

The Management Of D.T.U vs Shri B. B. L. Hajelay & Anr on 6 September, 1972

Equivalent citations: 1972 AIR 2452, 1973 SCR (2) 114, AIR 1972 SUPREME COURT 2452, 1972 LAB. I. C. 1619, 1973 (1) LABLJ 76, 1972 SERVLR 787, 1973 2 SCR 114, 1973 SERVLR 19, 42 FJR 412, 27 FACLR 10

Author: D.G. Palekar

Bench: D.G. Palekar, J.M. Shelat, S.N. Dwivedi

PETITIONER:
THE MANAGEMENT OF D.T.U.

Vs.

RESPONDENT:
SHRI B. B. L. HAJELAY & ANR.

DATE OF JUDGMENT 06/09/1972

BENCH:
PALEKAR, D.G.
BENCH:
PALEKAR, D.G.
SHELAT, J.M.
DWIVEDI, S.N.

CITATION:
1972 AIR 2452 1973 SCR (2) 114
1972 SCC (2) 744
CITATOR INFO :
RF 1976 SC2301 (2)
D 1977 SC 567 (12)
RF 1977 SC 965 (14)

ACT:
Disciplinary proceedings-Delhi Municipal Corporation Act, 1957--Ss. 92, 95(1) and proviso, 491 and 504--Removal by officer subordinate to the appointing authority-Effect of delegation of functions by the appointing authority-Subordination is of rank and not flinctions--Protection cannot be destroyed by the concept of agency.

HEADNOTE:
By the Delhi Municipal Corporation Act, 1957 the Delhi Road

Transport Authority Act, 1950, was repealed and the functions of the Authority were taken over by the Corporation. Every employee-. of the Authority stood transferred to and became an employee of the Corporation from January 1958.

Under s. 92 of the Corporation Act the power of appointing municipal officers and other municipal employees to posts carrying a (minimum monthly salary of Rs. 350/- vest in the General Manager (Transport). Section 95(1) dealing with disciplinary matters provides that every officer or other employee shall be liable to be punished by such authority as may be prescribed by regulations. By the proviso to subsection (1) of s. 95 no officer or employee shall be reduced in rank, compulsorily retired, removed or dismissed by any authority subordinate to that by which he was appointed. Section 491 read with 504 empowers the General Manager (Transport) to direct by order that any power conferred or any duty imposed on him by or under the Act shall be exercised and performed also by any municipal officer specified in the order.

Respondent No. 2 was originally employed as a driver in the Delhi Transport Authority. He became an employee of the Corporation from January 1958. The minimum monthly salary drawn by him was less than Rs. 350/-. After a disciplinary enquiry the Assistant General Manager removed the respondent from service with effect from May 16, 1963. The Labour Court, in an application under s. 33 (2) (b) of the Industrial Disputes Act, did not grant approval of the action on the ground that the General Manager alone could have removed him from service. The High Court confirmed this view. It was common ground that the General Manager (Transport) had by order issued in 1961 delegated his power to the Assistant General Manager to appoint and consequently, to remove from service a driver like respondent No. 2. In the appeal to this Court it was contended by the appellant Undertaking that the respondent was originally employed by the Manager of the Road Transport Authority constituted under the 1950 Act and on the repeal of that Act and the take over of the authority by the Corporation any officer of the appellant Undertaking competent to appoint or remove a driver was entitled to remove him from service; that the Assistant General Manager of the Undertaking could not be described as an authority subordinate to the Manager of the Delhi Road Transport Authority; and that in any event the Assistant General Manager had become an agent of the General Manager. Dismissing the appeal.

