

(1988) 08 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1094 of 1982

M.D. Awasthy

APPELLANT

Vs

State of Madhya Pradesh and another

RESPONDENT

Date of Decision : 01-08-1988

Acts Referred:

Madhya Pradesh Nagar Tatha Gramin Nivesh Adhiniyam, 1973 — Section 72, 73

Citation : (1989) J LJ 25 : (1989) MPLJ 75

Hon'ble Judges : S. Awasthy, J; B.C. Varma, J

Bench : Division Bench

Advocate : D.M. Dharmadhikari, for the Appellant; Deepak Verma, Govt. Advocate for Respondent No. 1 and M.M. Sapre with V.S. Shrotri, for the Respondent

Final Decision : Allowed

Judgement

B.C. Varma, J.

The petitioner, M.D. Awasthi was initially appointed as an Engineer in Jabalpur Town Improvement Trust, a local authority constituted under the Madhya Pradesh Town Improvement Trust Act, 1960. On constitution of the Jabalpur Development Authority with effect from 11-1-1980 under the provisions of the Madhya Pradesh Nagar Tatha Gram Niwesh Adhiniyam, 1973, the employees of the Jabalpur Town Improvement Trust became the employees of the Jabalpur Development Authority (J.D.A.) by force of Section 87(1)(c)(iv) of the latter enactment. The terms and conditions of the employees so being transferred to the Jabalpur Development Authority remained the same. With the new employer, the petitioner came to be designated as Development Engineer. It is the petitioner's allegations that as he could not cater to the taste of local politicians, they got annoyed and set out to harm the petitioner. Their earlier attempts proved futile but finally they could manage the petitioner's transfer to Katni Town Improvement Trust by an order dated 23-6-1982 (Annexure-B) passed by the Chief Executive Officer of the J.D.A. The order also shows that it has approval of

the Chairman of the J.D.A. The petitioner resisted that order and questioned the authority of the Chief Executive Officer to make such transfer. This led to the passing of yet another order dated 18-8-1982 whereby the petitioner's services have been terminated. This order (Annexure-L), like the earlier order (Annexure-B), has also been passed in the similar manner by the Chief Executive Officer and approved by the Chairman. The petitioner challenges both these orders in this petition and alleges that he could not have been transferred or even sent on deputation to the Town Improvement Trust, Katni under the employment of altogether a different master constituted under entirely a different enactment. It is also urged that the Chief Executive Officer has no authority to make those two orders which are, therefore, void and non est. The claim, therefore, is for the petitioner's continuance as Development Engineer in the services of the J.D.A. The record also shows that the State Government has also intervened in the matter and has prompted the Chief Executive Officer of the J.D.A. to pass the impugned orders. The petitioner, therefore, has contended that the Government has no such power or authority.

Learned Government Advocate, appearing for the State, contended that it is the State Government who has passed those orders or has caused those orders to be passed and does have such an authority under Sections 72 and 73 of the M.P. Nagar Tatha Gram Niwesh Adhiniyam, 1973. Shri Sapre, counsel for the Town and Development Authority, Jabalpur (respondent No. 2) supports the validity of the orders. It is further contended by Shri Sapre that if the order of termination is held to be erroneous on any count whatever, the petitioner's remedy is only to claim damages for wrongful termination from service and that too not in these proceedings but by filing a civil suit where alone different aspects of assessment of damages can be gone into. It is added by the learned counsel that if for any reason the Court were to allow continuance of service, back wages should not be allowed for that will need separate enquiry.

We shall first consider whether the Executive Officer of the Jabalpur Development Authority has jurisdiction to direct petitioner's transfer to Katni Improvement Trust even with the approval of the Director and whether he has similar jurisdiction to terminate the petitioner's services. A few provisions of the M.P. Nagar Tatha Gram Niwesh Adhiniyam, 1973 may be noticed for this purpose. Section 3 of the Adhiniyam requires the State Government to appoint an Officer to be the Director of the Town and Country Planning, Section 38 provides for establishment of a Town and Country Development Authority and permits the State Government to establish by notification a Town and Development Authority by such name and for such area as may be specified in the notification. Acting under this provision, the Jabalpur Development Authority has been constituted. According to Section 39, every Town and Country Development Authority shall be a body corporate by the name specified in the notification u/s 38. By force of Section 40, every such authority shall consist of a Chairman and other members not exceeding six. The Chairman and all those members shall be appointed by the State Government. Section 45 provides for meeting of the Town and Country

