

S.D. Mathur vs Municipal Board, Agra And Anr. on 19 October, 1955

Equivalent citations: AIR1956ALL181, AIR 1956 ALLAHABAD 181, 1956 ALL. L. J. 71

ORDER

Mehrotra, J.

1. The petitioner was appointed as the Executive Officer of Agra Municipal Board on probation for one year in the year 1940 and was duly confirmed in 1941. The petitioner has qualified for diploma in Public and Social Administration with practical training in Local Self-Government in the Oxford University in the year 1939. The scale of pay at the time of his appointment was Rs. 500-25-650-50-750 but as a result of the recommendation of the Pay Commission appointed by the Government, the scale was changed to Rs. 500-50-1000.

Since 1953 he had been drawing a salary of Rs. 1000/-. On 31-3-1954, an order was passed by the Administrator discharging the applicant from service of the Board on the ground of financial stringency. On 31-3-1954 a notice was given to the applicant by the Administrator, Municipal Board, Agra terminating his services on the ground that the expenditure on the establishment of the Municipal Board, Agra was very heavy and the finances of the Board did not justify any further retention of high paid Executive Officer, particularly in the present set up and also when the Board has got a Secretary.

With a view to effect economy in the expenditure, it was necessary to discharge the present incumbent of the post of the Executive Officer. Three months' pay in lieu of notice as required by Rule 6 of the Rules regulating the appointment, punishment, dismissal and discharge of Executive Officers of Municipal Boards was given to the applicant. No opportunity was given to the applicant to explain his position. After the service of the notice dated 31-3-1954. the applicant filed a writ petition challenging the validity of that order which was numbered 317 of 1954 and on 1-12-1954 it was rejected on the ground that a departmental appeal filed by the petitioner was pending before the State Government.

The appeal filed, before the State Government by the applicant was rejected and the result was communicated to the applicant by a letter dated 29-3-1955 from the Deputy Secretary to Government of Uttar Pradesh. Thereafter the present petition under Article 226 of the Constitution was filed for a writ or direction in the nature of certiorari quashing the order dated 31-3-1954 terminating the services of the applicant as the Executive Officer of the Municipal Board, Agra.

2. In the affidavit, filed in support of the petition, apart from the facts which I have already mentioned, it has also been stated that the Secretary has, after the termination of the applicant's services, been appointed to act as the Executive Officer of the Board in the same scale of pay as was applicable to the petitioner and another Secretary has been appointed in addition to the Executive Officer. In the affidavit, facts have also been set out to show that there was no financial stringency in the Board as disclosed from the budget.

3. A counter-affidavit has been filed on behalf of the Municipal Board, Agra. It is admitted in the counter-affidavit that on the termination of the petitioner's services on 31-3-1954, the Secretary of the Board was appointed by the Administrator to officiate as the Executive Officer. This arrangement was subsequently sanctioned by the State Government. It is, however, denied that a Secretary was also appointed in addition to the Executive Officer.

According to the counter-affidavit, the post of Secretary was kept in abeyance from 1-4-1954 to 31-3-1955 and it was only with effect from 1-4-1955 that the post of Secretary has been revived temporarily for one year with the sanction of the Government. The budget figures given by the applicant in his affidavit have been denied & facts have been given in the counter-affidavit to show that there was in fact financial stringency in the Board and the services of the applicant had to be terminated as a measure of economy.

4. A rejoinder affidavit has been filed reiterating most of the allegations made in the affidavit'. The order terminating the services of the applicant has been challenged on the following grounds: Firstly it is contended that under Notification No. 369/XI-469-41, dated 13-4-1942, discharge of an Executive Officer of a Board amounts to a punishment and consequently before such discharge order was passed the applicant was entitled to a hearing.

Secondly, the validity of Rule 6 is challenged on the ground that it is beyond the rule-making power conferred under Section 296 of the Municipalities Act. Thirdly, it is contended that Rule 6 not having been adapted, is not applicable to those Municipalities which have at present Administrators under the U. P. Local Bodies (Appointment of Administrators) Act, 1953.