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HELD : (i) Respondent No. 2 at the time of his absorption in January 1958, would be deemed to have been appointed under s. 92(1) (b) which would mean that he was appointed by the General Manager (Transport). Being so, appointed, no subordinate of his including the Assistant General Manager

would be entitled to remove him in view of s. 95(1) proviso. The only consequence of the delegation of functions of the General Manager to the Assistant General Manager would be that if after 1961 the Assistant General Manager makes the appointment of a driver like respondent No. 2 he would no doubt be entitled to remove him from service. [118D-E]

(ii) A protection which is given to an employee by statute cannot be nullified by rules and regulations authorised by the statute itself. If the Corporation itself could not have by a regulation destroyed the protection given by the statute to respondent No. 2, it would be inappropriate to say that General Manager by an order delegating his functions to the Assistant General Manager under s. 491 read with 594 the Corporation Act could destroy the protection. The true position in law is that while sections 491 and 504 read together authorised the General Manager (Transport) to delegate his powers-and functions to a subordinate they did not authorise delegation of his rank. What is involved in matters of appointment and removal is the status and rank of the employee and the status and rank of the authority taking action. When the proviso to sub-section (1) of s. 95 says that an officer and an employee shall not be dismissed by any authority subordinate to that by which he was appointed the subordination is of rank and not functions. [120D-H] R.T. Rangachari v. Secretary of State, 64 Indian Appeals, 40, referred to.

It is implicit in the statutory prohibition debaring removal by a lesser authority, that the appointing authority has to personally apply its mind to the question of removal and cannot delegate such a function. The protection provided cannot be destroyed by importing concepts of agency. [121C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1518 of 1971.

Appeal by special leave from the judgment and order dated the 21st January 1971 of the Delhi High Court in Civil Writ Petition No. 719 of 1969.

M. C. Chagla, and S. K. Dholakia, for the appellant. R. K. P. Shankardass D. N. Vohra, H. K. Puri and S. K. Dhingra, for respondent No. 2.

The Judgment of the Court was delivered by PALEKAR, J. This is an appeal from the judgment and Order dated January 21, 1971 of the Delhi High Court in Civil Writ Petition No. 719/1969.

Respondent no. 2 Ved Prakash was originally employed as a Driver in the Delhi Road Transport Authority which had been constituted under the Delhi Road Transport Authority Act, 1950.

The Delhi Municipal Corporation Act, 1957 came into force in January, 1958. By section 516(1)(a) of the Corporation Act, the Delhi Road Transport Authority Act, 1950, stood repealed and in virtue of several other sections of the Corporation Act the functions of the Delhi Road Transport Authority were taken over by the Corporation. Under section 511 every officer and employee of the Transport Authority stood transferred to and become an officer and employee of the Corporation. Thus respondent no. 2 became an employee of the Corporation from January, 1958.

A disciplinary enquiry was started against respondent no. 2 by the Assistant General Manager (Transport) in 1962 and the Assistant General Manager decided to remove respondent no. 2 from service with effect from 16-5-1963. At that time an Industrial dispute was pending before respondent no. 1, the Presiding Officer of the Labour Court, and hence an application was made under section 33(2)(b) of the Industrial Disputes Act for approval of the proposed action of removal of respondent no. 2 from service. Respondent no. 1 did not approve of the action on the ground that the Order for removal was made by the Assistant General Manager and not the General Manager who alone could have removed him from service. That order was challenged in the High Court which, however, agreed with the view taken by respondent no.

1. Hence the present appeal.

The short point with which we are concerned is whether the Assistant General Manager of the, Delhi Transport Undertaking of the Municipal Corporation of Delhi was a competent authority to remove respondent no. 2 from service. There is no dispute that under section 511(1) of the Corporation Act, respondent no. 2 became an employee of the Corporation from January, 1958. (By reason of section 516(2)

(a) his appointment continued in force and was deemed to have been made under the provisions of the Corporation Act). Section 92 which comes under Chapter VI of the Corporation Act dealing with Municipal officers and other Municipal employees, so far as is relevant, is as follows :

"92(1) Subject to the provisions of section 89 the power of appointing municipal officers and other municipal employees, whether temporary or permanent,

(b) to posts carrying a minimum monthly salary (exclusive of allowances) of less than three hundred and fifty rupees. shall vest in..... the General Manager (Transport)."

The minimum monthly salary of respondent no. 2 was less than Rs. 350/- and hence the, appropriate authority under the Corporation Act to appoint respondent no. 2 would be the General Manager (Transport).

