
(1971) 07 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 501 of 1970

Municipal Committee, Ludhiana

APPELLANT

Vs

Ved Parkash Joshi

RESPONDENT

Date of Decision : 28-07-1971

Acts Referred:

Punjab Civil Services (Punishment and Appeal) Rules, 1952 — Rule 7(6)

Punjab Municipal (General) Rules, 1979 — Rule 3

Punjab Municipal Act, 1911 — Section 240

Citation : AIR 1972 P&H 150

Hon'ble Judges : P.C. Pandit, J;Gopal Singh, J

Bench : Division Bench

Judgement

Gopal Singh, J.—This is Letters Patent appeal by Municipal Committee, Ludhiana against Ved Parkash Joshi. It is directed against the judgment of single Judge dated October 9, 1969, quashing the order of dismissal of the respondent dated July 6, 1966 and holding that he be deemed to be in service until he is removed in accordance with law. The facts leading to the appeal are as under:--

2. The respondent was employed as Building Superintendent with the appellant. There were against him allegations of misappropriation of money, dereliction of duty, absence from duty, overcharging and overspending of municipal funds. The respondent was served with a charge-sheet on January 4, 1965. he was asked to submit his explanation to the charge-sheet supplied to him. On January 5, 1965, the respondent asked for supply of copies of certain documents existing in the relevant files but instead of copies being supplied to him, he was told that he could inspect the documents, the copies of which were required by him. He submitted his explanation in reply to the charges. He denied the charges. he also pleaded that they were vague. One of the charges pertained to loss of Rs.720/- per mensem suffered by the appellant on account of the negligence on the part of the respondent in course of construction of roofs of some shops. He was served with a supplementary charge-sheet on January 11, 1965. That charge-sheet pertained to over-payment of Rs.3,664.69. In reply, he described the

charge baseless.

3. In the meeting of the appellant held on December 6, 1965, a Sub-Committee of seven members was constituted to hold enquiry into the charges drawn up against the respondent. The Sub Committee held enquiry in course of several sittings and recorded evidence of witnesses and took on file documentary evidence adduced by the parties. The Sub-Committee drew up report dated May 10, 1966. In its report, the Sub-Committee found that the following charges had been established against the respondent:--

- (1) Over-payment of Rs.3,664.69.
- (2) Negligence in the disposal of town planning schemes.
- (3) Delay in the disposal of 200 building applications.
- (4) Absence from duty without prior approval of leave.
- (5) Negligence and inefficiency in connection with the construction of three shops, an office building, a slaughter house and supply of bricks.
- (6) Pilferage of 36,000 bricks.
- (7) Non accounting for 1,14,000 bricks.

4. The respondent was called upon to compensate the appellant for the sum of Rs.3,664.69 found to have been overpaid by him to a contractor and the sum of Rs.720 per mensem found to have been suffered as loss by the appellant. The appellant considered the report of the Sub-Committee in its meeting held on June 9, 1966 and agreeing with its findings ordered the dismissal of the respondent from service holding him to be guilty in respect of the above charges. In its resolution, the appellant observed that the sum of Rs.3,664.69 be treated as having been misappropriated by the respondent and the same be recovered from him, that the loss of Rs.720 per mensem having been caused to the appellant on account of the negligence of the respondent in the construction of roofs of some shops, the roofs be replaced by the respondent to the satisfaction of the Municipal Engineer of the appellant and that in case of failure on the part of the respondent to do so, the sum of rs.720 per mensem be also recovered from the respondent.

