

(1965) 01 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 44 of 1964

Raghava Rajagopala Chari

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 15-01-1965

Acts Referred:

Constitution of India, 1950 — Article 226, 309, 310, 311
Penal Code, 1860 (IPC) — Section 161, 467, 487
Prevention of Corruption Act, 1988 — Section 6

Citation : (1965) 01 GAU CK 0002

Hon'ble Judges : G. Mehrotra, C.J.; S.K. Dutta, J

Bench : Division Bench

Advocate : S.K. Ghosh and J.P. Bhattacharjee, for the Appellant; M.C. Pathak, Sr. Govt. Advocate, for the Respondent

Judgement

S.K. Dutta, J.—This is a petition under Article 226 of the Constitution of India, and the facts leading to the petition are as follows.

2. The Petitioner was appointed as Superintendent of the Assam Government Press at Shillong from 1-4-1931 and he was confirmed in that post with effect from 1st of October 1931. In 1941 he was sent on deputation to the office of the Director General of Munitions Production, Government of India, Calcutta and after he served there for some time, he was transferred to Delhi on promotion to work in the Supply Department of the Government of India. In April 1945 the Petitioner was transferred to Kanpur as the Assistant Iron and Steel Controller and promoted to the post of Deputy Iron and Steel controller, Kanpur Circle on 31-12-1945. The Petitioner proceeded on leave for four months with effect from 21-9-1946 and the leave was extended up to the 12th May, 1947. By an order of the Central Government the Petitioner was suspended from service with effect from the 13th May, 1947 without assignment of any reason therefore. Thereafter he was arrested in Madras on the 28th October, 1947 on a warrant issued by the District Magistrate of Kanpur and was subsequently released on bail. Then the Government of India accorded sanction for the prosecution of the Petitioner on

the 31st January, 1949. The police submitted charge-sheet on the 2nd of March, 1949 alleging that the Petitioner along with his Assistants had "committed various acts of conspiracy and other offences during the period from 1-1-46 to 20-9-46. The petitioner along with one Vaish, a Clerk in charge of the Licensing Department under the Petitioner, was tried by the Additional District and Sessions Judge at Kanpur, who agreeing with the opinion of the assessors and the unanimous verdict of the jury, convicted the Petitioner under various sections of the Indian Penal Code and the provisions of the Defense of India Rules read with the provisions of the Iron and Steel Order, 1941 and sentenced him to different terms, of imprisonment. The other accused was also similarly convicted and sentenced. Both the Petitioner and the other accused filed an appeal before the High Court at Allahabad and the High Court acquitted the Petitioner of all the charges except his conviction and sentences passed Under Sections 161 and 487, Indian Penal Code, by its judgment dated the 17th March, 1958. Against this judgment upholding the conviction under the aforesaid two sections the Petitioner filed an appeal before the Supreme Court with a certificate from the High Court, and "the Supreme Court by its judgment and order dated the 28th March, 1962 set aside the conviction and sentences passed against the Petitioner under both the counts and acquitted him of the said charges. The Supreme Court held that the sanction required by Section 6 of the Prevention of Corruption Act for the prosecution of the Petitioner u/s 161, Indian Penal Code was invalid. It also held that the finding of the High Court in respect of the charge u/s 467, Indian Penal Code was also erroneous as the essential part of the prosecution story rested on the evidence of the accomplice. .

3. The Petitioner was suspended from service by the Central Government on 13-5-47. He was convicted by the trial Court on the 7th May, 1953. The High Court upheld the conviction on the 17th March, 1958 and the final acquittal order of the Supreme Court was passed on 28-3-62. The Government of Assam dismissed the Petitioner with effect from the 30th November, 1953 by its order dated 17-3-54. The Petitioner was normally to retire on superannuation with effect from 30-6-53 but as the trial could not possibly be completed by then the State Government on the request of the Government of India extended the service of the Petitioner by issuing a notification dated 23-7-53.

