

(1994) 10 AHC CK 0051

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 36475 of 1994

Kripa Shanker Awasthi

APPELLANT

Vs

Nagarpalika, Bindid, Fatehpur through its Chairman and
Another

RESPONDENT

Date of Decision : 06-10-1994

Acts Referred:

Uttar Pradesh Municipal Servants (Appeal) Rules, 1967 — Rule 22
Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 4

Citation : (1994) 10 AHC CK 0051

Hon'ble Judges : D.S.Sinha, J

Final Decision : Dismissed

Judgement

D. S. Sinha, J.—Heard Sri K. P. Agrawal, learned Senior Advocate appearing for the petitioner and Sri G. C. Pant, learned counsel representing the respondent No. 1 Nagar Paiika, Bindki, district Fatehpur through its Chairman, hereinafter referred to as the Nagar Paiika.

2. This petition, under Article 226 of the Constitution of India, is directed against the order and judgment dated 6th September, 1979 passed by the U. P. Public Services Tribunal 2nd, Lucknow, hereinafter called the Tribunal, in Claim Petition No. 92i/T/(I)/77/248/75, Kripa Shanker Awasthi v. Nagar Paiika, Bindki and others, whereby the dismissal of the services of the petitioner by means of the order dated 6th January, 1975, passed by the President of the Nagar Paiika in exercise of powers conferred upon him under Section 76 of the U. P. Municipalities Act, 1916, hereinafter to be referred as Municipalities Act, has been upheld.

3. The petitioner was a ClassIV employee of the Nagar Paiika. By order dated 23rd October, 1974, he was suspended on certain charges of misconduct. Thereafter, the chargesheet dated 3rd November, 1974 was served upon the petitioner by the Executive Officer of the Nagar Paiika apprising him of the charges and the evidence sought to be relied upon in support of the charges, and

calling upon him to produce his defence, if any. A copy of the said chargesheet is Annexure "2" to the petition. The petitioner responded to the chargesheet and submitted his explanation dated 6th November, 1974 stating therein that he had not committed the mistake deliberately and pleading for pardon if found guilty. A copy of the explanation is Annexure "3" to the petition. The Executive Officer, who was, it appears, inquiring into the matter, submitted a report dated 28th November, 1974 to the President of the Nagar Palika, a copy whereof is Annexure "4" to the petition. According to the Executive Officer, the charge against the petitioner was approved.

4. Later on, by means of his order dated 3rd December, 1974, a copy whereof is Annexure "5" to the petition, the President of the Nagar Palika informed the petitioner that the charges against him were fully proved, and called upon him to show cause as to why he should not be dismissed from service. Along with the order dated 3rd December, 1974 the petitioner was also supplied copy of the report of the Inquiry Officer dated 28th November, 1974. The petitioner did not show cause. Eventually, the President passed the order dated 6th January, 1975 dismissing the petitioner from service.

5. Challenging the order of dismissal from service dated 6th January, 1975 the petitioner instituted in the court of the Munsif, Fatehpur Suit No. 248 of 1975 seeking a declaration to the effect that the order of dismissal dated 6th January, 1975 was null and void. The Nagar Palika filed its written statement in answer to the plaint of the petitioner.

6. Upon enforcement of the U. P. Public Services (Tribunals) Act, 1976 (hereinafter called the Act) the suit of the petitioner was abated, and record thereof was transferred to the Tribunal for deciding it in the same manner as if it was a claim petition referred to under Section 4 of the Act. The Tribunal adjudicated upon and decided the claim of the petitioner for declaration of the dismissal order dated 6th January, 1975 to be null and void by its order and judgment dated 6th September, 1979, impugned herein.