Development Authority and permits the authority to make regulations to provide for the conduct of its business. Every such authority shall have a Chief Executive Officer to be appointed by the State Government. He shall also be the Secretary of the Authority. Every Town and Country Development Authority shall have power to appoint such officers and servants as may be necessary and proper for sufficient discharge of its duties. For creation of such posts prior sanction of the State Government is necessary. The State Government is also empowered to impose such restrictions as it may from time to time like to impose on the power of appointment of officers and servants by the Town and Country Development Authority. Such is the provision contained in Section 47 of the Adhiniyam. Another provision worth mentioning is Section 76-B which provides for constitution of the Development Authorities Service for the purpose of providing officers and servants to all Development Authorities in the State. Counsel stated at the Bar that no such Service has yet been constituted. From the aforesaid provisions, it is clear that it is the Town and Country Development Authority which, with the prior approval of the State Government has the power to appoint officers and servants. The petitioner who should be deemed to be the employee of the Town and Country Development Authority established u/s 30-A (in the present case the Jabalpur Development Authority) by force of Section 87(1)(c) (iv) is the officer of the Jabalpur Development Authority within the meaning of Section 47 of the Adhiniyam. His service conditions could be changed and he could be removed from service only by the order of the Jabalpur Development Authority which for all intent and purpose is the appointing authority of the petitioner. We have earlier shown that the Town and Country Development Authority consists of a Chairman and members appointed by the State Government. Obviously, the order dated 23-6-1982 directing petitioner's transfer to Katni Town Improvement Trust is not passed by the Jabalpur Development Authority. As shown above, it has been passed by the Chief Executive Officer. True it is that it is preceded by Annexure-C dated 27-8-1982 passed by the State Government purporting to take back the petitioner's services and to post him as Engineer in Katni Town Improvement Trust. It also shows that his services have been so placed with the Town Improvement Trust, Katni on deputation. We have earlier indicated that the Chief Executive Officer, Jabalpur Development Authority has no jurisdiction to pass any such order, vide Annexure B. We further do not agree with the learned Government Advocate that the Government has any authority to pass the order like Annexure C taking back the petitioner's service and then placing him on deputation with another authority. Reference to sections 72 and 73 on which reliance was placed by the Government Advocate in support of this contention is misconceived. Section 72 only authorises the State Government to have power of superintendence and control over the acts and proceedings of the officers appointed u/s 3 and the authorities constituted under the Act. Certainly this will not include a power to call back the services of any officer or servants of the Development Authority and to place those services under the disposal of altogether a different authority. Reference to Section 73 is also misplaced as it only provides that the authorities

constituted under the Act shall be bound by such directions in the matter of policy as may be given to them by the State Government. The order Annexure C passed by the State Government putting the petitioner's service at the disposal of the Katni Improvement Trust cannot be said to be a direction on matters of policy. In our opinion, neither Section 72 nor Section 73 empowers the State Government to pass any order like Annexure C. For the aforesaid reasons, we are of the opinion that the order Annexure B and Annexure C directing petitioner's transfer to Katni Town Improvement Trust are without jurisdiction. They are liable to be quashed.

For the reasons recorded by us above, the order dated 18-8-1982 (Annexure L) passed by the Chief Executive Officer terminating the petitioner's services also must be quashed. It is true that there is an endorsement that the order has the approval of the Chairman of the Authority. Chairman, however, is not the Jabalpur Development Authority. No copy of resolution of the Jabalpur Development Authority has been filed to show that the petitioner's services have been terminated by the Authority itself. No rules of business even have been exhibited to show that the Chairman is under some law permitted to take an action to remove from service the officers of the Authority. Be that as it may. The order Annexure L has been passed by the Chief Executive Officer who, as we have shown above, has no such authority. This order must, therefore, be quashed. We, accordingly, quash the three orders Annexure B dated 23-6-1982, Annexure C dated 27-5-1982 and Annexure L dated 18-8-1982.