4. In view of the acquittal of the Petitioner by the Supreme Court, the Government of Assam by an order dated the 18th January, 1963 vacated their order dated 17-3-54 by which the Petitioner was dismissed. The said order further mentioned that the date of superannuation of the Petitioner and the manner of regularising his absence from duty from the date of his suspension up to 28-3-62 was under consideration. The Petitioner then filed a writ petition under Article 226 of the Constitution of India in this Court claiming that the Government should have passed specific orders regarding his pay and allowances simultaneously with the order of reinstatement. This petition was allowed and the Government of Assam was directed to pass necessary orders Under Rule 54 of the Fundamental Rules by the 31st of January, 1964. Thereafter by an order

dated 28-1-64 the Petitioner was informed by the Government that in view of the reserved nature of the Supreme Court's judgment, the Petitioner's acquittal could not be treated as "honourable" and consequently the period of Petitioner's suspension from 13-5-47 to 16-3-54 should be regularised under F. R. 54 (b) and treated as on duty for the purpose of leave, increment and" pension; and that the Petitioner would be given 50%. of his pay and allowances during the said period subject to adjustment of subsistence allowance already drawn. The Governor of Assam was further pleased to order that the Petitioner would be considered as having gone on pension with effect from 17-3-54 and that on and from that date the Petitioner would be entitled to pension as admissible under the Rules. On 1-2-64 the Petitioner sent an application, to the Secretary, G.A.D. Government of Assam for revision of the above order but he received no reply.

5. By the present writ petition the Petitioner challenges the aforesaid Government order dated 28-1-64. The Petitioner's contentions are as follows:

F.R. 54 cannot apply to the case of the Petitioner as it applies only in a case where the employee-is acquitted in a departmental proceeding. Even if the Rule applies, Clause (a) of that Rule will be applicable-to the Petitioner as he was wholly and completely acquitted. In this view of the matter, the Petitioner is entitled to full pay for the entire period this absence-from duty till the date of the passing of the order under F. R. 54.

The Petitioner's service being extended by the Government, he must be deemed to be in service till-his acquittal by the Supreme Court that is 28-3-62. His superannuation on the 17th March, 1954 has-been arbitrarily and illegally, fixed by the Government.

6. At the outset, the learned Senior Government-Advocate raises two points. He firstly argues that under Article 310 of the Constitution of India all civil" posts under the State are held at the pleasure of the Governor except as expressly provided by the Constitution. Therefore, according to him, this petition is not maintainable. I do not find any force in this-argument. When a post is "held" under the Governor,, it means that the Governor has full power to remove the employee from that post or to demote him from" the same. This pleasure is fettered only by express-provisions of the Constitution. If there is no violation! of any constitutional provision in the removal or demotion, a Court of law cannot interfere. But Article 310 of the Constitution does not empower the Governor to refuse at its pleasure to pay an employee even for the period of his service.

7. Secondly Mr. Pathak argues that in his former petition before this Court, the Petitioner prayed for an order under F. R, 54. The Government accordingly passed an order under that Rule as per direction given by this Court. Therefore, the Petitioner is estopped from denying the applicability of F. R. 54" to his case, I do not find any force in this argument either. There can be no estoppels on a point of law. Admission on matter of law, or any ignorance of legal" right, cannot constitute any basis for estoppels.

8-9. The next argument put forward by the learned Government Advocate is that F. R. 54 is attracted in case of the Petitioner and that the Petitioner was not honorably acquitted by the Supreme Court, and hence his case must be governed by Clause (b) of the said rule. F. R. 54 is as follows:

When the suspension of a Government servant is held to have been unjustifiable or not wholly justifiable;

When a Government servant who has been dismissed or removed, or suspended, is reinstated the revising or appellate authority may grant to him, for the period of his absence from duty (a) if he is honorably acquitted, the full pay to which he would have been entitled if he had not been dismissed, removed or suspended and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal, removal or suspension; or (b) if otherwise, such proportion of such pay and allowances as the revising or appellate authority may prescribe.

In a case falling under Clause (a), the period of absence from duty will be treated as a period spent on duty. In a case falling under Clause (b), it will not be treated as a period spent on duty unless the revising or appellate authority so direct.

10. The above rule does not itself say as to whether it applies to "reinstatement after departmental proceedings only or also to reinstatement after a criminal prosecution resulting in an acquittal. But the application of the rule to the latter class of cases will lead to various difficulties. The "revising or appellate authority" which is to grant the pay on reinstatement is obviously the departmental "revising or appellate" authority. The expression "honorably acquitted" is never used by any court of justice. It is a form of order used by extra-judicial tribunals. So, if a person is acquitted by a Court of law, how the "revising or appellate authority" will decide whether the acquittal is honorable or not. There is no guidance whatsoever in the rule for such an authority to arrive at any such decision. In such circumstances, the rule must be held to be applicable only to departmental proceedings.

