

(1998) 11 MP CK 0007

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1028 of 1997

Kanhiyalal Rawal

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 19-11-1998

Acts Referred:

Constitution of India, 1950 — Article 225

Citation : (1999) 1 JLJ 381

Hon'ble Judges : Shambhoo Singh, J;B.A. Khan, J

Bench : Division Bench

Advocate : A.K. Sethi, Umesh Gajankush and Rajendra Sugandhi, for the Appellant; Bhargava, A.A.G., for the Respondent

Judgement

B.A. Khan, J.—Petitioner entered service as Constable. He was later promoted to post of Head Constable under the orders of DIG. At one stage he was charged of dereliction of duty and dismissed from service pursuant to enquiry held against him vide order passed by the Superintendent of Police. He assailed his dismissal from service before State Administrative Tribunal on various grounds including picking holes on the inquiry. He also alleged that dismissal order suffered from want of jurisdiction as S.P. was not competent to impose punishment of dismissal on him. The Tribunal partly allowed his petition holding the charges and enquiry against him in order but set aside the dismissal on the ground of incompetence of S.P. to pass the order. While doing so it referred to a judgment of this Court in 1983 JLJ 599 wherein order of dismissal of the concerned employee was held void in similar circumstances having been passed by the incompetent Authority. Drawing analogy from this, Tribunal observed "The same thing happened in this case also." It accordingly quashed the order of dismissal but declined back wages to Petitioner and granted liberty to Competent Authority to start fresh proceedings for his punishment.

2. Petitioner's case is that once Tribunal had found his order of dismissal incompetent and had treated it void it ought to have awarded back wages to

him. Because void order was non-est and non-existent in the eye of law and would not operate against him. Therefore he was to be treated in service though fictionally and declared entitled to full back wages. Reliance in this regard is placed on a Supreme Court judgment in Union of India and another Vs. Babu Ram Lalla, laying down as under:

Since the order of termination of service of the Respondent was rightly held to be a nullity he was entitled to be paid salary on the footing that he had always continued in service and the void order was never in existence in the eye of law.

3. This position was contested by Shri Bhargava AAG., who argued that award or refusal of backwages to a delinquent employee was a matter falling within the domain of the Court/Tribunal and depended on facts and circumstances of a case. No delinquent employee could claim back wages as of right in disregard of the principle of "No work No wages" as it would amount to rewarding him for an otherwise proved misconduct in many cases. He referred to AIR 1997 SC 608 : AIR 1994 SC 1074 : AIR 1990 SC 120 and 1995(II) LLJ 669 in support.

4. The issue of payment of back wages to a delinquent employee on quashment of his order of punishment has received varying treatment by Courts from time to time. The initial view, was that quashment of punishment order would restore status quo ante and place delinquent employee in the position that obtained prior to the passing of the order entitling him to all benefits that would have accrued to him during interregnum. This found expression in various judgments of the Supreme Court including AIR 1979 SC 75, AIR 1973 SC 2251, AIR 1971 SC 2171 and AIR 1991 SC 2010.

5. The trend, however, could not last long after it was found to have resulted in some anomalous situation conferring undue gain on delinquent employees more often than not for nonfulfillment of technical requirements like non-issuance of a notice or some defect in the inquiry violative of principles of natural justice.

6. The situation was accordingly sought to be remedied by falling back upon the principle of "No work No pay". It was accordingly enunciated that even when disciplinary action against the employee was invalidated, it could not as of right entitles him to back wages for his failure or inability to do any work. This found eloquent expression in various judgments of the Apex Court including AIR 1990 SC 166, AIR 1991 SC 958 and AIR 1996 SC 2036.

Then came a new tread focussing on Public interest and public funds given regard to the conduct of delinquent employee. It was propounded that writ Courts should take their hands off and leave the matter to be decided by the employer. This found early expression by the Supreme Court in AIR 1980 SC 840 in the following terms:

In matters of employment, while exercising its supervisory jurisdiction under Article 225 of the Constitution, over the orders and quasi-judicial proceedings of an administrative authority not being proceeding under the industrial/labour law

before an industrial/labour tribunal - culminating in dismissal of the employee, the High Court should ordinarily, in the event of the dismissal being found illegal, simply quash the same and should not further give a positive direction for payment to the employee full back wages (although as a consequence of the annulment of the dismissal the position as it obtained immediately before the dismissal is restored).

7. It was followed up by the Supreme Court in 1990(II) SLR 120 : AIR 1994 SC 1074 and 1995(II) LLJ 669. The Court disapproved directions for payment of back wages to delinquent employees treating it to be amounting to putting premium for deviant conduct. It went as far as to suggest a procedure to be adopted for determination of entitlement of back wages in such cases. In *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, laying down thus:

When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled.

8. It becomes difficult in this hazy scenario to take sides either way and to lay down a general proposition that an employee could be entitled to back-wages as a matter of right if his dismissal order was quashed for having been passed by an incompetent Authority. There can be no quarrel with the proposition that an order lacking in jurisdiction becomes long existent in law having no consequence.

It would not operate against the person against whom it was passed be normally entitled to all benefits in disregard of such order. But this may not hold good in all events and circumstances, more so when the issue is to be examined in exercise of equitable jurisdiction. Situations are conceivable where such incompetent order may have been passed under mistake, impression or belief. It would surely inequitable to order payment of back-wages in routine in such cases and in disregard of the surrounding facts and circumstances and without any enquiry whether the employee concerned, was gainfully employed or was otherwise disentitled to receive the missed benefits. It would amount to paying premium to the employee and rewarding him for his otherwise proved misconduct and misbehaviour. But there could be also cases where the whole exercise of disciplinary action undertaken against an employee suffers from want of jurisdiction, the action in such cases would be a nullity entitling him to all benefits missed by him during the interval.

Therefore, we find it difficult to lay down an abstract proposition that a delinquent employee could be entitled as a right, and mechanically to full back-wages if his order of punishment was invalidated for having been passed by as incompetent Authority. Though his entitlement should flow normally in cases where the disciplinary action was declared void or nullity, it would still require examination and scrutiny of the facts and circumstances surrounding the cases and would squarely fall for determination by the Court/Tribunal as the case may be in accordance with rules, if any. It would also be open to the Court-Tribunal to leave the matter to be decided by the Competent Authority under rules. In other words such employee would not be automatically entitled to receive full back wages and other benefits once his order of punishment was set aside for being incompetent. It would fall in the sound judicial discretion of the Court to award or refuse the benefits depending upon the circumstances of the case.

9. Given regard to all this, Petitioner's case does not seem fitting the Bill. He was not wholly left off by the Tribunal. His petition was, on the contrary partly allowed. Though his order of dismissal was quashed but charges and inquiry against him were found in order. Liberty was also granted to the Competent Authority to start fresh proceedings of punishment against him. To top it all, Tribunal also stopped short of returning a clear cut finding on his dismissal being void ab initio or nullity and thus non-est in law. Therefore, Tribunal order for declining to award back-wages could not be faulted. But even so it ought to have left the issue to be decided by the Competent Authority in the facts and circumstances of the case. That would have been the correct position in law.

10. This petition is accordingly disposed of by providing that question of entitlement of full back wages to Petitioner would be decided by the Competent Authority under rules on culmination of fresh proceeding, if any taken.