
(2001) 05 AHC CK 0179
In the Allahabad High Court
Case No : C.M.W.P. No. 13862 of 1993

Municipal Board, Amroha and another	APPELLANT
Vs	
U.P. Public Services Tribunal No. 1 and another	RESPONDENT

Date of Decision : 23-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33(3)

Citation : (2001) 3 AWC 1831 : (2001) 90 FLR 385 : (2001) LabIC 3505 :
(2001) 2 LLJ 1221 : (2001) 2 UPLBEC 1651

Hon'ble Judges : Lakshmi Bihari, J;D.S. Sinha, J

Bench : Division Bench

Advocate : G.N. Chandra and Vinod Sinha, for the Appellant; B.N. Asthana, Sandeep Mookerji, S.C. and Malik Sayeed Uddin, for the Respondent

Final Decision : Allowed

Judgement

D.S. Sinha and Lakshmi Bihari, JJ.—Heard Sri Vinod Sinha, the learned counsel appearing for the petitioners, Sri B.N. Asthana, the learned senior advocate, appearing for respondent No. 2, and Sri Sandeep Mookerji, the learned standing counsel of the State of U.P. appearing for the respondent No. 1.

2. In this petition under Article 226 of the Constitution of India, the petitioners have prayed for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 30.9.1992 passed by respondent No. 1, a copy whereof is Annexure-4 to the writ petition.

3. The facts, emerging from the pleadings of the parties and the impugned judgment, are that respondent No. 2 was a confirmed meter reader in Water Works Department of Nagar Palika, Amroha. On 13.5.1974, the Executive Officer submitted a report that the work of respondent No. 2 was not satisfactory. On the said report, the respondent No. 2 was suspended on 14.5.1974 and the Water Works Engineer was appointed as the Inquiry Officer. On the same day, charge-sheet was served on the respondent No. 2. After completing the inquiry,

the Inquiry Officer submitted his report dated 24.6.1974, a copy of which is Annexure-3 to the writ petition. On 16.7.1974, a show cause notice was issued to respondent No. 2 along with the copy of the inquiry report. On 30.7.1974", the respondent No. 2 appeared and sought time to file his reply. On 8.8.1974. he submitted his reply. On 27.8.1974, the Administrator passed an order removing respondent No. 2 from the service of the Nagar Palika. a copy of which is Annexure-2 to the writ petition. The respondent No. 2 filed an appeal against the aforesaid order which was dismissed by order dated 11.5.1977. Thereafter, respondent No. 2 filed a claim petition before the U.P. Public Services Tribunal which was dismissed by it by order dated the 28.12.1985. The respondent No. 2, thereafter, filed a review application before the Tribunal. The Tribunal by its impugned Judgment dated 30.9.1992 has allowed the review application, set aside its judgment dated 28.12.1985 and quashed the order of removal dated 27.8.1974 and the order of dismissal of the appeal dated 11.5.1977. Aggrieved, the Municipal Board has filed the instant petition.

4. The learned counsel for the petitioners submitted that the Tribunal committed an illegality in placing reliance on the judgment of the Hon"ble Supreme Court rendered in State of Maharashtra Vs. Chandrabhan Tale, . as the same was not applicable to the facts of the case and that the Tribunal erred in allowing the review application. His submission was that in the backdrop of the facts and circumstances of the case. mere non-payment of subsistence allowance by itself was not sufficient to invalidate the inquiry proceeding and the consequential order of punishment. In support of his contention, the learned counsel for the petitioners placed reliance on the judgments rendered in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, and Ghanshyam Das Shrivastava Vs. State of Madhya Pradesh,

5. On the other hand, the learned counsel appearing for the respondent No. 2 contended that mere non-payment of subsistence allowance was sufficient to invalidate the order of removal. In support of his contention, the learned counsel placed reliance on the judgment rendered in State Bank of Patiala and others v. S.K. Sharina JT 1996 13 SC 722.

6. The learned standing counsel appearing for the respondent No. 1 has submitted that non-payment of subsistence allowance amounts to violation of the principles of natural justice and he. accordingly, submitted that the Tribunal has rightly allowed the review application and rightly set aside the order of removal dated 27.8.1974 as well as the order of dismissal of appeal dated 11.5.1977. In support of his contention, he placed reliance on a Supreme Court judgment rendered in Fakirbhai Fulabhai Solanki Vs. Presiding Officer and Another, .

7. The Tribunal by its impugned order and Judgment has allowed the review application filed by respondent No. 2 merely on the ground that no subsistence allowance was paid to him and has founded its order and judgment on the decision of the Hon"ble Supreme Court rendered in State of Maharashtra Vs. Chandrabhan Tale, . In the said case, the question of vires of the second proviso

to Rule 151 (1) (ii) (b) of the Bombay Civil Services Rules, 1959, providing for payment of subsistence allowance at the rate of rupee one per month to a Government servant who was convicted by competent court and sentenced to Imprisonment and whose appeal against conviction and sentence was pending, was raised. The Hon"ble Supreme Court after considering various Judgments held that the second proviso was unreasonable and void. Thus, the said judgment of the Hon"ble Supreme Court was not applicable to the facts of the present case and as such the reliance placed on it by the Tribunal is misplaced.

8. Now the question that arises for determination is as to whether non-payment of subsistence allowance to the respondent No. 2, during the period of suspension, ipso facto rendered the order of removal invalid.

