State Of Uttar Pradesh vs Om Prakash Gupta on 28 October, 1969

Equivalent citations: AIR1970SC679, 1970LABLC568, (1969)3SCC775, AIR 1970 SUPREME COURT 679, 1970 LAB. I. C. 568

Author: K.S. Hegde

Bench: J.C. Shah, K.S. Hegde

JUDGMENT

K.S. Hegde, J.

1. The respondent Om Prakash Gupta was successful in the U.P. Civil Service (Executive) Competition held in 1940. He joined the service on June 20, 1940. Thereafter he was confirmed in due course. After serving in some districts in U.P. he was posted to Lakbimpur Kheri in July, 1944. He joined there as S.D.O. on July 20, 1944. On the basis of a report submitted by his Deputy Commissioner on August 20, 1944, the Government placed him under suspension on August 23, 1944. Mr. Bishop, the Commissioner, Lucknow Division was appointed as the enquiry officer to enquire into the allegations made against the respondent. He framed the following four charges against him.

> (1) That on or about August 15, 1944, one Mst. Jamila was presented before you in Court by the police under a warrant under Section 100, Cr.P.C. You did not decide the case on the 15th August but postponed it to the 19th August 1944 making over the girl to the custody of one Hafiz Habib Beg. On 17th of August you sent for Mst. Jamila from the house of Hafiz Habib Beg at about 7 p.m. through your orderly Jangu Khan and detained the girl at your house for immoral purposes. Next morning the girl expressed desire to go with her father who came to receive her at your house but you did not allow her to do so and again sent back the girl to the house of Hafiz Habib Beg.
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> (2) That on or about August 10, 1944, the police, on the complaint of one Puttulal produced before you one Mst. Gunga Kurmin for whose arrest you had issued a warrant under Section 100, Cr.P.C. You directed Mst. Gunga and Puttu. Lal to be escorted to your house by your orderly Jangu Khan. You sent away Puttu Lal and detained Mst. Gunga alone at your house for about two hours evidently to use her for immoral purposes.

(3) That sometime in the last week of July, 1944, a girl named Taqderan was produced before you under a warrant of arrest issued by you under Section 100, Cr.P.C. but you asked the parties to present the girl after court hours at your house. When the girl was brought to your house you asked the people accompanying her to stay outside and took the girl alone inside your house under the I pretext of recording her statement and detained her there for two hours evidently to use her for immoral purposes.

(4) That in all these three cases you conducted yourself in a manner unbe coming of an officer of the U.P.C.S. and, therefore, you are asked to show cause why you should not be dismissed from service.

2. These charges were duly served on the respondent. Thereafter Mr. Bishop held an enquiry on the basis of those charges in the presence of the respondent He came to the conclusion that the respondent was guilty of all the charges though he found that there is no positive evidence of any immoral act on bis part The Government accepted those findings and after obtaining the concurrence of P.S.C. dismissed the respondent.

3. The respondent thereupon filed a suit on December 4, 1948, challenging on various grounds, the validity of the order dismissing him. The learned Judge who tried the suit set aside the order of dismissal on the sole ground that a second show cause notice as required by Section 240 of the Government of India Act, 1935 had not been given. This decision was upheld in appeal both by the High Court as well as by this Court. In its judgment, the trial Court had observed that it was open to the Government to continue the second stage of the enquiry in accordance with law. On April 12, 1949, the Government set aside the order of dismissal made by it on November 25, 1944. At about the same time it issued a notice to the respondent calling upon him to show cause why he should not be dismissed from service on the basis of the findings reached by the enquiry Officer. By that notice he was required to show cause against the proposed punishment by May 31, 1949. That notice was served on the appellant on April 30, 1949. On receipt of that notice, the respondent wrote to the Government requesting that he may be allowed time upto July 31, 1949 to show cause against the proposed punishment. But the Government granted him time only upto June 25, 1949. He was told that no further time will be given to him and if he failed to show cause by that time, it will be deemed that he has no cause to show. Despite this warning, the respondent did not show cause against the proposed punishment. On the other hand he challenged the Government's right to call upon him to show cause against the proposed punishment as he proposed to file an appeal against the order of the trial Court in so far as that Court did not-uphold his contention that the enquiry held by Mr. Bishop was wholly vitiated. Thereafter the Government proceeded ex parte. It accepted the report of the enquiry officer, came to a tentative conclusion that the respondent should be dismissed; it consulted the Public Service Commission afresh and dismissed the appellant by its order dated August 30 1949. That order reads thus:

