
(1995) 08 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1311 of 1981

Municipal Committee

APPELLANT

Vs

Kishan

RESPONDENT

Date of Decision : 16-08-1995

Acts Referred:

Pathankot Municipal Committee Sweepers Rules — Rule 13
Prevention of Corruption Act, 1947 — Section 5(2)

Citation : (1995) 111 PLR 543

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : Amarjit Markan, for the Appellant; H.N. Mehtani, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—This is defendant's regular second appeal against the judgment and decree of the Additional District Judge whereby the appeal filed by the plaintiff was accepted thereby decreeing the suit of the plaintiff to the extent indicated therein.

2. Plaintiff filed a suit for declaration to the effect that the order dt 26.4.77 passed by the Administrator, Municipality Pathankot, dismissing him from service is illegal, void and ultravires and for mandatory injunction directing the defendant to reinstate the plaintiff.

3. Defendant put in appearance and filed written statement. By way of preliminary objection, it was stated the suit in the present form is not maintainable. On merit, it was stated that the provisions of Article 311 of the Constitution of India are not applicable to the municipal employees. The plaintiff was firstly suspended when he was involved in a criminal case and on his conviction was rightly dismissed from service. According to the defendant, even the civil service rules were not applicable to the municipal employees.

4. On the pleadings of the parties, following issues were framed: -

1/ Whether the order dated 26.4.1977 dismissing the plaintiff from service is void and illegal as alleged in para 3 of the plaint ? OPP

2/ Whether the suit in the present form is not maintainable ? OPD.

3/ Relief.

5. The trial Court decided issue No. 1 against the plaintiff. Issue No. 2 was decided against the plaintiff holding that no mandatory injunction directing the defendant to reinstate the plaintiff can be issued by the Court and so the plaintiff was dismissed.

6. Before the appellate Court, it was urged by the counsel for the appellant that the impugned order is illegal and against the principles of natural justice. According to the counsel, a case u/s 5 of the Prevention of Corruption Act and 161 of the India Penal Code for having accepted Rs. 10/- as illegal gratification from one of the employee of the Committee was registered against him, but the Special Judge vide order dated 8.11.1976 instead of sentencing the appellant to any imprisonment, dealt the case u/s 360(1) of the Code of Criminal Procedure directing the appellant to furnish personal bond to the sum of Rs. 3000/- with one surety in the like amount for a period of two years. Thus, he was not sentenced to any imprisonment but was given benefit of Section 360 of the Code of Criminal Procedure. Otherwise also, there has been non compliance of rules governing the service of the appellant. As per Rule 13 of the Pathankot Municipal Committee Sweepers' Service Rules, no member of service can be dismissed or removed until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. Since no opportunity had been granted to the appellant, the order deserves to be set aside. The lower appellate Court found merit in this contention of the appellant and so reversed the finding of the trial Court in respect of issue No. 1. Under issue No. 2, the Court held that the suit is competent so far it-pertains to the declaration sought. However, suit for mandatory injunction was not competent. Accordingly, the appeal was accepted to that extent i.e. the order dated 26.4.1977 was declared to be null and void. The Court, however, permitted the respondent Municipal Committee to take a fresh look to the circumstances leading to the conviction of the plaintiff and to take such action as it so likes.

7. Seeking reversal of the judgment and decree of the lower appellate Court, counsel for the appellant-Municipal Committee once again highlighted the alleged conviction of the plaintiff-respondent u/s 5(2) of the Prevention of Corruption Act vide order dated 8.11.1976. According to the counsel, it is only after the conviction of a person that sentence which is to be awarded follows. Thus, even when Special Judge thought it appropriate to release him on probation, the same is also in the nature of sentence in view of the guilt established. This way the order of removal passed by the Municipal Committee and upheld by the trial Court is perfectly legal and just. Moreover, it is admitted case that the plaintiff had been convicted by the criminal Court. Thus, there was no necessity of

affording him an opportunity of hearing before his removal as he is a municipal employee. Municipal Committee, Pathankot, has framed service rules concerning sweepers. Vide notification dated 11.5.1962 these have been published for general information and have come into force from the date of its publication. Rule 13 of the Pathankot Municipal Committee Sweepers' Service Rules is reproduced below: -

"13. Authorities empowered to impose penalties; 13(1) The authorities specified in column 3, Appendix 8, are hereby empowered to impose upon any member of the service mentioned in column 1 such of the penalties as are shown in column 2 of the appendix against each.