This now takes us to the question of relief to be awarded to the petitioner. Learned counsel, appearing for the parties, addressed the Court at length on this issue. While Shri D. M. Dharmadhikari, learned counsel for the petitioner's contention has been that this Court has jurisdiction to direct reinstatement and payment of all wages for the period during which the petitioner has been out of employment because of wrongful termination of his service, Shri M. M. Sapre, appearing for the respondent No. 2, strongly urged that the contract of service, though wrongfully terminated, cannot be specifically enforced and the petitioner cannot be re-instated. It was added that no writ can be issued by this Court under Article 226 of the Constitution directing reinstatement.

In early days, the Common Law Courts in England never dreamt of enforcing agreements strictly personal in their nature including the common relation of master and servant. To quote Halsbury's Laws of England:

The Court does not seek to compel persons against their will to maintain continuous personal and confidential relations.

The change of law by passage of time involving new principles which again according to Halsbury's Laws of England are:

.... an employer may be restrained from dismissing an employee in breach of contract if there is no loss of confidence between employer and employee or if (at least in a contract of employment to carry out a public duty) the employee

has been dismissed in a manner which does not comply with statutory or contractual regulations governing dismissal.

In *Shenton vs. Smith*, (1895) AC 229, Privy Council expressed that "certain servants of the Crown held their offices during the pleasure of the Crown, regulations were merely directions for general guidance and that no such servant could insist upon holding office until removed according to the process thereby laid down." However in *Gould vs. Stuart*, (1896) AC 575, where again the dismissal of service of a servant of the Crown was in breach of statute, the Privy Council expressed that it was an exceptional case in which it was deemed for the public good that some restrictions should be imposed on the power of the Crown to dismiss the servants. Thus, the theory of statutory rights of the employees were introduced and in *Smith vs. Macnally*, (1912) 1 Ch. 816, the termination notice was held to be invalid and the employee was treated to be continuing as teacher. In *Barnard vs. National Dock Labour Board*, (1953) 1 All.E.R. 1113, the dismissal of the employee was in breach of statutory scheme but the employer was not a statutory body. The employee's case was rejected by Court of Appeal by majority decision. Jenkins, L.J., however, recorded this dissenting note:

Why should it be wrong, those being the plaintiffs rights, for the Court to make a declaration to the effect that his purported dismissal was ultra vires and invalid if in law he is to be regarded as still in the employment of the national board ?

In appeal by the employee, the House of Lords introduced a concept of status and said:

This is an entirely different situation from the ordinary master and servant case. ... Here, the removal of the plaintiffs name from the register being, in law, a nullity, he continued to have the right to be treated as a registered dock worker with all the benefits which, by statute, the status conferred on him. It is, therefore, right that, with the background of this scheme, the Courts declare his rights.

In relation to statutory bodies, it was said in *Barber vs. Manchester Hospital Board*, (1958) 1 All. E.R. 322:

.....statutory bodies....can....only act for the purposes for which they are created. A statutory body has....an untremmelled right to terminate the services of one of its own employees....provided that decision is arrived at bona fide....in the best interests of the object of the statutory body...and not made for some wholly extraneous reason.

A noticeable change is to be found in *Ridge vs. Baldwin*, (1963) 2 All.E.R. 66 where the House of Lords granted declaration to an employee who had been dismissed without hearing from an office. It was observed:

.....an officer cannot lawfully be dismissed without first telling him what is alleged against him and hearing his defence or explanation.

This change reflected itself in more specific and clear terms in *Malloch vs. Aberdeen Corporation*, (1971) 2 All. E.R. 1278, where Lord Wilberforce radically altered the tradition of no specific performance in matter of employment. He included breaches of administrative law among the offences that rendered a termination null and void. The observations are:

The appellants' challenge...raises a question of administrative law. The respondents are a public authority, the appellant holds a public position fortified by statute. The considerations which determine whether he has been validly removed from that position go beyond the mere contract of employment... They are...to be tested broadly on arguments of public policy... The appellant is entitled to complain if, whether in procedure or substance, essential requirements, appropriate to his situation in the public service under the respondents, have not been observed and in case of non-observance, to come to the courts for redress.

