State Of Madras vs A.R. Srinivasan on 2 March, 1966

Bench: K.N. Wanchoo, S.M. Sikri, M. Hidayatullah

CASE NO.:
Appeal (civil) 1113 of 1964

PETITIONER:
STATE OF MADRAS

RESPONDENT:
A.R. SRINIVASAN

DATE OF JUDGMENT: 02/03/1966

BENCH:
P.B. GAJENDRAGADKAR (CJ) & K.N. WANCHOO & S.M. SIKRI & M. HIDAYATULLAH & J.C. SHAH

JUDGMENT:

JUDGMENT 1966 AIR (SC) 1827 The Judgment was delivered by :

GAJENDRAGADKAR, C. J. : The respondent, A. R. Srinivasan, entered Government service in the State of Madras and was first appointed as Supervisor in the Public Works Department. After about 21 years of service, he rose to the rank of an Executive Engineer and was appointed as the Project Engineer in charge of the Manimuthar Project in the Tirunelveli district. He was holding this post from 1st August 1951 to the 30th September, 1954. It appears that certain complaints of corruption were received against the respondent by the appellant, the State of Madras, and were investigated by the C.I.D. As a result of these investigations, a reference was made to the Tribunal for Disciplinary Proceedings, Madras, which framed two charges against the respondent on the 3rd September, 1954. On the 30th September, 1954, the respondent was transferred to Madras. On a further reference by the appellant, the said Tribunal framed three additional charges against the respondent on the 31st December, 1954. All these charges were in respect of acts of corruption alleged to have been committed by the respondent.

2. After the said two sets of charges were communicated to the respondent, the Tribunal held an enquiry. At this enquiry, 18 witnesses were examined for the appellant and 83 Exhibits were filed in support of the charges. As a result of the enquiry, the Tribunal found that out of the five charges, the first and the last charges were not proved, although there was some suspicion of guilt in respect of a gold wrist watch chain mentioned in charge No. 1. The Tribunal also found that the remaining three charges had been proved against the respondent. Having recorded these findings, the Tribunal recommended that the respondent should be compulsorily retired from service.

3. On receipt of the report made by the Tribunal (Item No. 7), the appellant provisionally accepted its findings and came to the conclusion that the respondent should be compulsorily retired from service. Accordingly, a notice dated 13th June 1956 (Item No. 8) was served on the respondent. By this notice, the respondent was told that the Government had provisionally accepted the findings of the Tribunal and had arrived at the provisional conclusion that he should be compulsorily retired from service. The respondent was then called upon to show cause, within one month of the receipt of the memorandum, why he should not be compulsorily retired from service. This notice intimated to the respondent that he may peruse the connected records in the Office of the Tribunal and take notes or copies thereof to enable him to submit his explanation. He was warned that the period of one month indicated in the notice for submitting his explanation would not be extended. Accordingly, the respondent submitted an elaborate explanation in support of his case that he was completely innocent of all the charges framed against him.

4. Thereafter, the appellant sent the matter to the Madras Public Service Commission for its advice. On the 2nd April, 1957, the Commission sent its advice to the appellant (Item No. 9). In this communication, the Commission stated that "it is generally in agreement with the findings of the Tribunal". It observed that the respondent's reply to the show cause notice was unconvincing. "The prosecution evidence, as a whole," said this communication, "leaves in one's mind a strong suspicion of corrupt practices on the part of the accused officer although some of the individual instances may not stand the test of strict legal proof as in a criminal case."The Commission also added that" according to the principles laid down in G. O. No. 902, Public (Services), dated the 28th May, 1938, dismissal or removal would be justified in this case. The proposed penalty of compulsory retirement errs on the side of leniency, but it serves the purpose (viz., that the accused officer should no. longer be retained in service) well enough. The Commission agrees that in all the circumstances of the case, it is enough to impose that penalty. The Commission advises accordingly"

5. On receipt of this advice, the appellant ordered that the respondent should be compulsorily retired from service with effect from the afternoon of the 23rd March, 1957, on which date he was placed under suspension. This order was passed on the 14th November, 1957 (Item No. 10).

6. It appears that while these proceedings were pending before the appellant, certain other complaints were received against the respondent, and they were ordered to be investigated. The order by which the respondent was compulsorily retired from service by the appellant sets out in brief the history of the proceedings taken against the respondent, the nature of the advice received by the appellant from the Public Service Commission and concludes in paragraph 4 that "the Government have carefully considered the explanation submitted by the accused officer in consultation with the Madras Public Service Commission."

