
(1995) 05 GAU CK 0011

In the Gauhati High Court

Case No : First Appeal No. 1 of 1984

Jagadish Chandra Nath

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 23-05-1995

Acts Referred:

Fundamental Rules — Rule 54(1), 54(1)

Citation : (1995) 2 GLJ 122

Hon'ble Judges : N.G.Das, J

Bench : Single Bench

Advocate : S.N.Banerjee , S.Deb, R.Das Gupta, Advocates appearing for Parties

Judgement

1. This first appeal by the plaintiff directed against the judgment and decree of learned Additional District Judge, West Tripura, Agartala dated 30.8.1983 raises two questions, namely, (1) whether the doctrine of promissory estoppel is applicable against the Government where it has by a written order made to the plaintiff, appellant herein a clear and unequivocal promise that not only his order of termination would be withdrawn but the period of absence between the date of termination of services and the date of joining be treated as spent on duty for all purpose and (2) whether the competent authority was bound to afford an opportunity of hearing to the plaintiff, appellant herein before making any adverse order against him in respect of clauses (a) and (b) of FR 54.

2, This litigation has had a chequered career. The appellant who was appointed to the post of Copy Holder in the scale of Rs. 12531404156EB4

200 per month was terminated from the services under subrule 1 of Rule 5 of Central Civil Services (Temporary Services) Rules, 1965 by an order dated 31.8.1970 issued under Memo No. F.I (179)PTG/69/368892. Although the appellant was a quasi permanent staff, he was not even given one month's notice for such termination. So the appellant being aggrieved by the said order of termination brought a suit being TS 5 of 1973 in the Court of learned

Subordinate Judge, Tripura, Agartala. The suit was, however, dismissed on contest. So, the plaintiff preferred an appeal being TA No.25 of 1977 against the judgment of dismissal of the suit.

3. While the appeal was pending before the Court of learned District Judge, Tripura, Agartala, the defendant No.2, respondent No.2 herein, namely, Secretary to the Government of Tripura, Printing and Stationery Department issued an order under Memo No. F.I (80)Estt/PTG/71/215155 dated 25th of May, 1978 on recommendation of the Cabinet SubCommittee withdrawing the aforesaid order of termination of service of the appellant. This order also contained that the said order of revocation was to be operative with immediate effect and that the period of absence between the date of termination and the date of joining of the appellant would be treated as period spent on duty for all purposes. Pursuant to this order the appellant joined the service on 25.5.1978 and by virtue of the aforesaid order of withdrawal of the termination order the appellant became entitled to pay for the period of absence between the date of termination of his service and the date of his joining. The appellant did not proceed with the appeal as all the reliefs sought for in that suit/appeal were given to the appellant. Accordingly the appeal was dismissed for non prosecution.

4. But soon after the order of dismissal of the appeal on withdrawal was passed, the respondent No.2 vide No. F.I(216)PTG/73/362630 dated 8th September, 1978 issued a corrigendum stating that the words 'treated as spent on duty for all purposes' occurred in the order dated 25th of May, 1978 would be deleted and be substituted by the words 'decided later on'.

Thereafter the respondent No.2 by his order No. F. 1 (216)PTG/75/478286 dated 15th October, 1979 issued another order that the period of absence from 1.9.1970 to 24.5.1978 i.e. the period between the date of termination of the service of the appellant and the date preceding the date of joining of the appellant would be treated as on duty for all purposes. But he would not get any arrear of pay etc. for the said period i.e. from 1.9.1970 to 24.5.1978. In pursuance of this order the pay of the appellant was notionally fixed and he was ordered to be paid arrears only from 25.5.1978.

5. In this context the appellant further stated that defendant No.3 (respondent No.3 herein) who was similarly terminated under subrule 1 of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965 was reinstated on the revocation of his order of termination and he was granted all the arrears of pay and allowances on the recommendation of the Cabinet SubCommittee. It was stated that both the appellant and respondent No.3 were similarly placed and while respondent No.3 was granted all the arrears of pay and allowances, the respondents refused to treat the case of the appellant similarly and passed the order depriving him of the arrears of pay.

6. The appellant therefore, challenged the aforesaid order mainly on the ground that the order was discriminatory and principles of natural justice were not

followed and that the Government cannot go back upon its promise.

7. The appellant, therefore, filed the suit for a declaration that he would be entitled to the arrears of pay and allowances for the period from 1.9.1970 to 24.5.1978 and that he would be entitled to receive Rs.35,651.30 being the arrears of pay and allowances for the period from 1.9.1970 to 25.5.1978.

