The State Of Orissa And Another vs Ram Narayan Das on 8 September, 1960

Equivalent citations: 1961 AIR 177, 1961 SCR (1) 606, AIR 1961 SUPREME COURT 177, 1960 ALL. L. J. 962, 1960 BLJR 740, 1961 (1) LABLJ 552, 1961 (1) SCJ 209, 1961 (1) SCR 606, 1961 27 CUTLT 1

Author: J.C. Shah

Bench: J.C. Shah, S.K. Das, M. Hidayatullah, K.C. Das Gupta, N. Rajagopala Ayyangar

PETITIONER:
THE STATE OF ORISSA AND ANOTHER

Vs.

RESPONDENT:
RAM NARAYAN DAS

DATE OF JUDGMENT:
08/09/1960

BENCH:
SHAH, J.C.
BENCH:
SHAH, J.C.
DAS, S.K.
HIDAYATULLAH, M.
GUPTA, K.C. DAS
AYYANGAR, N. RAJAGOPALA

CITATION:
1961 AIR 177 1961 SCR (1) 606
CITATOR INFO :

RF	1962 SC 794	(8)
E	1963 SC 531	(6,8)
RF	1963 SC1552	(5)
R	1964 SC 449	(17)
RF	1964 SC 600	(13,138)
R	1964 SC1854	(18)
R	1968 SC1089	(10,11,13,17)
R	1974 SC 423	(14)
F	1974 SC2192	(65,158)
RF	1976 SC1766	(6,12)
RF	1976 SC2547	(11,14,21)
D	1978 SC 363	(11)
RF	1987 SC2135	(1)
R	1987 SC2408	(10)

ACT:
Public servant-Probationer Sub-Inspector-Discharge from service for unsatisfactory work and conduct-If amounts to dismissal-constitution of India, Art. 311(2).

HEADNOTE:
The respondent was appointed a Sub-Inspector on probation in the Orissa Police Force. A notice was served on him to show cause why he should not be discharged from service " for gross neglect of duties and unsatisfactory work ". He submitted his explanation and asked for opportunity to cross-examine certain witnesses. The Deputy Inspector-General of Police considered the explanation unsatisfactory and passed an order discharging the respondent from service " for unsatisfactory work and conduct ". The respondent contended that the order was invalid on two grounds: (i) that he was not given a reasonable opportunity to show cause against the proposed action within the meaning of Art. 311(2), and (ii) that he was not afforded an opportunity to be heard nor was any evidence taken on the charges.
Held, that the order of discharge did not amount to dismissal and did not attract the protection of Art. 311(2) of the Constitution and was a valid order. The services of the respondent,' who was a probationer, were terminated in accordance with the rules and not by way of punishment. He had no right to the post held by him and under the terms of his appointment he was liable to be discharged at any time during the period of his probation. The notice given to the respondent was under Rule 55-B of the Civil Services (Classification, Control and Appeal) Rules which made it obligatory to give such notice before terminating the services of a probationer. The enquiry was merely for ascertaining whether he was fit to be confirmed.
Shyam Lal v. The State of U. P., [1955] 1 S.C.R. 26 and Purshottam Lal Dhingra v. Union of India, [1958] S.C.R. 828, referred to.
State of Bihar v. Gopi Kishore Prasad, A.I.R. 1960 S.C. 689, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 61/1959. Appeal by special leave from the judgment and order dated December 4, 1957, of the Orissa High Court in O.J.C. No. 449 of 1956.

C. K. Daphtary, Solicitor-General of India, D. N. Mukherjee and T. M. Sen, for the appellants. The respondent did not appear.

