Municipal Board, Pratabgarh And Anr. vs Mahendra Singh Chawla And Ors. on 11 October, 1982

Equivalent citations: AIR1982SC1493, [1982(45)FLR382], 1982LABLC1783, 1982(2)SCALE1106, (1982)3SCC331, 1983(1)SLJ440(SC), 1982(14)UJ626(SC), AIR 1982 SUPREME COURT 1493, 1982 LAB. I. C. 1783, (1983) 1 LAB LN 5, 1982 UJ (SC) 626, 1983 SCC (L&S) 19, (1982) 45 FACLR 382, 1982 (3) SCC 331

Bench: D.A. Desai, R.B. Misra

ORDER

1. Respondent Mahendra Singh Chawla was appointed as an Overseer by the appellant Municipal Board, Pratabgarh (Board for short) as per its resolution dated October 15, 1956. Respondent was prosecuted and convicted for an offence under Section 161 of the Indian Penal Code on the charge that he attempted to accept illegal gratification. During the pendency of trial respondent was suspended from service. It is not clear as to whether service of the respondent was terminated consequent upon his conviction for an offence involving moral turpitude. By Resolution of the appellant Board, Ext. 6 dated August 28, 1963, respondent was given fresh appointment from that day as an oversear on a pay of Rs. 145/- p.m. as basic pay plus D.A. @ Rs. 40/-p.m. and cycle allowance of Rs. 10/- p.m. This Resolution appears to have been passed pursuant to an application made by the respondent and the last paragraph of the Resolution makes it clear that a fresh appointment was given. By another Resolution Ext. 7 of the same date the request of the respondent for salary and wages for the suspension period was rejected and it was made abundantly clear that a fresh appointment was given to the appellant with effect from August 28, 1963. This fresh appointment came to the notice of the Local Self Government Department of Rajasthan Government. The Department concerned made an Order No. 18(a)(131) DLB/65/23473 dated July 21, 1965, by which the Municipal Board was directed to terminate the service of the respondent being in violation of the Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958. Accordingly the service of the respondent was terminated with effect from August 31, 1965.

2. The respondent filed a suit in the Court of Civil Judge, Pratabgarh, for a declaration that the order terminating his service was void ab initio and that no fresh appointment was given but after setting aside the suspension order he was reinstated. It was contended on his behalf that he being a permanent employee his service could not be terminated in the manner in which it was done. The trial court held that the appointment given to the respondent on August 28, 1963, as per Resolution Ext. 6 dated August 28, 1963, was a fresh appointment and that under the Rajasthan Municipal (Subordinate and Ministerial Services) Rules, 1963, fresh appointment given to the respondent would clothe him with the status of a temporary servant and the termination of his service is legal and valid. Respondent appealed to the District judge without success. Respondent then carried the matter in second appeal to the High Court of Rajasthan.

3. A learned single Judge of the Rajasthan High Court held that the appointment given as per order and Resolution Ext. 6 dated August 28, 1963, was in substance reinstatement of the respondent after revoking the order of suspension and that as the respondent was a permanent servant, this reinstatement would not alter the character of his status in service irrespective of the fact that the Resolution Ext. 6 and 7 indubitably show that the appointment given to the respondent was a fresh appointment and he was not paid his salary and wages for the period of suspension. Nor is there anything to show that the order of suspension was revoked. The learned Judge accordingly allowed the appeal and decreed the suit of the plaintiff declaring that the order dated July 21, 1965 made by the local Self Government Department was illegal and void and that the respondent is entitled to arrears of salary with all consequent benefits till his reinstatement. Hence this appeal by special leave by the Municipal Board.

