chief Executive Officer, Nagpur Corporation, and the Board of Revenue be quashed by issue of a writ of certiorari or such direction as will meet the ends of justice. This application came on for hearing before Mr. Justice G. P. Bhutt on 6 October, 1954. On behalf of the applicant (appellant) three contentions were raised before him. It was stated that suspension could not be regarded as a punishment when the order of suspension had been directed to take effect from 1 May, 1951. Secondly, it was urged that the order of suspension as passed by the Board of Revenue could not be passed without a proper notice being given to the petitioner before such order could be passed. Finally, it was urged that the order of suspension as

passed by the Chief Executive Officer on or about 24 November, 1952, making it retrospective from 1 May, 1951, could not be sustained. The learned Judge rejected these contentions and dismissed the application. It is against the judgment of the learned Judge dismissing the special civil application that the petitioner (appellant) has come to this Court in appeal under the Letters Patent.

6. Mr. Chandurkar, who appears on behalf of the appellant, has, in the first place, contended that the order of suspension by the Chief Executive Officer was bad inasmuch as he directed that that order should take effect from an earlier date, namely, from 1 May, 1951. He drew our attention to the fact that on 20 November, 1952 the High Court had declared that the order of dismissal as passed by the Officer-in-charge of the Municipal Committee was illegal. Mr. Chandurkar contended that the effect of the High Court's judgment setting aside the order of dismissal was that the appellant was in service, and when he was lawfully in service the Chief Executive Officer could not pass an order of suspension so as to affect the period during which, in view of the High Court's judgment, the appellant must be deemed to have been legally in service. It may be noted that the order of suspension was passed by the Chief Executive Officer at the stage of enquiry, which, in view of the subsequent judgment of the High Court, could not have been regarded as finally disposed of. All what the High Court did was to declare the order of dismissal as being illegal. The result of it was that the matter could still be regarded as being at the stage of enquiry, and if at that stage the Chief Executive Officer, particularly having regard to the fact that the appellant had given up his charge on 1 May, 1951, purported to pass the order of suspension operating from 1 May, 1951, it could be held that it was an order passed during the stage of enquiry and the rules do not prohibit the passing of such order of suspension in the course of the enquiry. Whether the order could be retrospective if it was directed to take effect from a date previous to the date on which the enquiry started does not fall for consideration in the present case because before 1 May, 1951 the enquiry had already started so far back as the year 1949. However, it is not necessary for our purpose to consider the propriety or the legality of this order. The final order came to be passed by the Chief Executive Officer himself. With the passing of the final order by the Chief Executive Officer, it must be held that the order of suspension came to an end. Further, it is not this order against which the appellant could have any real grievance. It is the order which has been passed by the Board of Revenue in appeal against which the appellant could have any grievance at all. The order that was passed by the Board of Revenue by way of punishment was passed in appeal No. 40. But as I have already stated, the appellant did not make any grievance against or challenge this order in his application filed in this Court under Art. 226 of the Constitution. We do not think that Mr. Chandurkar is right when he says that it was not necessary for the appellant to challenge this order when the earlier order of suspension pending inquiry as passed by the Chief Executive Officer and confirmed by the Board of Revenue in appeal No. 39 had been duly challenged in his application. We may, however, assume that it is open

to the appellant to impugn this order in the appeal and proceed to consider its propriety and legality.

7. Mr. Chandurkar contends that the Board of Revenue could not pass an order of suspension by way of punishment so as to make it retrospective in effect and operate from 1 May, 1951. In support of his contention, Mr. Chandurkar has relied upon certain decisions of other High Courts. In Hemanta Kumar Bhattacharjee Vs. S.N. Mukherjee, there was an order of suspension passed during the enquiry and the question considered by their lordships was whether the order so far as it covered the period between 16 January, 1951 and 28 April, 1952 was valid. The order came to be passed on 29 April, 1952, and was made retrospective from 16 January, 1951. In the course of the judgment, their lordships held :

The antecedent period which an order of suspension with retrospective effect must be tended to cover, would ordinarily be a period during which the person concerned had already performed the duties of his office or held the relevant position. There can be no meaning in suspending a man from working during a period when the period is past and he has already worked or suspending a man from occupying a position or holding a privilege in the past when he has already occupied or held it."

