DEVENDRA PRATAP NARAIN RAI SHARMA

v.

STATE OF UTTAR PRADESH

1961

November 3.

(K SUBBA RAO, J. C. SHAH, RAGHUBAR DAYAL and J. R. MUDHOLKAR, JJ.)

Public Servant—Dismissal—Re-instated by decree of Civil Court—Merits of charge not considered—Whether fresh enquiry on the same charges competent—Salary—Effect of order of Civil Court declaring dismissal invalid—Uttar Pradesh Government Fundamental Rules as amended in 1953 r. 54,—Code of Civil Procedure, 1908 (Act V of 1908), O. 2. r. 2—Constitution of India, Arts. 226, 310 and 311.

The order of dismissal against the appellant was set aside by the High Court, holding *inter alia*, that reasonable opportunity was set afforded to the appellant before imposing the penalty dismissed and the appellant must be deemed to continue in service. Thereafter the appellant was re-instated, but he was awarded salary at the rate of Rs. 76-11-0 till the order of dismissal, and at a token rate of Rs. 1/- for the period between the order of dismissal and reinstatement. The appellant was again suspended and enquiry was directed against him in respect of dereliction of duty for which he had already been once dismissed and re-instated.

The appellant moved the High Court for a writ to quash the order directing the said enquiry. He claimed that Government had no power to re-open the enquiry concluded by the decision of the High Court and that the State was bound to pay him salary with increments for the period of suspension as if he was on duty during that period. The High Court, *inter alia*, held that the second enquiry against the appellant was not barred by virtue of the previous decision, but the fixation of token salary amounted to punishment which could not be imposed without following the procedure laid down in Art. 311 of the Constitution, and there was no justification for not granting him full salary. The appellant came up in appeal to the Supreme Court by certificate.

Held, that the State Government was competent in the circumstances, to direct a fresh enquiry against the public servant for dereliction of duty, and to suspend him.

Where the order of dismissal of a public servant was declared invalid by the decree of a Civil Court the effect was that the public servant was never to be deemed to have been lawfully dismissed from service, and the order of re-instatement was superfluous. It was not open to the authority

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to deprive the public servant of the remuneration which he would have earned had he been permitted to work.

Held, futher, that r. 54 of the Fundamental Rules of the Uttar Pradesh Government enables the State Government of fix the pay of a public servant, when dismissed is set aside in a departmental appeal, but that rule has no application to cases in which the dismissal of a public servant is declared invalid by the decree of a Civil Court and he is consequently re-instated.

Dwarkachand v. *State of Rajasthan*, I. L. R. (1957) Raj. 1049, *Nanak Chandra Bairagi* v. *Supdt. of Police, Sibsagar*, I. L. R. (1955) Assam 191 and *Mohan Singh Choudhri* v. *Divisional Personnel Officer, Northern Railway, Ferozepore Cantt.* I. L. R. (1957) Pub. 1883, not applicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 622 of 1960.

Appeal from the judgment and order dated February 12, 1960, of the Allahabad High Court (Lucknow Bench) at Lucknow in Writ Petition No. 228 of 1959.

1. *M. Lall, E. Udyarathnam* and *S. S. Shukla*, for the appellant.

C. B. Agrawalla and *C. P. Lal*, for the respondents.

1961. November 3. The Judgment of the Court was delivered by

Shah J.

SHAH, J.—In 1951 the appellant Devendra Pratap Narain Rai Sharma held the post of "Inspector Qanungo" in the Revenue Department of the State of Uttar Pradesh and was selected for the post of Tehsildar on probation. By order dated April 21, 1952, the Collector of Jhansi suspended the appellant and commenced an enquiry against him on certain charges of misdemeanour. In June, 1952, the Collector recommended to the Land Reforms Commission that the appellant be reverted to the post of "Naib Tehsildar", but the Commissioner recommeded to the State Government that the applicant be dismissed from service.

The State Government accepted the recommendation of the Commissioner and dismissed the appellant from service, by order dated September 16, 1953. The appellant then commenced an action (Suit No. 163 of 1954) in the Court of the Civil Judge, Lucknow, challenging the legality of the order of dismissal principally on the ground that he was not afforded the opportunity of defending himself and of showing cause against the action proposed to be taken against him. The Civil Judge dismissed the suit but the decree of the Judge was reversed by the High Court of Civil Judicature at Allahabad. The High Court held that reasonable opportunity was not afforded to the appellant either before the recommendation was made for imposing penalty or before imposing punishment and therefore the appellant was deprived of the protection of Art. 311 of the Constitution. The High Court, accordingly, allowed the appeal, set aside the decree of the Civil Judge and granted a declaration that the order passed by the Government of Uttar Pradesh dated September 16, 1953, purporting to dismiss the appellant was void, inoperative and illegal and the appellant must be deemed to continue in service.