Section 95 deals with disciplinary actions against municipal officers and employees. Sub-section 6 provides "every municipal officer or other municipal employee shall be liable to have his increments or promotion withheld or to be censured, reduced in rank, compulsorily retired, removed or dismissed for any breach of any departmental regulations or of discipline or for carelessness, unfitness, neglect of duty or other misconduct by such authority as may be prescribed by

regulations." The first proviso to the above sub-section reads "Provided that no such officer or other employee as aforesaid shall be reduced in rank, compulsorily retired, removed or dismissed by any authority subordinate to that by which he was appointed."

In view of the proviso referred to above it was contended on behalf of respondent no. 2 that he cannot be removed by any authority subordinate to the General Manager (Transport) and since the Assistant General Manager was a subordinate of the General Manager, the- Order of removal was unauthorised and illegal. That contention has been upheld by the High Court. Two more provisions of the Corporation Act have to be noticed at this stage. They are sections 491 and 504 in Chapter XXV entitled "Miscellaneous". Section 491 is as follows "The Commissioner may by order direct that any power conferred or any duty imposed on him by or under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercised and performed also by any municipal officer or other municipal employee specified in the order."

Section 504 so far as is relevant is as follows "Save as expressly provided in this Act and unless the context otherwise requires,-

Any reference in this Act to the Commissioner..... shall be construed.

(ii) in relation to any matter pertaining to the Delhi Transport Undertaking, as a reference to the General Manager (Transport)..... "

Reading these two provisions together one sees that the General Manager (Transport) is entitled by order to direct that any power conferred or any duty imposed on him by or under the Act shall be exercised and performed also by any municipal officer or other municipal employee specified in the order. It is common ground that the General Manager (Transport) has by an order issued in 1961 delegated his power to the Assistant General Manager to appoint and, consequently, to remove from service a driver like respondent no. 2. Mr. Chagla, appearing on behalf of the, appellant Undertaking, contended that respondent no. 2 had been actually appointed by the Manager of the Delhi Road Transport Authority constituted under the Delhi Road Transport Authority Act, 1950 and on the repeal of that Act and the take over of the Authority by the Corporation, any officer of the appellant Undertaking, competent to appoint or remove a driver, was entitled to remove him from service. The Assistant General Manager of the Undertaking could not be described as subordinate to the Manager of the Delhi Road Transport Authority because factually he was not. There- fore, he contended, the provision 'that he shall not be removed by the authority subordinate to that by which he was appointed' found in section 95 of the Corporation Act was inapplicable. In our opinion, the contention is not well founded. The proviso to section 95 sub-section (1) gives protection to every officer and employee of the Undertaking that he may not be removed or dismissed from service by an authority subordinate to that by which he was appointed. It may be that in 1961 the functions of the General Manager (Transport) had been delegated to the Assistant General Manager. The only

consequence is that if after 1961 the Assistant General Manager makes the appointment of a driver like respondent no. 2, he would no doubt be entitled to remove him from service. But so far as respondent no. 2 is concerned his individual position will have to be determined with reference to the time when he was absorbed in Corporation Service. That was in January, 1958. Section 516 while repealing the Delhi Road Transport Authority Act, 1950 by clause (a) of sub-section (1) protects the appointments made under that Act. Sub-section 2(a) provides "Notwithstanding the provisions of sub-section (1) of this section (a) any appointment..... made and in force immediately before the establishment of the Corporation, shall, in so far as it is not inconsistent with the provisions of this Act, continue in force and be deemed to have been made under the provisions of this Act, unless and until it is superseded by any appointment made under the said provisions." Since under section 92 (1) (b) already referred to the power of appointing municipal employees to posts carrying a minimum monthly salary of Rs. 350/- vested in the General Manager (Transport), Respondent no. 2, at the time of his absorption in January, 1958 would be deemed to have been appointed under section 92 (1) (b) which would mean that he was appointed by the General Manager (Transport). Being so appointed, no subordinate of his including the Assistant General Manager (Transport) would be entitled to remove him from service in view of section 95(1) proviso.