(2) No member of the service shall be dismissed or removed until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

Provided that this Sub-rule shall not apply where a person is dismissed or removed on the ground of conduct which has led to his conviction or where an authority empowered to dismiss or remove him is satisfied that for some reasons to be recorded by that authority in writing it is not reasonably practicable or expedient to give him an opportunity of showing cause.

(3) If any question arises whether it is reasonably practicable or expedient to give any member of service an opportunity of showing cause under Sub-rule (2) the decision thereon of the authority empowered to dismiss or remove such member(s) as the case may be shall be final."

As per Rule 13(2) of the Pathankot Municipal Committee Sweepers' Service Rules, no member of the service is to be dismissed or removed until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him provided this rule shall not be applicable in case a person is dismissed or removed on the ground of conduct which has led to his conviction or where the authority is satisfied that it is not reasonably practicable or expedient to give him an opportunity of showing cause. Examined in the light of this provision, there is no manner of doubt that a person before he is dismissed or removed is entitled to an opportunity of showing cause against the action proposed unless the authorities have recorded reasons to the contrary. In the present case, it is not the case of the Municipal Committee that the authorities have come to the conclusion that it is not reasonably practicable or expedient to give him an opportunity of showing cause. This being so, the impugned order is unsustainable on the ground that there has been non compliance of Rule 13 of the Pathankot Municipal Committee Sweeper's Rules.

8. Learned counsel for the appellant has, however, placed reliance upon the decision of the apex Court in case reported as The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, and argued that the order of release on probation comes into existence in case the accused is found guilty and is convicted of the offence and so the conviction of the accused

or the finding of the Court that he is guilty cannot be washed out at all. In fact, the order of release on probation is merely in substitution of the sentence to be imposed by the Court. There can be no quarrel on this dictum of the apex Court. In this judgment, while examining the matter in the light of Section 12 of the Probation of Offenders Act, the Court held as under:-

"The words" attaching to a conviction of an offence under such law" in Section 12 refer to two contingencies: (i) that there must be a disqualification resulting from a conviction; and (ii) that such disqualification must be provided by some law other than the Probation of Offenders Act. The Penal Code does not contain any such disqualification. Therefore, it cannot be said that Section 12 the Act contemplates an automatic disqualification attaching to a conviction and obliteration of the criminal misconduct of the accused. Thus the conviction of a delinquent employee simpliciter without anything more will not result in his automatic dismissal or removal from service."

9. In case reported as Union of India and other v. Bakshi Ram 1990 (1) RSJ 597, it has been held that even when a person is released on probation his conviction remains and so the department can take action for his misconduct leading to the offence or to the conviction thereon. Section 12 of the Probation of Offenders Act does not preclude the department from taking action for misconduct to the offence or to his conviction there on as per law i.e. to say it will not exonerate the person from departmental punishment.

10. In the present case, there has been no applicability of mind by the concerned authority as to whether the plaintiffs services deserves to be dispensed with nor an opportunity has been granted to the plaintiff in terms of Rule 13 of the Pathankot Municipal Committee Sweepers" Rules. Thus, even if it be taken that the plaintiff could be dismissed or removed from service, yet he was entitled to an opportunity of hearing before any proposed action is taken against him. It is also not the case of the Municipal Committee that it is not reasonably practicable or expedient to give him an opportunity of showing cause. It is precisely for this reason that the first appellant Court while decreeing the suit of the plaintiff to the limited extent- declaring the order of dismissal to be illegal yet kept it open for the Municipal authority to consider the circumstances leading to the conviction of the plaintiff and to take such action as it deems fit. Thus, finding no merit in this appeal, the same is dismissed.