4. Respondent joined service in 1956. He was prosecuted and convicted for attempting to accept illegal gratification under Section 161 of the Indian Penal Code and was sentenced to pay a fine of Rs. 200/-. During the pendency of the trial he was under suspension. The record does not make it clear whether consequent upon his conviction for accepting illegal gratification his service was terminated. However, it appears from the Resolution of the Municipal Board Ext. 6 dated August 28, 1963, that he was given fresh appointment effective from the date of the Resolution on the minimum salary available at the induction in service. Ordinarily, a Municipal Board employee convicted for an offence of accepting illegal gratification meaning thereby involving moral turpitude is liable to be dismissed and no enquiry would also be necessary before imposing the penalty of dismissal from service. Therefore, it becomes abundantly clear from the Resolution Ext. 6 that there was termination of service but on the request of the respondent the Municipal Board made a fresh appointment. The Municipal Board in giving the fresh appointment appears to have been influenced by the fact that respondent was a technical hand and he was very intelligent and even during the period of suspension he used to come to the office and completed the work assigned to him by the Board. This humanitarian consideration appealed to the Board to give him a fresh appointment. It appears 20 that the respondent had sought reinstatement meaning thereby revocation of the order of suspension and continuity of service. The Resolution Ext. 7 clearly shows that this request was rejected. The relevant portion of the Resolution reads :

> Demand made by the oversear about the salary of suspension period is not proper in the Board's opinion. Therefore, this prayer of the oversear...is rejected.
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> If an employee was under suspension during trial and ultimately he was convicted for an offence involving moral turpitude and was liable to be dismissed and was given a fresh appointment on humanitarian grounds, the appointment made contrary to the rules obviously would be a fresh appointment. Both in Exts. 6 and 7 it is stated that the respondent is being given fresh appointment simultaneously rejecting his request for revocation of suspension order and for the salary for the period of suspension. If all these circumstances are taken together it is crystal clear that the respondent was not reinstated though the English translation of Ext. 7 at one place uses the expression 'reinstated'. This expression cannot be read in isolation because Ext. 6 precedes Ext. 7 and the Resolution Ext. 6 clearly shows that what was offered was a

fresh appointment and not reinstatement after revoking the suspension order which would permit an inference of continuity in service.

5. Now, prima facie it was improper for the Municipal Board even to give a fresh appointment to a person who by abuse of his office had attempted to obtain illegal gratification. This lapse could not have been overlooked. Even then an offer of fresh appointment was given to the respondent who accepted the same without demur. Obviously, therefore, this appointment would not clothe the respondent with the status of a permanent employee. In fact, if his appointment is ab initio void in the sense that the Municipal Board could not have even given him fresh appointment in view of his conviction for an offence under Section 161, I.P.C., the question whether he would be a temporary or permanent employee pales into insignificance. Some argument of estoppel appears to have weighed with the High Court. The relevant rules being statutory it is difficult to entertain the plea of estoppel. Therefore, the judgment of the High Court on the point of law holding that the order dated August 28, 1963, was one of reinstatement with continuity of service and hence the respondent was a permanent employee and his service could not be terminated in the manner in which it was done does not commend to us.

6. What are the options before us. Obviously, as a logical corollary to our finding we have to interfere with the judgment of the High Court, because the view taken by it is not in conformity with the law. It is at this stage that Mr. Sanghi, learned Counsel for the respondent invited us to consider the humanitarian aspect of the matter. The submission is that the jurisdiction of this Court under Article 136 of the Constitution is discretionary and, therefore, this Court is not bound to tilt at every approach found not in consonance or conformity with law but the interference may have a deleterious effect on the parties involved in the dispute. Laws cannot be interpreted and enforced divorced from their effect on human beings for whom the laws are meant. Undoubtedly, rule of law must prevail but as is often said, 'rule of law must run akin to rule of life. And life of law is not logic but experience.' By pointing out the error which according to us crept into the High Court's judgment the legal position is restored and the rule of law has been ensured its prestive glory. Having performed that duty under Article 136, is it obligatory on this Court to take the matter to its logical end so that while the law will affirm its element of certainty, the equity may stand massacred. There comes in the element of discretion which this Court enjoys in exercise of its extraordinary jurisdiction under Article 136. In approaching the matter this way we are not charting a new course but follow the precedents of repute. In Punjab Beverages P. Ltd. Chandigarh v. Suresh Chand and Anr. this Court held that the order of dismissal made by the appellant in that case in contravention of Section 33(2)(b) of the Industrial Disputes Act did not render the order void and inoperative, yet this Court did not set aside the order of the lower court directing payment of wages under Section 33(c)(2) and affirmed that part of the order. While recording this conclusion this Court observed that in exercise of the extraordinary jurisdiction this Court was not bound to set aside every order found not in conformity or in consonance with the law unless the justice of the case so requires. The Court further observed that demands of 35 social justice are paramount while dealing with the industrial disputes and, therefore, even though the lower court was not right in allowing the application of the respondent, the Court declined to exercise its overriding jurisdiction under Article 136 to set aside the Order of the labour Court directing the appellant to pay certain amount to the workers. Following this trend in State of Madhya Pradesh v. Ram Ratan (1980) Suppl. S.C.C. 198