5. The respondent filed writ petition under Arts. 226 and 227 of the Constitution on August 16, 1966 alleging that he had not been supplied with copies of the documents applied for by the respondent to the appellant to enable him to reply to the charges and to cross examine the witnesses produced in support of the charges framed against him and to give effective defence against those charges, that the list of witnesses and documents sought to be produced on behalf of the appellant against the respondent was not supplied to him before the evidence was led and the documents were proved on behalf of the appellant, that the proceedings were conducted and in particular the evidence of Joginder Singh P. W. was recorded and concluded by the Sub-Committee in the absence of the

respondent, that in the meeting held by the Sub-Committee on January 14, 1966, only three members out of seven members attended the meeting and consequently the proceedings conducted on that date were without jurisdiction and ineffective against the respondent, that no copy of the report drawn by the Sub-Committee finding the respondent to be guilty of various charges was supplied to the respondent and that no opportunity was afforded to the respondent to show cause against the punishment of his dismissal sought to be imposed upon the respondent on the basis of that report.

6. In the return filed on behalf of the appellant, various pleas raised in the writ petition by the respondent were controverted and it was pleaded that the respondent having been given the opportunity of inspection of the list of witnesses and of the documents, supply of copies of the list and the documents was not necessary, that the statement of Joginder Singh recorded in the absence of the respondent did not materially affect the result of the enquiry as he was a formal witness and not a witness of any importance and that according to bye-law 64, the absence of members of the Sub-Committee on January 14, 1966 could not vitiate the proceedings conducted on that date. The appellant in its return admitted that the procedure laid down in Rule 7(6) of the Punjab Civil Services (Punishment and Appeal) rules, 1952, hereinafter called "the Rules" applicable to the respondent had not been followed and after the receipt of the report from the Sub-Committee, no notice had been given to the respondent to show cause in respect of the action proposed to be taken against him. It was, however, contended that it was not necessary to do so since the procedure was in conformity with the provisions of Rule 3 of the Punjab Municipal (General) Rules, hereinafter called "the General Rules" framed u/s 240 of the Punjab Municipal Act, 1911.

7. On the basis of the above pleadings of the parties, the learned single Judge came to the conclusion that the order of dismissal of the respondent was wrongful and invalid in as much as he had not been supplied with copies of list of witnesses and of documents as required by him, the appellant had a right of cross-examination of Joginder Singh P. W. and the proceedings conducted in his absence without affording the respondent opportunity to cross examine the witness prejudiced the case of the respondent and rendered the proceedings invalid, the absence of the members, who did not attend the meeting on January 14, 1966, vitiated the proceedings as the Sub-Committee constituted for the purpose of conducting enquiry against the respondent by virtue of Rule 7(6) of the Rules, it was obligatory on the appellant to supply the respondent with a copy of the report and to serve him with a show cause notice and Rule 3 of the General Rules relied on by the appellant is irrelevant and had nothing to do with the obligation cast upon the appellant to supply copy of the report as well as to serve him with a show-cause notice against the punishment proposed against him on the basis of that report and consequently quashed the order of dismissal.

8. The appellant feeling dissatisfied with the judgment of the learned Judge has

filed the present appeal.

9. Shri. H. S. Doabia appearing on behalf of the appellant did not raise any argument against the above findings arrived at by the learned single Judge in holding that the dismissal of the respondent was wrongful. He admitted at the bar that copy of the report of the Sub-Committee finding the respondent guilty of the charges had not been supplied by the appellant to the respondent and that the same should have been supplied to him under Rule 7(6) of the Rules. He, however, raised a new and the only point that no order of reinstatement as spelt out of the consequential effect of the declaration granted by the learned single Judge could be made, when an order of dismissal of an employee of a Municipal Committee has been challenged on the ground of its being wrongful, that the appropriate remedy is to file a suit for damages and that such an employee cannot ask for reinstatement.

10. Admittedly, this point was never raised before the learned single Judge. Such a point cannot be allowed to be raised for the first time in the absence of its having been raised before him and no finding thereon having been given by him. Moreover, it has been admitted by both the counsel for the parties that the respondent has retired from the service of the appellant and is no longer in service and consequently the question of his being entitled or not entitled to reinstatement does not now arise. We did not allow the counsel to canvass for this altogether new point and one of no consequence now.

11. In the result, the appeal fails and is disallowed. There will, however, be no order as to costs.

Prem Chand Pandit, J.

12. I agree.

13. Appeal dismissed.