
(1958) 04 BOM CK 0025
In the Bombay High Court
Case No : Second Appeal No. 177 of 1956

State of Bombay

APPELLANT

Vs

Giridharilal Shankerlal Patel

RESPONDENT

Date of Decision : 16-04-1958

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(1)

Citation : (1958) 60 BOMLR 1137 : (1958) 2 LLJ 700

Hon'ble Judges : J.C. Shah, J

Bench : Single Bench

Judgement

J.C. Shah, J.—This is an appeal by the State of Bombay against the decree passed by the Assistant Judge, Baroda, in Appeal No. 120 of 1954. The plaintiff, who is the respondent in this appeal, is a graduate in medicine and surgery of the appeal, is a graduate in medicine and surgery of the Bombay University. After graduation the plaintiff joined the former Baroda Government in Medical Department on 14 October 1941, and he was a permanent employee of the State till the date of its merger, 1 August 1949, with the State of Bombay. Before the merger of the State there was an agreement between His Highness the Maharaja of Baroda and the Government of the Union of India that the services of the Baroda State servants were either to be contained on the same conditions as those prevailing in the State or that the servants were to be given reasonable compensation for termination of employment. Pursuant to this agreement, the Government of Bombay issued on 18 July 1949 a Resolution No. 2735/46 (Political and Services Department), stating in its preamble that :

"in connexion with the discharge of some of the servant of the merged and integrated States whom it is not possible to absorb in Bombay Government service, the Government of Bombay is pleased to make the following rules, in supersession of the orders contained in the Government resolution mentioned in the margin to regulate the conditions applicable to the discharge or retirement of such State servants."

2. Rule 1 (a) provided that certain employees shall be discharged if they were :

"(1) Persons who are either inefficient, unfit or dishonest, provided there is sufficient material to establish their inefficiency, unfitness or dishonesty ..."

and

"(2) (c) All other State servants of whom it can be said with reasonable certainty, after taking into account future requirements, that their services are not wanted."

Clause (b) of rule 1 provided that

"All State employees other than those mentioned in Clause (A) above should be given the option either to retire or to continue in the service of the Government of Bombay."

3. The plaintiff was accepted in the employment of the State of Bombay after the merger of the Baroda State, and he continued to remain employed in the Medical Department till 19 August, 1950. On that date a notice was served upon the plaintiff informing him that it was decided by the Government that he be discharged from service under rule 1(A)(i) of the rules contained in Government Resolution No. 2735 /46 dated 18 July 1949. By the second paragraph of this notice the plaintiff was informed that he was given one month's notice of discharge in accordance with rule No. 1(A)(1) of the rules and that he will be discharged from services with effect from 18 September 1950 afternoon. The plaintiff was directed to hand over charge of his post of Resident Medical Officer, S. P. Sanatorium, Baroda, to Dr. O. P. Shah, if no other medical officer came on that date to relieve him.

4. The plaintiff thereafter served a notice under S. 80 of the CPC upon the State of Bombay and filed Suit No. 497 of 1951 in the Court of the Joint Civil Judge, Senior Division, Baroda, for a declaration that the order of discharge dated 19 August 1950, "was illegal, ultra vires and a nullity" and for a declaration that "the plaintiff is continuing in the post which he then occupied and for an order against the State of Bombay directing that the plaintiff be reinstated in service as per his rank, status and seniority which he enjoyed at that time." This suit was resisted by the State of Bombay contending that the plaintiff could not rely upon the merger agreement between His Highness the Maharaja of Baroda and the Union of India, and that the plaintiff had no right to sue for the relief claimed by him, as the termination of employment of the plaintiff amounted to an act of State. The defendant further contended that rule 1(A)(1) of the rules framed by the Government, under which the plaintiff was discharged, was properly framed and that as the plaintiff was found unfit for retention in service, his services had been dispensed with. It was submitted that the plaintiff was found unsuitable having regard to his post career, and his employment was terminated. The written statement then set out some instances of alleged misconduct of the plaintiff and his general unsuitability to be in charge of the Sri Sayaji General Hospital and for absorption in the Bombay Medical Service.