Fourthly, it is contended that the legislative power given to the State of Uttar Pradesh to adapt the provision of the U. P. Municipalities Act is an illegal delegation and the protections contemplated in Rule 6 against the discharge of an Executive Officer have become a nullity. ' Lastly, it is contended that Rule 6 confers arbitrary powers and was in contravention of Article 14 of the Constitution and the order of discharge was, in any case, passed mala fide.

It was also contended that the position of an Executive Officer is that of a civil servant and consequently he is entitled to the benefit of Article 311 of the Constitution. It is an admitted case of the parties that the services of the applicant were not terminated on any ground of misconduct and, therefore, it is contended by the opposite parties that the petitioner was not entitled to any opportunity to show cause against the order of removal and no explanation could be called for from him and hearing given to him.

The applicant's services were terminated under Rule 6 of the Rules framed for the appointment, dismissal and removal of an Executive Officer.

5. The first contention of the applicant is that the Board is a statutory body. Under Act 17 of 1953, even if it be assumed that the powers of the Board have vested in the Administrator, the Administrator is also a creation Of a statute, and unless the statute, under which the Board or the Administrator have been created, gives power to the Board to discharge an employee, it is not open to the Board or an Administrator to terminate the services of an employee.

The procedure laid down in the Act and the Rules framed thereunder for the termination of the services of an employee have got to be followed and the order of termination must conform to the provisions of the Act and the Rules. The Advocate-General, who appeared for the opposite parties, tried to support the order of discharger not only on the ground that such a power exists in the Administrator under Rule 6 of the Rules for the appointment and dismissal of an Executive Officer but has further contended that an employer has a right to terminate the services of an employee unless there is any protection guaranteed to an employee either in the Constitution or in the Municipalities Act or the Rules framed thereunder.

It was for the petitioner to show that he was entitled to a specific protection and unless he is able to establish that any of the provisions of the protection guaranteed to him have been violated, it is not open to this Court to set aside an order of discharge. The principle that the services are at the pleasure of the Crown has been embodied in Article 310 of the Constitution which provides that every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of -the Governor.

Although under Article 310 of the Constitution all civil posts are held at the pleasure of the President or the Governor, still there is a statutory guarantee given to an employee which is embodied in Article 310.

But, to my mind, the principle embodied in article 310 cannot be made applicable to the statutory bodies or to an Administrator who is the creation of an Act. A statutory body has to act in accordance with the terms of the statute.

In matters of appointment and dismissal or termination of services, it has to act in accordance with the provisions of the statute and unless there is a provision in the statute which directly or indirectly empowers the Board to terminate the services of an employee, it is not open to the Board to discharge an employee at its pleasure.

In cases where terms and conditions of employment are regulated by a contract between the employer and the employee, it may be open to the employer to terminate the services of the employee in accordance with the terms of the contract but in the absence of any contract under which the Board was authorised to terminate the services, unless there is any power given to the

Board to terminate the services of an employee, it cannot do so.

Services may as well terminate if an employee has attained the age of retirement as laid down in the Rules or when the post itself has been abolished.

6. The question, therefore, to be determined in this case is whether there is in existence any such power in the Board to terminate the services by giving three months' notice. Section 58, Municipalities Act provides that-

"58(1). A board may punish, dismiss or remove its executive officer by a special resolution supported by not less than two-thirds of the members constituting the board, subject to his right of appeal to the State Government within 30 days of the communication to him. of the order of punishment or dismissal.

(2) The State Government may suspend the executive officer pending the decision of an appeal under Sub-section (1), and may allow, disallow or vary the order of the board."

This section gives power to the Board to dismiss or remove its Executive Officer as a punishment. In the present case, it cannot be said that the Administrator exercised his powers under Section 58, Municipalities Act. Section 57 gives power to the Board to appoint an Executive Officer by a special resolution. Sub-section (3) of Section 57 provides that the appointment, salaries and conditions of service of Executive Officers and medical officers of health shall be subject to the approval of the State Government.

Section 71 of the Act provides that a Board may, by resolution, determine what servants are required for the discharge of the duties of the Board and the salaries to be paid to them respectively. The rules have been framed under Section 296, Municipalities Act and at p. 446 of the Municipal Manual, Rules regulating the appointment, punishment, dismissal and discharge of executive officers of Municipal Board are given. Rule 3 of the Rules provides that-

"Every permanent appointment shall be made on probation for one year unless Government otherwise direct."

