

(2006) 08 AHC CK 0012
In the Allahabad High Court

Jhunni Lal Azad

APPELLANT

Vs

District Manager, U.P. Scheduled Caste Vitta Awam Vikas Nigam Ltd., Additional District Development Officer, Samaj Kalyan, Shri Karunesh Tripathi, District Manager, U.P. Scheduled Caste Vitta Evam Vikas Nigam Ltd./Additional District Development Officer, Samaj Kalyan and Shri Shabahat Hussain Khan (Wrongly Mentioned in Writ Petition as Shri Sharafat Hussain), the then Assistant District Manager, U.P. Scheduled Caste Vitta Evam Vikas Nigam Ltd.

RESPONDENT

Date of Decision : 25-08-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 311
Penal Code, 1860 (IPC) — Section 21

Citation : (2006) 10 ADJ 278

Hon'ble Judges : Sudhir Agarwal, J;S. Rafat Alam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S. Rafat Alam and Sudhir Agarwal, JJ.—Shri Tej Pal, learned Counsel through whom this appeal was filed, made his submission at length yesterday. However, he made request for preparing the case further and thereafter this matter was directed to be taken up today for further hearing. Today when the case was taken up Shri Tej Pal, learned Counsel did not appear. However, the appellant appeared in person and informed that he has submitted application in the Registry with the request to permit him to argue this case in person. On his request the application was summoned from the office and after considering the prayer, the petitioner-appellant was permitted to argue the matter in person.

2. This special appeal arises out of the judgment of the Hon"ble Single Judge dated 12.11.2003 dismissing the petitioner"s writ petition filed against the order of termination.

3. The only ground raised before us by the petitioner-appellant is that no order of

termination was served upon him though it is claimed by the respondents that his services were terminated on 13.2.2002. It is contended that he has actually served the department even thereafter and at no point of time the order of termination was ever served upon him, therefore, it cannot be said that his service was ever terminated and the respondents are illegally not permitting him to continue in service and also not paying him salary.

4. Heard the petitioner-appellant, who appeared in person, and perused the record including the judgment under appeal, passed by the "Hon"ble Single Judge.

5. It appears that a notice was published in the daily newspaper "Amar Ujala" dated 23.2.2002 regarding termination of service of the petitioner. Copy of the aforesaid notice is annexed as annexure I to the affidavit filed in support of the stay application in this appeal and the contents thereof are quoted as under:

vko";d lwpuk

tuin vkxjk fuoklh leLr vuqlwfpr tkfr ds ukxfjd ,oa m?iz? vuq? tkfr ,oa fodkl fuxe vkxjk ds leLr _k cdk,nkjksa dks lwfpr fd;k tkrk gS fd fuxe dk;kZy; esa vc rd dk;Zjr Lo;aHkw vehu Jh >qUuh yky vktn fuoklh ";ke fogkj dkyksuh] ujk;u] vkxjk dh Isok;sa fuxe }kjk lekIr dj nh x;h gSA Jh >qUuh yky vktn }kjk funsZ"kkksa ds ckotwn Hkh dk;kZy; ls fuxZr jlhn cqd la?1321 tek ugha dh xbZ gS ;fn dksbZ cdk;snkj Jh >qUuh yky vktn ls /kujkf"k tek djds jlhn izkIr djrk gS rks ml cdk;snkj dh Lo;a ftEesnkjh gksxhA

