State Of Punjab vs Amar Singh Harika on 6 January, 1966

Equivalent citations: AIR 1966 SUPREME COURT 1313, 1965-66 28 FJR 464, 1966 2 LABLJ 188, 1966 CURLJ 482, 1966 2 SCJ 777

Bench: K.N. Wanchoo, M. Hidayatullah, V. Ramaswami

CASE NO.:
Appeal (civil) 938 of 1964

PETITIONER:
STATE OF PUNJAB

RESPONDENT:
AMAR SINGH HARIKA

DATE OF JUDGMENT: 06/01/1966

BENCH:
P.B. GAJENDRAGADKAR(CJ) & K.N. WANCHOO & M. HIDAYATULLAH & V. RAMASWAMI &
P. SATYANARAYANARAJU

JUDGMENT:

JUDGMENT 1966 AIR (SC) 1313 The Judgment was delivered by GAJENDRAGADKAR, C.J Per Gajendragadkar, C.JThe respondent, Amar Singh Harika, who was an Assistant Director, Civil Supplies, in the Patiala and East Punjab States Union, was dismissed from service by an order purported to have been passed on 3 June 1949; this order was, however, communicated to him by the Chief Secretary, Pepsu Government, on 2/3 January 1953. The respondent filed a suit against the appellant, the State of Punjab, and alleged that the impugned order, whereby he was dismissed from service, was invalid, inoperative and illegal. This suit was instituted by the respondent in the Court of Subordinate Judge, II Class, Patiala. The respondent pleaded that the impugned order had been passed without holding any enquiry, and that the procedure adopted by the appellant in respect of the said enquiry was wholly illegal and invalid. That is why he claimed a declaration that despite the said order of dismissal, he continued to be an employee of the appellant and to hold his position as Assistant Director, Civil Supplies. As a consequential relief, the respondent also asked for an order calling upon the appellant to post him as Assistant Director, Civil Supplies, or to some other post of the same status.

This claim was resisted by the appellant on several grounds. The appellant urged that the suit filed by the respondent was incompetent in law. It also alleged that the impugned order was valid, legal and binding on the respondent; and it raised the plea of limitation.

On these pleadings, the learned trial Judge framed three issues. They were :

(1) Is the dismissal of the plaintiff from service of the defendant illegal, void and ultra vires ?

(2) Is the suit within time ?

(3) Is the suit maintainable ?

The first two issues were answered by the trial Judge in favour of the respondent. He however, held that the suit filed by the respondent was not maintainable in law with the result that the respondent's claim was dismissed with costs.Against the decree passed by the learned trial Judge, the respondent preferred an appeal in the Punjab High Court. The High Court has upheld the finding of the learned trial Judge in favour of the respondent on the first two issues, and has held that the dismissal of the respondent was ultra vires, void and illegal and that the respondent's suit was within time. In regard to the finding of the learned trial Judge that the respondent's suit was not maintainable, the High Court has taken a contrary view; it has held that the suit was maintainable. In the result, the respondent's claim has been decreed with costs throughout. It is this appellate decree which is challenged before us by Sri Bishan Narain on behalf of the appellant in the present appeal which has been brought to this Court by special leave.

Before dealing with the points raised by Sri Bishan Narain for our decision in the present appeal, it is necessary to state the material facts leading to the present litigation. The respondent was appointed as a permanent Assistant Director, Civil Supplies Patiala, on 15 June 1948. Soon thereafter, he was suspended on 5 July 1948. The order passed by the Prime Minister, Patiala, which suspended him, directed that an enquiry committee consisting of Raja Shiv Dayal Singh, Sardar Rajwant Singh and Babu Banwari Lal should enquire into the charges framed against him. The substance of charges thus framed against him was that he had abused his powers by issuing certain permits for the procurement of 1, 000 maunds of bajra. On 12 July 1948 the respondent made a representation that Raja Shiv Dayal Singh, who had been appointed the chairman of the said enquiry committee, was disqualified to sit on the enquiry committee, because the transaction which had given rise to the charge against the respondent, had been entered into under his directions. Thereupon, Raja Shiv Dayal Singh was removed from the chairmanship and Sodhi Sukhdev Singh, Legal Remembrancer, was appointed in his place. Later Sodhi Sukhdev Singh became a member of the enquiry committee, and Sardar Kartar Singh took the place of the chairman. The committee served a questionnaire on the respondent, and this questionnaire purported to contain several charges against him. This questionnaire was served on the respondent on 8 September 1948, and the respondent submitted his reply thereto on 22 September 1948. On 2 October 1948, the committee submitted its report. It found that the respondent was guilty of the charges framed against him. In regard to the question of punishment, it left the matter to be decided by the Government.It appears that the respondent had no knowledge of the fact that the committee had submitted its report; and so, he went on making representation to the Government in regard to the said charges. On 16 December 1948, he wrote to the Chief Secretary, Pepsu Government, Patiala, and complained that he had learnt from the Legal Remembrancer that the committee had submitted a report, and yet he had not received a copy of the said report. By this time, Patiala State had merged in the Patiala and East Punjab States Union.