It was further observed:

.....while the courts will necessarily respect the right, for good reasons of public policy, to dismiss without assigned reasons, this should not....prevent them from examining the framework and context of the employment to see whether elementary rights are conferred on (the employee) expressly or by necessary implications....

The learned Judge emphasised:

....I find it hard to believe that in a field of employment, based on the possession of qualification historically accepted, it can really have been intended that men, and women validly qualified...were ipso facto to be deprived of employment without any regard for vested rights.

We then have Lord Denning's view in *Langston vs. Ahew*, (1974) 1 All. E.R. 980, that in modern times the right is implied in the contract and that it was a right to work which the courts will protect. In spite of such a dictum, in *Chappell vs. The Times Newspaper*, (1975) 2 All. E.R. 233, injunction was refused on a finding of lack of confidence.

In India, we have the law of specific relief codified in Specific Relief Act, 1963. Section 14(1)(b) which is verbatim a reproduction of Section 21(b) of the 1877 Act, bars specific enforcement of any contract which is dependent on the personal qualifications or volition of the parties. This makes it clear that the contract of personal service cannot be specifically enforced. But, in the matter of public employment, conferring a status upon the employee, it does not suffer from any such disability. A Full Bench decision reported in *I.I.T. vs. Mangat Singh*, 1974 Lab.I.C. 819, Deshpande, J. observed that "In so far as the performance depends on the volition of the parties it is incapable of specific performance...But it would be governed by status if the volition has been taken away by statutory provisions." Such status may be conferred in more ways than

one. It has been expressly conferred on Government servants by Articles 309, 310 and 311 of the Constitution. The Constitutional functionary like the Judges of the Supreme Court and the High Courts do enjoy such status. In the matter of employment Articles 14, 16, 19 and 21 of the Constitution guarantee fundamental rights to the employees against the employer and thus secure the "status among the employees." Employees of the "State" as defined under Article 12 of the Constitution including its agencies and instrumentalities enjoy the "status" the employment being public employment. The Supreme Court in *Roshan Lal Tandon Vs. Union of India (UOI)*, , approved the following remarks in *Salmond and Williams on Contracts*:

In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status.

Privy Council in AIR 1937 31 (Privy Council) , and AIR 1937 27 (Privy Council) , directed reinstatement of the Government servants, former being the case of dismissal in breach of rule while the latter involved violation of the Act itself. The dismissal in both the cases was held to be a nullity. In AIR 1948 121 (Privy Council) , where the Government servant was discharged from service in contravention of requirement of Government of India Act, 1935, continuance in service was directed. "Confidence" or "Volition" could not prevent the Courts in granting that relief. Regarding industrial workmen, *Gajendragadkar, J.* (as he then was) said in *Assam Oil Company Vs. Its Workmen*, , that normal rule is reinstatement, but there can, however, be cases where it would not be expedient to follow this normal rule. Even so, in *S.B. Dutt Vs. University of Delhi*, , where the employer was a statutory body, the employee was not granted any relief of reinstatement because he did not complain of breach of any statute. *Shah, J.* in *S.R. Tewari Vs. District Board Agra and Another*, , held that the Courts have jurisdiction and power to declare the actions of the statutory body as illegal or ultra vires "even if the action relates to determination of employment of a servant." The observations are:

....the powers of a statutory body are always subject to the statute which has constituted it, and must be exercised consistently with the statute, and the Courts have, in appropriate cases, the power to declare an action of the body illegal or ultra vires, even if the action relates to determination of employment of a servant.

