
(1959) 09 MP CK 0015

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Petition No. 44 of 1957

Ratiram Durgaprasad Saini

APPELLANT

Vs

Regional Settlement Commissioner

RESPONDENT

Date of Decision : 10-09-1959

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : AIR 1960 MP 230 : (1960) 1 FLR 218 : (1960) JLJ 241 : (1960) 2 LLJ 415 : (1960) 5 MPLJ 261

Hon'ble Judges : H.R. Krishnan, J

Bench : Single Bench

Advocate : Homi Daji, for the Appellant; S.L. Dubey, for the Respondent

Final Decision : Dismissed

Judgement

H.R. Krishnan, J.

This is an application by an extemporary (15 days notices) servant of the Union Government in the Regional Settlement Commissioner's office against the termination of his service on the 24th July 1956 on the allegation that his service has been terminated not in accordance with the terms and conditions of his employment, but on account of certain charges, and that the procedure under Article 311 of the Constitution not having been followed, the order of the Regional Settlement Commissioner should be set aside and he should be ordered to be reinstated.

The facts of the case are the following : The appellant was appointed as a temporary servant and was working in that capacity in June 1956. Certain charges were made against him and a formal charge sheet given with the usual order asking him to show cause. However, that was not pursued. On the 24th July, 1956 he was asked to hand over charge to some other person having been shown an order which mentioned that his services had been terminated and he was to make over charge to Mr. Joshi, another assistant in the office.

A copy of the order was not demanded or served on him. He did not hand over charge but presented on the next day a memorial to the Regional Settlement Commissioner making certain allegations and alleging that he expected that he would have been given a warning and requesting that he might be given another chance in any case. ("I therefore request your honour to reconsider my case and to give me one chance to show improvement.") The order of the previous date is very cryptic mentioning to hand over charge; there is no mention of 15 days notice or notice pay. Certainly, there is no allegation of incapacity.

In reply to the petition of 25th, he was given on the 28th July the order on his "application for review", at his special insistence. Here he is described as "undependable and incompetent". The officer at the same time stated that in view of his age and the possible inconvenience of an order of dismissal, he had taken a lenient view and had just ordered a removal.

He thereupon went in appeal to the Chief Settlement Commissioner in the Ministry of Rehabilitation. The order in appeal was :

"With reference to his appeal dated 13-8-1956 regarding termination of his services, by the Regional Settlement Commissioner, Indore, Shri R. D. Saini is informed that his services were terminated by the Regional Settlement Commissioner, Indore in accordance with the terms and conditions of his employment. Arrangements are being made to make payment of 15 days salary to him in lieu of notice. This also disposes of his counsel's notice dated 7-2-1957."

It is noted incidentally that this authority works at Delhi outside the jurisdiction of this court. This was an order of clean termination with benefit of the 15 days notice pay. Any misapprehension created in the mind of the petitioner by the order on his own application for review, should have been removed by the appellate order. However, he came with an application under Article 226 of the Constitution of India with an averment that the appellate order was not correct, and he was not removed in accordance with the terms and conditions of his employment. He urged that the earlier orders, especially the one of 28th July, still prevailed, and as they throw a black mark on the petitioner, the whole proceedings should be quashed as not having conformed to Article 311 and he should be directed to be reinstated.

While the application and the return were filed, there seems to have been some uncertainty as to whether temporary servants were entitled to the benefit of the procedure given in Article 311 or statutory rules framed in accordance with that article under Article 309. Since then, case law has developed. Instead of giving a list of the rulings, it will be sufficient to summarise the principles. If the removal is one without any black mark or comment on the ability of the employee, then Article 311 does not apply. Merely writing or not writing "in accordance with the terms and conditions of the temporary employment" would make no difference.

The order, if shown to a future employer, should not prejudice him against the

employee on the ground that he had been turned out of the earlier service for some mistake or incompetency. In popular language, the temporary servant should be allowed to go away quietly without being tarred. On the other hand, what is in the minds of the ex-employer or in the office notes of the department concerned, is not relevant unless, it is, expressly or by implication, indicated in the order itself. The notice or notice pay should also be given.

The question in the present case is, whether the applicant has been ordered to go away quietly without a black mark. The appellate order makes the matter absolutely clear and anybody reading the final order in this regard cannot form the least notion of the petitioner's having been removed for some thing wrong done by him. Shri Daji appearing for the petitioner however argues that in a case like this the appellate order does not merge in or neutralize the original order in other words, the original order of the subordinate authority still stands, and as such the applicant is entitled to seek relief in the Court having jurisdiction over the subordinate authority, notwithstanding whatever the appellate authority might have said.