5. The learned trial Judge held that the plaintiff did not become a civil servant of the State of Bombay on the merger of the former Baroda State; that Art. 311 of the Constitution did not come to the aid of the plaintiff; that even though the notice of discharge was given without affording to him any opportunity to render explanation or to show cause, absence of such opportunity did not affect the termination of the plaintiff's employment; that the act of the government Bombay in not absorbing the plaintiff in the Bombay Medical Service and discharging him from service was not illegal an ultra vires, and that the plaintiff could not in support of his plea rely upon the merger agreement between the Maharaja of Baroda and the accordingly held that the plaintiff had no right to be reinstated and dismissed the suit, Against the decree passed by the learned trial Judge, and appeal was preferred to the District Court of Baroda, and the learned Assistant Judge held that as the plaintiff was continued in service on the merger of the State of Baroda with the State of Bombay, he acquired a right to serve in the Bombay State and by reason of such continuance before terminating his employment the State of Bombay was bound to give to the plaintiff an opportunity of defending himself. The learned District Judge also held that rule 1(A)(1) contravened the principles of natural justice in that it deprived the plaintiff of his right to an enquiry and opportunity to defend himself. The learned Judge also held that the plaintiff had a right to maintain the suit. On that view the learned Judge reversed the decree passed by the trial Court, declaring that the order passed by the Government of Bombay removing the plaintiff from service, purporting to do so under rule 1(A)(1), was "void and inoperative" and the plaintiff continued to be in the employment of the State of Bombay. The learned Judge, however, declined to grant other relief to the plaintiff. Against that decree this second appeal has been preferred by the State of Bombay.

6. There is no dispute that the plaintiff was a permanent employee of the Baroda State. There is also no dispute that between 1 August 1949 and 19 August 1950 the plaintiff was an employee of the State of Bombay and that he received salary as such employee. It is true that the plaintiff was not appointed to any substantive vacancy in a post created by the Bombay State Government and he may, therefore, be regarded as a temporary employee. But even as a temporary employee, the plaintiff was, in my judgment, not liable to be dismissed from employment without the requisite enquiry under Art. 311 of the Constitution. Under the resolution which I have already referred to, the State Government had issued a rule that persons who were inefficient, unfit or dishonest, and against whom there was sufficient, material to establish their inefficiency, unfitness or dishonesty, were to be discharged from service. Evidently when the plaintiff was accepted in employment on 1 August 1949, the authorities of the Bombay State did not regard him as inefficient, unfit or dishonest. The termination of the plaintiff's employment is expressly made in exercise of authority under rule 1(A)(1) of the rules framed on 18 July 1949, Therefore, by the notice terminating his employment the plaintiff has in effect been informed that he is inefficient, or unfit or dishonest, and that there are sufficient materials to establish his

inefficiency or unfitness or dishonesty. The order, therefore, is an order of dismissal and not merely of termination of employment of a temporary employee, On the merger of the former Baroda State the Government of Bombay was under no obligation to accept the plaintiff in its employment. As observed by their lordships of the Supreme Court in *Rajvi Amar Singh Vs. The State of Rajasthan*, :

"It is well established that when one State is absorbed in another, whether by accession, conquest, merger or integration all contracts of service between the prior Government and its servants automatically terminate and thereafter those who elect to serve in the new State, and are taken on by it, serve on such terms and conditions as the new State may choose to impose. This is nothing more (though on a more exalted scale) than an application of the principle that underlies the law of master and servant when there is a charge of masters."

7. The plaintiff, therefore, could not claim that, because he was a servant of the former Baroda State, he was entitled to be employed by the Bombay State. But the Bombay State Government accepted the plaintiff in its employment and allowed him to work for a period exceeding one year. Article 311 of the Constitution provides by Clause (1) that :

"No person who is member of a civil service of the Union or a civil service of State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed."

and Clause (2) provides that :

"No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him."

