A.K. Moitra And Ors. vs Ministry Of Defence, Union Of India ... on 29 March, 1955

Equivalent citations: AIR1955ALL512, AIR 1955 ALLAHABAD 512

JUDGMENT

Agarwala, J.

1. This is a special appeal against a decision of a learned single Judge of this Court dismissing a petition under Article 226 of the Constitution, The facts, briefly stated, are as follows:--

2. The appellants are employed as Storemen in the Defence Department, Union of India, and were working at the Central Ordnance Depot, Chhcoki, Allahabad. There was a report about the theft of certain articles and a police enquiry was at first held and later on the matter was referred to what is called a "court of enquiry" which held the preliminary enquiry and came to the conclusion that the appellants were responsible for the thefts and they were suspended with effect from 15-9-1952 and they are still under suspension.

The petition under Article 226, as originally presented on 27-8-1953, merely stated the facts, as they existed on that date and the prayer made was that the opposite party, which was the Ministry of Defence, Union of India, be commanded to withdraw the order of suspension passed on 15-9-1952 against the appellants and restore them to their posts. Later on, the petition was amended. Nine other persons, including those who were members of the "court of enquiry" were added as opposite parties and a fresh affidavit was filed and an additional relief was claimed.

The fresh facts mentioned were that the "court of enquiry" had completed its investigation and had submitted its report to the Officer-in-charge, A.O.C., Records, Jubbulpur -- the officer who is stated to be the person having the authority to dismiss or, otherwise, punish the appellants. Various irregularities in the conduct of the enquiry by the "court of enquiry" were also alleged.

These irregularities are mainly three, namely (1) that the appellants were asked to give evidence although this was not legal as the charge against them was of a criminal nature, (2) that the witnesses examined in the preliminary enquiry were not examined 'de novo' when the appellants were charge-sheeted, and the statements of these witnesses were merely read over to the appellants and they were asked to cross-examine those witnesses upon that evidence and that the copies of the depositions of the witnesses who were examined in examination-in-chief in the absence of the appellants were not supplied to them when they were asked to cross-examine them and (3) that the members of the "court of enquiry" were not present throughout the proceedings.

It is further stated that on the basis of the report of the "court of enquiry" the Officer-in-charge, A. O. C., Records, Jubbulpur has charge-sheeted the appellants and has issued notice to the appellants asking them to show cause why they should not be dismissed from service or, otherwise, punished.

3. No steps have yet been taken against the appellants by the Officer-in-Charge, A. O. C., Records, Jubbulpur, and no relief is claimed against that officer obviously because he is beyond the jurisdiction of this Court. The fresh relief claimed now is that a writ in the nature of prohibition or 'certiorari' calling for the record and findings of the enquiry proceedings be issued and after examining the validity of the proceedings, this Court may be pleased to quash them.

4. The allegations contained in the affidavits filed by the appellants as to the irregularities committed during the course of the enquiry were not admitted on behalf of the respondents. It is not necessary for us to go into details in regard to the alleged irregularities as the petition was dismissed by the learned single Judge upon other grounds. The learned single Judge held that this was not a suitable case in which the Court should exercise its powers under Article 226.

The grounds on which he dismissed the petition were, firstly, that this was a case where an equally efficacious and adequate remedy, by way of a regular suit, would be available after a final order had been passed against the petitioners and secondly, that no relief should be given at an intermediate stage of the proceedings where no final orders had been issued, specially when the proceedings related to disciplinary matters.

5. Learned counsel for the appellants has urged before us that the grounds on which the learned Judge dismissed the petition are not sufficient in law. He has referred us to two English cases and has urged that even at an intermediate stage where final orders had not been passed, the English Courts had issued writs of 'certiorari' to quash the proceedings which had affected the rights of the petitioners. The cases referred to are -- 'Rex v. Postmaster General', (1928) 1 KB 291 (A) and -- 'Rex v.Boycotf, (1939) 2 KB 651 (B),

6. The question to be determined, in cases like the present, is whether there has been a judicial or quasi-judicial determination of the rights of the petitioner. This Court will not issue a writ of 'certiorari' under Article 226 of the Constitution when the proceedings that are sought to be quashed are merely administrative or are not intended to determine any of the rights of the parties.

7. In -- 'Rex v. Electricity Commissioners', (1924) 1 KB 171 (C), Atkin L. J. defined the scope of writs of 'certiorari' in words which have now become classic--

> "Wherever any body of persons having legal authority to determine questions affecting the rights of subject, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the (Queen's) Bench Division exercised in these writs."

There must be 'authority to determine' and the persons exercising that authority must be those who have a duty to act judicially. As was observed in -- 'R. V. Statutory Visitors to St, Lawrence's

Hospital, Caterham', 1953-2 All ER 766 (D) at p. 768 by Lord Goddard C. J. :

> "It is essential to remember -- that there must be something that can be called a determination which will affect the rights of the applicant and a tribunal whose duty it is to act judicially. It is not easy to give an exact definition of what is meant by "act judicially", but I should say that for this purpose it means a body bound to heat evidence from one side and the other. There need not be anything called strictly a lis, but the body would have to hear submissions and evidence by each side and come to a judicial decision approximately in the way that a Court must do.
>
> Unless there is an order or a determination by the body to whom it is suggested the order should be directed the order of 'certiorari' will not lie."