Government of the United Provinces Appointment (A) Department.

Notification Dated Lucknow, August 30, 1949 With effect from August 30, 1949, Shri Om Prakash Gupta, Deputy Collector, under suspension is dismissed from service.

Sd/-

Bhagwan Sahay Chief Secretary.

As a result of the aforementioned order another round of litigation started which has culminated in this appeal. The respondent challenged the impugned order in Civil Suit No. 14 of 1953 in the Court of II Addl. Civil Judge, Allahabad on various grounds. The plaint filed by him is prolific. That plaint as amended covers twenty closely printed pages. Most of the grounds taken in the plaint are irrelevant and have no bearing on the issues arising for decision. Several of the grounds alleged against the preliminary enquiry held by the Deputy Commissioner as well as the formal enquiry held by Mr. Bishop are petty and deserve no serious consideration.

4. It is unfortunate that the trial court did not bear in mind the scope of a suit challenging the validity of a departmental enquiry held against a government servant. That court does not appear to have borne in mind that a member of Civil Service in India prior to January 26, 1950 held office during the pleasure of the Crown and that the only safeguard he had was the procedural safeguard guaranteed under Sub-section (2) of Section 240 of the Government of India Act, 1935. A perusal of the judgment of the trial court shows that that court constituted itself as an appellate court over the enquiry officer. It admitted evidence to show that the findings reached by the enquiry officer are incorrect. It took upon itself the responsibility of reassessing the evidence relating to those charges. On the basis of the evidence adduced before it, it came to the conclusion that the enquiry officer's findings as regards charges Nos. 2 and 3 are not sustainable but on charge No. 1, it accepted the finding of the enquiry Officer. On that charge, it observed that "There is no doubt that this was a most improper conduct of the plaintiff and this was not the way how a Deputy Collector is expected to function." It found that the girl Jamila was sent for from the house of Hafiz Habib Beg by the respondent through bis orderly Jaragu Khan on the 17th of August, 1944; she came to his house at about 8-30 p. m. he asked the girl whether she had her menses and about the time when her hairs had begum to grow. It also found that the girl remained in the Magistrate's house for the whole of the night and that she slept in the night at a distance of two ft. from the cot in which the respondent slept that night. Admittedly there was no other female member in the house of the respondent that night. It may be noted that these findings were reached primarily on the basis of the admissions made by the respondent.

5. The trial court came to the conclusion that there were no serious irregularities in the conduct of the enquiry. It held that even though there were technical breaches of some of the rules, in its opinion, those breaches were not sub stantial. It further held that specific charges had been served on the respondent; he had been given reasonable time to file his written statement; the oral enquiry was held in his presence and that he was heard in person. It also held that the enquiry officer had given reasonable opportunity to the respondent to cross-examine the witnesses. In conclusion it observed "my clear opinion, therefore, is that there has been no breach of Rule 55 as contended to

by the plaintiff. The procedure laid down in Rule 55 has been substantially adhered to and Mr. Bishop was also conscious of this fact all the time."

6. The trial court rejected the contention of the respondent that he had not been given reasonable opportunity to show cause against the proposed punishment Rejecting the contention of the respondent that the impugned order is not valid as the same was not made in the name of Governor, the trial court observed that the order was made in the name of the Government. It was made after obtaining the approval of the Premier and with the concurrence of Public Service Commission; hence that order is substantially in accordance with law. In the result it dismissed the respondent's suit with costs.