8. The respondent Nos. 1 and 2 resisted the suit by filing a joint written statement wherein they denied all the material averments of the plaint and contended further that the suit was barred under the provision of section 34 of the Specific Relief Act. It was, however, admitted that the appellant was appointed to the post of Copy Holder in the scale of pay mentioned in the plaint and it was also admitted that he was terminated from the service by an order under subrule 1 of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965. But the respondents contended that on 19.4.1978 the Council of Ministers decided the case of the appellant along with others and made recommendation as follows :

?The recommendations made in the 1st report of Cabinet SubCommittee were approved to the extent that reinstatement was concerned. Other matters would be dealt with after the Committee completes its work. The Finance Department should work out the implementation of the recommendation in respect of the steps proposed for dealing with the Ranibazar Case.?

It was averred that the Cabinet accepted the recommendation of the Cabinet SubCommittee to the extent of reinstatement of the officers but other matters such as pay etc. were deferred to be dealt with subsequently. It was contended that the previous revocation order dated 25.5.1978 was issued without looking into the Cabinet decision and hence the authority issued the corrigendum dated 8.9.1978 modifying the previous order. It was stated that the Government has every power to modify such order by issuing corrigendum. But as regards the contention of the appellant that respondent No.3 was similarly situated and he was granted all arrears of pay and allowances the respondents in their written statement stated that they had no knowledge whether the respondent No.3 was granted all arrears of pay and allowances.

9. It was, however, admitted by the answering respondents that the aforesaid order of corrigendum was passed subsequent to the withdrawal of the appeal by that appellant. It was averred that since the previous order of revocation was erroneously issued, the Government has right to correct it by issuing corrigendum and hence the appellant was not entitled to claim any arrear from the Government.

10. Upon the pleadings, learned trial Court framed the following issues :

1. Is the suit maintainable in its present form ?
2. Is the suit barred under the principles of estoppel, acquiescence and waiver?

3. Whether notice under section 80 CPC is proper and valid ?
4. Is the plaintiff entitled to the arrear pay and allowances for the period from 1.9.1970 to 24.5.1978 amounting to Rs.35,651.30 on the basis of the reinstatement order passed by the Cabinet decision on 19.4.1978 ?
5. Whether the authority may modify his order which was issued wrongly or erroneously and whether the plaintiff is entitled to get any benefit on the wrong/erroneous order.
6. Has the plaintiff been discriminated against in not being granted the arrear pay and allowances for Rs.35,651.30 ?
7. What other relief or reliefs the parties are entitled to ?

11. Issue Nos. 1, 2 and 3 being not pressed, the learned trial Court took up issue Nos.4 and 5 together and decided that the appellant was not entitled to get any arrears of pay etc. for period of his absence on the basis of the order of reinstatement. These being main issues, the learned trial Court decided issue No.6 against the appellant and dismissed the suit on contest without costs. But the learned trial Court directed the competent authority to reconsider the question of arrears of pay for the period of absence from 1.9.1970 to 24.5.1978 after giving the appellant a reasonable opportunity of hearing. Hence this appeal.

12. The principal argument advanced by Mr. S. Deb, the learned senior counsel appearing on behalf of the appellant is that the appellant was given a categorical assurance on behalf of the Government by the order dated 25th of May, 1978 that he would not only be reinstated but his period of absence between the date of termination of services and the date of joining would be treated as spent on duty for all purposes and that on getting this written communication the appellant withdrew his appeal. It is submitted that the respondents in their written statement having admitted that the appellant withdrew the appeal after receipt of this communication dated 25th May, 1978 marked as Ext.2 the answering respondents were bound on the principle of promissory estoppel to honour the assurance and allow the appellant to get the arrears of pay and allowances for the period of his absence from the date of termination of his services to the date of joining.

13. Mr. Banerjee, the learned counsel appearing on behalf of the respondents has contended that no question of estoppel arises in this case and such a promissory estoppel under the facts and circumstances is not applicable to the present case. According to Mr.Banerjee the question which needs consideration is whether the order of dismissal was right or not. It has not, however, been denied that the Secretary to the Government of Tripura, Printing and Stationery Department issued the aforesaid communication marked as Ext. 2 revoking the order of termination of the appellant and by that order it was specifically stated that the period of absence between the date of termination of services and the date of joining of the appellant be treated as spent on duty for all purposes. Mr.Banerjee