It seems that the Chief Secretary was not at all satisfied with the report made by the committee against the respondent, and he recommended that the said report should be handed over to a Judge of the High Court or a member of the judicial committee for his opinion after taking such further evidence as he may consider necessary in the interest of justice. The Prime Minister, however, did not agree with this recommendation. On 13 February, 1949, the Chief Secretary again urges the Prime Minister to consider the matter carefully and he expressed his belief that for the charges held proved against the respondent, the really guilty persons were Raja Shiv Dayal Singh and the ex-Prime Minister of Patiala himself. According to the Chief Secretary, the respondent had merely been made a scapegoat. On receiving this strongly worded letter from the Chief Secretary, the Prime Minister decided to refer the matter to the Public Service Commission. The Commission agreed with the report and recommended that exemplary punishment should be meted out to the respondent and that he should be dismissed form Government service from the date of his suspension.

Thereafter, on 2/3 May, 1949, the respondent received a communication from the Government of Pepsu, Home Department in which it was suggested to him that in view of the definite finding of the enquiry committee holding him guilty of the charges levelled against him, he may exercise his option to resign. It was however, added that even if he resigned, it should not be taken to imply any commitment on the part of the Government to accept the same. Pursuant to this letter the respondent tendered his resignation on 6 May 1949. Notwithstanding his resignation the appellant proceeded to pass an order of dismissal against him on 3 June 1949. This order purported to take effect from the date of respondent's suspension which was 5 July 1948. It is significant that though a copy of this order was forwarded to six persons noted thereunder, no copy of the same was sent to the respondent himself.On 29 January 1951, the respondent made a representation to the Government of Pepsu in which he asked for a copy of the report of the committee, a copy of the allegations on which the said report was based and a copy of the chargesheet to show cause why the respondent should not suffer the punishment as proposed by the Government before taking final action in the matter. He also prayed for a reasonable opportunity to show cause against the said punishment. In reply, the respondent was informed on 16 April 1951, by the Pepsu Government that his representation could not be considered in view of the fact that he had tendered resignation. However, it was on 28 May 1951, that the respondent was informed by Bishan Chand, Assistant Comptroller, Pepsu, that the record of the office showed that he had been dismissed from Government service with effect from the date of this suspension. It is on this date that the respondent came to know about his dismissal for the first time.

Then followed further correspondence between the respondent and the appellant. When, however, the respondent found that all his pleas failed, he withdrew his resignation on 22 August 1952. Last came the order passed on 2/3 January 1953, by the Chief Secretary to Government, Pepsu. This order informed the respondent that his last application dated 20 August 1952, requesting for reinstatement on the ground that his dismissal was unlawful and unjust, was rejected and that Government found it impossible to reopen his case. On receiving this order, the respondent filed the present suit on 20 April 1954.

The first question which has been raised before us by Sri Bishan Narain is that though the respondent came to know about the order of his dismissal for the first time on 28 May 1951, the said

order must be deemed to have taken effect as from 3 June 1949 when it was actually passed. The High Court has rejected this contention; but Sri Bishan Narain contends that the view taken by the High Court is erroneous in law. We are not impressed by Sri Bishan Narain's argument. It is plain that the mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passed an order of dismissal but does not communicate it to the officer concerned, theoretically it is possible that unlike in the case of a judicial order pronounced in Court, the authority may change its mind and decide to modify its order. It may be that in some cases, the authority may feel that the ends of justice would be met by demoting the officer concerned rather than dismissing him. An order of dismissal passed by the appropriate authority and kept with itself, cannot be said to take effect unless the officer concerned knows about the said order and it is otherwise communicated to all the parties concerned. If it is held that the mere passing of the order of dismissal has the effect of terminating the services of the officer concerned, various complications may arise. If before receiving the order of dismissal, the officer has exercised his power and jurisdiction to take decisions or do acts within his authority and power, would those acts and decisions be rendered invalid after it is known that an order of dismissal had already been passed against him ? Would the officer concerned be entitled to his salary for the period between the date when the order was passed and the date when it was communicated to him ? These and other complication would inevitable arise if it is held that the order of dismissal takes effect as soon as it is passed though it may be communicated to the officer concerned several days thereafter. It is true that, in the present case, the respondent had been suspended during the material period; but that does not change the position that if the officer concerned is not suspended during the period of enquiry, complications of the kind already indicated would definitely arise. We are, therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as form the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published. When a public officer is removed from service, his successor would have to take charge of the said office; and except in cases where the officer concerned has already been suspended, difficulties would arise if it is held that an officer who is actually working and holding charge of his office, can be said to be effectively removed from his office by the mere passing of an order by the appropriate authority. In our opinion, therefore, the High Court was plainly right in holding that the order of dismissal passed against the respondent on 3 June 1949, could not be said to have taken effect until the respondent came to know about it on 28 May 1951.The next question is whether the High Court was right in holding that the respondent's suit is competent. It is true that the Farman-i-Shahi, which was the law in Patiala at the relevant time, had provided that no suit shall be instituted by any private individual against the State or any State officer in respect of his dismissal from State service. After Patiala merged with and became a part of the Patiala and East Punjab States Union, all laws, rules and regulations in the erstwhile State of Patiala were made applicable to the newly formed union. As such, the Farman-i-Shahi also continued to be in operation; but, as has been pointed out by the High Court, S. 13 of the Patiala and East Punjab States Union General Provisions (Administrative) Ordinance, 2005 BK (16 of 2005 BK) (hereinafter referred to as the Ordinance), expressly provided that Government may sue or be sued by the name of the Government of the State or in such other manner as may, by notification, be directed by the Government though S. 12 retained the bar of certain suits against the States as

