

Badri Prasad vs President, District Board on 26 October, 1951

Equivalent citations: AIR1952ALL681, AIR 1952 ALLAHABAD 681

JUDGMENT

Sapru, J.

1. This is an application under Article 226 of the Constitution. The precise relief which the applicant seeks is that this Court may be pleased to direct the opposite parties that the order of suspension passed by the Chairman of the District Board shall not be operative. It is further prayed that the opposite parties be prohibited by a writ of prohibition or any other suitable writ or direction from proceeding further with the enquiry initiated against the applicant. A further prayer embodied in the application is that an interim order may be passed restraining the opposite parties from enforcing the suspension order dated 8-9-1950, until the decision of this case.

2. In order to understand the points which have arisen in this case a few facts are necessary. The applicant is the Secretary of the District Board of Mirzapur. His allegation is that in May 1951 he incurred the displeasure of a member of the Board, Shri Narsingh Prasad Singh, and that thereafter that member made a complaint against him to the Chairman. Subsequently, the matter came up for consideration before the Executive Committee of the District Board on 15-5-1951. On that date the complaint of Shri Narsingh Prasad Singh against the Secretary was considered by the Executive Committee of the Board which appointed a Sub-Committee to go into the charges against the applicant. It was directed to submit its report to the Executive Committee.

3. The case, as presented by the applicant, is that on 25-5-1951 the sub-committee met and, after detailing the various charges which had been levelled against him, recommended that the deponent be suspended in order to facilitate further proceedings against the deponent. The deponent was required to submit his explanation and he appears to have complied with this direction. The matter referred to above came up on 7th and 8th September before the Executive Committee. On those dates i.e. 8th the chairman of the District Board made an order in which he stated that the Executive Committee of the Board had in a previous resolution directed him to suspend the Secretary as his explanation was not satisfactory that there were serious charges against him and that it was necessary to hold further enquiries into them. In these circumstances, the Chairman added that he had decided to suspend him pending enquiry and that that enquiry would be conducted by a Committee consisting of three members of the Board who were named by him in his order. This order of the Chairman was conveyed to the deponent on 10-9-1951. Thereafter, on 11th the deponent made representations to the Chairman contending that his dismissal was illegal and improper. This representation was considered and rejected by the Executive Committee at its meeting held on the 13th of September and the deponent's case is that he was asked to hand over charge of his office to one Shri Mahendra Nath but he adds that inspite of the order he has not actually done so.

4. The contention put forward on behalf of the applicant is that his suspension is illegal and that the sub-committee appointed by the Chairman had no authority in law to investigate the charges against the deponent. It is further alleged that the deponent has no other adequate or efficacious remedy in law against his proposed suspension by the opposite parties and that, for that reason, he is entitled to a writ or order or direction by this Court.

5. The office of the Secretary is a statutory one under the District Boards Act. Section 70 of Act X [10] of 1922 (hereinafter called the Act) lays down the manner in which the Secretary shall be appointed. That section runs as follows :

"Every board shall by special resolution appoint a secretary who shall be a whole time salaried officer. The appointment of the secretary and the conditions of his service shall be made in conformity with the rules framed by the Provincial Government."

Under the scheme of the Act the Secretary has certain special functions assigned to him and they will be found enumerated in Section 74. The procedure for his punishment or dismissal is laid down in Section 71 of the Act. Shortly put, that procedure is that "the Board, by a special resolution, may punish or dismiss the secretary provided firstly that such resolution is passed by a vote of not less than two thirds of the total number of members of the Board for the time being."

6. Against such a resolution, there is a right of appeal given to the Secretary, within one month of the communication of the resolution, to the State Government. It is further laid down that that resolution cannot take effect until the period of one month has expired or until the State Government have passed orders on any appeal preferred by the Secretary. It will be observed that the Secretary has the right of appeal against the State Government under two circumstances: (i) against an order of dismissal; and (ii) against an order punishing him.