1960. September 8. The Judgment of the Court was delivered by SHAH J.-The respondent was appointed in the year 1950 a Sub- Inspector on probation in the Orissa Police force. In view of the adverse reports received against him on July 28, 1954, notice was served on the respondent calling upon him to show cause why he should not be discharged from service "

> for gross neglect of duties and unsatisfactory work ". In the notice, ten specific instances of neglect of duty and two instances of misconduct-acceptance of illegal grati- fication and fabrication of official record were set out. By his explanation, the respondent submitted that action had already been taken against him by the Superintendent of Police in respect of instances of neglect of duty set out in the notice and no further action in respect thereof could on that account be taken against him, because to do so would amount to imposing double punishment. He denied the charge relating to misconduct and submitted that it was based on the uncorroborated statements of witnesses who were inimical to him. He also asked for an opportunity to cross-examine those witnesses. The Deputy Inspector General of Police considered the explanation and observed:
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> "I have carefully gone through the representation of the probationary S. I. His argument that he has already been punished by the S. P. for specific instances of bad' work does not help him very much since all these instances of bad work during the period of probation have to be taken together in considering his merits for confirmation or otherwise. The S. 1. has already had long enough of chance to work under different S. Ps. though in one District, but he has not been able to procure a good chit from anyone. He has also been adversely reported against after the representation dealt with therein was submitted. It is, therefore, no good retaining him further in service. He is discharged from the date on which this order is served on him ".

The Deputy Inspector General of Police on December 11, 1954, in discharging the respondent from service, passed a formal order as follows:

> " Probationary S. I. Ramnarayan Das of Cuttack District is discharged from service for unsatisfactory work and conduct with effect from the date the order is served on him ".

The respondent then presented a petition under Art. 226 of the Constitution in the High Court of Judicature, Orissa, challenging the validity of the order passed and praying for the issue of a writ in the nature of certiorari or any other writ quashing the order of discharge. Inter alia, the respondent urged, (1) that the order of discharge was invalid since he was not given a reasonable opportunity to show cause against the action proposed to be taken in regard to him within the meaning of Art. 311(2) of the Consti- tution, (2) that the order of discharge was invalid since he was not afforded an opportunity to be heard nor was any evidence taken on the charges framed.

The High Court by order dated December 4, 1957, set aside the order of discharge. In the view of the High Court, the Deputy Inspector General of Police had taken into consideration allegations of corruption in passing the impugned order and also that he had refused to give to the respondent an opportunity to cross-examine witnesses on whose statements the charge of misconduct was made. The High Court observed that by discharging the respondent from service without holding an enquiry as contemplated by r. 55 of the Civil Services (Classification, Control and Appeal) Rules and without complying with the requirements of Art. 311(2) of the Constitution, an " indelible stigma affecting his future career " had been cast. Against the order issuing the writ quashing the order discharging the respondent from service, this appeal has been preferred by special leave.

The respondent was undoubtedly at the time when proceedings were started against him and when he was discharged from service, a probationer, and had no right to the post held by him. Under the terms of his appointment the respondent was liable to be(discharged at any time during tile period of his probation. By r. 668 of the Police Manual of the Orissa State, in so far as it is material, it is provided :

> " All officers shall in the first instance be appointed or promoted on probation. Where the period of probation is not otherwise provided for in the Rules, it shall be for a period of two years in the case of executive officers..... The authority empowered to make such appointment or promotion may at any time during such probation period and without the formalities laid down in Rule 820 remove an executive officer directly appointed or revert such an officer promoted who has not fulfilled the conditions of his appointment or who has shown himself unfitted for such appointment or promotion ".

Rule 681 of the Police Manual by cl. (b) in so far as it is material provides, " Those promoted from the rank of Assistant Sub-Inspector shall be confirmed (Rule 659(e)) and those appointed direct shall be on probation for a period of two years. At the end of that period, those pronounced competent and fit will be confirmed by the Deputy Inspector-General. The others will be discharged by the same authority ".

Rule 55-B of the Civil Services (Classification, Control and Appeal) Rules, in so far as it is material provides :

> " Where it is proposed to terminate the employment of a probationer, whether during or at the end of the period of probation, for any specific fault or on account of his unsuitability for the service, the probationer shall be apprised of the grounds of such proposal and given an opportunity to show cause against it, before orders are passed by the authority competent to terminate the employment".