8. It is, therefore, not enough to show that a body of persons has to hear evidence from one side and the other and also submissions of one side and the other and to arrive at a conclusion. What is further necessary to show is that that body of persons has been given the power to make an order or a determination which affects the rights of one of the parties before them. In the same case, Lord Goddard pointed out that the reports submitted by certain bodies, if they are no more than materials put before a higher authority to enable that higher authority to come to a decision are not judicial or quasi-judicial proceedings at all and that a writ of 'certiorari' will not issue to quash those reports.

9. In (1928) 1 KB 291 (A), a certificate issued by a medical officer was quashed because it was considered that the giving of a certificate was in the nature of a judicial act. The facts of that case were these. Section 1, Sub-section (1), Workmen's Compensation Act, 1925 and an Order extending the provisions of that section to include telegraphists' cramp had the effect that a post office workman obtaining the certificate of a certifying surgeon that he was suffering from that complaint and was thereby disabled, became entitled to get compensation.

By Section 44, Sub-section (3) of the Act, a medical practitioner appointed by the Secretary of State was given the powers and duties of a certifying surgeon. The order provided that so far as regards post office employees, the post office medical officer under whose charge the workman is placed shall, if authorised to act, be substituted for the certifying surgeon in cases of telegraphists' cramp. It was the practice of the post office to refer, all cases of telegraphists' cramp to the chief medical officer of the post office, and this reference was relied on as constituting him the substitute for the certifying surgeon under the above sub-section and Order.

The applicant in this case, a telegraphist, was on the capitation list of the local post office medical officer, but in fact never consulted him. On her claiming compensation for telegraphists' cramp, the case was referred to the chief medical officer in accordance with the usual practice. . He certified that she was not suffering from telegraphists' cramp. It was obvious that the chief medical officer was not the post office medical officer under whose care the applicant had been placed within the meaning of the aforesaid Order and that he could not be substituted for the certifying surgeon.

The certificate was quashed on the ground that it vitally affected the right of the applicant to obtain compensation. The certificate of the certifying surgeon was a condition precedent to the obtaining of the compensation. The certificate had to be granted upon a judicial determination of the facts. In those circumstances, it was held that the certificate could be quashed. It will be observed that there is a vital difference between that case and the present. In that case, the giving of the certificate was a complete act of the certifying surgeon and prevented the applicant from obtaining the relief.

That cannot be said of the report of the enquiry court in the present case. The enquiry court has been given no power to "determine" anything. It merely records certain findings and sends them on to the officer concerned. The determination is by the officer.

10. This will be clear by a reference to Rule 15 of the Rules, Civilians in Defence Service (Classification, Control and Appeal Rules), 1952, which is almost the same as Rule 55 of the Civil Service (Classification and Appeal) Rules.

11. In the case of (1939) 2 KB 651 (B), Section 31 of the Mental Deficiency Act, 1913, provided that in case of doubt as to whether a child is or is not capable of receiving benefit from instruction in a special school or class, or whether his retention in such school or class could be detrimental to the interests of the other children, the matter shall be determined by the Board of Education. A boy Stanley Keasley was certified by one Dr. Boycott, certifying medical officer, to be incapable by reason of mental defect from receiving further benefit from instruction in a special school or class under the Education Act and to be an imbecile within the meaning of the Mental Deficiency Act, 1913.

The certificate was also signed by the school medical officer, who had neither seen nor examined the boy. A report dated October 5, confirming the certificate was also sent by Dr. Boycott to the education officer and by letter dated 10-10-1938, the clerk of the local education authority forwarded that document to the clerk of the County Council Mental Deficiency Act Committee with a view to steps being taken to transfer the boy to an occupational centre.

12. It was held by the K. B. Division that the certificates of the certifying medical officer and of the school medical officer and the report confirming the certificate sent by Dr. Boycott which were part and parcel of the same transaction purported to be a decision of a quasi-judicial authority and were liable to be corrected by an order of certiorari. This case was adversely commented upon by Lord Goddard in 'R. v. Statutory Visitors to St. Lawrence's Hospital (D)', Ubi supra, and it was also pointed out by him that in that case it seemed to have been accepted on behalf of the respondents that in those circumstances the writ could issue as a matter of law.

13. It was urged that this case was cited with approval by the Supreme Court in -- 'Province of Bombay v. Kushaldas', AIR 1950 SC 222 (E). That was a case in which the Court had to consider the nature of a judicial or quasi-judicial act. In considering that question reference was made to 'Boycott's case (B)'. But the mere fact that a reference to that case was made without any expression of its approval does not mean that the decision in the case was approved by the Supreme Court. The point that arises, for decision before us in the present case did not arise in the case before the Supreme Court.

We are, therefore, of the opinion that the report of the Court of Enquiry cannot be said to be a determination of the rights of the applicants, and as such are not a fit subject for the issue of writ of certiorari.

14. Further, as we have already pointed out, the final order in the case has to be made by A. O. C., Records Officer, Jubbulpore, (now in Hyderabad) against whom this Court has no jurisdiction to issue any writ, direction or order, he being not resident within the jurisdiction of this Court. This Court will not issue a writ order or direction in a case in which the final authority is not bound by the orders of this Court and may well flout the directions of this Court by ignoring them and passing orders as he thought best.

15. Thirdly, as held by the learned single Judge, in disciplinary proceedings it is normally not desirable that the Courts should interfere before the proceedings have terminated. If interference were made by Courts at intermediary stages it would result in unnecessary delay.

16. In the result we dismiss this appeal.