8. The same view was taken in a case in Abid Mohammad Khan Vs. The State, . There also their lordships were concerned with an order of suspension passed during the enquiry. Their lordships referred to the dictionary meaning of the word "suspension" and stated :-

""Suspension" thus connotes temporary cessation of something as right, work or labour. This very concept of the word "suspension" rules out a Government servant who is in service and who has in law performed the duties of his office during a certain period being placed subsequently under suspension for that period. When in law he has performed the duties, then there can be no question of forbidding him from exercising the functions of his office in that period which is already past."

9. The same view has been expressed in U.P. Government Vs. S. Tabarakh Husain, . The reason underlying these decisions appears to be that you cannot suspend a person for a period during which he was actually in service or in law must be deemed to have been in service. If he was in service during a particular period of time, it is inconceivable and indeed impossible how he should be treated as being under suspension for that period which is already a matter of irrecoverable past. It is true that in these decisions the question arose regarding the order of suspension passed during the enquiry against a servant, but we do not think how any distinction in principle can be made between an order of suspension passed during the enquiry and an order of suspension passed as a penalty, as in the present case. If the authority empowered to impose a penalty is inclined to impose the penalty of suspension, it is inconceivable how that

authority can impose a penalty of suspension so as to make it retrospective in effect. We do not think that the authority empowered to inflict the penalty could make the penalty operative for a period during which the person upon whom the penalty is imposed was either in service or in law must be deemed to have been in service. In the present case, there was already an order of the High Court in 1952 which stated that the order of dismissal passed by the Officer-in-charge of the Municipal Committee was bad and was, therefore, inoperative. Again, the Board of Revenue in appeal held that the order of the Chief Executive Officer could not be sustained because it was too drastic and, therefore, it set aside that order. Therefore, at the time when the Board of Revenue considered the propriety of the penalty of suspension, the position was that till the date on which the order imposing the penalty was passed, the appellant was legally in service, and if so, we do not think how that position could be undone by any retrospective order of suspension as passed in the present case. Mr. Bobde, learned counsel for respondent 1, urged that the decided cases were concerned with an order of suspension passed during the inquiry. It is true that those cases related only to such an order, but considering the matter on principle, it is difficult to conceive of an order of suspension passed as a penalty so as to make it retrospective and operate for a period in the past when the servant on whom the penalty is proposed to be imposed has already either actually rendered the service or in law must be deemed to have been in service. We, therefore, are inclined to accept the submission of Mr. Chandurkar and hold that the order of suspension passed as a penalty by the Board of Revenue was not strictly legal and could not be made operative as intended by the Board. However, since the matter has come to this Court under the provisions of Art. 226 of the Constitution and now before us in appeal under the Letters Patent, we have to consider whether the passing of this order has caused any prejudice or injustice to the appellant. The Board of Revenue was inclined to hold that the petitioner (appellant) was guilty of negligence though it readily found that he was not guilty of preparing false muster rolls. It was on this account that the Board of Revenue thought it proper to award a lesser punishment; and if the Board of Revenue had passed a proper order of suspension, we do not think that any objection could have been taken to such an order. Further, the Board of Revenue considered the fact that from 1 May, 1951, when the petitioner gave up the charge of his duties, he was not at all in service and had not rendered any service to the Corporation. The Board of Revenue, probably in consideration of the further prospects which the petitioner might have in service as the sanitary inspector, thought it desirable to make the order of suspension retrospective so that there should not be any break in his service, once he was reinstated in his post. If we accept the contention of Mr. Chandurkar, it only means that the matter will have to be sent back to the Board of Revenue to pass an appropriate order in place of the order which it has passed, and we do not see that there would be any impediment in the way of the Board of Revenue in passing an order of suspension as to make it effective from a future date. In this case, the Board of Revenue was anxious to see that the

petitioner was reinstated in his post forthwith and that after such reinstatement there should not be any break in service and that was probably one of the reasons which induced it to make the order of suspension retrospective though, as we have already stated, the order was not strictly legal. Further, the petitioner did not, in his application under Art. 226, make any grievance against the order of suspension which had been passed against him by way of punishment by the Board of Revenue in appeal No. 40. Under these circumstances, we do not think any prejudice or injustice whatever has been caused to the petitioner (appellant) by the order which is now sought to be impugned before us.

10. For the reasons stated above, we dismiss the appeal. No order as to costs.