Supreme Court of India
J.B. Sharma vs State Of Madhya Pradesh And Anr. on 10 February, 1988
Equivalent citations: AIR 1988 SC 703, 1988 (36) BLJR 364, JT 1988 (1) SC 282, 1989 LablC 1203, 1988 (1) SCALE 310, 1988 Supp (1) SCC 451, 1988 (1) UJ 470 SC
Author: L M Sharma
Bench: A Sen, L Sharma
JUDGMENT Lalit Mohan Sharma, J.

1. The appellant was appointed temporarily as an Assistant Jailor in the State of Madhya Pradesh and his services were terminated in 1965 without assigning any reason. He filed the suit out of which the present appeal arises challenging the termination order as illegal on the ground that although it was, on its face, a termination order simpliciter it was passed as a measure of punishment without holding an inquiry. The suit was dismissed by the trial court but on appeal the First Additional District Judge, Gwalior decreed the same. The State of Madhya Pradesh challenged the judgment before the High Court in second appeal which was allowed and the suit was again dismissed. The plaintiff- appellant has now come to this Court in the present appeal by special leave.

2. The issue on which the result of the present case is dependent is whether the impugned order of termination of the appellant's services had been passed as a measure of punishment or not. If the answer be in the negative, the appellant being a temporary servant had no right to continue in service which could be terminated without assigning any reason as was done. The First Appellate Court answered the question in favour of the appellant and granted him a decree as prayed for while the trial court and the High Court took a different view

3. The learned Counsel for the appellant contended that in view of several recent decisions of this Court the form of order terminating the services of a government servant is not conclusive of its true nature and it is the duty of the court to examine its real character and further if the court be of the view that the order of termination has been in the facts and circumstances of a given case passed by way of punishment without holding an inquiry it should strike it down as illegal. We will assume the legal position accordingly but the difficulty of the appellant is that the conclusion reached by the High Court appears to be correct, namely, that the plaintiff appellant has not been able to show that he was removed from service by way of punishment.

4. The decision of the High Court has been challenged before us on the ground that the finding of the lower appellate court was binding on the High Court in second appeal and in view of section 100 of the CPC it had no jurisdiction to re-appraise the evidence and come to a contrary finding.

5. The appellant's counsel placed before us the judgments of the First Appellate Court and the High Court as also the pleadings of the parties and the evidence led by them in support of the correctness of the findings of Additional District Judge, Gwalior.

6. According to the statements made in the plaint, a departmental inquiry on the basis of certain allegations had been initiated against the appellant in 1964 but was left inconclusive. Later, another allegation was made against him in December 1964 that he had sent an anonymous complaint on

behalf of some of the prisoners to the Vigilant Commissioner. The appellant after sending his reply proceeded on leave. Later he made a prayer for his transfer from Gwalior to Indore. He was interviewed with the Inspector General of Prisons when he accepted that in fact he had written the anonymous complaint and tendered his apology. The Inspector General is stated to have condoned the lapse and assured him that he would be transferred to Indore as prayed for. His service was terminated soon thereafter.

7. The appellant has also made allegations of mala fides against Shri B.N. Shukla, Superintendent, Gwalior Jail, who according to his case was instrumental in getting him thrown out of service. In the written statement of the defendants Nos. 1 and 2, it was pleaded that the case of the plaintiff-appellant that he was removed from service by way of punishment was incorrect. The defendants did not deny the inconclusive disciplinary inquiry of 1964 nor the facts that an allegation was made against him about sending of the anonymous complaint and that he had made a written admission accompanied with regrets, but the other allegations were refuted. Shri B.N. Shukla who had, by the time the trial of the suit was taken up, retired from service, went to the witness box to support the defence case. He asserted that he had no bias against the plaintiff and when the latter applied for appointment in the State Transport Department after the termination of his service, he (Shri Shukla) had given him a letter of recommendation and appreciation.

8. In support of his case that the order of termination of his services was passed as a punishment no direct no direct evidence was led by the appellant. As has been pointed out earlier, the order itself does not say so. The judgment of the learned Additional District Judge indicates that the Circumstances pleaded in the plaint and mentioned above did not lead him to the conclusion in favour of the plaintiff. He, however, proceeded to examine a Circular (Ext. D-3) issued by the authorities about a month after the termination order and accepted the plaintiff's case on its basis, observing that by the issuance of the said Circular (Ext. D-3) the plaintiff was visited by a stigma and the termination order read along with the Circular must, therefore, be treated to be penal in nature. The High Court while reversing the finding pointed out that the Circular did not specifically name the plaintiff and was not issued simultaneously with the termination order. By the Circular the subordinate jail officers were asked not to involve themselves in sending anonymous complaints. It is true that the Circular mentioned the fact of sending of an anonymous complaint by somebody in the past. Although the plaintiff is not named therein, it was argued on his behalf, that it should be presumed that the reference was to him. The Additional District Judge agreed with the plaintiff without any evidence to connect him with the Circular. From the evidence of Shri Shukla, DW-2, it appears that the number of jails throughout the State is large and naturally the number of the employees much larger. The High Court in these circumstances disagreed with the assumption made by the Additional District Judge which was not supported by any evidence. Besides, the Circular did not cast any stigma on any particular person. Its object was to lay down a guideline for the conduct of the State employees in the future. So far as the plaintiff was concerned, his services had already been terminated earlier and there was no question of re-opening the matter. It will thus be seen that the first appellate court while recording the finding acted on an assumption not supported by any evidence and further failed to consider the entire document on the basis of which the finding was recorded. The High Court was, therefore, justified under Section 100 of the CPC to set aside the finding.

9. For the reasons mentioned above we are of the view that there is no merit in this appeal which is dismissed but, in the circumstances, without costs.