This is sought to be supported by the citation of the following cases: Somasundaram v. State of Madras AIR 1956 Mad 419; & in particular, State of U.P. v. Mohammad Nooh AIR 1958 SC 86. The rulings in Suraj Narain Anand v. North-West Frontier Province AIR 1942 FC 3 and Krishna Rajeshwar v. Chief Secretary to the M. P. Govt. Police Dept. Nagpur AIR 1954 Nag 151 have also been cited but they are not of any direct bearing on this question. The ruling in D.R. Menon Vs. Director of Harijan Welfare and Another, has been referred to; but it is in regard to the nature of the order itself and not on the question whether in certain circumstances the aggrieved party can seek relief against an order by a subordinate authority, in the face of an appellate order.

In the Madras case, the position was that an employee had been dismissed by an authority subordinate to the one that made the appointment. There was an appellate order but since the order of the subordinate authority was one which could not in any event have been legally passed, it was held that the illegality was not neutralized by the existence of the appellate order. Similarly, in the Supreme Court case, the order of the subordinate authority was basically vitiated by the fact that the authority that made the decision was also a witness.

Obviously, it is a case of gross and patent violation of the well-known principle of natural justice that the same person cannot be a witness and the judge. Therefore, it was held:

"Where in a departmental "trial" of the petitioner (a police constable) under U. P. Police Regulations, the officer holding the trial had offered him-self as a witness for the department and against the petitioner, and had himself convicted him by passing an order of dismissal, the "trial" is one held in gross violation of natural justice. The fact that the petitioner had gone in appeal against the order under Regulation 508 and also in revision against the appellate order wherein the order

of dismissal was maintained and thus the petitioner had exhausted his remedies, will not bar his petition for the issue of writ of certiorari".

The principle that emerges from these, is that if there is a basic want of jurisdiction or in other words, if the subordinate authority could not have validly made an order to the same effect as the appellate one, the latter notwithstanding, the aggrieved party can seek relief under Article 226 in the High Court from the original order itself. But I find nothing in these rulings against the basic principle of appeals that, in the event of the subordinate authority being legally competent to pass the order, the appellate order, as it were, washes it out and takes its place. If, even in such cases, it is possible for the High Court to give relief from the order of the subordinate authority, the law might as well have not provided for any appeal at all. Whereas here the subordinate authority is legally competent, its order is no more in existence, in the face of the appellate order.

Apart from the fact that an appellate order which is the only order in force now, is by an authority which is outside the jurisdiction of this court, it is clearly one that removed the petitioner under the terms of his service without a black mark. When the petitioner was called upon on 24-7-1956 to make over charge, he was not simultaneously informed that he would get 15 days' notice pay. He could, in fact, have asked for it. But whether he asked or not, the appellate order has made it clear that he should get it. Again, on the order which was shown to him on 24-7-1956, there was no comment or remark about his ability. But he opened a fresh controversy by memorializing to his officer and by asking "for another chance". Thus, the officer was called upon to tell him why another chance was not given. But in that context the petitioner felt that this was a blackmark.

Whether he was justified or not in this, the appellate order has again made it clear that his removal was in accordance with the terms of the contract and had nothing to do with a blackmark. In the case reported in AIR 1958 SC 86 (supra), it has been laid down that even a temporary employee should not be removed with a stigma, unless he has had the benefit of Article 311 of the Constitution. Of this, there can be no doubt. The same ruling points out that a mere mention of the word "under the terms of the contract" will not have any significance, if in the same order there is an indication that it was for some fault. But going through the appellate order in the present case, I note that it is a simple and straightforward one, giving notice pay and removing from the minds of the petitioner or as for that matter any possible future employer, the idea that he has not been sent away quietly, but has been black-marked.

It is not understandable why, in view of the clear order of the appellate authority, the petitioner should still come here and assert that he has been removed for misconduct or turned away with a blackmark. All orders of the subordinate authorities cease to exist in view of the appellate order and this case is not similar to the ones referred to where the subordinate authority was itself legally incompetent to pass the order that it had passed, and the appellate authority could not cure that fundamental illegality.

In the result, I hold that the application is without substance and I dismiss it. Costs and pleaders fee of Rs. 50/- payable by the petitioner to the non-applicant.