11. The next issue is with regard to the fixation of the date of "superannuation. The Petitioner was to retire normally with effect from 30-6-1958. The Government extended his service by a notification dated 23-7-1953. Thus the Petitioner retired long before the notification was issued. The service of the Petitioner could not be extended with retrospective effect. So the order extending his service is abortive and the Petitioner must be taken to have retired with effect from 30-6-1953.

12. In the result therefore the Petitioner continued in service from 13-5-1947 (the date of his suspension) to 29-6-1953 and for this period he will get his fully pay. He is to go on pension with effect from 30-6-1953. The subsistence allowance already drawn by the Petitioner will have to be adjusted towards pay or pension as the case may be.

13. The petition is allowed to the extent indicated above. The Petitioner will get his cost which we fix at Rs. 100/-.

G. Mehrotra, C.J.

14. I have read the judgment of Dutta J., and I agree with the order proposed by him. But I would like to give my reasons for it. The Petitioner who was originally appointed as Superintendent of the Assam Government Press at Shillong from the 1st April 1931, was transferred to Kanpur in 1945 as the Assistant Iron and Steel Controller and was promoted to the post of the Deputy Iron and Steel Controller, Kanpur Circle on the 31st December, 1945. With effect from the 13th May 1947 the Petitioner was suspended by an order of the Central Government without assigning any reason. On the 28th October 1947 he was arrested under a warrant issued by the District Magistrate, Kanpur, and subsequently he was released on bail. Thereafter on sanction being accorded, he was prosecuted in the year 1949 for various acts of conspiracy and other offences. The trial court convicted the Petitioner on the 30th November 1953. The Petitioner in the normal course would have been superannuated by the end of June 1953. But as prosecution was going on against him, by an order dated the 23rd July, 1953 issued by the State of Assam, his services were extended after the date on which he attained superannuation till such time as the prosecution against him in the court of law was finalized. After his conviction by the trial court on the 30th November 1953, the Assam Government by its order dated the 17th March 1954 dismissed him from service with effect from the date of the judgment of the trial court. His suspension thus came to an end and by this order his services were terminated. He went up in appeal to the High Court of Allahabad against his conviction and on some counts his conviction was maintained. An appeal was then filed by him to the Supreme Court. The Petitioner was acquitted by the Supreme Court by its judgment dated 28th March 1962. In view of the judgment of the Supreme Court, the Assam Government by its order dated the 12th January, 1963, vacated its order dated the 17th March 1954. The order of the 12th January 1963 reads as follows:

The order issued vide this Department Notification No. PG. 27/53/14 dated 17-3-1954 dismissing Shri R.R. Chari from Government service is hereby, vacated.

The date of superannuation of Shri Chari and the manner of regularizing his absence from duty from the date of suspension up to 28-3-1962 is under consideration.

Thereafter the Petitioner moved this Court for a writ of mandamus directing the Government to dispose of the matter of regularising his absence from duty. This writ petition was allowed and a time was fixed by this Court for the Government to act in accordance with its order issued on the 12th January, 1963. Thereafter the impugned order was passed by the Government of Assam on the 28th January, 1964. The order is as follows:

In continuation of (his Department Notification forwarded under the above quoted. Memo and the D.O. Letter referred to above, I am directed to say that in view of the reserved nature of the Hon''ble Supreme Court's judgment, Shri Chari's acquittal by the Supreme Court could not be considered as honorable and, as such, the Governor of Assam is pleased to order that the period of his suspension from-13-5-1947 to 16-3-1954 should be regularized under F. R. 54 (b) and treated as on duty for the purpose of leave, increment and pension and Shri Chari be given 50% of his pay and allowances during the said period, subject to adjustment of" the subsistence allowance already drawn.

The Governor of Assam is also pleased to order, that Shri Chari should be considered as having gone on pension with effect from 17-3-64 and on and from that date he will be entitled to pension as admissible under the rules.