9. In the case of Fakirbhai Fulabhai Solanki Vs. Presiding Officer and Another, . the Hon"ble Supreme Court held that nonpayment of subsistence allowance to the workman during the pendency of an application u/s 33(3) of the Industrial Disputes Act, 1947. amounted to denial of a reasonable opportunity to defend in the proceedings before the Tribunal and such denial led to violation of principles of natural justice vitiating the proceedings before the Tribunal under sub-section (3) of Section 33 of the Industrial Disputes Act, 1947. Thus, according to the said judgment, the denial of payment of subsistence allowance to the workman placed under suspension during the pendency of the proceedings u/s 33(3) amounts to violation of principles of natural justice.

10. Here the question is whether mere violation of principles of natural justice is sufficient to invalidate the inquiry proceedings and the consequent order of dismissal/ removal.

11. Discussion in paragraphs 20, 21, 22. 23 and 24 of the decision of the Hon"ble Supreme Court in the case of Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others, , provides complete answer to the question. The said paragraphs are reproduced below :

"20. Principles of natural justice have an important places in modern Administrative Law. They have been defined to mean "fair play in action". Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, : Bhagwati. J. As laid down by this Court "they constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men" Union of India and Another Vs. Tulsiram Patel and Others, An order of an authority exercising Judicial or quasi judicial functions passed in violation of principles of natural justice is procedurally ultra vires and, therefore, suffers from a Jurisdictional error. That is the reason why in spite of the finality imparted to the decision of the Speakers/Chairman by paragraph 6 (1) of the Tenth Schedule, such a decision is subject to judicial review on the ground of non-compliance with rules of natural justice. But while applying the principles of natural justice, it must be borne in mind that "they are not immutable but flexible" and they are

not cast in a rigid mould and they cannot be put in a legal strait-jacket. Whether the requirements of natural Justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case."

21. The approach of the English Courts has been thus summed up by Prof. Wade :

"The Judges, anxious as always to preserve some freedom of manoeuvre, emphasise that "it is not possible to lay down rigid rules as to when the principles of natural justice are to apply nor as to their scope and extent. Everything depends on the subject-matter. The so-called rules of natural justice are not engraved on tablets of stone. Their application, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. in the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant there is no such thing as a merely technical infringement of natural Justice,"

[H.W.R. Wade : Administrative Law, 6th Edn., p. 530]"

22. Similarly Clive Lewis has stated :

"The fact that the applicant has suffered no prejudice as a result of the error complained of may be a reason for refusing him relief. It is necessary to keep in mind the purpose of the public law principle that has technically been violated, and ask whether that underlying purpose has in any event been achieved in the circumstances of the case. If so. the Courts may decide that the breach has caused no injustice or prejudice and there is no need to grant relief.

The Courts may. for example, refuse relief if there has been a breach of natural justice but where the breach has in fact not prevented the individual from having a fair hearing.

[Clive Lewis : Judicial Remedies in Public Law (1992) p. 2901

23. in the words of Lord Wilber Force :

"A breach of procedure, whether called a /allure of natural Justice, or an essential administrative fault, cannot give him a remedy in the Courts, unless behind it there is something of substance which has been lost by the failure. The Court does not act in vain".

[Malloch v. Aberdeen Corporation. (1971) All ER 1278

24. The approach of the Courts in india is no different. in A.M. Allison Vs. B.L. Sen, , it has been laid down that while exercising the jurisdiction under Article 226 of the Constitution the High Court has the power to refuse the writs if it was satisfied that there has no failure of justice."

According to the view of the Hon"ble Supreme Court in the aforesaid Judgment, mere violation of principles of natural justice is not enough and apart from the violation of principles of natural justice, some real prejudice has to be shown.

12. in the judgments rendered in Ghanshyam Das Shriuastava v. State of Madhya Pradesh (supra) and Capf. M. Paul Anfhony v. Bharat Gold Mines Ltd. and others (supra), the employees concerned could not attend the inquiry proceedings because of paucity of funds and financial stringencies on account of non-payment of subsistence allowance. in these circumstances, it was held by the Hon''ble Supreme Court that the inquiry proceedings were vitiated.

13. The proposition that is culled out from the aforesaid judgments of the Hon''ble Supreme Court is that apart from the violation of the principles of natural justice because of non-payment of subsistence allowance, some prejudice must be shown to have been caused to the employee. Prejudice may be the inability of the employee to attend the inquiry proceedings for want of funds because of non-payment of subsistence allowance.

Therefore, it is clear that mere non-payment of subsistence allowance during the period of suspension will not ipso facto render the order of removal invalid. it must be coupled with real prejudice.

14. in the Judgment rendered in State Bank of Patiala and others v. S.K. Sharma (supra), on which reliance has been placed by the learned counsel for the respondent No. 2, the question of non-payment of subsistence allowance was not raised and considered. The Judgment. Therefore, is of no help to the respondent No. 2.

15. in the instant case, respondent No. 2 has not pleaded that he was prevented from attending the inquiry proceedings because of non-payment of subsistence allowance. No material has been placed by him before the Court to show that any prejudice was caused to him on account of non-payment of subsistence allowance it is not in dispute that he attended the inquiry proceedings throughout and was afforded full opportunity. Under these circumstances, the Tribunal was not Justified in allowing the review application and in setting aside the order of removal dated 27.8.1974 and the order of dismissal of appeal dated 11.5.1977. Therefore, the Impugned judgment of the Tribunal is liable to be quashed.

16. in view of the discussion made above, the petition succeeds and is allowed. The impugned judgment of the Tribunal dated 30.9.1992 is quashed. However, in the circumstances of the case, there will be no order as to costs.