

(1955) 07 RAJ CK 0001

In the Rajasthan High Court

Case No : Writ Case No's. 22, 28, 98 and 243 of 1954

Meghraj and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 22-07-1955

Acts Referred:

Constitution of India, 1950 — Article 14, 311, 311(2)

Government Servants Conduct Rules, 1973 — Rule 21, 22A

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 15, 16

Citation : AIR 1956 Raj 28 : (1956) 2 LLJ 366 : (1956) RLW 531

Hon'ble Judges : Wanchoo, C.J.; Dave, J

Bench : Division Bench

Advocate : M.L. Joshi, Chandmal, for Mukandas and Balkishan, for Chunilal and Jeetmal, for the Appellant; L.N. Chhangani, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Wanchoo, C.J.—These are four connected applications under Article 226 of the Constitution by Meghraj (No. 22), Mukandas (No. 28), Jeetmal (No. 98) and Chunnilal (No. 243). As the main points raised in them are the same, we propose to decide them by one judgment.

2. Of the four applicants, Meghraj was a, male nurse in M. T. B. Hospital, Bari (Udaipur), while the other three were male nurses at the Mahatma Gandhi Hospital Jodhpur. They were dismissed on various dates in 1952. Their appeals were also dismissed in 1954. Thereafter, the present applications were filed, and the order of dismissal was challenged.

3. Two main points have been, raised by the applicants in their applications. The first is that there was no rule in the Government Servants' Conduct Rules which prohibited strikes by Government servants. Therefore, even if the applicants went on strike, they could not be dismissed from service on that ground, and, in any case, the order of the Director of Medical and Health Services dismissing,

them for contravening Rule 21 of the Government Servants' Conduct Rules could not be sustained for the applicants did not commit any breach of that rule.

The second point that is urged is that no opportunity was given to them after the enquiry had been completed and their guilt had been established to show cause against the proposed punishment, and their dismissal therefore without complying with the provisions of Article 311 of the Constitution was illegal.

4. A further point has been taken in Meghraj's petition, namely that he had prayed that he might be heard in person in answer to the charges framed against him, and that no enquiry, as contemplated by Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules of 1950, was made.

5. The facts of the three cases relating to the Jodhpur Hospital are that there was a hunger strike by the male nurses at Jodhpur Hospital about the end of June, 1952.

Thereupon, the strikers were suspended from Government service. Later/there was an unqualified apology by the strikers, and most of them were reinstated but the three applicants were not reinstated and that is why they have filed these applications.

6. The facts relating to the Udaipur Hospital case are slightly different. In this case, Meghraj was charged with" organising a compounders meeting, and instigating them to go on strike shouting slogans and making demonstration against the Government of Rajasthan, organising and addressing a public meeting, and also taking part in hunger strike himself. Meghraj was suspended.

He later submitted an unconditional apology like others but he was not reinstated.

7. We shall first consider whether the applicants could be dismissed for taking part in a hunger strike which they admittedly did. The argument on their behalf is that all employees have a right to strike, and merely because they struck work, the Government could, not take action against them, and dismiss them under the relevant rules.

It may be mentioned that strikes by Government servants were not specifically forbidden by the Gov-ment Servants' Conduct Rules till 1954. It was only on 10-3-1954, that Rule 22A was inserted in the Government Servants' Conduct Rules, and laid down that

"no Government servant shall resort to any form of strike, for the purpose of securing redress of his grievances.

It may also be conceded that the conduct of the Jodpur applicants was not against Rule 21, Government Servants' Conduct Rules for it cannot be said that these applicants took part in, of subscribed in aid of, or assisted, in any way, any, political movement or public agitation against any act or order of the Government.

The mere fact, however, that Government Servants' Conduct Rules of Rajas than did not contain a specific provision relating to stirkes up to 1954 does not in our opinion conclude the matter. Dismissals of Government servants are made under Rule 15 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1950, and that rule provides the penalty of dismissal among other penalties for good and sufficient reasons.