The appellant was then by the Government of Uttar Pradesh Notification dated March 30, 1959, reinstated to his original post of Tehsildar. He was posted at Tehsil Puranpur in District Pilibhit and took charge of his office on April 28, 1959. The appellant then applied to the Accountant General of Uttar Pradesh for payment of arrears of salary and allowances due to him. The Accountant General, by letter dated May 18. 1959, informed the appellant that he was "entitled to draw pay and allowances with effect from April 28, 1959" and that as regards the arrears of pay and allowances for the period between April 21, 1952, and April 28, 1959, reference had been made to the State Government about the terms and

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conditions of the appellant's reinstatement and that action would be taken on receipt of instructions in that behalf.

The appellant was again suspended by order dated July 11, 1959, issued by the Board of Revenue and was directed to hand over charge to the Naib Tehsildar of Tehsil Purarpur. On July 24, 1959, the Board of Revenue ordered that the salary of the appellant for the period between April 21, 1952, and the date of taking over charge of his duties as Tehsildar on reinstatement will be fixed as follows :—

(1) The pay from April 21, 1952 till the date of orders of his dismissal will be limited to the subsistence allowance of Rs. 76/11/- p. m. already drawn by him.

(2) The pay for the period from the date following the date of the order of his dismissal till the date of his taking over charge of his duties as Tahsildar on reinstatement will be fixed at Rs. 1/-p. m. as token pay.

The appellant was also informed that the period of his dismissal, i.e. April 21, 1952, to the date of his taking over charge of his office as Tehsildar on reinstatement will be treated as "on duty", and will count towards pension.

The appellant applied on August 25, 1959, to the High Court at Allahabad by a petition under Art. 226 of the constitution praying for a writ quashing the order directing enquiry into the allegations regarding his work and conduct as Tehsildar at Garautha, District Jhansi and for a direction setting aside the order of suspension dated July 11, 1959, and for a direction permitting the appellant to draw his full salary and allowances with all increments amounting to Rs. 27,238/10/- and for an order to the Accountant General to issue pay slips at the rate of Rs. 325/-p.m. from the date

of taking over charge with dearness and house allowances with further increments, if any, falling due in the scale of Rs. 200-10-250-15-400, and for directions to the respondents to issue orders for confirmation of the appellant with effect from April 19, 1953. The appellant claimed that the Government of Uttar Pradesh had no power to reopen the enquiry concluded by the decision of the High Court of Allahabad and that the State was bound to pay him salary with increments and allowances for the period of suspension as if he was on duty during that period. He also claimed that he must be deemed to have been confirmed in the post of a Tehsildar and, therefore, entitled to salary in the grade of Tehsildar.

The High Court held that the second enquiry against the appellant directed by the Board of Revenue was not barred by virtue of the previous decision and that the appellant could not be deemed to have been confirmed with effect from April, 1953. The High Court further held that because the appellant had not claimed the salary for the period April 21, 1959, to November 24, 1954, in the Civil Suit filed by him he should be deemed to have relinquished that part of his claim. Regarding the salary for the period November 24, 1954, to April 28, 1959, the High Court held that fixation of Rs. 1/- by the Board of Revenue as token salary of the appellant amounted to punishment which the Government could not impose without following the procedure laid down by Art. 311 of the Constitution. In the view of the High Court the appellant having been reinstated, there was no justification for not granting him full salary till July 14, 1959, the date till which he continued to function as Tehsildar after reinstatement. But the High Court observed, "A writ of mandamus can, however, only direct the opposite parties to proceed in accordance with law. We, therefore, direct that the order contained in annexure 11 be quashed and the State Government

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directed to reconsider the matter in the light of the relevent rule after giving notice to and hearing the petitioner." The High Court further held that the appellant was not entitled to any higher salary nor was there anything to show that he had earned any annual increment or had crossed the efficiency bar.

Against the order passed by the High Court partially allowing the petition and directing the State Government to reconsider the matter regarding the pay and allowances due to the appellant for the period November 24, 1954, to April 28, 1959, this appeal has been preferred with certificate of fitness granted under Articles 132 (1) and 133 (1)(b) of the Constitution.

In our view, the State Government was competent to direct a fresh enquiry against the appellant for dereliction of duty even if such dereliction was in the period relating to which proceedings were previously started and the appellant had been dismissed from service. The appellant was not in the earlier proceedings exonerated by the High Court in respect of the alleged misconduct charged against him, and, in any event, charge against him in the second enquiry was different from the charge in the first enquiry. The High Court had in the suit challenging the order passed in the first enquiry expressly observed that on the question as to misconduct and the punishment, no opinion was expressed. The suit filed by the appellant was decreed only on the ground that he had not been afforded a reasonable opportunity of showing cause against the charge against him and also the punishment decided to be imposed upon him.

Authorities on which reliance was placed by counsel for the appellants, namely, *Dwarkachand* v. *State of Rajasthan*(1), *Nanak Chandra Bairagi* v.

(1) I. L. R. (1957) Raj. 1049.