Thus, according to this decision, in *Tewari's* case the general law of master and servant that the servant is at the pleasure of the master would stand abrogated even in cases of statutory body. The principles of statutory intervention or abrogation was also extended to a statutory body and abridged considerably the power of a public employer to discharge an employee at will without reason. Relying upon this decision in *Tewari's* case, *Vaidialingam, J.* in *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, , observed that the position in law is that no declaration to enforce a contract of personal

service will be normally granted. Three exceptions noted to this rule are (1) a public servant, who has been dismissed from service in contravention of Article 311, (2) reinstatement of a dismissed worker under Industrial Law by Labour and/or Industrial Tribunals; (3) a statutory body when it has acted in breach of a mandatory obligation, imposed by statute. Then, in a decision of the Supreme Court, in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, , after holding that the Oil and Natural Gas Commission, Life Insurance Corporation and the Industrial Finance Corporation are "other authorities" within the meaning of Article 12 being statutory authority on whom powers are conferred by law, it was held that employees of such a statutory body have a statutory status and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions. The employees of such bodies are entitled to claim protection under Articles 14 and 16 of the Constitution. It was further held that the regulations and rules framed by such authorities are law and impose obligation on such authority. These statutory authorities cannot deviate from the conditions of service and any deviation will be enforced by legal sanction by declaration by Courts to invalidate action in violation of rules and regulations. Alagiriswami, J. dissenting Mathew, J. and Ray, C.J. laid down that the test to grant declaration of continuance in service is "whether the employment is public employment and, for that reason, the employee would obtain a status which would enable him to obtain the declaration." "....The law of master and servant has not kept pace with the modern conditions and the mandate of equality embodied in the Constitution." In Executive Committee of Vaish Degree College vs. Lakshmi Narain, AIR 1976 SC 888, while Fazal Ali, J. with whom Khanna, J. concurred, re-enforced the three exceptions noted by Vaidialingam, J. in C.K. Tyagi's case, to the general rule that no declaration to enforce a contract of personal service will be normally granted, Bhagwati, J. (as he then was) observed in the separate opinion that the three exceptions so noted cannot be said to be exhaustive. The learned Judge added:

The law enacted in this section operates, irrespective whether the management is or is not a statutory body. Such a consideration is entirely irrelevant to the applicability of this section.

The majority opinion of the decision in Vaish Degree College was further adopted in Smt. J. Tiwari Vs. Smt. Jwala Devi Vidya Mandir and Others, , ignoring Bhagwati, J's opinion in that case.

A noticeable change may thus be seen during the last few years in the attitude towards this problem, the attitude becoming more reformative. The scope of fundamental right is considerably enlarged. The right of equality enshrined in Article 14 will now strike against any arbitrary State action. Breach of natural justice, lack of reason, abuse of discretion, consideration of irrelevant or

extraneous materials etc. are now the various grounds of attack well covered under Article 14. The concept of agency and instrumentality of the "State" used in Article 12 has also been considerably expanded. Consequently, the concept of public employment has also been extended to various employers -- both statutory or non-statutory. With it has grown the availability of protection of fundamental rights to a growing class of public employees. It has thus become possible for an employee to challenge his termination not only when the authority made any breach of statutory provision but also to challenge the statutory provisions themselves if they offend his fundamental rights. According to decision of the Supreme Court in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, , Article 12 must be held to bring within its ambit to include whatever otherwise may not have been comprehended, irrespective of the form. The distinction between the statutory and non-statutory body must be deemed to have been taken away. Employers" satisfying the test of "State action" must be deemed to be covered under Article 12. It thus includes even companies, societies and aided schools and all become public employers. The employees of such bodies have constitutional rights and status. They are in public employment and not under personal service. Specific performance thus can be claimed when the termination violates fundamental rights. In *Central Inland Water Transport Corporation's* case, service rule framed permitted termination of service by the employer was struck down as violative of Article 14 and void on account of Section 23 of the Contract Act. The Central Inland Water Transport Corporation, a company incorporated under the Companies Act was held to be a "State" and the termination of employment was held to be invalid. Re-instatement was directed. Re-instatement was also directed in the case of *Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee*, , and *M.K. Agarwal vs. Gurgaon Gramin Bank*, AIR 1988 SC 286. The Gurgaon Gramin Bank constituted under Regional Rural Banks Act (21 of 1976) was held to be a "State" within Article 12. Regulations framed under the Act enabling termination simpliciter were held to be arbitrary and unconstitutional. While considering the question of grant of relief, the Supreme Court held in para 7 of that Judgment, that it is well settled that in appropriate cases the Court may decline to grant reinstatement but the application of such rule in a given case would require the balancing of diverse and conflicting interests and claims. Reinstatement in that case was not refused.