It may be further pointed out that there are two types of suspension contemplated by Section 90, vide (a) suspension as a punishment; and (b) suspension pending inquiry or orders. It is clear that the right of appeal which has been given to the Secretary is confined under Section 90 to the first type of suspension, namely suspension as a punishment and that suspension pending enquiry or orders has been made to stand on a different footing.

7. The point which has been forcibly urged on behalf of the applicant is that the Chairman had no power to suspend the secretary inasmuch as he was a statutory officer who could be punished or dismissed only in the manner prescribed by the Act under Section 71 and it is urged that suspension, whatever be its nature, and dismissal mean the same thing, the power of suspension being included in the power to dismiss. In other words, the argument is that they constitute one power and dismissal includes suspension whether by way of punishment or inquiry.

8. An examination of the Act will show that there are certain matters in which the Chairman can act on behalf of the Board, certain other matters which can only be decided by committees of the Board and again certain other matters which can be decided by the Board itself. Schedule I enumerates the powers and functions of a Board and has to be read with Sections 67 (1) and 68 (1) (a) of the Act.

According to Section 67 (1) the powers, duties and functions specified in the second column of Schedule I, with the exception of those against which an entry is shown in the third column of that schedule, may be exercised and shall be performed or discharged, by a board by a resolution passed at a meeting of the board and not otherwise.

A reference to the schedule will show that there is no entry in its remarks column authorising the board to delegate the power of appointing or punishing or dismissing a secretary of the board or any of its committees. The suspension in this case is a suspension pending inquiry and not by way of punishment. The question, in these circumstances, is whether the Chairman, on his own authority, could suspend the secretary pending inquiry and not by way of punishment. In this connection it is important to refer to Section 40 which lays down the functions that must be discharged by the Chairman. I quote below the relevant part of Section 40:

"The following powers, duties and functions of a board may be exercised, and shall be performed or discharged by the President of the board and not otherwise, namely:

* * *

(d) all other duties, powers and functions of a board with the exception of

(i) those specified in the second column of Schedule I, and

(ii) those delegated by the board under Section 68."

It is quite clear that it is not open to the Chairman to appoint or punish or dismiss a secretary but, if dismissal, punishment and suspension pending inquiry are separate powers and do not mean the same thing, than there is obviously no limitation on the power of the Chairman to suspend the secretary pending an inquiry. It is true that he cannot suspend him as a punishment but a careful reading of Section 90 makes it clear that suspension as a punishment has been treated separately from suspension pending inquiry or orders.

9. After giving the matter my careful consideration, I feel that the words "suspension pending inquiry" had a different connotation from that assigned to "dismissal or punishment." Such suspension is, in the very nature of things something temporary. This power is intended only to enable an inquiry or investigation to be made under fair and impartial conditions. It does not involve any punishment and is not to be confused with it. For this reason, I think that the power of suspension, pending inquiry, is different from the power of dismissal or punishment and consequently, the Chairman had the power to suspend the secretary. There is, therefore, no force in the contention that the chairman's order suspending the applicant, pending inquiry, is invalid.

10. The second point which has been urged in the case is that assuming that the Chairman had the power of suspension, this power was not exercised by the Chairman himself but by the Executive Committee for, in the order passed by the Chairman, it is stated that he was suspending the

secretary as directed by the Committee. I find that there is no substance in this argument for though the Chairman acted on the suggestion of the Executive Committee, actually the act of suspension was his. He clearly states that "he was suspending him from today pending inquiry".

11. The third point which has been urged in this case is that the inquiry which was directed by the Chairman was by a committee consisting of three persons, nominated by him. It has been urged that this was irregular as the committee could only be appointed by the Board and it is contended that under Section 56 (3) it was for the Board to establish and appoint an advisory committee for the purpose of inquiring into and reporting on any matter in respect of which a decision of the Board was required by or under the Act.

