

(1967) 04 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2388 of 1966

Zila Parishad, Allahabad

APPELLANT

Vs

The Commissioner, Allahabad Division and Others

RESPONDENT

Date of Decision : 13-04-1967

Acts Referred:

Uttar Pradesh Kshetra Samiti and Zilla Parishad Adhiniyam, 1961 — Section 46, 46(1)
Uttar Pradesh Kshetra Samiti and Zilla Parishad Adhiniyam, 1961 — Section 46, 46(1)
Uttar Pradesh Kshetra Samiti and Zilla Parishad Adhiniyam, 1961 — Section 46, 46(1)

Citation : (1967) 37 AWR 375

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satish Chandra, J.—The principal question raised by this petition is whether a, disciplinary action taken by the Adhyaksh against an employee of the Zila Parishad is appealable?

2. Mool Narain Jha, Respondent No. 3, was appointed as a temporary Sanskrit teacher on 4-11-1949 in a Junior High School which was administered by the District Board. It is stated that he was removed from service in 1952, but was re-instated. He was again dismissed in 1953, but was again reappointed. On 25-5-1964 the Adhyaksh Zila Parishad made a spot inspection of the Junior High School to verify the complaints against the third Respondent for being absent from the school. He found that the third Respondent was absent for some time. He served a charge sheet mentioning three charges including coming late to the school contrary to the rules. The teacher filed an explanation and an enquiry was held. The charges were found established by the enquiry officer. A notice was issued on 26-8-1964 asking the third Respondent to show cause why he should not be removed. The explanation was found unsatisfactory and on 10-9-1964 the Adhyaksh of the Zila Parishad by an order removed him from service. The order was challenged in an appeal before the Commissioner, Allahabad. The Zila

Parishad sent comments to the allegations made in the appeal. The Commissioner found that the; charge of coming late on the date of spot inspection was established, but the other two charges were not proved. He set aside the order of removal from service on the ground that it was under the circumstances, severe. He directed that the third Respondent will be treated as on leave without pay for 25-5-1964 and that this fact will be mentioned in his character roll. Ultimately the third Respondent was directed to be reinstated with continuity of service. This order of the Commissioner is challenged on the merits, but principally on the ground that no appeal lay.

3. On the merits, it was urged that the Commissioner could not validly base his decision on the view that the enquiry report was not given along with the show cause notice or that the show cause notice did not mention the evidence relied upon for holding that the charges have been established because no such point was taken in the appeal and hence the Respondent did not get a fair opportunity of showing cause. The mere absence of a ground of appeal will not disentitle the appellate authority from going into this matter, if it was otherwise apparent from the record. The Commissioner hence did not commit any error of law in finding that the omission to supply a copy of the enquiry report was a fatal omission. It was also urged that the enquiry report did not contain anything of importance. It only held that the charges have been proved. If that was so, it was incumbent on the authorities to have mentioned in the show cause notice the evidence which had been relied upon for the finding. That alone would have given the third Respondent a reasonable opportunity of showing cause. Moreover, the Commissioner has gone into the charges on their merits. The Commissioner found that the charge that the teacher violated the rules in going back to his home every day after the close of the school and in leaving his principal place of residence without permission was not established because no such rules were produced and hence" there was no question of their contravention. Mr. S.C. Khare, learned Counsel for the Petitioner, urged that there was no evidence for this finding. The finding is in negative. It is based on the absence of the evidence. The Zila Parishad did not mention the rules which were alleged to have been violated either in the enquiry report or in the show cause notice or in the order of removal. No such rules were brought to the notice of the Commissioner or even before me. The Commissioner was, therefore, justified in holding that there was no basis for this charge.

4. So far as the view that the punishment of removal from service merely for coming late to school on one day was severe, is also reasonable. It does not disclose any error of law. On the merits the Commissioner's order does not deserve any interference.

5. The main pointy however, relates to the existence of a right of appeal. That depends upon the interpretation of the relevant provisions.

6. The Local Self Government in this State was carried on under the UP District Boards Act, X of 1922. The third Respondent was employed in 1949 under the

provisions of the District Boards Act. u/s 82 of the District Boards Act the power to punish or dismiss servants of the Board vested in the President in cases of servants employed on a monthly salary of more than Rs. 40/-. Under the first proviso an appeal against the order of dismissal or punishment lay to the State Government. Section 193 of the District Boards Act permitted the State Government to delegate by a notification any power vested in it by the Act. By a notification No. U.O. 463 (2)/XI-B-8-51, dated 18-6-1952, the State Government delegated to the Commissioners of Divisions with respect to district boards within their respective divisions inter alia the power under the first proviso to Section 82 to decide all appeals except appeals against the orders of dismissal from servants of the District Boards whose monthly salary does not exceed Rs. 100/- per mensem. This notification was modified by notification No. 2424-B/IX-83-54 dated 8-1-1955 wherein the phrase "except appeals against orders of dismissal" were deleted. From this date onwards, the Commissioner, became entitled to hear appeals against orders of dismissal as well. On 1-11-1957 the State Government issued another notification No. 2440-A/IXA-186-54 wherein the power u/s 82 to decide all appeals from servants of District Boards whose monthly salary does not exceed Rs. 200/- per mensem was delegated. Thus, after 1-11-1957 the Commissioner was empowered to decide all appeals from servants of the District Board whose monthly salary does not exceed Rs. 200/- per mensem. The third Respondents case was covered by this provision.