It is therefore within the power of Government to dismiss any Government servant for good and sufficient reasons. Generally speaking, this Court will not scrutinise the reasons for a dismissal, if they appear prima facie good and sufficient. It is only in an extreme case where, on "the face of it, the reasons are not good and sufficient that this Court may interfere on the ground that the dismissal is not in accordance with Rule 15 of the Classification, Control and Appeal Rules.

Where the Government Servants' Conduct Rules forbid Government servants from doing a certain thing, and a Government servant commits a breach of those rules, a case of dismissal for breach of Government Servants' Conduct Rules would be obviously covered by the words "good and sufficient reasons*.

But where, as in this case, there was no specific provision against strikes in the Government Servants Conduct Rules up to 1954, we have to see whether dismissal for taking part in a hunger strike is a prima facie good and sufficient reason for dismissing a Government servant.

8. In this connection, our attention was drawn to Halsbury's Laws of England, Vol. VI (Second Edition), para. 437, pages 391 and 392. In this paragraph the most important liberties that have been created and elaborated have been enumerated and one such liberty is the right to strike, or the right of the subject to withhold his labour, so long as he commits no breach of contract, or tort, or crime.

But under our Constitution, the right to strike is not a fundamental right. It may be open to a citizen to go on a strike or withhold his labour. But different considerations arise when there is a strike a private concern, and when the strike, is by Government employees. Further, even among Government employees a distinction may have to be made between those who are employed in what, are commercial undertakings of Government, and those who, are employed in the administration.

The applicants in this case were employed in the hospital, and not in any commercial undertaking of Government, and their going on on strike has to be judged according to the nature of their employment, Further, though a Government servant as a citizen may have a right to strike, that would not take away the power of the Government to dismiss a Government servant for good and sufficient reasons as provided in Rule 15 of the Classification, Control and Appeal Rules which cover all Government servants.

So far as administrative departments of Government are concerned, it stands to reason that a strike for purposes of enforcing some demand of the employees or for purposes of demonstrating against some order of the Government is clearly an act of indiscipline. It also goes without saying that administration cannot be run properly if those who are serving the administration act in an undisciplined manner. We have, therefore, no hesitation in coming to the conclusion that a Government servant holding an administrative job by striking acts in an undisciplined manner, and therefore invites dismissal under Rule 15 for reasons which, in our opinion, are good and sufficient. The fact that in the orders dismissing the applicants breach of Rule 21 of the Government Servants' Conduct Rules is mentioned does not mean that the power of Government to dismiss under Rule 15 is in any way, restricted.

All that can be said is that those who passed the order of dismissal did not understand the scope of Rule 21 of the Government Servants' Conduct Rules, and also perhaps did not understand the amplitude of the power which Government has under Rule 15 I of the Classification, Control and Appeal Rules to dismiss a Government servant for good and sufficient reasons.

The reason for dismissal in this case being in our opinion, *prima facie* good and sufficient, the Government or the proper authority concerned had power to dismiss the applicants under Rule 15 of the Classification, Control and Appeal Rules. There is therefore no force in the first point urged on behalf of the applicants.

9. Before taking up the second point, which is common to all the applicants, we may dispose of the contention on behalf of Meghraj that his dismissal was illegal because the provisions of Rule 16 of the Classification, Control and Appeal Rules were not complied with.

Rule 16 provides that after the charge has been delivered to the Government servant concerned, he shall be required within a reasonable time to put in a written statement of his defence and to state whether he desires to be heard in person. If he desires, an oral enquiry shall be held at which oral evidence shall be heard, and the person charged shall be entitled to cross-examine the witnesses and give evidence on his own behalf.

The contention on behalf of Meghraj is that he had desired in his written statement to, be, heard in person, and as such an oral enquiry should have been conducted. It is not in dispute that no oral enquiry was conducted in connection with Meghraj's case, but the reply of the State is that this was because at a later stage Meghraj tendered an unqualified apology.