7. The High Court reversed the decree of the trial court on the following grounds:

> (1) The respondent was appointed by the Governor and therefore he could not have been dismissed by the Chief Secretary, an authority subordinate to the Governor;
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> (2) The order of dismissal did not con form to the requirements of law as the same was not made in the name of Governor as required by Section 59 of the Government of India Act, 1935;
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> (3) The Premier had not agreed to the dismissal of the respondent. He had only agreed to accept the findings of the enquiry officer and to refer the matter to the Public Service Commission. Dealing with that aspect of the case, this is what the Court observed;

After perusal of the file pertaining to the dismissal of the plaintiff in the year 1949, we are satisfied that it does not contain any material to show that the order of dismissal of the year 1949 was passed by the Premier himself or that the Premier had applied his mind to the question, and had felt satisfied in the matter. The file contains an office report. It was pointed out in that report that although notice to show cause against the proposed punishment had been issued to the plaintiff, he did not file any reply to the same. It was said that the plaintiff did not show cause against the aforesaid notice, because according to the plaintiff he had filed an appeal in this Court from the decision in Suit No. 1 of 1948 and that no cause could be shown until that appeal has been decided. The office report also said that notice of the appeal had not been received by the State till then. The time given to the plaintiff to show cause had expired and as the plaintiff did not place any fresh material before the authorities, his case should be decided on the basis of the old enquiry and materials that were already before the State authorities, and that it was also said that on the basis of those materials, the Government should be asked to order that the plaintiff be dismissed from service. It was also proposed that as the matter had once been sent to the Public Service Commission at an earlier stage, the matter be again sent to the Public Service Commission. The aforesaid report was placed before the Hon'ble Premier and the Hon'ble Premier wrote on that report 'agree'.

X X X X X In fact we are of the view that the word "agree, used by the Premier does not imply that he agreed to the dismissal of the plaintiff. Read in the context of the report, the only conclusion that

can be arrived at is that the Hon'ble Premier had agreed only to the proposal that the case of the plaintiff be decided on the basis of the old materials and that the matter be referred to the Public Service Commission. We are, therefore, of the view that even those documents which were contained in the Government file, do not go to establish that the order of dismissal was passed by the Premier or that it was issued after the Premier had applied his mind to the facts of the case and after he had felt satisfied about the same." and (4) That the enquiry held by Mr. Bishop is vitiated for the following reasons:

(i) That the enquiry officer had not given any finding on the 4th charge:

(ii) That there is no proof to show that Mr. Bishop had been appointed to enquire into the charges by the competent authority or the second show cause notice had been issued by the competent authority;

(iii) That the respondent had not been supplied with a copy of the report of Mr. Bishop before he was called upon to show cause against the proposed punishment; and

(iv) That the enquiry officer did not allow the respondent to cross-examine Hafiz Habib Beg in respect of some portion of his evidence.

8. We are in agreement with the trial court that the first charge leveled against the respondent is conclusively established.In respect of that charge apart from any other evidence, we have the admissions made by the respondent himself in his written statement filed in reply to the charges leveled against him. Therein he admitted that the girl was produced before him in his court by the police on August 15, 1944 after arresting her on the strength of the warrant issued by him under Section 100, Cr.P.C. When he examined her in court, the girl stated that she was 20 years' old but yet he would not release her as according to him, from her appearance he concluded that she was not more than 17 years; therefore he entrusted her to the charge of Hafiz Habib Beg and posted the case to the 19th of that month but on the 17th at about 6 p. m. he sent his orderly Jangu Khan to get the girl to his house and the girl was brought to his house at about 8-30 p. m. He further stated that in order to question her, he took the girl inside his house on the open roof at about 9-30 p. m.; there he asked her whether she had her menses; he went on questioning her till about 10 or 10-15 p.m.; thereafter as the girl was afraid to go to the house of Hafiz Habib Beg, she remained in his house for the night Proceeding further he stated she slept on the ground on open roof. I also slept there. So did my servant. I had no women-folk in the household there. In the morning as soon as Jangu Khan came I asked him to take the girl wherever she liked to go". On his own admissions, it is seen that a young girl who had been brought to court in execution of a warrant issued by him, was brought to his house on a night and that she remained in his house for the whole of that night and further that she slept near his cot that night. If the respondent had any genuine doubt as regards the correct age of the girl, he should have got her examined by a medical officer. The extraordinary course adopted by the respondent is not capable of any innocent explanation. Even if we brush aside all Other evidence in the case, on the basis of the respondent's own admissions the only reasonable conclusion any responsible person would have come to is that (he respondent is unworthy of