ftyk izcU/kd m?iz? vuq? tkfr foRr ,oa fodkl fuxe fy?] vkxjkA

6. The petitioner came to know of the aforesaid notice certainly on 23.2.2002, which is also admitted by him in his legal notice dated 27.8.2002 where in para 3 of the notice the fact about the aforesaid notice has been stated. The appellant was also aware that the District Manager has passed the order dated 14.2.2002 terminating his services and claimed to have perused the aforesaid order on 21.8.2002, as stated in para 6 of the legal notice dated 27.8.2002. He challenged the validity of the aforesaid termination" order vide his legal notice dated 27.8.2002 and there is. no mention any where in the entire notice that the petitioner did not possess the copy of the aforesaid order at least on the date when the legal notice dated 27.8.2002 was issued. However, in para 132 of the affidavit filed in support of the stay application and this appeal the applicant has averred that he came to know, for the first time, about the letter dated 13.2.2002 and order dated 14.2.2002 from the counter affidavit filed in the writ petition. Apparently, the affidavit is false since the legal notice dated 27.8.2002 itself mentions that the petitioner perused and came to know about the aforesaid document on 21.8.2002 when he perused file No. 156 (S/B) proceeding pending in the Hon"ble Chief Judicial Magistrate, Agra. Besides, it appears that the contention of the petitioner is that unless the order of termination as such is served upon him the same cannot be said to be operative and having force in law.

7. We are not inclined to accept the submission. A decision taken by the authorities regarding an employee, unless communicated to him, cannot become an order and, therefore, the communication of the decision is must. However, no particular procedure is required for communication unless specifically provided under the statute. If the communication of a decision is made in a recognised manner, the same is sufficient communication and the decision of the authority shall not be deemed to be invalid for the lack of communication.

8. In the matter of termination decision, taken by the employer needs to be communicated to the employee i.e. publication of the information. It may be published in a recognized manner or communication to the officer concerned in a manner prescribed under the rules or practice followed in the department. The purpose and intention only is that the person concerned must know about the order and its contents. Admittedly, the information regarding termination was duly published in the newspaper on 23.2.2002 and the petitioner knew about the aforesaid publication and its contents. In the circumstances, it cannot be said that the order of termination was never communicated to the petitioner-appellant. However, he has heavily relied upon the judgment of the Hon''ble Apex Court in support of his contention that the order of termination shall not be made effective unless communicated to the officer concerned. The proposition is well settled and no exception can be taken thereof. However, in our view, the judgment of the Hon''ble Apex Court in the case of State of Punjab Vs. Amar Singh Harika, does not support him as the ratio of that judgment is that the order terminating the services can only be made effective after it is communicated to the officer concerned or is otherwise published. In the instant case, admittedly, the appellant had the knowledge about the order of termination, which was also published in the newspaper on 23.2.2002 and he had the knowledge of the aforesaid publication and its content thereof. The Hon''ble Apex Court stressed upon the fact that the information must be conveyed to the officer concerned whether by communication or by publication. This is clear from the following observations made in para 11 of the judgment, which are reproduced as under:

11. The first question which has been raised before us by Mr. Bishan Narain is that though the respondent came to know about the order of his dismissal for the first time on the 28th May 1951, the said order must be deemed to have taken effect as from the 3rd June 1949 when it was actually passed. The High Court has rejected this contention; but Mr. Bishan Narain contends that the view taken by the High Court is erroneous in law. We are not impressed by Mr. Bishan Narains'' argument. It is plain that the mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passed an order of dismissal, but does not communicate it to the officer concerned, theoretically it is possible that unlike in the case of a judicial order pronounced in Court, the authority may change its mind and decide to modify its order. It may be that in some cases, the authority may feel that the ends of justice would be met by demoting the officer concerned

rather than dismissing him. An order of dismissal passed by the appropriate authority and kept with itself, cannot be said to take effect unless the officer concerned knows about the said order and it is otherwise communicated to all the parties concerned. If it is held that the mere passing of the order of dismissal has the effect of terminating the services of the officer concerned, various complications may arise. If before receiving the order of dismissal, the officer has exercised his power and jurisdiction to take decisions or do acts within his authority and power, would those acts and decisions be rendered invalid after it is known that an order of dismissal had already been passed against him? Would the officer concerned be entitled to his salary for the period, between the date when the order was passed and the date when it was communicated to him? These and other complications would inevitably arise if it is held that the order of dismissal takes effect as soon as it is passed, though it may be communicated to the officer concerned several days thereafter. It is true that in the present case, the respondent had been suspended during the material period; but that does not change the position that if the officer concerned is not suspended during the period of enquiry, complications of the kind already indicated would definitely arise. We are, therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published. When a public officer is removed from service, his successor would have to take charge of the said office; and except in cases where the officer concerned has already been suspended, difficulties would arise if it is held that an officer who is actually working and holding charge of his office, can be said to be effectively removed from his office by the mere passing of an order by the appropriate authority. In our opinion, therefore, the High Court was plainly right in holding that the order of dismissal passed against the respondent on the 3rd June 1949 could not be said to have taken effect until the respondent came to know about it on the 28th May 1951.