therein provided. The question is whether in view of S. 13 of the Ordinance, the present suit is competent or not; and, in deciding this question, it is necessary to refer to S. 14 of the Ordinance Section 14 reads thus :

> "(1) Subject to the provisions of Sub-sec. (2), the Rajparmukh, or any authority authorized in this behalf by the Rajparmukh, may -
>
> (a) regulate the recruitment and conditions of service of persons appointed to public services and to posts in connexion with the affairs of the Government, or
>
> (b) make rules or regulation for the conduct of Government servants who are members of the Public services or are holding posts in connexion with the affairs of the Government, or for any other matter relating to them.(2) No person who is a member of a civil service of the State or holds any civil post in the State shall be dismissed from service or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him."

There is a proviso to this section which is not relevant for our purpose. The High Court has taken the view that having regard to the specific provisions of S. 14(2) of the Ordinance, the bar created by the Farman-i- Shahi against the competence of all suits must be deemed to have been removed in regard to cases of public servants who seek to challenge the legality or the validity of the orders of dismissal passed against them on the ground that they contravene the mandatory provisions of S. 14(2) of the Ordinance. Section 14, in substance, corresponds to Art. 311 of the Constitution; and in our opinion, the High Court is right in holding that having regard to the significance and importance of the guarantee contained in S. 14(2) of the Ordinance, it would be reasonable to hold that suits filed by public servants for the purpose of challenging the validity of orders of dismissal passed against them in contravention of S. 14(2) are competent. Besides, S. 13 of the Ordinance itself seems to authorize the institution of such a suit and the High Court has observed that :

> "the protection afforded by the said section would be not only meaningless but wholly elusive if a suit like the present one (?) is held to be incompetent."

Therefore, we are not satisfied that Sri Bishan Narain can successfully challenge the correctness of the decision of the High Court that the suit filed by the respondent is competent. It will be noticed that this conclusion is based on S. 14 of the Ordinance quite apart from the provisions of Art. 311 of the Constitution.That leaves only one question to be considered : Did the respondent get the benefit of S. 14(2) of the Ordinance ? The answer to this question must clearly be in favour of the respondent. The enquiry held against the respondent seems to us to be illegal and invalid from beginning to end. What purports to be the chargesheet framed against the respondent is no more than a questionnaire and some of these questions clearly show that the approach adopted by the authorities that drafted the said questions was completely unreasonable, if not perverse. One of the questions which was put in this questionnaire was : On whose authority the respondent canceled the permits issued by him to the bogus representative ? It is surprising that the substance of the charge being that permits for the procurement of 1, 000 maunds of bajra were issued to a bogus

representative, it should have been suggested that, in cancelling the said permits, the respondent had done something which was wrong. Another question seems to suggest that when the respondent in self- defense pleaded that he had acted under the orders of the higher authorities, that itself, it was thought, constituted misconduct. Therefore, what purports to be the chargesheet itself discloses a serious infirmity in the approach adopted in initiating the proceedings against the respondent.

Then, as to the reasonable opportunity guaranteed by S. 14 (2) of the Ordinance, it is clear that a copy of the report made against him has not been supplied to the respondent, and even when he was heard before the order of dismissal was passed against him, he had no means of knowing what grounds had weighed with the enquiry committee when it made a report against him. Having regard to the procedure adopted by the State authorities in appointing the enquiry committee, in formulating the questionnaire containing the charges against the respondent, in making the report, and in dealing with the recommendations made by the Chief Secretary from time to time, we are satisfied that High Court was right in coming to the conclusion that the respondent had not received a reasonable opportunity to make his defence, and, that the proceedings of the enquiry and the report made by the committee, as well as the final order of dismissal passed against the respondent, have contravened the safeguards guaranteed by S. 14(2) of the Ordinance.The result is, the appeal fails and is dismissed with costs.