holding any responsible post Any minor irregularity in the matter of conducting the enquiry cannot vitiate a finding which is SO obviously correct. Once it is held that the respondent was properly found guilty under Charge No. 1, it is unnecessary to go into the other charges. The gravity of the offence of the respondent under the first charge is such as to merit his dismissal from service. As observed by this Court in State of Orissa v. Bidya-bhushan Mohapatra that if the order of the government can be supported on any finding as to substantial misdemeanour for which the punishment imposed can be lawfully imposed, it is not for the court to consider whether that ground alone would have weighed with the authority dismissing the public servant.

9. Reasonable opportunity contemplated by Section 240 of the Government of India Act, 1935 as under Article 311(2) of the Constitution primarily consist or (I) opportunity to the concerned officer to deny his guilt and establish his innocence which means he must be told what the charges against him are and the allegations on which such charges are based; (ii) he must be given reasonable opportunity to cross-examine the witnesses produced against him and examine himself or other witnesses on his behalf and (ffi) he must be given opportunity to show cause that the proposed punishment would not be proper punishment to inflict which means that the tentative determination of the competent authority to inflict one of the three punishments must be communicated to him - See Khem Chand v. Union of India 1958 SCR 1081.

10. All these requirements have been substantially complied with in the present case. It is true that an enquiry under Section 240 of the Government of India Act, must be conducted in accordance with the principles of natural justice. But those principles are not embodied principles. What principle of natural justice should be applied in a particular case depends on the facts and circumstances of that case. All that the courts have to see is whether the non-observance of any of those principles in a given case is likely to have resulted in deflecting the course of justice. In the present case so far as the first charge is concerned, the fact that the respondent was not given full opportunity to cross-examine Hafiz Habib Beg could not have in the least affected the finding of the enquiry officer as it was primarily based on the admissions made by the respon dent. The High Court was not right in its conclusion that the report of the enquiry officer had not been made available to the respondent before he was called upon to show cause against the proposed punishment A summary of that report had been given to him when he asked for it for the purpose of submitting a memorial to the Government against the order made in 1944 dismissing him from service. It is not shown that that summary did not contain all the relevant facts and circumstances taken into consideration as well as the conclusions reached by the enquiry officer and the recommendations made by him. The entire records of the enquiry were be fore the courts in proceedings commenced by the respondent in 1948 and quite clearly it would have included the report of the enquiry officer. Further it was open to the respondent to ask for a copy of that report when he was asked in 1949 to show cause against the proposal to dismiss him. He did not do so nor did he object to the notice calling upon him to show cause why he should not be dismissed, on the ground that he had not been supplied with a copy of the report made by the enquiry officer. The learned judges of the High Court were wholly wrong in holding that there was no proof to show that Mr. Bishop had been appointed to enquire into the allegations. No such plea had been taken in the plaint There is a presumption that official acts had been done according to law.

11. In this Court, the respondent who argued' his own case contended that the enquiry was vitiated because the enquiry officer had relied on the statements given by some of the witnesses behind his back; that he had not been given the true copies of the statements of the witnesses recorded by the Deputy Commissioner; that the translations of those statements given to him were full of mistakes and that Mr. Bishop was biased against him.

