

(1989) 01 AHC CK 0080

In the Allahabad High Court

Case No : Writ Petition No"s. 2692 and 3565 of 1979 and 745 of 1980

Ramendra Nath

APPELLANT

Vs

Mandi Samiti and Another

RESPONDENT

Date of Decision : 18-01-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 311

Citation : (1989) 1 AWC 539

Hon'ble Judges : Virendra Kumar, J;U.C. Srivastava, J;Rajeshwar Singh, J

Bench : Full Bench

Advocate : A. Manan and Asit Kumar Chaturvedi, for the Appellant; K.S. Bjpai and P.C. Varma, for the Respondent

Final Decision : Allowed

Judgement

U.C. Srivastava, J.—These connected writ petitions came up for consideration before a Division Bench of this Court of which two of us were Members. At the time of hearing of these writ petitions, from the record which was produced, it was found that on the ground of issuing forged Gate-pass passed by the Petitioners, a first Information Report was lodged on 19th December, 1979 by the Secretary, Mandi Samiti, Jaffarganj, Sultanpur, and the Petitioners, who were employees of the Mandi Samiti, Sultanpur, were arrested and after three days were released on bail. Ultimately the police submitted final report in the case. The Petitioners were attached to Mandi Samiti, but salary was not paid to them although they applied for it. The Secretary, Mandi Samiti referred the matter to the Director of the Mandi Samiti and the Director vide letter dated 27th November, 1979 directed the Mandi Samiti to terminate the services of such employees including the Petitioners in term of Clause-II of the appointment order by paying one month"s salary in lieu of notice. It was also mentioned in the said letter dated 27th November, 1979 which is on record, that no reference of said letter be made in the termination order. On 6th and 7th March, 1980 the Mandi Samities were dissolved including the Mandi Samiti of Jafarganj and the

Petitioner services were terminated on 10th March, 1980 and it was provided in the order that in lieu of one month's notice, one month's salary will be paid to the Petitioners.

2. From the record, which was produced, it appears that the Superintendent of Police recommended that action against the Petitioners be taken and their services may be terminated. One Paras Nath filed writ petition No. 613 of 1980 which was dismissed by a Division Bench of this Court vide order dated 1st August, 1980 on the ground that it was contractual matter and the opposite parties were within their right to terminate Petitioner's service. When the services of the Petitioners were terminated statutory Rules were not in existence and they came in force after two years. The writ petition came up before the Division Bench of which two of us were Members and we found it difficult, after perusing the record, to agree with the view taken by a Division Bench of this Court in Writ Petition No. 613 of 1980, and that is why the matter was referred to larger Bench.

3. The facts are clear that the Petitioners were arrested, kept behind the bar and were placed under suspension and the Superintendent of Police recommended that their services may be terminated. The Mandi Samiti passed resolution for retention of their services and after dissolution of the Mandi Samitis, the services of the Petitioners were terminated in pursuance of the orders passed by the Director of the Mandi Samiti and from the fact it is quite evident that the arrest of the Petitioners led to the termination of their services as was desired by the Superintendent of Police and directed by the Director of Mandi Samiti. No opportunity of hearing was given though ultimately final report was submitted by the police in respect of the offence which was said to have been committed by them.

4. It is true that Mandi Samiti is a corporate body and its employees are employees of the Mandi Samiti and, as such, they do not hold civil post, but notwithstanding the fact that the termination order was in innocuous language, if the same is violative of Article 14 of the Constitution of India and the principles of natural justice, which principles are included in Article 14 of the Constitution, it cannot hold good. The order has been challenged on the ground that the same was arbitrary and discriminatory and violative of principles of natural justice. On behalf of the opposite parties it was pointed out that it being a matter of contract between the employer and employees the services were terminated in terms of contract and there being no statutory Rules, no interference can be made and in this connection reference was made on behalf of the opposite parties to a Division Bench of this Court in A.K. Home Chaudhary v. National Textile Corporation, U.P. Ltd., Kanpur and Ors. 1984 UP LB EC 81 . In the said case the Petitioner was appointed by the Board in Patlad Textile Mills, Patlad (Gujarat) Ltd., a Unit of the National Textile Corporation. While he was posted at Calcutta, questions were raised in the Parliament that he was a dismissed employee of the State Government and even then he had been employed as Director of one of

