
(1967) 05 AHC CK 0031
In the Allahabad High Court

Municipal Board

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 11-05-1967

Acts Referred:

Constitution of India, 1950 — Article 224, 226, 228, 311, 32

Citation : (1968) 2 LLJ 1

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Satish Chandra, J.—This petition under Article 228 of the Constitution prays that the order of the State Government passed on 22 March 1968 be quashed.

2. The Municipal Board, Sikandrara, Aligarh is the petitioner. It appointed Narsingh Bhan Singh, respondent 3, as a temporary toll inspector on 28 January 1949. He was appointed to officiate as the executive officer on 25 June 1954. On 7 June 1955, the municipal board appointed him as the executive officer. This appointment was disapproved by the State Government on 12 October 1955. The municipal board again resolved to appoint him as the executive officer, but this attempt also failed and the State Government rejected the proposal. On 17 February 1956 the municipal board resolved to revere Narsingh Bhan Singh to the post of toll inspector. On 21 February 1956 respondent 3 was suspended. On 9 April 1956 a chargesheet was served upon him and on 25 July 1956 Narsingh Bhan Singh was dismissed from the post of toll inspector. Respondent 3 filed an appeal to the State Government. On 25 April 1957 the municipal board by a special resolution passed its budget, abolishing the post of toll inspector with effect from 1 April 1967. On 25 February 1958 the State Government set aside the order of dismissal of respondent 3 and directed the municipal board to reinstate him to the post of toll tax superintendent. The municipal board represented that respondent 3 was only a toll tax inspector and therefore he could have been directed to be reinstated to that post and not to the post of the

toll tax superintendent. On 22 December 1958 the State Government appropriately modified its previous order and directed that the Narsingh Bhan Singh will be reinstated on the post of the toll tax inspector. In February 1959, the State Government addressed a letter to respondent 3 saying that "the State Government reinstated you to the post of toll inspector, but since the post has been abolished with effect from 1 April 1957, you are entitled to your salary from the date of your suspension till 31 March 1957." It is also alleged that the amount of salary was subsequently paid to respondent 3.

3. Narsingh Bhan Singh filed two writ petitions, No. 285 of 1969 challenging the order of the State Government passed on 22 December 1958 modifying its earlier order and No. 1375 of 1959 praying that the municipal board should at any rate be directed to implement the State Government's last order of 22 December 1958 reinstating him to the post of toll tax inspector. The writ petitions were decided on 3 August, 1961. Writ petition No. 265 of 1959 was allowed. It was held that the State Government exercised a quasi-judicial power and hence it could not modify or vary its earlier order. The municipal board was directed to implement the first order of the State Government passed on 25 February 1958. The counsel for respondent 3 then stated that in case the first writ petition is allowed, he would not press the second writ petition. The second Writ Petition No. 1875 of 1959 was hence dismissed without deciding it on the merits. The municipal board filed a special appeal No. 352 of 1961 against the judgment allowing Writ Petition No. 265 of 1959. The special appeal was on 6 February 1954 allowed. It was held that the power of the State Government was administrative in nature and hence the State Government could vary its earlier order. Consequently Writ Petition No. 285 of 1959 was dismissed. The Bench observed that since the second writ petition had been dismissed and there was no appeal against that, it would mean that neither of the reliefs claimed in the two writ petitions have been granted. It also observed that Narsingh Bhan Singh was entitled to be reinstated as toll tax inspector under the Government order and that the Bench was confident that the municipal board will give effect to that order.

4. The municipal board took the attitude that it complied with the Government's order dated 22 December 1958 and reinstated respondent 3 by giving him the arrears of salary till 31 March 1957 and tendering him three months' salary in lieu of notice. Since the post stood abolished with effect from 1 April 1967, respondent 3 could not continue in the employment of the municipal board thereafter. It appears that later on, respondent 3 made a representation to the Commissioner which is the prescribed authority, who forwarded the same to the State Government for necessary action. In the counter-affidavit filed on behalf of the State it is stated that the State Government asked the municipal board to send its comments on the representation and the municipal board submitted its comments on 11 November 1965. After considering the comments the State Government on 22 March 1966 passed the impugned order. It stated that the legal consequence of the State Government's order passed on 22 December

1958 would be that Narsingh Bhan Singh should be deemed to have all along continued in the service of the board on the post of the toll inspector. While the appeal was pending, the board should not have abolished the post, but should have waited for the final orders of the State Government. The initial mistake which the board, therefore, committed was that it abolished the post without, waiting for the final orders of the State Government. The State Government also observed that since the effect of the orders passed by the State Government is that Narsingh Bhan Singh continued in the board's service on the post of toll inspector, it would be deemed that the post of the toll inspector still exists for him in spite of the resolution of the board abolishing the post. That resolution of the board would have to be treated as a dead letter so far as Narsingh Bhan Singh was concerned. However, since the post of toll inspector was no longer needed by the board, the only thing that appears to be possible DOW is that after Narsingh Bhan Singh is reinstated on the post of toll inspector, the board should take steps to terminate his permanent services in accordance with the rules and this action should synchronize with the abolition of the post. Narsingh Bhan Singh would, therefore, have to be paid his salary throughout. In Para. 2, the order has stated that in view of the above legal opinion, the municipal board be instructed to act accordingly. In June 1968 the municipal board made a representation, but the same was rejected by an order dated 13 October 1966.