It was therefore thought that he admitted the charges made against him to be correct, and Rule 16 only requires an oral enquiry as to such of the allegations as are not admitted. The reply on behalf of Meghraj is that though he tendered an unconditional apology he did not admit the charges that had been framed against him.

We have read that unconditional apology. It is somewhat vague inasmuch as there is no express admission of the charges against the applicant in so many words. The applicant assured the Government never to participate directly or indirectly in any activities or agitation directed against the Government. He said that on the basis of this assurance he might be excused for any kind of participation by him in anti-Government movement and reinstated. Finally he said that he apologised unconditionally for his action.

We are of opinion that when a Government servant in a departmental enquiry tenders such an unqualified apology he must thank himself if no oral enquiry is made as provided by Rule 16 of the Classification, Control and Appeal Rules. The very fact that Meghraj was asking to be excused for any participation of his in any anti-Government movement, and apologised unconditionally for his action could only mean that on second thoughts he was admitting the charges framed against him, and begging the authorities concerned to excuse him.

In these circumstances, we are of opinion that there was no necessity of holding an oral enquiry as this unconditional apology superseded any denials by Meghraj in his earlier statements and any demand for an enquiry. A Government servant cannot submit an unconditional apology like this, and at the same time say that he still maintains a demand for oral enquiry into the allegations made against him.

There is, therefore, no force in the contention of Meghraj that an oral enquiry as provided by Rule 16 should have been made in his case, and therefore the order of dismissal should be set aside on that ground.

10. We may also refer to another argument which was faintly urged, namely that many of those who had taken part in the strike were reinstated, but these, applicants were not. So far as that is concerned, we are of opinion that it is for the Government to, judge in each individual case after an unconditional apology is tendered as was done in this case, whether that unconditional apology should be accepted, and the person reinstated, or whether the penalties for indiscipline should be imposed, and if so what penalty.

Such action on the part of the Government can not, in our opinion, offend against the equal protection clause of the Constitution. It is inherent in the nature of things that such matters should be judged on the merits of each individual case, and in so judging there is bound to be sometimes difference in the result.

11. We now come to the second point raised on behalf of all the applicants, namely that the applicants were not given a reasonable opportunity of showing cause against the action proposed to be taken in regard to them as provided by Article 311(2) of the Constitution.

It is not denied on behalf of the State, that the applicants were in this case not given a reasonable opportunity of showing cause against the proposed dismissal.

How this should be done was pointed out by this Court in the case of -- Sobhagmal Vs. State, to which one of us was a party."

It was held in that case that a "civil, servant was entitled under Rule 16 of the Classification, Control and Appeal Rules to be informed in writing of the grounds on which it is proposed to take action, and to be afforded an adequate opportunity to defend himself.

He is further entitled under Article 311(2) after the charges have been investigated and found proved, to be given another opportunity of showing cause against the punishment proposed to be inflicted upon him. In these cases, all that happened was that the charges were supplied to the applicants, and they were asked to show cause why they should not be dismissed from Government service.

They made a reply which necessitated an enquiry under Rule 16. Later, however, they submitted an unqualified apology, and so it was not necessary to hold an oral enquiry. What should have been done, thereafter was for the authority concerned to, decide what punishment should be inflicted.

After that was decided, the applicants should have been asked to show cause why the punishment of dismissal should not be meted out to them, and thereafter the order of dismissal should have been passed. In this case, however, the applicants were not asked what they had to say with respect to the proposed punishment and were straightway dismissed.

In those circumstances, as the mandatory provisions of Article 311(2) were not complied with, the" dismissal of the applicants without such compliance; was not justified.

12. We, therefore, allow the applications, and setting aside the orders of dismissal direct that the, authority concerned should now comply with the provisions of Article 311(2) as explained above and then proceed to pass such punishment as is considered proper.

In view however of the circumstances of the case, and remembering that the applicants had tendered unqualified apology at one stage, we pass no order as to costs.