7. With effect from 1-5-1958, Antarim Zila Parishads were established in all districts under the Antarim Zila Parishad Act No. XXIII of 1958. The UP District Boards Act continued to operate with the modification that the Antarim Zila Parishad became entitled; to exercise powers and functions, of the District Board. The District Board ceased to function as such. The powers of the President were vested in the Collector. Subsequently by UP Act No. III of 1961 provision for election of Adhyaksh was made and he was to exercise the powers of the President under the District Boards Act. The power to decide appeals also remained intact.

8. In 1961 the Kshettra Samiti and Zila Parishad Adhiniyam (UP Act No. 23 of 1961) was passed. Under this Act the Zila Parishads were established with effect from 30-6-1963 by a notification dated 29-6-1963 issued u/s 17(i) of the Adhiniyam. The Petitioner was the Adhyaksh of the Antarim Zila Parishad as also the Zila Parishad, Allahabad.

9. Chapter IX of the Adhiniyam deals with the officers and other servants of the Zila Parishad and Kshettra Samities. Section 39 mentions the various posts which a Zila Parishad will have. The Zila Parishad was empowered to create other posts as may be prescribed by the rules. The qualifications, emoluments and other conditions of service of officers and other servants were to be prescribed by the rules. Section 43 specified the method of appointment of persons to certain posts. Section 46 provided the, consequences of the enforcement of the Act on existing officers and servants. Sub-section (1) stated:

All officers and servants in the employment of the District Board constituted under the UP District Boards Act, 1922 (UP Act No. X of 1922) and of the Antarim Zila Parishads immediately before the appointed date shall notwithstanding anything contained in Sections 39 to 43 but subject to the provisions of Sub-section (2) be officers and servants employed by the Zila Parishad and until appointed to posts created u/s 39 shall be entitled to the same emoluments and allowances and shall be subject to same conditions of service to which they were entitled or were subject immediately before the said date.

Sub-section (2) prescribed the procedure for appointing the existing officers and servants to the posts newly created u/s 39. This has not yet been done in the case of Respondent No. 3. He continues on the same post as under the District Boards Act. The appointed date is, u/s 2, Clause (23) the date notified u/s 17 for the establishment and incorporation of the Zila Parishad. So the officers and servants employed by the District Board before the appointed date were deemed to be officers and servants employed by the Zila Parishad and were to be governed by the same "conditions of service" as before.

10. The question is what are the conditions of service of an employee? Are matters relating to punishment or termination "conditions of service"? Mr. S.C. Khare, appearing for the Petitioner, urged that in its normal significance this phrase does not include disciplinary matters. He further urged that the question of appointment does not relate to conditions of service. Power to appoint includes the power to terminate the service. Hence this also is outside the purview of conditions of service. According to him, conditions of service relate to matters governing the employee after he has been appointed and till he is in service. Matters like salaries and allowances, leave, increments, providend fund, gratuity, fixation of the age of superannuation etc. would alone pertain to the conditions of service, because they seek to resolve situations which arise during the service and in respect of the service. Learned Counsel submitted that the phrase "conditions of service" is used in Section 46(1) in this sense. It does not include termination of service. Mr. Advocate General, on the other hand, urged that the expression "conditions of service" generally includes all matters which relate to the employment, including those which arise prior to the appointment as also subsequent to the termination of service. Disciplinary matters also relate to the conditions of service of an employee. In AIR 1949 112 (Privy Council) the Judicial Committee held that the natural meaning of the expression "condition of service" includes provisions which prescribe circumstances under which the employer is 10 be entitled to terminate the services. This case supports the learned Advocate General. This Privy Council decision was approvingly referred to by the Supreme Court in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, .

11. Mr. S.C. Khare, counsel for the Petitioner, as an illustration of the distinction between conditions of service and disciplinary matters, has invited my attention to Article 314 of the Constitution. This article says that every person who having been appointed to the civil service of the Crown in India continues in service

after the commencement of this Constitution, shall be entitled to receive the same conditions of service as respects remuneration, leave and pension and the same rights as respects disciplinary matters as; changed circumstances may permit, as that person was entitled to immediately before such commencement. The dichotomy stated in Article 314 of the Constitution between conditions of service and disciplinary matters was deliberate and with a purpose. The constituent assembly intended to guarantee the pre-existing conditions of service in respect of remuneration, leave and pension, but not in respect of disciplinary matters, see *The Accountant General, Bihar and Another Vs. N. Bakshi*, . That is why disciplinary matters were separately mentioned. This Article specifically mentions pension as a condition of service. The question of pension arises after the end of the tenure of an employee. It is not a matter which relates to a situation which arises while service is continuing or which arises in between the two termini of service, i.e. appointment and termination.