This paragraph then summarises the advice given by the Madras Public Service Commission. The last two sentences in this paragraph are relevant.

> "The Commission," says the said paragraph, "has therefore agreed that in the present case, it is enough to impose the penalty of compulsory retirement from service on the delinquent officer. The Government agree with the Madras Public Service

Commission."

Paragraph 5 refers to the further complaints received against the respondent and directs that the same should be investigated. The operative portion of this paragraph says that the Government have decided that the accused officer should be retired compulsorily on the basis of the charges already proved before the Tribunal for Disciplinary Proceedings and that if it is later found necessary to impose further punishment on the basis of the present enquiry into the further charges against the officer, then the question of reducing the pension due to the officer for unsatisfactory work may be considered by Government.

7. Aggrieved by this order, the respondent moved the Governor of Madras by way of appeal on the 23rd January, 1958. The Governor was pleased to dismiss the respondent's appeal on the 25th July, 1958, with the observation that the appeal submitted by the respondent contains no. new facts and as such does not afford fresh grounds for reconsideration of the case now (Item No. 13). This order also points out that the Governor had gone through the relevant papers on the subject and had observed that the three charges held to be proved against the respondent by the Tribunal were sufficiently grave calling for the imposition of the penalty of compulsory retirement from service under the Government. That is how the respondent's appeal before the Government came to be dismissed.

8. The respondent then moved the Madras High Court under Art. 226 of the Constitution challenging the validity of the order passed by the appellant compulsorily retiring him from service. The learned Judge who heard this writ petition, came to the conclusion that the impugned order by which the respondent was compulsorily retired from service, was really based on mere suspicion and as such, was invalid. That is why writ petition filed by the respondent was allowed and the impugned order was set aside. The appeal preferred by the appellant against this decision was dismissed by the Division Bench of the said High Court on 1st November, 1962; it is this appellate decision which has brought the appellant before this Court by special leave.

9. Mr. Bishan Narain for the appellant contends that the High Court was in error in holding that the respondent had been compulsorily retired by the appellant merely on suspicion. The finding made by the High Court on this point, says Mr. Bishan Narain, is plainly based upon a misconstruction of the impugned order. In our opinion, this contention is well-founded and must be upheld.

10. It is common ground that the enquiry held against the respondent by the Tribunal was fairly conducted and principles of natural justice were fully complied with. It is also common ground that in its report, the Tribunal has examined the evidence, both oral and documentary, and has made clear findings in respect of the five charges framed against the respondent. According to the Tribunal, the first and the last charges were not proved, whereas the remaining three had been proved. This position is not in dispute. The High Court has taken the view that when the Public Service Commission was consulted, it expressed its concurrence with the punishment which the appellant proposed to impose upon the respondent on the ground that even if there was nothing more than a strong suspicion of corrupt practices against the respondent, his compulsory retirement would be justified. It must be conceded that the words used by the Public Service Commission in its

communication to the Government are somewhat ambiguous. In the first part of the communication, the Commission has expressed its general agreement with the findings of the Tribunal. If that is read by itself, it would show that the Commission accepted the finding of the Tribunal that the respondent was guilty of three charges. Having made this observations, however, the Commission has further referred to the fact that the prosecution evidence as a whole, leaves in one's mind a strong suspicion of corrupt practices on the part of the accused officer; and this would suggest that the Commission was proceeding on the basis that in the present case, there was a strong suspicion against the respondent and nothing more. This reading is partly supported by the fact that the Commission refers to a G. O. No. 902, Public (Services) dated the 28th May, 1938, which seems to indicate that even though guilt is not established against a public servant by proof as in a criminal case, the fact that an officer's reputation is notoriously bad affords just ground for the Government to refuse to continue to be represented or served by such an officer in any department. Inasmuch as the Commission has referred to this G. O., it may well be said that the Commission was prepared to advise the appellant to compulsorily retire the respondent from service, though the case against the respondent may be based merely on strong suspicion. That being so, it may not be possible to hold that the High Court was in error in coming to the conclusion that the advice of the Public Service Commission was substantially based on the G. O. in question.