5. For that petitioner it has been urged that the State Government had no power to make this order or to issue these instructions to the municipal board. I have heard learned Counsel for the parties and found it difficult to sustain this order with reference to any provision of the Municipalities Act. Learned Counsel for the respondent has sought to sustain the order under Sections 34 and 35 of that Act. Sub-section (1) of Section 34 is clearly inapplicable. Sub-section (1) (b) authorizes the State Government to prohibit the execution of any resolution or order of the board if in its opinion such resolution was or is prejudicial to public interest. The impugned order does not prohibit the execution of any resolution or order of the board, nor does it state that in the opinion of the State Government any prejudice has been caused to the public interest. This provision is not at all attracted.

6. Section 35 authorizes the State Government or in the case of a board of a city and the prescribed authority in relation to a board or a municipal board other than a city to pass an order fixing a period for the performance of a duty for which the board had made a default or for carrying out any order of the State Government. It will be seen that the State Government has power only in respect of the board of a city. It is admitted that the petitioner is a board of a municipality for which the State Government has no jurisdiction. Only the prescribed authority can act in relation to the petitioner-board u/s 35. The impugned order passed by the State Government was, therefore, lacking in power. It is true that Narsingh Bhan Singh made a representation to the prescribed authority but the prescribed authority transmitted it to the State Government. The State Government appears to have taken legal opinion in the

matter and then passed the impugned order on 22 March, 1966. The State Government communicated its order to the prescribed authority, viz., the Commissioner, Agra, for necessary action. The prescribed authority then transmitted the State Government's order to the municipal board. It is clear that the prescribed authority did not apply its mind at all. It only acted as the transmitting authority between the State Government on the one hand and the municipal board and respondent 3 on the other. It cannot, therefore be said that the impugned order emanates from the prescribed authority.

7. The view expressed in the impugned order of the State Government that the effect of the State Government's previous order setting aside the dismissal of Narsingh Bhan Singh and directing that he be reinstated would be that Singh would be demand to continue in the service of one board all along, does not appear to be a correct exposition of the law. The decision of the Supreme Court in *Devendra Pratap Narain Rai Sharma v. State of Uttar Pradesh* 1962 I L.L.J. 236 sheds name light on this problem. In that case Devendra Pratap was dismissed from the post of inspector, Qunnago, on 16 September 1953. Ha filed a suit challenging the legality of the order of dismissal on the ground that he was not afforded the opportunity of del ending himself and of showing cause. The suit was decreed and the order of dismissal was declared as void and illegal. The Government then reinstated Devendra Pratap to his original post, but again suspended him and directed a fresh enquiry. Devendra Pratap filed a petition under Article 224 challenging, infer alia, the order of suspension and enquiry. The Supreme Court held that in the previous suit Devendra Pratap was not exonerated from the alleged charges of misconduct. The suit was decreed only on the ground that the reasonable opportunity of showing cause was not given to him. Hence, the State Government was competent to direct a fresh enquiry, even if the charges related to matters for which the proceedings has been taken previously. It also held that the State Government could like was pass a fresh order of fcuapeusion(sic) pending enquiry. The Supreme Court then observed that the effect of the decree in the civil suit declaring the order of dismissal invalid was that the appellant was never to be deemed to nave bean lawfully dismissed from service and the order of reinstatement was super flows. According to this decision the effect or an order setting aside the dismissal of an employee is, as if the order of dismissal was never passed, or that in the eye of law it stood wiped out. The employee is to be deemed to continue in service uninterrupted by the order of dismissal. Unless the appellate authority takes notice of subsequent events, the mere order of setting aside the dismissal would not affect those subsequent events. If during the pendency of an appeal against an order of dismissal an employee is subjected to free a proceedings or a fresh order terminating his service, this will not be fulfilled simply because the previous order of dismissal is set aside. The effect of the setting aside of the order of dismissal would only be that the employee would be deemed to be in service on the date the order of dismissal was passed.

8. In the present case the State Government while setting aside the order of

dismissal did not set aside the order or resolution abolishing the post. That incident, therefore, remained unaffected by the setting aside of the order of dismissal. In the present order also the State Government proceeded on the basis that the municipal board had abolished the post. Its view that the abolition of the post would be deemed to be a dead letter in so far as Narsingh Bhan is concerned, does not appear to be correct. That result will not, in law, follow from the mere setting aside of the order of dismissal. The direction of the State Government that Narsingh Bhan Singh be reinstated was, in the absence of any order sitting aside the abolition of the post, superfluous. Its effect would only be that Narsingh Bhan Singh would be deemed to be in service on the date of the order of dismissal, and not on the date of Government's order.

