

(1960) 07 AHC CK 0013
In the Allahabad High Court

Case No : Special Appeal No. 164 of 1960 connected with Special Appeal No. 163 of 1960

The Divisional Superintendent, Northern Railway, Allahabad APPELLANT
Vs

Ram Saran Das RESPONDENT

Date of Decision : 25-07-1960

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (1960) 07 AHC CK 0013

Hon'ble Judges : N.U.BEG, J and A.P.SRIVASTAVA, J

Final Decision : Dismissed

Judgement

N. U. Beg, J.

1. This judgment disposes of two Special Appeals Special Appeals Nos. 163 and 164 of 1960. In both these appeals the appellant is the Divisional Superintendent, Northern Railway, Allahabad Division. The respondent in Special Appeal No. 163 of 1960 is Ram Nath Gautam, and the respondent in Special Appeal No. 164 of 1960 is Ram Saran Das. These appeals were connected as they raised a common question of law. The respondents in both these appeals were tried on a criminal charge.

They were convicted by the trial court. After their conviction by the trial court, the Government passed an order of dismissal as provided in Art. 311(1)(a) of the Constitution of India. These orders of dismissal were passed on the ground that they had been convicted by the trial court. In appeal, however, the conviction of the respondents was set aside, and they were acquitted. In view of their acquittal, the respondents applied to be reinstated. Their applications for reinstatement were dismissed by the appellant.

Thereafter each of the dismissed servants, who are respondents in these appeals, filed a writ petition in this Court praying for the issue of a writ of certiorari quashing the order refusing to reinstate them. These petitions came up

for hearing before a learned Judge of this Court, who took the view that the conviction of the petitioners having been set aside by the appellate court, and they having been ultimately acquitted of the charge, proviso (1) to Art. 311, SubArt. (2) did not apply to their cases. He therefore, allowed both the writ petitions and granted the relief sought for in the writ petitions.

2. Dissatisfied with the said judgments, the opposite party in both the writ petitions viz. the Divisional Superintendent, Northern Railway, Allahabad, has filed these two appeals.

3. Having heard the learned counsel for the appellant, we are of opinion that there is no force in these appeals. Art. 311 of the Constitution of India provides two important guarantees to civil servants holding posts in the Union or a State. The first guarantee is incorporated in Art. 311, cl. (1). According to it, no civil servant in the Union or a State can be dismissed or removed by an authority subordinate to that by which he was appointed.

The second guarantee is contained in Art. 311, cl. (2) which lays down that no such person 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. In the present case, we are concerned with the second guarantee given to servants holding civil posts in the Union or a State.

The intention of the Constitution makers appears to have been to assure the civil servants that they would not be made victims of any arbitrary action on the part of authorities entrusted with the task of dealing with matters vitally affecting their service or tenure of office, and that no steps seriously imperilling their security or prejudicing their tenure of office shall be taken against them without giving them a reasonable opportunity of meeting the charges levelled against them.

There might, however, be certain exceptional cases in which it might not be necessary to afford any such opportunity. These exceptions are specified in the proviso attached to cl. (2) of Art. 311. In the present case we are concerned with the first exception, which is defined in subcl. (a) to this proviso, and according to which cl. (2) would not apply "where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge."

The sole question that has arisen before us relates to the interpretation of the expression "led to his conviction on a criminal charge" used in the above subclause. In our opinion, there can be no manner of doubt that the words "led to his conviction on a criminal charge" can only mean a criminal charge which has finally resulted in the conviction of the person proceeded against.

4. On behalf of the appellant, however, it has been strenuously argued by the learned counsel that the word "conviction" in the above subclause means first conviction or conviction by the trial Court. In our opinion, the interpretation

suggested by the learned counsel would not be warranted by the terms of this subclause. No such qualification is contained before or after the word "conviction". To import any such qualification would be tantamount to adding words which are not contained in the subclause at all.

5. The context in which the word "conviction" is used in this subclause also points to the same conclusion. It is significant to note that the words "his conviction" are preceded by the words "has led to". The use of the words "has led to" in our opinion, indicates that the conviction envisaged therein is one which is recorded at the final stage of the termination of the trial which had led to the proceedings against the accused person. The proceedings in the appellate court are nothing but a continuation of the proceedings in the trial court. In this view of the matter it must be held that the conviction contemplated therein is not conviction by the first court but conviction by the last court.