11. That, however, is not the end of the matter. What the High Court had to consider and what we must decide in the present case is whether the appellant ultimately decided to compulsorily retire the respondent merely on suspicion; and the decision of this question must depend upon a fair construction of the order passed by the appellant on the 14th November, 1957. We have already referred to the relevant portions of this order. In paragraph 4 of this order, the appellant has expressed its agreement with the Madras Public Service Commission; but that, in the context, clearly means that the appellant agreed with the view of the Public Service Commission that compulsory retirement of the respondent would meet the ends of justice in the present case. It does not mean, as the High Court seems to have assumed, that the appellant agreed with the Commission's view that the case against the respondent was no. more than one of strong suspicion. One has merely to read the whole of paragraph 4 to be satisfied that all that the appellant states towards the close of the said paragraph was that the appellant thought that the Commission was right in taking the view that compulsory retirement of the respondent would be enough penalty in the present case.

12. This construction of the last portion of paragraph 4 is clearly supported by the definite order made in paragraph 5 where the appellant has expressly stated that the Government have decided that the officer should be retired compulsorily on the basis of the charges already proved before the Tribunal. It is impossible to see how this finding, which is clear and categorical, can be ignored in considering the question as to whether the appellant acted against the respondent merely on suspicion. The whole order is elaborately drawn; it sets out the history of the proceedings; the findings of the Tribunal, the advice of the Madras Public Service Commission, and the conclusion of the appellant. The conclusion of the appellant is clear; the appellant took the view that three charges had been proved before the Tribunal, and it is on proof of those charges that the punishment of compulsory retirement was imposed on the respondent.

13. When the matter reached the Governor in the form of an appeal presented before him by the respondent, we find that the Governor rejected the respondent's appeal on the ground that three charges had been held proved against the respondent by the Tribunal and that the respondent had produced no. new facts and had adduced no. fresh grounds for reconsideration of his case. Therefore, it seems to us that the High Court was in error in coming to the conclusion that the impugned order passed against the respondent was based on mere suspicion. The Tribunal had made definite findings against the respondent in respect of three charges, and the appellant accepted those findings before it imposed the penalty of compulsory retirement on the respondent.

14. Mr. Setalvad for the respondent attempted to argue that the impugned order gives no. reasons why the appellant accepted the findings of the Tribunal. Disciplinary proceedings taken against the respondent, says Mr. Setalvad, are in the nature of quasi-judicial proceedings and when the appellant passed the impugned order against the respondent, it was acting in a quasi-judicial character. That being so, the appellant should have indicated some reasons as to why it accepted the findings of the Tribunal; and since no. reasons are given, the order should be struck down on that ground alone.

15. We are not prepared to accept this argument. In dealing with the question as to whether it is obligatory on the State Government to give reasons in support of the order imposing a penalty on the delinquent officer we cannot overlook the fact that the disciplinary proceedings against such a delinquent officer begin with an enquiry conducted by an officer appointed in that behalf. That enquiry is followed by a report and the Public Service Commission is consulted where necessary. Having regard to the material which is thus made available to the State Government and which is made available to the delinquent officer also, it seems to us somewhat unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal. It is conceivable that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons why it differs from the conclusions of the Tribunal, though even in such a case, it is not necessary that the reasons should be detailed or elaborate. But where the State Government agrees with the findings of the Tribunal which are against the delinquent officer, we do not think as a matter of law, it could be said that the State Government cannot impose the penalty against the delinquent officer in accordance with the findings of the Tribunal unless it gives reasons to show why the said findings were accepted by it. The proceedings are, no. doubt, quasi-judicial; but having regard to the manner in which these enquiries are conducted, we do not think an obligation can be imposed on the State Government to record reasons in every case.

16. We may incidentally point out that in G. O. No. 902, Public (Services), dated the 28th May, 1938, to which the Public Service Commission has referred in its communication addressed to the appellant it appears to be assumed that a public servant can be punished even without proof of any corrupt practice if the cumulative evidence that he was suspected in a number of instances to be corrupt or is generally believed to be a corrupt officer, is available against him. In our opinion, the view thus expressed by the Government Order is open to serious objection. It may be that in disciplinary proceedings taken against public servants, the technicalities of criminal law cannot be invoked, and the strict mode of proof prescribed by the Evidence Act may not be applied with equal

rigour; but even in disciplinary proceedings, the charge framed against the public servant must be held to be proved before any punishment can be imposed on him.

17. The result is, the appeal is allowed, the order passed by the Division Bench of the High Court is set aside and the writ petition filed by the respondent is dismissed. There would be no. order as to costs.