12. This Court has repeatedly laid down that the fact that the statements of the witnesses taken at the preliminary stage of the enquiry were used at the time of the formal enquiry does not vitiate the enquiry if those statements were made available to the delinquent officer and he was given opportunity to cross-examine the witnesses in respect of those statements-see State of Mysore v. Shivbasappa . It is clear from the records of the case that the respondent had been permitted to go through the statements recorded from the witnesses by the Deputy Commissioner and prepare his own notes; he was supplied with the English translations of those statements and that he was permitted to cross-examine those witnesses in respect of those statements. It may be that there were some mistakes in the translations. In our opinion those mistakes could not have vitiated the enquiry. They were quite trivial mistakes. We agree with the trial court that the enquiry officer had given reasonable time to the respondent to prepare his case.

13. The allegation that Mr. Bishop was biased against the respondent is unsubstantiated. The much too often asserted plea of the respondent that he was prosecuted for his nationalistic views and attitudes is belied by the admitted facts. That plea appears to have been put forward as a mere cloak to cover the reprehensible conduct of the respondent.

14. We are surprised that the High Court should have held that the enquiry is vitiated because the enquiry officer did not give any finding on the fourth charge. The fourth charge is not an independent charge at all. All that it says is that if the delinquent officer is guilty of the first three charges his conduct should be held to be unbecoming of an officer of U. P. C. S. and that he should be asked to show cause why he should not be dismissed from service. As the enquiry officer came to the conclusion that the respondent is guilty of the first three charges, it follows that he had also com(c) to the conclusion that the respondent's conduct was unbecoming of an officer of U. P. C. S. and therefore he should be asked to show cause why he should not be dismissed from service. It is regrettable that the learned Judges of the High Court while dealing with the ap peal ignored the substance and went after shadows.

15. The conclusion of the High Court that the respondent was appointed by the Governor and therefore he could not have been dismissed by the Chief Secretary, an authority lower in rank than the Governor is based on no pleadings. No such allegation was made in the plaint nor any issue raised in that regard. The plaintiff did not lead any evidence to show that he had been appointed by the Governor. The contention that he was dismissed by an authority lower in rank than that appointed him was not urged before the trial court. That contention appears to have been taken for the first time in the High Court. The High Court should not have entertained that contention. Under Section 241 of the Government of India Act, 1935, appointments to the Civil Service and Civil Posts in connection with the affairs of a Province could have been made by the Governor or such person as he might have directed. The material on record does not afford any basis for the conclusion that the

res pondent was appointed by the Governor. Therefore the High Court, in our opinion, was wholly wrong in holding that the respondent was dismissed by an authority lower in rank than that appointed him.

16. In view of our above conclusion, it is not necessary to go into the question whether the proposal to dismiss the respondent was approved by the Premier though on the basis of the facts found by the High Court, there is hardly any doubt that he did approve the proposal to dismiss the respondent from service.

17. This Court has repeatedly held that the provisions of Article 166(1)(2) (similar to Sub-sections (1) and (2) of Section 59 of the Government of India Act, 1935), are directory and substantial compliance with those provisions is sufficient - See P. Joseph John v. State of Travancore Cochin 1955 SCR 1011 and Chitralekha v. State of Mysore . In this case the impugned order was made in the name of the State Government. It was signed by the Chief Secretary. Therefore prima facie it is a valid order. We need not go further into that question in view of our conclusion that the respondent has failed to prove that he was appointed by an authority higher in rank than the Chief Secretary of the State.

18. For reasons mentioned above this appeal is allowed, the judgment and decree of the High Court are set aside and the decree of the trial Court restored. The respondent shall pay costs of the appellant both in this Court and in the High Court. The respondent brought the suit from which this appeal arises in forma pauperis. Hence he is liable to pay the Court-fees payable on the suit claim.