Viewed in the aforesaid state of law, the picture that emerges in the present case is that the respondent Authority which is a creature of a statute constituted under the Nagar Tatha Gram Niwesh Adhiniyam is an "Authority" within the meaning of Article 12. The employees of this Authority are, therefore, in public employment and have a status. They have protection of Article 14. Their services cannot be arbitrarily terminated. In absence of any rules or regulations governing the conditions of service, the termination could only be in accordance with rules of natural justice and enquiry into the conduct was necessary under the statute,

viz., Nagar Tatha Gram Niwesh Adhiniyam. The authority competent alone could terminate the services. The termination of employment by altogether a different person without any authority and without observing the rules of natural justice must, therefore, be held to be wholly illegal and ultra vires. We have found earlier that the petitioner's services have been terminated by an authority not competent so to do. Under these circumstances, the petitioner cannot be denied the relief of reinstatement.

Shri Sapre strongly relied upon a decision of the Supreme Court in *Dipak Kumar Biswas Vs. Director of Public Instruction and Others*, . There the employee was a Lecturer in an aided College. His appointment was found to be in contravention of certain rules and was, therefore, terminated. Applying the rule to *Tewari's* case (supra) and in *Vaish Degree College* case (supra) and distinguishing the one in *Indra Pal Gupta Vs. Managing Committee, Model Inter College, Thora*, , it was held that although the college in question may be governed by the statute of University and Education Code framed by the Government of Meghalaya and even though the college may be receiving financial aid from the government, it would not be a statutory body because it has not been created by any statute and its existence is not dependent upon any statutory provision. The termination was not in contravention of any statutory provisions or regulations or procedural rules. For these reasons, it was held that it was not possible to grant a declaration that the appellant continues to be in service of the college and that he was entitled to all the benefits flowing from the declaration. Clearly this case has no application here. The employer, namely, the Jabalpur Development Authority, is the creation of statute. Its existence is dependent upon statutory provisions contained in Nagar Tatha Gram Niwesh Adhiniyam. The termination of petitioner's services is by the authority not competent under the Act to terminate the services.

Shri Sapre also pressed into service for his client a decision of this Court in *M.P. State Co-operative Marketing Federation Limited vs. Board of Revenue and another*. L.P.A. No. 73 of 1985 decided on 19-11-1986. That was a case of a Co-operative Marketing Federation vis-a-vis its employees. Services of a temporary employee were terminated. A dispute u/s 55 read with Section 64 of the Co-operative Societies Act was referred to the Registrar under the M.P. Co-operative Societies Act. The question was whether this contract of service could be specifically enforced in view of the provisions contained in Section 14 of the Specific Relief Act. After considerable discussion and review of the case law, the Division Bench found:

We have to see whether it is an instrumentality or agency of the Government and in that event a writ may lie against it, but still in the absence of any statutory rule governing the service of its employee or violations of Articles 14 and 16 of the Constitution, no order for reinstatement could have been passed since the law of master and servant only applied and the remedy of the respondent No. 2 lay in claiming damages.

These observations make this decision inapplicable to the present case. We have seen that the respondent is an authority within the meaning of Article 12 of the Constitution. The termination of service is violative of Articles 14 and 16 of the Constitution. The authority, viz., the Chief Executive Officer, purporting to terminate the services has no jurisdiction to do so, since the petitioner's employer is the Jabalpur Development Authority, a statutory body constituted under Nagar Tatha Gram Niwesh Adhiniyam.

For what we have said above, we are of the opinion that the petitioner is entitled to a direction to be reinstated and the order Annexure L terminating the petitioner's services and the order Annexure C directing petitioner's transfer to Katni Improvement Trust are liable to be quashed. He is also entitled to all consequential benefits.

The petition succeeds and is allowed. The impugned order directing petitioner's transfer (Annexure C) and order dated 18-8-1982 (Annexure L) directing termination of petitioner's services, are hereby quashed. The petitioner shall be reinstated and shall get all consequential pecuniary benefits. There shall be no order as to costs. Security amount be refunded to the petitioner.