Notice to show cause whether the employment of the respondent should be terminated was, by r. 55-B made obligatory. The Deputy Inspector General of Police who had appointed the respondent apprised him by notice of the grounds on which the order of discharge was proposed to be made and required him ,,to show cause why action as proposed should not be taken. The notice consisted of

two parts, (1) relating ;to ten heads of "

gross neglect of duty and unsatisfactory work " and (2) "

suspicious and un police man-like conduct " in which specific instances of fabrication of public records and acceptance of illegal gratification were set out. The Deputy Inspector General of Police by his order which ha; been set out hereinbefore, expressly observed that he had, in considering the case of the respondent for confirmation, to take into account the reports received by him. The formal order communicated to the respondent also stated that the respondent was discharged from service for unsatisfactory work and conduct. The reasons given in the order clearly indicate that the notice served upon the respondent was under r. 55-B of the Civil Services (Classification, Control and Appeal) Rules for ascertaining whether he should be confirmed or his employment terminated. Prima facie, the order is one terminating employment of the respondent as a probationer, and it is not an order dismissing him from service. The High Court has however held that the order of discharge amounted to imposing punishment, because the respondent had been " visited with evil consequences leaving an ineligible stigma on him affecting his future career ".

The respondent has not appeared before us to support the judgment of the High Court, but the learned Solicitor General who appeared in support of the appeal has very fairly invited our attention to all the materials on the record and the relevant authorities which have a bearing on the case of the respondent.

In Shyam Lal v. The State of Uttar Pradesh and the Union of India (1), it was held that compulsory retirement under the Civil Services (Classification, Control and Appeal) Rules of an officer did not amount to dismissal or removal within the meaning of Art. 311 of the Constitution. In that case, the public servant (1) [1955] 1 S.C.R. 26.

concerned was served with a notice to show cause in respect of three specific items of misdemeanor as a public servant to which he submitted his explanation. Thereafter, the President, after considering the case and the recommendation of the commission appointed to investigate the case, decided that the public servant should be retired forthwith from service ". This order was challenged by a petition under 226 of the Constitution filed in the High Court at Allahabad. In an appeal against the order dismissing the petition, this court held that the order compulsorily retiring the public servant involved " no element of charge or imputation " and did not amount to dismissal or removal within the meaning of Art. 311(2) of the Constitution and the order of the President was not liable to be challenged on the ground that the public servant had not been afforded full opportunity to show cause against the action proposed to be taken in regard to him.

In Parshottam Lal Dhingra v. Union of India (1) this court by a majority held that if an officer holding an officiating post had no right under the rules governing his service to continue in it, and such appointment under the general law being terminable at any time on reasonable notice, the reversion of the public servant to his substantive post did not operate as a forfeiture of any right: that order "

visited him with no evil consequences " and could not be regarded as a reduction in rank by way of punishment. Bose, J., who disagreed with the majority observed that the real test was whether evil consequences over and above those that ensued from a contractual termination, were likely to ensue as a consequence of the impugned order: if they were, Art. 311 of the Constitution would be attracted even though such evil consequences were not prescribed as penalties under the Rules. In that case, Das; C. J., in delivering the judgment of the majority, entered upon an exhaustive review of the law applicable to the termination of employment of public servants and at pp. 861.863 summarised it as follows:

(1) [1958] S.C.R. 828.

" Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by this court in Satish Chander Anand v. The Union of India (1). Like-wise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Art. 311(2) as has also been held by this court in Shyam Lal v. The State of Uttar Pradesh (2)..... In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Art. 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal, or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Art. 311 must be complied with. As already stated, if the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Art. 31 1, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an indelible stigma on the officer affecting his future career..... But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant (1) [1953] S.C.R. 655.

(2) [1955] 1 S.C.R. 26.

to a lower post or rank cannot in any circumstances be a punishment. The real test for determining-whether the reduction in such cases is or is not by way of punishment is to find out if the order for

the reduction also visits the servant with any penal consequences..... The use of the expression, " terminate " or " discharge " is not conclusive. In spite of the use of such innocuous expressions, the court has to apply the two tests mentioned above, namely, (1) Whether the servant had a right to the post or the rank or (2) Whether he has been visited with evil consequences of the kind hereinbefore referred to ? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service....."