7. Learned counsel for the petitioner submits that the impugned order and judgment is liable to be set aside on the grounds that the view of the Tribunal that the suit of the petitioner was not maintainable as he had not availed the alternative remedy of departmental appeal is incorrect; and that the finding that the petitioner had actually admitted his guilt and that he had been given sufficient opportunity to defend himself cannot be sustained as there is no material to support the same. On the other hand, the learned counsel representing Nagar Palika, Bindki submits that in view of the provisions contained in Regulation 22 of the Municipal Servants Conduct Regulations, hereinafter called the Regulations the petitioner was obliged to file appeal against the order of dismissal dated 6th January, 1975 under Rule 3 of the U. P. Municipal Servants Appeals Rules, 1967, hereinafter called the Appeal Rules, before instituting the suit culminating into the impugned order and judgment. He points out that, as a matter of fact, the petitioner had no cause of action to

maintain the suit. Elaborating the point he submits that as matter of fact right to file the suit was not available to the petitioner till he had exhausted the statutory alternative remedy of appeal under the Appeal Rules. Further submission of the learned counsel is that the petitioner was given full and effective opportunity to defend himself notwithstanding his alleged admission of the guilt. According to him the Tribunal has rightly upheld the order of dismissal of the petitioner.

8. Before evaluating the rival contentions put forth by the learned counsel for the parties, it would be apposite to notice, the relevant statutory provisions covering the controversy involved in the petition. Section 76 of the Municipalities Act, which provides for appointment and dismissal of permanent inferior staff of the Nagar Palika, runs as under :

"76. Punishment and dismissal of permanent inferior staff. Except as otherwise provided, the Executive Officer, and where there is no Executive Officer,, the President may dismiss, remove or otherwise punish servants of the board, or terminate the services of probationers (referred to in Section 75) subject to their right of appeal, except in the case of the termination of the service of a probationer, to such authority within such time and in such manner as may be prescribed."

Rule 3 of the Appeal Rules contemplates an appeal against the punishment under Section 76 of the Municipalities Act. Rule 3 reads thus :

"3. Appeals. Subject to the provisions of the Act, appeal against an order of punishment shall lie

(i) to the President in a case in which the order of punishment is passed by punishing authority other than the President under Section 76;

(ii) to the Commissioner of the Division in a case in which the order of punishment is passed by the punishing authority under Section 74 or by the President under Section 76."

9. Regulation 22 of the Regulations, relied upon by the learned counsel for the Nagar Palika, is as below :

"22. Litigation on service matters. No servant shall attempt to seek in a court of law a decision on grievances arising out of his employment or conditions of service, even in cases where such a remedy is legally admissible without first exhausting the normal official channels of redress." (Emphasis supplied.)

10. It is not disputed that the order of dismissal of the petitioner was passed by the President of the Nagar Palika in exercise of his power under Section 76 of the Municipalities Act. Section 76 of the Act contemplates that the order of dismissal, removal or other punishment or termination of services of servants of the Nagar Palika shall be subject to their right of appeal. Thus, the statutory remedy of appeal against the order of dismissal is clearly envisaged and provided for. And Rule 3 of the Appeal Rules provides the forum of appeal which, in the instant

case, was the Commissioner of the Division in which Nagar Palika, Bindki falls.

11. Regulation 22 of the Regulations, which have been, indisputably, made under Section 297 of the Municipalities Act, mandates that no servant shall attempt to seek in a court of law a decision on grievances arising out of his employment or conditions of service, even in cases where such remedy is legally admissible without first exhausting the normal official channels of redress. It cannot be gainsaid that the petitioner had grievance in the matter arising out of his employment and he had statutory remedy of appeal before the Commissioner of the Division. He, therefore, was clearly obliged to avail the remedy of appeal before going to any court of law, be it a civil court where he instituted suit for seeking a decision on his grievance against, the order of his dismissal or the Tribunal which came to have jurisdiction to hear the grievance of the petitioner upon the enforcement of the Act. Admittedly, the petitioner had not exhausted the normal official channel of redress, namely, the appeal under Rule 3 of the Rules. The institution of the suit by the petitioner in the civil court challenging the order of his dismissal was, therefore, clearly in violation of the statutory provisions of Regulation 22 of the Regulations. Learned counsel of the Nagar Palika is absolutely right in contending that the right to file the suit was not available to the petitioner as he had not exhausted the statutory alternative remedy of appeal and he had actually no cause of action to maintain the suit. The decision of this court rendered in *Shafqat Husain v. Municipal Board, Sambhal* and another, 1967 ALJ 17, fortifies the contention of the learned counsel.