Rule 4 provides that-

"Every permanent appointment shall be made on a time-scale of pay and there shall be an efficiency bar at a suitable stage in the time scale."

Rule 5 provides that-

"Every appeal against an order of dismissal or punishment shall contain all material statements and arguments relied on by the appellant and shall be addressed to the Secretary to Government in the Municipal Department."

Rule 6 provides that-

"No executive officer shall be discharged from the service of the board-

(a) except by a special resolution of the board setting, forth 'clearly the grounds for discharge and supported by not less than two thirds of the members constituting the board; and

(b) unless he has been given by the board not less than three months' notice or a sum equal to three months' pay in lieu of notice."

7. Reliance has been placed on Rule 6(b) of the Rules by the opposite parties in the case. It is contended that the only limitation placed on the power of a board is to be found in Rule 6. It is open to an Administrator to discharge an Executive Officer on giving three months' notice or a sum equal to three months' pay in lieu of notice. R. 6 does not, by itself, give any power to the Board to discharge an Executive Officer. It may be assumed that there is such power and to the exercise of such power there are certain limitations mentioned in Rule 6.

The argument of the petitioner is that Rule 3, which provides that every permanent appointment shall be made on probation for one year, necessarily implies that once an appointment has become permanent, it cannot be terminated by merely giving three months' notice. In my opinion Rule 6 does not give any power to an Administrator of a Board to discharge an Executive Officer from service. It only places certain restrictions on the exercise of that power and unless the power can be inferred from the other provisions of the Act or the Rules framed thereunder, the Administrator had no power to discharge the applicant.

8. The next contention of the applicant is that even if there was power given to the Administrator to discharge the applicant, it could not be exercised unless the provisions of Rule 44 of the Rules framed by the State Government, printed at p. 454 of the Municipal Manual, have been complied with. The heading of Rule 44 is "Discharge of Servants of boards". Rule 44 itself reads as follows:

"The principle that before dismissal an employee should be given a hearing and his reply reduced to writing and formal orders recorded, should be observed, in justice to their servants, by municipal boards."

Admittedly, in the present case; the procedure provided in this rule has not been followed. The argument, however, of the opposite parties is that the rule deals with the cases, of dismissal and not the cases of discharge. The notification dealing with cases of reduction of pay of statutory servants is further provided at p. 454 of the. Municipal Manual, It provides that any reduction in the pay of officer or servant of a board mentioned in Sections 57, 67 or Section 68, U. P. Municipalities Act, 1916 or for whom special rules laying down the conditions of appointment have been prescribed by the State Govt., except when such reduction is resorted to as a measure of economy & forms part of a general scheme of reduction in the salaries of employees of the Board, with the written consent of such officer or servant, or the removal, or discharge from service, whether as a measure of economy

or retrenchment or otherwise, of any such officer or servant, shall be treated as 'punishment or removal, as the case may be, and shall be effected only by a special resolution of the Board supported by no less than two-thirds of the members constituting the Board.

The contention of the opposite parties is that whether as a measure of economy or retrenchment if any servant is discharged from service, the only limitation placed on the power of the Board is that such a discharge can be effected only by a special resolution of the Board. In my opinion this Rule provides that if a servant has been discharged from service, even as a measure of economy or retrenchment, his discharge has to be treated as punishment or removal and there is a further limitation placed on it that it can only be effected by a special resolution. If the effect of this Rule is to make a case of discharge from service, even as a measure of economy, a punishment or removal, the provisions of Rule 44 of the Rules are attracted.

The contention of the applicant further is that the Rule regulating dismissal, removal and retrenchment of municipal employees printed at p. 654 of the Municipal Manual also applies to the present case and no second opportunity, as contemplated in the said Rule, was given to the applicant. The said Rule provides that "no officer or servant shall be dismissed, removed or reduced without a reasonable opportunity being given to him of showing cause against the action proposed to be taken in regard to him. Any written defence tendered shall be recorded and a written order shall be passed."