8. The plaintiff's employment was terminated under rule 1(a) (1) and the termination, as I have already observed, operated as dismissal from service. There is no dispute that the plaintiff has not been given any opportunity of showing cause against the action proposed to be taken in regard to him. This Court has held in *G.P. Oak Vs. The State of Bombay*, that the expression, "person" in Art. 311(1) of the Constitution includes all civil servants, whether they have been appointed temporarily or as permanent employees, and that Art. 311 of the Constitution has a limited operation. Its protection avails an employee against an order of dismissal, removal or reduction in rank, but within that ambit the article applies to all employees whether they are permanently employed or temporarily employed. This view appears to have been approved by their lordships of the Supreme Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, . Where the learned Chief Justice, in delivering the judgment of the Court, observed :

"... It has been held in some cases that Arts. 310 and 311 do not make any distinction between Government servants who are employed in temporary posts."

9. The learned Chief Justice then referred to several cases, including the case of *G. P. Oak v. State of Bombay* (supra) and observed :

"... Coming to Art. 311, it is obvious that if that article is limited to persons who are permanent members of the services or who hold permanent civil posts, then the constitutional protection given by Clause (1) and (2) will not extend to persons who officiate in permanent post or in a temporary post and consequently such persons will be liable to be dismissed or removed by an authority subordinate to that by which missed, removed or reduced in rank without being given any opportunity to defend themselves. The latter classes of servants require the constitution protections as much as the other classes do and there is nothing in the language of Art. 311 to indicate that the Constitution-makers intended to make any distinction between the two classes."

10. It must, therefore, be held that the law has been finally settled by the pronouncement of their lordships of the Supreme Court that the constitutional guarantee of protection applies to all public servants, and no distinction is to be made between permanent employees and temporary employees.

11. Rule 1(A)(1) enables the State to discharge persons who are either inefficient, unfit or dishonest provided that there is sufficient material to establish their inefficiency, unfitness or dishonesty, and prima facie it appears that the rule may apply only at the time when the employee is to be accepted in the employment of the Bombay State. But even assuming that this rule may apply after the date of the merger of the former Baroda State to the continuance in employment of the former employees of that State, I have no doubt that this rule infringes the constitutional guarantee under Art. 311 of the Constitution, to the extent to which it may appear to dispense with an opportunity to show cause against the action proposed to be taken in regard to employees of the former Baroda State who were accepted and continued in the employment of the Bombay State.

12. The learned Government pleader contended that the decision of their lordships of the Supreme Court, *Amar Singh v. State of Rajasthan*, which I have already referred to in another context, supports the plea raised by the defendant. That was a case in which a District and Sessions Judge of the former Bikaner State was employed by the State of Rajasthan as a Civil Judge after integration of the State of Bikaner with the State of Rajasthan. His pay and employments prior to the merger of the Bikaner State were retained and his grading also was continued, and his earned increments were also not affected. The only change that was made was as to the designation of his office and the conditions of his office were no worse than what they were when he was in the employment of the Bikaner State. The employee filed a petition before the Rajasthan High Court for a writ under Art. 226 claiming that, as he was reduced in rank without affording him an opportunity to show cause Art. 311 was violated. In appeal to the Supreme Court it was held that, on a true interpretation of the covenant between the former Bikaner State and the Union of India and the Government

orders and notifications, no question of reduction in rank could arise, and therefore, Art. 311 was not attracted. In my view, Amar Singh case can have no application to the present case. That was a case in which on the facts their lordships held that there was no reduction in rank. Their lordships have not held in Amar Singh case that, servant was not entitled to the benefit of the constitutional guarantee under Art 311 of the Constitution.

13. In my view, the learned Assistant Judge was right in decreeing the plaintiff's suit, and in granting him a declaration that the order passed by the Bombay State on 19 August 1950 was illegal and ultra vires.

14. The appeal, therefore, fails and is dismissed with costs.