9. The post of the toll inspector could not be deemed to continue to exist for the benefit of Narsingh Bhan Singh so long as the resolution abolishing the post stood and was not set aside.

10. Learned Counsel for the respondent made an attempt to show than the board had in fact never abolished the post. For the petitioner this was seriously contested. In my opinion the question whether the post was abolished or not does not really arise in the present case. The impugned order of the State Government proceeds on the basis that toe board had in fact abolished the post. It has declared the legal position on that footing.

11. For the respondents it was also urged that in law the abolition of the post will not adversely effect respondent 8 because the abolition was contrary to the provisions of law. Section 71 of the Uttar Pradesh Municipalities Act permits abolition of a post. Section 77 says that the provisions of Section 71 shall be subject to the provisions of Section 78 and any rule imposing any conditions on the appointment of persons t offices and on the suspension or dismissal of persons so appointed. Section 78 deals with continuation of the service of the board. The provision of any rule relation to suspension to the question of abolition of posts. But assuming that it has, there were no valid rules u/s 77 in 1957 when the post was abolished or in February 1959 when respondent 3 as informed of it. At that time there was a rule printed at p. 640 of the Municipal Manual dealing with suspension and dismissal. That rule was held to be ultra vires the rule-making power in Uttar Pradesh State v. Muriaza All 1961 A.L.J. 287. The position therefore was that there was no rule u/s 77. The power u/s 71 remained untrammelled. The rules were for the first time framed on 16 April 1960. These rules were not given any retrospective effect. Hence they were not applicable in 1958 or in 1959. The abolition of the post therefore did not contravene any provision of the Municipalities Act or the rules.

12. It was also urged that respondent 3 was a permanent employee holding the post substantively. He services, therefore, could not be terminated abruptly. Reliance in this connection was placed on K.P. Joshi Vs. State of Madhya Pradesh, . This case is inapplicable. There the post was not abolished, but the

employee was retrenched. It was held that the action was unauthorized and contravened Article 311 of the Constitution. The Court noted that in *Parshotam Lal Dhingra v. Union of India* 1958 I L.L.J. 54(sic) the Supreme Court had held that, one of the ways in which the services can be terminated is on the abolition of the post: but held that in that case the post had not been abolished, but only the employee was retrenched. That was circumventing the constitutional guarantee of Article 311. This case goes to show that the effect of abolition of a post is the termination of the services of an employee, and that it does not violate Article 311 of the Constitution. Article 311 of the Constitution is not applicable to respondent 3 because he was only an employee of a municipal board. There is no rule in the Municipal Act conferring a guarantee like Article 311 of the Constitution.

13. It may be noticed that the present is a case where respondent 3 was holding a post which was not part of any service. There was only one post of toll tax inspector. The present case is to be distinguished from a situation where one post alone in a service having many such posts is abolished. In such a case the applicable principle may be different.

14. The effect of the abolition of the post was not considered or adjudicated by this Court in the previous writ petition or in the special appeal. The observation at the end of the judgment in the special appeal that the municipal board will reinstate respondent 3 in compliance with the Government order was not a finding or order, but a pious hope. It was made without noticing the effect of the abolition of the post meanwhile. That observation, therefore, does not advance the case of respondent 3.

15. For the petitioner it is urged that the effect of dismissal of the petitioner's Writ No. 1375 of 1959 was that matter stood decided against the petitioner and as such the State Government had no jurisdiction to read judicate that matter. I do not agree. The writ petition was not pressed at the final hearing. The learned Judge specifically held that it is not necessary to discuss that petition on merits. In *Daryao and Others Vs. The State of U.P. and Others*, the Supreme Court held:

If a writ petition filed by a party under Article 226 is considered on the merits as a contested matter and is dismissed, the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution. It would not be open to a party to ignore the said Judgment and move the Supreme Court under Article 32 by an original petition made on the same facts and for obtaining the same or similar orders or writs.

Their lordships then observed:

If the petition filed in the High Court under Article 226 is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then the

dismissal of the writ petition would not constitute a bar to a subsequent petition under Article 89 except in cases where and if the facts thus found by the High Court may themselves be relevant even under Article 32.

16. Later on the Court observed:

If the petition is dismissed as withdrawn. It cannot be a bar to a subsequent petition under Article 32. because in such a case there has been no decision on the merits by the Court.

17. Thus the previous petition, having been dismissed as not pleased without discussion on Its merits, would not operate as a bar between the parties in the present case.

18. In the result the petition succeeds and is allowed. The impugned orders of the State Government are quashed. Under the circumstances, I decline to make any orders as to costs.