Section 95(1) dealing with disciplinary action against municipal officers and employees specifically provides that every officer or other municipal employee shall be liable to be punished in the several ways referred to in that section by such authority as may be prescribed by regulations. The definition of the word 'regulation' given in clause 48 of section (2) is as follows : "Regulation" means regulation made by the Corporation under this, Act by notification in the official gazette. In other words, the power of making regulations is vested in the Corporation and it is open to the Corporation to prescribe by regulation who would be the authority to punish any municipal officer or employee for his delinquency. Such a regulation may provide that an employee of the status of respondent no. 2 can be removed, for example, by the Assistant General Manager. And yet by virtue of the proviso to that sub-section respondent no. 2 would be protected against any such action of the Assistant General Manager because his appointing authority was the General Manager and the Assistant General Manager was his subordinate. A similar situation had arisen in R. T. Rangachari v. Secretary of State(1). The appellant Rangachari had been appointed by the Inspector General of Police but his dismissal was ordered in 1928 by an official lower in rank than the Inspector General. Rangachari claimed protection under section 96(b) of the Government of India Act, 1919 which so far as we are concerned was as follows "Sub-section (1) Subject to the provisions of this Act and the rules made thereunder every person in the Civil Service of the Crown in India holds office during his Majesty's pleasure and may be employed in any manner required by a proper authority within the scope of his duty but no person in that service may be dismissed by any authority subordinate to that by which he was appointed."

Since rules had been framed by which the power of dismissal had been delegated by the Inspector General of Police to a subordinate authority it was contended, though with certain amount of hesitation, that the dismissal of Rangachari was proper. Lord Roche delivering the judgment in the case observed "The courts below held that the power of dismissal was in fact delegated and (1) 64 Indian Appeals, 40.

was lawfully delegated to the person who purported to exercise it. Counsel for the respondent candidly expressed a doubt as to the possibility of maintaining this view and indeed it is manifest that if power to delegate this power could be taken under the rules, it would wipeout a proviso and destroy a protection contained not in the rules but in the section itself. Their Lordships are clearly of opinion that the dismissal purporting to be thus ordered in February was by reason of its origin bad and inoperative. It is manifest that the stipulation or proviso as to dismissal is itself of statutory force and stands on a footing quite other than any matters of rule which are of infinite variety and can be changed from time to time. It is plainly necessary that this statutory safeguard should be observed with the utmost care and that a deprivation of pension based upon a dismissal purporting to be made by an official who is prohibited by- statute from making it rests upon an illegal and improper foundation."

It is, therefore, clear that a protection which is given to an employee by the statute cannot be nullified by rules and regulations authorised by the statute itself. In other words, any regulation made by the Corporation which would have authorised the Assistant General Manager to remove respondent no. 2 from service would have been inoperative qua respondent no. 2, as his appointing authority was the General Manager (Transport). The question now is whether, if the Corporation itself by any regulation could not have destroyed the above protection given by the statute to respondent no. 2, it would be appropriate to say that the General Manager by an order delegating his functions to the Assistant General Manager under sections 491 r/w 504 of the Corporation Act could destroy the protection. Since the General Manager (Transport) is an officer of the Corporation and subordinate to the Corporation, it will amount to saying that what the Corporation could not do by a regulation could be done by an officer of the Corporation by merely delegating his functions to the Assistant General Manager. The position would look ridiculous. The true position in law is that while sections 491 & 504 read together authorised the General Manager (Transport,) to delegate his powers and functions to a subordinate, they did not authorise delegation of his rank. , What is involved in matters of appointment and removal is the status and rank of the employee and the status and rank of the authority taking action. When the proviso to subsection (1) of section 95 says that an officer and an employee shall not be dismissed by an authority subordinate to that by which he was appointed the subordination is of rank and not of functions. The proviso places an embargo on any subordinate of the appointing authority from removing or dismissing an employee from service and, therefore, the High Court was right in holding in the present case that the removal of respondent no. 2 by the Assistant General Manager (Transport) was illegal.

Mr. Chagla then contended that by reason of the delegation, the Assistant General Manager had become an agent of the General Manager and the act of the Assistant General Manager must be deemed to be the act of the General Manager himself. We are not concerned here with the law of a agency. It is implicit in the statutory prohibition debarring removal by a lesser authority, that the

appointing authority has to personally apply its mind to the question of removal and cannot delegate such a function. Since the authority which can 'remove an-employee is the appointing authority or its superior in office, the protection thus provided cannot be destroyed by importing concepts of agency. In the result the appeal fails and is dismissed with costs.

K.B.N.
dismissed.

Appeal