12. In the aforesaid decision the court, though considering the question of limitation for bringing a suit against the order of dismissal, considered the meaning of the expression "cause of action" in relation to the suit against the order of dismissal of an employee passed by the President under the Municipalities Act. Dealing with the question of fixing the date of accrual of cause of action for such suit, the Court observed as follows :

"The difficulty lies in fixing the date of accrual of the cause of action. The cause of action means the bundle of facts which have to be established to entitle a plaintiff to a decree. Under the old law, the cause of action consisted of the order of dismissal dated 22.12.1958. But the law was altered in January, 1959. According to Regulation No. 22, a municipal employee must not approach the Civil Court without first exhausting the departmental remedy. Section 74 of the Act provides for a departmental appeal against an order of dismissal. So, according to Regulation No. 22, the aggrieved municipal employee must file an appeal under Section 74 before approaching the Civil Court. If a suit is filed without exhausting the departmental remedy, such a suit would be premature. After 31.12.1959 the cause of action consists of two parts

(i) the order of dismissal from service, (ii) the order dismissing the departmental appeal. Cause of action is complete when both the stages are over."

13. The cause of action to institute the suit against the order of dismissal of the petitioner could, therefore, arise only after the disposal of the appeal under Rule 3 of the Appeal Rules which the petitioner was legally obliged to prefer before instituting the suit in view of Regulation 22 of the Regulations. The finding of the Tribunal that the suit instituted by the petitioner in the Civil Court was not maintainable, therefore, cannot be impeached. In any event the finding of the Tribunal with regard to the failure of the petitioner to avail alternative remedy is not of much significance as the Tribunal has considered the case of the petitioner on merits also.

14. On merits, the Tribunal has upheld the order of dismissal of the petitioner on twin considerations, namely, the alleged admission of his guilt by the petitioner and giving of sufficient opportunity to him to defend. Learned counsel for the petitioner contended that the findings of the Tribunal with regard to admission of guilt by the petitioner and providing of sufficient opportunity to him to defend are perverse and cannot be sustained on the material on record. The court is afraid, the contention of the learned counsel cannot be sustained. The explanation of the petitioner dated 6th November, 1974, submitted to the concerned authority in answer to the chargesheet served upon him, is available before this court as Annexures to the petition. The court has read and reread the aforesaid explanation of the petitioner very carefully and is of the opinion that, read as a whole, the contents of the explanation unmistakably amount to admission of the guilt. In the explanation, the petitioner stated that he had not committed mistake deliberately and prayed for pardon as he had committed the mistake unknowingly. Thus, the finding of the Tribunal on the question of admission of guilt by the petitioner is well founded.

15. Coming to the finding of the Tribunal on the question of opportunity to the petitioner to defend himself, the fact that the petitioner was served with the chargesheet, that he filed an explanation ; that there was enquiry by an Inquiry Officer who submitted his report dated 28th November, 1974 to the President, that he was supplied with the copy of the enquiry report alongwith the notice to showcause as to why the punishment of dismissal may not be imposed upon by the President of the Nagar Palika, and that the petitioner failed to showcause, are sufficient to conclude and hold that the petitioner had been afforded sufficient opportunity to defend himself. The finding of the Tribunal in this regard also is well founded.

16. The foregoing discussion leads to an inevitable conclusion that the impugned order and judgment of the Tribunal dated 6th September, 1979 is perfect and does not suffer from any such infirmity as to invite intervention by this court in exercise of its special and extraordinary jurisdiction under Article 226 of the Constitution of India.

17. In the result, the petition fails and is dismissed. However, there will be no order as to costs.