9. In the case in hand, it is not the case that the order of termination passed by the authority was kept in file but as the facts show it was published in the newspaper and subsequently the petitioner even otherwise got it communicated, as admitted in his own legal notice. Therefore, it cannot be said that the order of termination till date does not exist or does not have any effect in the eye of law since it has not been communicated to the petitioner-appellant. The information regarding publication in newspaper is also admitted by the petitioner in his application dated 25.2.2002, which has been placed on record as annexure 13 to the affidavit filed in support of the stay application (at pages 76 and 77 of the paper book). Therefore, the publication of termination of service came to the knowledge of the petitioner-appellant on 25.2.2002 and the order of termination, therefore, became effective from the said date at least.

10. The appellant thereafter contended that he was illegally terminated since

without following the procedure under Article 311(2) of the Constitution of India his service could not have been terminated as already held by the U.P. Public Service Tribunal in Claim Petition No. 522 of 1989 decided on 25.11.1993 and, therefore, the termination was wholly illegal and void ab initio.

11. In our view, the submission is wholly misconceived and unsustainable. Admittedly, the petitioner was an employee in a corporation namely U.P. Scheduled Caste Financial Corporation. Neither the corporation is a department of the Government or Government itself nor the appellant was holding a civil post. The corporation is a company registered under the Company's Act and being a State Government company it may be "State" under Article 12 of the Constitution of India for the purpose of application of part III of the Constitution of India but Article 311 has no application to the case of the petitioner since he is not holder of a civil post. In supplementary affidavit filed by the appellant in the writ petition, at page 165 of the paper book the appellant knowing this fact has claimed himself to be a public servant u/s 21 of Indian Penal Code and not holder of a civil post in order to attract Article 311 of the Constitution. Therefore, the contention of the appellant that his service could not have been terminated in violation of Article 311 of the Constitution is not sustainable and is rejected. Moreover the appointment letter of the petitioner-appellant is on record as annexure 2 to the affidavit, which reads as under:

vkns"k

Jh >qUuh yky vktn iq= Jh xjhcuke fuoklh eksrh egy tequk fczt vkxjKA

vkidh fu;qfDr Lis"ky dEiksVsUV Iyku ds vUrxZr forfjr ekftax euh _.k dh olwyh gsrq vehu ds in ij fu;qDr layXu "krksZa ds v/khu dh tkrh gSA ;g fu;qfDr iw.kZr;k vLFkk;h gS vkSj fdLh Hkh le; fcuk iw.kZ uksfVI ds lekIr dh tk ldrh gSA

layXu & mijksDrkuqlkj g? viBuh; vij ftyk fodkl vf/kdkjh gfjtu dY;k.k vkxjKA

12. Admittedly, the petitioner was liable to be terminated at any time without any prior notice. The order of termination shows that the petitioner's services were terminated by the order of termination simplicitor. The appellant, being a temporary employee, his service has been terminated in accordance with the condition of his appointment letter. In the circumstances, it cannot be said that the order of termination is illegal.

13. We are of the view that the Hon"ble Single Judge has rightly found that the petitioner-appellant was not entitled for any relief and the writ petition deserves to be dismissed.

14. No other point has been argued by the appellant.

15. Accordingly, the appeal, being without any merit, is hereby dismissed. However, there shall be no order as to costs.