15. The Petitioner contends that the Government is not right in holding that the Supreme Court's view was of reserved nature. The Petitioner was honorably acquitted by the Supreme Court and thus he is entitled to his full salary and further ashy the order of the Assam Government dated the 23rd July 1953 his services were extended till the final decision of the criminal case, he is entitled to get his full salary up to the date of the judgment of the Supreme Court.

16. Mr. Pathak for the State has urged that as the Petitioner was not honorably acquitted by the Supreme Court, Clause (b) of Fundamental Rule 54 is attracted in his case. He has further urged that as on the previous occasion this Court allowed the writ petition and directed the Government to pass orders expeditiously under Rule 54 of the Fundamental Rules, by implication, this Court has held that the Rule 54 will apply to the Petitioner's case. I agree with my brother in holding that the decision of this Court in the previous petition under Article 226 of The Constitution is no bar to this Court going into the validity of the subsequent order passed by the State Government. Assam Fundamental Rule 54 reads as follows:

F. R. 54. - When the suspension of a Government servant is held to have been unjustifiable or not wholly justifiable ;

or When a Government servant who Ins been dismissed, removed or suspended or is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty.

if he is honorably acquitted, the full "pay to which he would have been entitled if he had not been dismissed, removed or suspended and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal, removal or suspension; or if otherwise, such proportion of such pay and allowances as the revising or appellate authority may prescribe.

In a case, falling under Clause (a), the period of absence from duty will be treated as a period spent on duty. In a case falling under Clause (b) it will not be treated as a period spent on duty unless the revising or appellate authority so

direct." It will appear from a careful reading of F. R. 54 that it applies to the case where a Government servant has been reinstated after the completion of the departmental inquiry and not to the cases where the order of dismissal has been set aside either by a Court of law or by the Government itself in view of the decision of a Court of law.

17. In the case of Devendra Pratap Narain Rai Sharma Vs. State of Uttar Pradesh, it was held by their Lordships of the Supreme Court that Rule 54 of the Fundamental Rules framed by the State of Uttar Pradesh under Article 309 undoubtedly enables the State Government to fix the pay of a public servant where dismissal is set aside in a departmental appeal. But the rule has no application to cases in which the dismissal of a public servant is declared invalid by a civil Court and he is reinstated. This was no doubt a case where the civil Court had held the order of dismissal to be invalid as there was non-compliance with the provisions of Article 311 of the Constitution, but it was held that the provisions of F. R. 54 apply where the dismissal is set aside in a departmental appeal. The order of the Government dated 12th January 1963 vacated the previous order of dismissal. There being thus no order of dismissal in existence, the Petitioner automatically continued in service and as pointed out by their Lordships of the Supreme Court in the case referred to above, it would not lie open to the State Government to deprive the public servant of the remuneration which he would have earned had he been permitted to work. The following passage at page 1337 of the report brings out the point very clearly:

This rule has no application to cases like the present in which the dismissal of a public servant is declared invalid by a civil Court and he is reinstated. This rule, undoubtedly enables the State Government to fix the pay of a public servant whose "dismissal is set aside in a departmental appeal, But in this case the order of dismissal was declared invalid in a civil suit. The effect of the decree of the civil suit was that the Appellant was never to be deemed to have been lawfully dismissed from service and the order of reinstatement was superfluous. The effect of the adjudication of the civil Courts is to declare that the Appellant had been wrongfully prevented from attending to his duties as a public servant. It would not in, such a contingency be open to the authority to deprive the public servant of the remuneration which, he would have earned had he been permitted to work.

Applying the same principle to the present case, the effect of the order of the Government was that he continued in service and he was wrongfully prevented from attending to his duties as a public servant.

18. The next question which arises for consideration is as to how long the Petitioner will be deemed to be in service. Ordinarily he would have attained the age of superannuation by the end of June 1953. But his period of service was extended from after the date he attained his superannuation till the time of the termination of the prosecution. This order is not itself a valid order on the ground that this order was passed after he had attained the age of superannuation and

such, an order could not have been passed. The State has filed as Annexure "F" certain correction and substitution made in the administrative instructions contained under Note 2 to F. Rule 54. This administrative instruction cannot override the main provisions of the Fundamental Rule. On the facts of this case this instruction is also not attracted.