argues that since the Secretary issued this order without the approval of the Council of Ministers, such order can be revoked by a corrigendum. The learned counsel for the appellant has quite fervently argued that the contention of Mr. Banerjee that doctrine of promissory estoppel is not applicable against the Government is an absurd proposition in face of the written communication whereby a clear cut assurance was given to the appellant that his pay and allowances for the period of his absence would be paid. In support of his contention Mr. Deb has placed reliance on the decision in the case of Union of India and others vs. Godfrey Philips India Ltd. and The Union of India & others vs. India Tobacco Co. Ltd. and Union of India and others vs. The Vazir Sultan Tobacco Co. Ltd, etc; reported in AIR 1986 SC 806. In the aforesaid decision the Supreme Court held that "the doctrine of promissory estoppel is applicable against the Government in the exercise of its Governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel." As already stated, in the present case it is an admitted fact that the appellant withdrew his appeal being TA No.25 of 1977 after receipt of the order marked as Ext.2 which reads :

"On the recommendation of the Cabinet SubCommittee the undersigned hereby withdraws the order of termination of service of Sri Jagadish Chandra Nath, CopyHolder, Tripura Government Press, Agartala issued earlier under No. F. 1 (170)PTG/69/368892 dated 31.8.1970 in pursuance of the proviso to subrule (1) of the Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 with immediate effect. The period of absence between the date of termination of services and the date of joining of Sri Nath be treated as spent on duty for all purposes. Sri Nath should report for duty immediately."

It would be quite apparent from the aforesaid order that the order of termination of the petitioner's services was not only withdrawn with immediate effect but it was also specifically stated in the order that the period of absence between the date of termination of services and the date of joining would be treated as spent on duty for all purposes.

14. In view of this order the contention of Mr. Banerjee that the respondent No.2 issued the aforesaid order without the approval of the Council of Ministry is not acceptable for the reason that the appellant was not afforded any opportunity of hearing before passing the order of corrigendum dated 8th of September, 1978 marked as Ext.3.

15. In the case of OP Gupta vs. Union of India & others reported in (1987) 4 SCC 328 it has been held by the Apex Court that:

"There is a duty to hear the concerned Government servant under FR 54 before any prejudicial order is made against him. An order passed under FR 54 is not always a consequential order or a mere continuation of the departmental proceedings against the delinquent civil servant inasmuch as consideration under

FR 54 depends on facts and circumstances in their entirety; and since the order may result in pecuniary loss to the Government servant, consideration under the rule must be held to be an objective rather than a subjective consideration. In the present case, the Government failed in its duty to pass an order in terms of FR 54 despite repeated representations made by the appellant in that behalf. The Single Judge of the High Court was therefore justified in dealing with the question whether or not the period of suspension should be treated as a period spent on duty and to make a direction regarding payment of the full pay and allowances as also to increments which he would have been entitled but for the disciplinary proceedings. 16. The principle enunciated in the aforesaid observation is clear that the competent authority must afford an opportunity of hearing to the concerned Government servant before making any adverse order against him in respect of clauses (a) and (b) of subrule (1) of FR 54 after his reinstatement.

17. In the case of *SL Kapoor vs. Jagmohan & others*, reported in AIR 1981 SC 136 it has been held under paragraph 16 of the judgment that:

‘The requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. The person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met.’

18. In the present case it is an admitted fact that this order of corrigendum was issued without affording any opportunity to the appellant. Hence in view of the dictum of the Apex Court quoted above, I am constrained to hold that such an order is bad in law. That apart it is also not denied by the answering respondents that the respondent No.3 who was similarly terminated was given all arrears of pay and allowances after his reinstatement.

19. The last contention urged by Mr. Deb is that the order of termination was ipso facto bad in law as admittedly the appellant was declared quasi permanent. Mr. Banerjee, the learned counsel for the respondent gave no reply to this contention. On the other hand Mr. Banerjee agreed that the Secretary to the Government of Tripura, Printing and Stationery Department ought to have taken the approval of the Council of Ministers before issuing the order dated 25th of May, 1978 marked as Ext.2.

20. Thus on consideration of the entire materials placed in the records I am of opinion that by issuing the aforesaid written order, on receipt of which the appellant withdrew his appeal was nothing but sort of a promise binding on the respondents and the respondents would not be entitled to go back upon it. I also hold that the order of corrigendum dated 8th September, 1978 passed by the Secretary to the Government of Tripura, Printing and Stationery Department is

bad in law as it materially affected the appellant who was not afforded any opportunity of hearing before passing the order containing corrigendum.

21. For the reasons stated above the judgment and decree of the learned trial Court are set aside, the appeal is allowed and I further direct that the respondent Nos. 1 and 2 will make payment of the arrears pay and allowances for the period from 1.9.1970 to 24.5.1978 to the appellant within a period of 4 (four) months from today.