12. While a report by a committee of inquiry is not a condition precedent for action under Section 91 it is for the Board and Board alone to appoint a committee of inquiry. It is urged that the Chairman could not appoint a committee of inquiry. Undoubtedly, there is force in this argument. It has, however, been urged that the committee appointed was of an informal nature having no statutory or legal basis and merely intended to facilitate the task of the Board, when the matter comes up for consideration. I feel that the procedure adopted by the Chairman of an informal committee was not one calculated to give a fair chance to the Secretary. Inevitable, when the matter comes up before the Board for consideration, the Board will find it hard to escape the influences of a report by an informal committee of its own members. The Chairman would have been better advised not to appoint an informal committee. I, however, do not look upon this Committee as a legal committee or any real committee at all. The committee is nothing more than a body of men selected by the Chairman to advise him in investigating the charges against the secretary. I have said that this is a procedure which I cannot approve of but, at the same time, I cannot understand what relief this Court can give to the applicant in the matter, as the committee has no statutory or legal existence. There is no law which prevents three, four or five persons belonging to a Board to confer together. I cannot see how, by writ or direction or order, this Court can stop informal consultations. Even so, as I have emphasised before, the procedure adopted by the Chairman is to be regretted as, I fear, it may prejudice a fair consideration of the charges against the secretary.

The proper course for the Chairman was to place the matter before the Board and ask the Board to appoint a committee to help him in the investigation of the charges against the applicant. I have given my careful consideration to the question whether this Court should give any relief to the applicant and I have come to the conclusion that there is no relief which can be given to him.

13. Learned counsel for the applicant, who has argued this case with considerable ability, has not been able to point out to us exactly what relief this Court can give in this case. I am satisfied, on a consideration of the entire case, that this is a case in which we ought not to interfere in the exercise of our powers under Article 226.

14. For the reasons given above, I would dismiss this application. In the circumstances of this case, I think the parties should be made to bear their own costs. I, therefore, make no order as to costs.

Mootham J.

15. The principal question which arises in this case is whether the President of a District Board has power to suspend the Secretary of the Board pending an inquiry into his conduct, or whether that is a power which can be exercised by the Board alone. Under Section 71, Uttar Pradesh District Boards Act the power to punish or dismiss the Secretary is vested in the Board, and Section 90, Sub-section (2) provides that the power to punish shall be deemed to include a power to suspend as a punishment, and Sub-section (3) provides that the power of dismissal shall be deemed to include a power to suspend any person against whom the power of dismissal might be exercised pending, inter alia, an inquiry into his conduct.

16. Under Section 40, Clause (d)(1)--which is the only part of this section which we need consider--the powers vested in the Board may be performed by the President of the Board provided they are not such powers as are specified in the second column of Schedule I of the Act. The second column of that Schedule contains an entry "(71) to punish or dismiss the secretary", and the question therefore is whether the power to dismiss the secretary and the power to suspend him pending an inquiry into his conduct are two separate powers or one only, the greater including the less. In support of his argument in favour of the latter interpretation Mr. Kacker placed reliance on Section 82 of the Act which, he argued, divided the servants of the Board into three classes, namely those whose pay was under Rs. 40 a month and of whom the control vested in the secretary, those whose pay exceeded Rs. 40 a month but who did not come within the ambit of Sections 10, 71 and 72 and of whom the control was vested in the President, and of a third class, which included the secretary, the appointment and control of whom is vested in the Board. The fallacy in this argument is that the section does not in fact make provision for the control of more than two classes of servants--namely such as do not come within the ambit of Sections 70, 71 and 72. It leaves the question of the appointment and control of servants who come within the ambit of those sections to be regulated by other provisions of the Act.

17. It may be the case that the power to suspend as a punishment and the power to punish are different aspects of one power, for the power to suspend as a punishment cannot be exercised without in fact exercising the power of punishment. I think however that the power to suspend a person pending an inquiry into his conduct is a power which is distinguishable from the power to dismiss a person. It is the exercise of a power which may or may not be a preliminary to the exercise of the power of dismissal. It is, in my judgment, a power which is separate from the power to dismiss, and as it is the latter power only which is specified in the second column of Schedule I, it follows that the power to suspend pending an enquiry is one which can be exercised by the President. I am satisfied therefore that the President had in this case power to suspend the applicant.

18. With regard to the other questions which arise in this case I agree with the judgment which has just been delivered. The application will accordingly be dismissed, but without costs.