The respondent had no right to the post held by him. Under the terms of his employment, the respondent could be discharged in the manner provided by r. 55-B. Again mere termination of employment does not carry with it " any evil consequences " such as forfeiture of his pay or allowances, loss of his seniority, stoppage or postponement of his future chances of promotion etc. It is then difficult to appreciate what " indelible stigma affecting the future career " of the respondent was cast on him by the order dis- charging him from employment for unsatisfactory work and conduct. The use of the expression " discharge " in the order terminating employment of a public servant is not decisive : it may, in certain cases amount to dismissal. If a confirmed public servant holding a substantive post is discharged, the order would amount to dismissal or removal from service; but an order discharging a temporary public servant may or may not amount to dismissal. Whether it amounts to an order of dismissal depends upon the nature of the enquiry, if any, the proceedings taken therein and the substance of the final order passed on such enquiry. Where under the rules governing a public servant holding a post on probation, an order terminating the probation is to be preceded by a notice to show cause why his service should not be terminated, and a notice is issued asking the public servant to show cause whether probation should be continued or the officer should be discharged from service the order discharging him cannot be said to amount to dismissal involving punishment. Undoubtedly, the Government may hold a formal enquiry against a probationer on charges of misconduct with a view to dismiss him from service, and if an order terminating his employment is made in such an enquiry, without giving him reasonable opportunity to show cause against the action proposed to be taken against him within the meaning of Art. 311(2) of the Constitution, the order would undoubtedly be invalid.

The Solicitor General invited our attention to a recent judgment of this court, State of Bihar v. Gopi Kishore Prasad (1)in which, delivering the judgment of the court, the learned Chief Justice extracted five propositions from the authorities and particularly from Parshottam Lal Dhingra's case (2), dealing with the termination of employment of temporary servants and probationers. The third proposition set out in the judgment is as follows:

> " But instead of terminating such a person's service without any enquiry, the employer chooses to hold an enquiry into his alleged misconduct, or inefficiency, or for some similar reason, the termination of service is by way of punishment, because it puts a stigma on his competence and thus affects his future career. In such a case, he is entitled to the protection of Art. 311(2) of the Constitution ".

This proposition, in our judgment, does not derogate from the principle of the other cases relating to termination of employment of probationers decided by this court nor is it inconsistent with what we

have observed earlier. The enquiry against the respondent was for ascertaining whether he was fit to be' confirmed. An order discharging a public servant, even if a probationer, in an enquiry on charges of misconduct, negligence, inefficiency or other disqualification, may (1) A.I.R. [1960] S. C. 689.

(2) [1958] S.C.R. 828.

appropriately be regarded as one by way of punishment, but an order discharging a probationer following upon an enquiry to ascertain whether he should be 0 confirmed, is not of that nature. In Gopi Kishore Prasad's case (1), the public servant was discharged from service consequent upon an enquiry into alleged misconduct, the Enquiry Officer having found that the public servant was " unsuitable " for the post. The order was not one merely discharging a probationer following upon an enquiry to ascertain whether he should be continued in service, but it was an order as observed by the court " clearly by way of punishment ". There is in our judgment no real inconsistency between the observations made in parshottam. Lal Dhingra's case (2) and Gopi Kishore Prasad's case (1). The third proposition in the latter case refers to an enquiry into allegations of misconduct or inefficiency with a view, if they were found established, to imposing punishment and not to an enquiry whether a probationer should be confirmed. Therefore the fact of the holding of an enquiry is not decisive of the question. What is decisive is whether the order is by way of punishment, in the light of the tests laid down in Parshottam Lal Dhingra's case (2).

We have carefully considered the evidence and the authorities to which our attention has been invited and we are definitely of opinion that the High Court was in error in holding that the order discharging the respondent from service amounted to dismissal which attracted the protection of Art. 311(2) of the Constitution.

In that view of the case, this appeal will be allowed and the petition for a writ dismissed. There will be no order as to costs throughout.

Appeal allowed.

(1) A.I.R. 1960 S.C. 689.

(2) [1958] S.C.R. 828.