12. Article 309 of the Constitution authorises the Legislature to regulate the conditions of service of persons appointed to public services. In *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, the Supreme Court held that conditions of service in Article 309 include proceedings by way of disciplinary action. This goes to demolish rather than support the restricted meaning which learned Counsel suggests for the term "conditions of service."

13. Mr. Khare further sought support for his submission from Section 16 of the UP General Clauses Act which runs as follows:

Where, by any Uttar Pradesh Act, a power to make any appointment is conferred, then unless a different intention appears, the authority having power to make the appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power.

Learned Counsel submitted that the power of dismissal is included in the power of appointment. The power of appointment does not relate to conditions of service, because it precedes the creation of the service of a person. Since dismissal is a part of this power, it will likewise be outside the purview of the conditions of service. The analogy is, in my opinion, neither apt nor appropriate. The power of dismissal relates to bringing to an end the tenure of service. It is ultimately connected with the continuance of service. It is one of the conditions of service, just as fixation of the age of superannuation is. Moreover, Section 16 includes the power to suspend also in the power of appointment. It cannot be urged and it was not said by learned Counsel, that the power of suspension does not deal with a situation arising between the two termini of appointment and termination. Section 16 of the General Clauses Act, therefore, does not assist this submission.

14. Learned Counsel placed reliance upon *The General Manager, Southern Railway Vs. Rangachari*, and urged that the phrase "matters relating to employment" in Article 16(1) of the Constitution were held by the Supreme Court

to include only the matters relating to salary, increments, leave, gratuity, pension and the age of superannuation. I do not agree. They held that matters relating to employment must mean the initial appointment as also all the terms and conditions of service pertaining to the said office. Their Lordships observed in concluding portion of paragraph 14 that what Article 16(1) guarantees is equality of opportunity to all citizens in respect of all the matters relating to employment illustrated by us as well as to an appointment to any office. In paragraph 16 the Supreme Court summarized that matters relating to employment must include all matters in relation to employment both prior and subsequent, to the employment which are incidental to the employment and form part of the terms and conditions of such employment. Therefore, in the opinion of the Supreme Court matters prior and subsequent to the appointment are incidental to employment and form part of its terms and conditions. The basic premise propounded by the learned Counsel that conditions of service relate to matters governing situations arising after appointment and prior to the termination of the service has not been accepted by the Supreme Court. Appointment itself was held to relate to conditions of employment or service. So should termination be.

15. Reliance was also placed upon a Full Bench decision of this Court in *UP State v. Murtaza Ali* 1961 AWR 387. That case is of no assistance in determining the general meaning of the phrase "conditions of service". That case turned on the language of Sections 57 and 58 of the UP Municipalities Act.

16. The position is that in its plain and ordinary meaning condition of service includes its termination. The question then arises if this phrase has been used in Section 46(1) in the same sense.

17. u/s 53 of the Adhiniyam, the punishment of officers and servants employed with the Zila Parishad including appeals from orders of punishments are to be regulated by the Rules. This provision applies to all officers and servants, be they existing from before the appointed date or may have been appointed subsequently. Learned Counsel informed me that the relevant rules have not yet been framed; but once the rules are framed all servants will be regulated by them in disciplinary matters, including the appealability of orders. It does not stand to reason that the Legislature intended that an employee, who had a right to appeal against an order of dismissal under the District Boards Act and who will have a right of appeal against any order of punishment u/s 53 of the Adhiniyam, will not have this important right in the intervening period of transition. If this unusual situation was intended to be created, some specific provision was expected. In this transition period an employee is to be governed by the same conditions of service as were applicable under the District Boards Act. The natural meaning of this term includes disciplinary matters. Giving this term as used in Section 46(1) the natural meaning, continuity of the status quo ante, which is the manifest object of Section 46(1), will be attained.

18. Sub-section (3) of Section 240 of the Government of India Act, 1935, provided that no person will be dismissed, until he has been given a reasonable

opportunity of showing cause. In High AIR 1948 121 (Privy Council) , the Privy Council held that Sub-section (3) was a statutory term of service. In AIR 1937 27 (Privy Council) it was held that Sub-section (2) of Section 240 by which it is provided that no person shall be dismissed by any authority subordinate to that by which he was appointed was a statutory term of service. On a parity of reasoning, the provisions of Section 82 of the District Boards Act providing for, inter alia, dismissal of an employee (including an appeal against it) would be a statutory term of service with the District Board. Section 46 of the Adhiniyam seeks to preserve the pre-existing conditions of service, statutory or contractual. So, taken either in its plain meaning or in the context of the scheme of the Adhiniyam, the phrase "conditions of service" in Section 46(1) will include all those matters including disciplinary action like dismissal and the right of appeal, which were provided for by the District Boards Act.

19. The delegation of the right to decide an appeal made by the State Government in favour of the Commissioner, will, in view of Section 270(a) of the Adhiniyam, continue. The Commissioner acted within his powers in deciding the appeal of the third Respondent.

20. In the result, the petition fails and is dismissed with costs.