this Court while holding that the High Court was in error in directing reinstatement of the respondent in service, took note of the fact that by passage of time the respondent superannuated. The Court paid him back wages till the day of superannuation in the round sum of Rs. 10,000. In other words, while formally setting aside the order of the High Court directing reinstatement, treated the respondent in that case in service and paid him back wages because physical reinstatement on account of passage of time was not possible. From the academic's point of view the later decision is the subject matter of adverse comment but we feel reasonably certain that it stems from narrow constricted view of the jurisdiction of this Court under Article 136. We adhere to our view after meticulously examining the learned comment. Having noted that criticism, we still adhere to the view that legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, this Court would be failing in its duty if it does not notice equitable considerations and mould the final order in exercise of its extra-ordinary jurisdiction. Any other approach would render this Court a normal court of appeal which it is not.

7. The position that emerges from the facts is that the respondent, a petty employee-an overseer-strayed from the path of virtue when he was convicted for attempting to accept a paltry bribe and was sentenced to pay a fine of Rs. 200/- only. The Municipal Board which itself must have taken umbrage at such deviation from the path of rectitude by its employee was influenced by the sincerity, capacity and capability of the respondent when it noted while giving a fresh appointment that the respondent worked even during the period of suspension and that too at the behest of the Municipal Board, and, therefore, it was persuaded to overlook the lapse on the part of the respondent in giving a fresh appointment and that too after seven years' service at the entry scale for the Oversear. Respondent served for a period of two years thereafter when his service was terminated pursuant to a directive of the local Self Government Department of Rajasthan State. And since 1965 the respondent has been chasing mirage of getting back into service. 17 years have rolled by. He has advanced in age. High Court has held that he continues to be in service. The Municipal Board has shown its willingness to accept him back in service condoning the lapse. Maybe, Local Self Government Department of the Rajasthan State may adopt an attitude that such deviation from the path of rectitude cannot be tolerated because respondent was shown to have attempted to accept a paltry bribe. This attitude may be commendable if uniformally enforced. We are not condoning the lapse on the part of the respondent but it is not possible to overlook his present position and situation. And he is a: capable hand. His services were needed. The Municipal Board was actually in search of his services. Therefore, in exercise of our extraordinary jurisdiction under Article 136, the discretion should be so exercised by us that justice may be rendered to both the parties.

8. We accordingly allow this appeal and modify the judgment of the High Court as under :

> The respondent in conformity with the judgment of the High Court shall be treated in service ignoring the order of termination. However, he would not be entitled to salary or wages for the period from August 31, 1965, till the date of his reinstatement. But when he is reinstated pursuant to this judgment his monthly salary should be so fixed in the relevant scale as if he was throughout in service from August 31, 1965, till

reinstatement which means that he would be given all the increments due to him. This would relieve some hardship to the respondent. Rest of the judgment of the High Court is set aside save and except a paltry amount decreed by the trial court shall be paid to the respondent. The respondent must report for duty pursuant to this judgment within two weeks from today. In the circumstances of the case there will be no order as to costs.