Supdt. of Police, Sibsagar(1) and *Mohan Singh Chaudhari* v. *Divisional Personnel Officer, Northern Railway, Ferozepore Cantt*(2), do not support the plea that the second enquiry is, in the circumstances of the case, barred. An adjudication on the merits by a quasi-Judicial body may or may not debar commencement of another enquiry in respect of the same subject matter. But in this case we are concerned with the scope of the High court order. The binding effect of a judgment depends not upon any technical consideration of form, but of substance. The High Court in the appeal filed by the appellant in suit No. 163 of 1954 did not exonerate the appellant from the charges. The High Court decreed the suit on the ground that the procedure for imposing the penalty was irregular, and such a decision cannot prevent the State from commencing another enquiry in respect of the same subject matter consistently with the provisions of Arts. 310 and 311. In Dwarkachand's case (3), in a previous enquiry the public servant concerned had been exonerated; and in Mohan Singh Chaudhari's case (2) a decision by the civil court declaring illegal an order dismissing a public servant by an officer not authorised in that behalf was held binding on all the parties in proceedings under Art. 226 till such decision was set aside in accordance with law. In Kanak Chandra's case (1) it was held that an order in exercise of powers of revision by the Govenor under the authority reserved to him setting aside on order of censure passed by a subordinate authority and dismissing the public servant concerned from service did not amount to a second departmental enquiry. These cases do not lend support to the proposition that after an order passed in an enquiry against a public servant imposing a penalty is quashed, by a civil court, no further proceeding can be commenced against him even if in the proceeding in which the order quashing

(1) I. L. R (1955) Assam 191.
(2) I. L. R (1957) Pub. 1833.
(3) I. L. R. (1957) Raj. 1049.

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the enquiry was passed, the merits of the charge against the public servant concerned were never investigated.

If the State Government was competent to order a fresh enquiry, we see no reason why it would be incompetent to direct suspension of the appellant during the pendency of the enquiry.

The High Court in dealing with the appellant's claim to salary during the period of his suspension pending the earlier enquiry observed that there was no justification for "not granting the appellant his full pay" for the period after the date of the suit. But the counsel for the State of Uttar Pradesh asserted that it is open to the State, notwithstanding the direction, to award as remuneration to the appellant for the period for which he was under suspension any amount which on a reconsideration of the matter in the light of the relevant rules and after hearing the appellant the State Government considers just and proper. This power, counsel contends, arises by virtue of Rule 54 of the Fundamental Rules framed by the State of Uttar Pradesh under the authority conferred under Art. 309 of the Constitution. Counsel says that it was because of this rule that the High Court directed the State Government to reconsider the matter in the light of the relevant rules.

In our view, this contention is wholly misconceived. Rule 54, as amended in 1953, stands as follows :—

> "54. (1) When a Government servant who has been dismissed, removed or suspended is reinstated, the authority competent to order the reinstatement shall consider and make a specific order—
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> (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where such competent authority holds that the Government servant has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government servant shall be given the full pay to which he would have been entitled, had he not been dismissed, removed or suspended, as the case may be together with any allowances of which he was in receipt prior to his dismissal, removal or suspension.

(3) In other cases, the Govt. servant shall be given such proportion of such pay and allowances as such competent authority may prescribe.

Provided that the payment of allowances under clauses (2) and (3) shall be subject to all other conditions under which such allowances are admissible.

(4) In a case falling under clause (2) the period of absence from duty shall be treated as the period spent on duty for all purposes.

(5) In a case falling under clause (3) the period of absence from duty shall not be treated as period spent on duty unless such competent authority specifically directs that it shall be so treated for any specified purposes."

This rule has no application to cases like the present in which the dismissal of a public servant is declared invalid by a civil court and he is reinstated. This rule, undoubtedly enables the State Government to fix the pay of a public servant whose dismissal is set aside in a departmental appeal. But in this case the order of dismissal was declared invalid in a civil suit. The effect of the decree of the

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civil suit was that the appellant was never to be deemed to have been lawfully dismissed from service and the order of reinstatement was superfluous. The effect of the adjudication of the civil court is to declare that the appellant had been wrongfully prevented from attending to his duties as a public servant. It would not in such a contingency be open to the authority to deprive the public servant of the remuneration which he would have earned had he been permitted to work.

The High Court has disallowed to the appellant his salary prior to the date of the suit. The bar of O.2 r. 2 of the Civil Procedure Code on which the High Court apparently relied may not apply to a petition for a high prerogative writ under Art. 226 of the Constitution, but the High Court having disallowed the claim of the appellant for salary prior to the date of the suit, we do not think that we would be justified in interfering with the exercise of its discretion by the High Court.

The order of the High Court therefore is confirmed. The State has made a wholly unjustifiable claim to fix the salary of a public servant wrongfully prevented from performing his duties, even after he is reinstated in consequence of a decision of the civil court declaring his dismissal as wrongful. As, however, the principal relief claimed by the appellant is not granted, we think that the proper order is that there will be no order as to costs throughout.