It further provides that "every order of dismissal, removal or reduction shall be in writing and shall specify the charge or charges brought, the defence and the reasons for the order."

There is note put down to this Rule which provides that-

"These regulations shall not apply to a case in which a servant is discharged for a reason other than a fault committed by him."

The argument of the Advocate-General is that this note forms part of the notification and consequently the provisions of the Rule, referred to above, do not apply in the present case as the applicant had not been discharged for a reason of fault committed by him. To my mind, there is force in this argument of the Advocate General, and in view of the note which forms part of the notification itself, second opportunity need not have been given, to the applicant in the present, case but, as I have already held, the applicant before the order of discharge was passed against him, was entitled to a hearing as contemplated in Rule 44 of the Rules, already referred to.

9. In view of my decision on this point, the other contention raised by the applicant need not be decided but as arguments have been advanced! on those points, I would like to indicate, in short, my views on them. Firstly, it was argued by the applicant that the State of Uttar Pradesh passed the U. P. Local Bodies (Appointment of Administrators). Act, 1953. Section 3 of this Act provides:

"Notwithstanding anything contained in the U. P. Municipalities Act, 1916, the U. P. Town Improvement Act, 1919, or the Kanpur Urban Area Development Act, 1945, the

State Government may, with a view to facilitate the establishment of Corporations in KABAL TOWNS and to ensure smooth transition, by order published in the Gazette, appoint Administrators for any local body in any KABAL TOWN and-

(a) declare that with effect from the date to be specified all powers, duties and functions of the local body, its President, Chairman or a Committee thereof, whether under the said enactment or any other law, shall be vested in such Administrator and shall, until the Order is superseded or repealed, be exercised, performed and discharged by or under the authority of the Administrator who shall be deemed in law to be the Board, Trust, President, Chairman, or Committee, as the occasion may require."

The contention of the petitioner is that the section, and the Rule which give power to the Board to dismiss a servant further provide a safeguard that such a power can only be exercised by a special resolution passed by a majority of members. In the present case the order has been passed by the Administrator and the safeguard is, therefore, not available to the petitioner.

Section 3, U. P. Local Bodies (Appointment of Administrators) Act, 1953, which I have already quoted, expressly provides that the Administrator will be deemed in law to be the Board and consequently for the exercise of the powers which vested in the Board, the Administrator will be deemed, to be the Board and such power can be exercised by the Administrator. The Administrator being a single individual, the question of majority or of special resolution does not arise.

When a Legislature gives certain powers to a statutory body with a certain limitation placed on that power, it is open to the Legislature to take away that power and to vest it in some other individual or a statutory body and it cannot be said that if consequent to the substitution of the statutory body by another individual, certain limitations of the Board given in the statute cannot be effected.

10. The next argument was that the Legislature could not delegate to the executive authority certain essential judicial powers and if in the exercise of certain delegated powers, the executive authority so acts as to make essential changes in the policy of the Act itself, the action of the executive authority cannot be held to be valid. Reliance has been placed on the case of -- 'Raj Narain Singh v. Chairman Patna Administration Committee', AIR 1954 SC 569 (A).

11. In that case where for imposing of certain taxes certain procedure was provided in the Act, the State Government was given power to extend the Act to certain other areas and the State Government by a notification extended the Act to other areas. In, however, applying the Act to the new area, it applied only that part of the Act which gave the power to certain authorities to impose tax taut the part of the Act which dealt with the procedure for imposing such a tax was not made applicable to the new area.

It was held in those circumstances by their Lordships of the Supreme Court that in applying the Act to other areas, the State Government could not select only that part of the Act which dealt with the power to impose the tax and eliminate that portion which dealt with the procedure for imposition of

such a tax and to that extent the delegation of such a power is ultra vires.

In the present case the State Government has under the Act appointed an Administrator. It is the very Act which has provided that the Administrator so appointed will be deemed to be the Board. It cannot, therefore, be said that the executive in the exercise of the power delegated to it, has done anything which materially affects the policy underlying the Municipalities Act. There is, therefore, no force in this contention of the applicant.

12. I, therefore, allow this petition with costs and quash the order of the Administrator dis charging the applicant from service.