6. Further, the interpretation suggested on behalf of the appellant would lead to some very absurd consequences. Thus, for instance, if a civil servant who is tried¹ on a criminal charge is acquitted by the trial court but is convicted by the appellate court, then according to the interpretation suggested on behalf of the appellant, proviso (a) to the Subclause would not be applicable in such a case. The result will be that in such a case it would not be open to the authority concerned to pass an order of dismissal, removal or reduction in rank, as the order of the first court was one of acquittal although the eventual order in the case was one of conviction.

7. In our opinion, the correct interpretation of this subclause would be to hold that the word "conviction" in this subclause means "conviction" in the eye of law. Once the order of conviction passed by the trial court is set aside by the higher court, there does not exist any conviction in the eye of law at all. The order of the appellate court supersedes and sweeps away the order of the trial court altogether. The result of reversal by the appellate court of the order of conviction passed by the trial court, and its substitution by the order of acquittal would be that there would be no existing order of conviction left at all.

8. Further, the acceptance of the interpretation suggested by the learned counsel would result in imputing to the constitution makers the intention that higher value should be attached to the views of the lower court; and lower value to the views of the higher court. Any interpretation that results in attributing such an obvious unreasonableness to the Legislature should be avoided at all costs.

9. On behalf of the appellant learned counsel further argued that the emphasis in proviso (a) appears to be on the conduct of the civil servant. It is argued that the intention of this provision of law appears to be to treat a person who has once been convicted of any offence by a court as an undesirable person, who is unfit to be retained in Government service, even though such an order of conviction is subsequently set aside.

Even if we presume that the emphasis in this subclause is on the conduct of the

civil servant, this argument seems to ignore the fact that the word "conduct" in this subclause is qualified by the subsequent phrase which lays down that the conduct should be such as has "led to his conviction." In other words, the conduct which can provide the basis of all action under this exception must be of such a type as has eventually resulted in the conviction of the person concerned.

10. The punitive action taken against the civil servant was based solely on the order of conviction, and the removal of the order of conviction has the effect of removing the entire basis of such an order. Once, therefore, the order of conviction falls, the very foundation on which the order of dismissal was based disappears and the order of dismissal, removal or reduction in rank must fall with it.

11. On behalf of the appellant learned counsel also argued that the acceptance of this view would have very inconvenient consequences so far as the Government is concerned. The procedure of appeal may take a very long time. The Government are not expected to wait for such a long.

time. We are of opinion that the difficulty suggested in this regard appears to be more imaginary revisional powers than real.

In a case like this it is possible for the Government to make only a temporary appointment or to merely suspend the civil servant concerned instead of dismissing him. In any case, in our opinion, the convenience of one party, viz., the Government, cannot be considered to be a just or a justifiable ground for depriving the other party viz. the civil servant of a constitutional guarantee solemnly afforded to him.

12. Lastly, we are clearly of opinion that the acceptance of the view so strongly pressed by the learned counsel before us would have the effect of nullifying the very purpose for the attainment of which this salutary provision of law appears to have been enacted. Learned counsel for the appellant has conceded before us that, in ordinary cases the dismissal of a Government servant involves two stages. At the first stage, he is apprised of the charges against him. At the second stage he is called upon to show cause against the action proposed to be taken against him. Both these stages are embraced in the procedure contemplated by Art. 311(2). The existence of an order of conviction has the effect of doing away with both these stages.

If the interpretation suggested by the learned counsel is accepted, it would be open to the Government to dismiss or remove any public servant once an order of conviction has been passed by the trial court without giving him any opportunity whatsoever of meeting the charges levelled against him, even though his conviction is subsequently set aside by the higher court, and the case against him is found by it to be a false and a concocted one. Such a procedure would be against all rules of natural justice. In our opinion, nothing could have been farther from the intention of the Constitution makers than a consequence so disastrous in its nature and so inequitable in its character.

13. The view taken by us is in consonance with the view taken by the Punjab High Court in the case of Dilbagh Rai Jarry v. The Divisional Superintendent, Northern Rly., reported in AIR 1959 Punj 401.

14. For the above reasons, we are of opinion that there is no force in these appeals. We, therefore, dismiss these appeals and direct that the respondents will be entitled to their costs in both the appeals.

Appeals dismissed.