the subsidiary companies of the National Textile Corporation on the basis of forged documents. The Petitioner was directed to submit his explanation, which was considered, and thereafter the Board which appointed him decided to terminate his services and his services were so terminated on the concealment of this material fact. The Division Bench held that Article 311 of the Constitution was not applicable to the employees of National Textile Corporation. It was further held that the form of the order is not conclusive to its nature. The entirety of circumstances attendant on the impugned order must be examined by the Court and overriding test will always be whether the mis-conduct is a mere motive or is the very foundation of the order. It was further observed that no punitive action was taken against the Petitioner. The allegation relating to the Petitioner's conduct was only a motive and not foundation and the termination order which was ex-facie innocuous in nature, could not be held to be punitive after holding an enquiry into the motive behind the order. Reference was also made to the case in *Kulchinder Singh and Others Vs. Hardayal Singh Brar and Others*, . The writ petition was directed against a society registered under Punjab Co-operative Societies Act. The Petitioner, in that case, wanted to enforce a contract which was entered into between the employer and Union regarding promotion of employees and the Court held that such writ petition was not maintainable. The ratio laid down in the said case has got no applicability to the facts of the present case, and nothing contrary was laid down in said case rather this question was not for consideration in said case and the question considered was whether the benefit of Article 311 of the Constitution is available to the employees of the Corporation, in respect of which there is no dispute in this case.

5. But in the instant case the facts, as indicated above, are that the termination order was passed on the basis of arrest of the Petitioners on the alleged charge of issuing forged passes in respect of which subsequently final police report was submitted, their services were terminated. Thus, the order which was passed on the ground of a particular act of commission committed by the Petitioner, apparently was punitive in nature for which no opportunity of hearing was given to the Petitioners. The final report has been accepted, and, as such, they cannot be held to be guilty and the recommendation of the Superintendent of Police could not have been looked into and the directives of the Director of Mandi Samiti was uncalled for. As the services of the Petitioners have been terminated by way of punishment the question will be as to whether an employee of a statutory corporation also is entitled to enquiry into the matter or his services can be terminated by an innocuous order as contractual employee without giving him any opportunity of hearing in respect of the action for which he has been-charged, though the same does not find place in the termination order. In this connection reference was made to the case of *Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee*, which was not considered in *A.K. Home Chaudhary's case* (supra). In the said case, when the services of the employees were terminated, the statutory Rules were not in force although they were in anvil and similar plea of contractual right was raised

that the matter related to contract, and, as such, no interference can be made. It was observed:

... if at the time of dismissal, the statutory regulations had not been framed or had not come into force, then also, the employment of the Respondent was public employment and the statutory body, the employer could not terminate the service of its employee without due enquiry in accordance with the statutory Regulations, if any in force, or in the absence of such Regulations, in accordance with the Rules of natural justice. Such an enquiry into the conduct of a public employee is of a quasi-judicial character. The Respondent was employed by the Appellant-Corporation in exercise of powers conferred on it by the statute which created it. The Appellants power to dismiss the Respondent from service was not derived from the statute. The Court would, therefore, presume the existence of a duty on the part of the dismissing authority to observe the Rules of natural justice, and to act in accordance with the spirit of Regulation 16, which was then in anvil and came into force shortly after the impugned dismissal. The Rules of the natural justice in the circumstances of the case, required that the Respondent should be given a reasonable opportunity to deny his guilt, to defend himself and to establish his innocence which means and includes opportunity to cross-examine the witnesses relied upon by the Appellant-Corporation and an opportunity to lead evidence in defence of the charge as also a show cause notice for the proposed punishment.

In the case of *Sora Prakash Rekhi v. Union of India* AIR 1981 SC 212 reference of which was made by the learned Counsel for the opposite parties, nothing to the contrary was laid-down.

6. In the case of *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, , which was also a case of statutory corporation, it was held that the principles of natural justice are implicit in Article 14 of the Constitution and if the agencies or instrumentalities of the State do not observe the Rule of natural justice, i.e. audi alteram partem, the same will be violative of Article 14 of the Constitution of India, meaning thereby that employees of such corporations which are instrumentalities of the State are also entitled to the benefit of Rules of natural justice and their services cannot be terminated without giving them an opportunity of hearing. In the said case it was held that termination of services of permanent employees by giving three months notice as contained in the terms of the appointment was violative of public policy and is void under the Indian Contract Act.

7. Thus, we are of the view, that the employees of statutory corporations, even in the absence of any Service Rules are entitled to the benefit of principles of natural justice which would also apply in the case of employees of the corporations in the matter of termination of services in case their services are terminated though by an innocuous order but by way of punishment without giving them an opportunity of hearing.

8. In the instant case, the facts as stated above, clearly show that the services of the Petitioners were terminated by way of punishment without giving them any opportunity of hearing and it is the arrest and the recommendation of the Superintendent of Police which was the foundation of the termination order. Consequently we are of the view that Writ Petition No. 613 of 1980 was wrongly dismissed and was not correctly decided on the ground that the same is contractual matter and it was done without taking into consideration the provisions of law including the principles of natural justice and Article 14 of the Constitution of India.

9. In the result, the writ petitions are allowed and termination order dated 9th September 1979 in Writ Petition No. 2692 of 1979, 27th November, 1979 in Writ Petition No. 3565 of 1979 and 10th March, 1980 in Writ Petition No. 745 of 1980 are hereby quashed.