Supreme Court of India
Pranlal Manilal Parikh vs State Of Gujarat on 7 December, 1993
Equivalent citations: (1995) IILLJ 690 SC
Author: A Ahamadi
Bench: A Ahmadi, K Ramaswamy, S Agrawal
ORDER A.M. Ahamadi, J.

1. The appellant is the original plaintiff. He was a judicial officer, a Civil Judge (Judicial Division), in the judicial service of the State of Gujarat when he was visited with the penalty of dismissal from service. The facts giving rise to the institution of a civil suit by him challenging the dismissal may be briefly stated.

2. The appellant joined the judicial service on January 3, 1952 and he was serving as Civil Judge (Judicial Division - Judicial Magistrate Ist Class) Karjan Senor in 1961, in which capacity he was required to hold sittings at the Link Court at Senor for four days in a fortnight with headquarters at Karjan. He was, therefore, required to travel to and fro by train to discharge his duties at Senor. It was alleged that he travelled without purchasing a ticket but preferred travelling allowance bills and collected the money from the State Treasury. On this allegation a departmental inquiry was initiated against him by the Government and District Judge, Banaskantha was appointed Enquiry Officer. At the conclusion of the departmental inquiry he was served with a notice dated March 22, 1965 to show cause why the penalty of dismissal from service should not be imposed. After taking into account the cause shown, the State Government passed an order dated November 3, 1965 dismissing him from service. That order was challenged by way of a writ petition in the High Court under Article 226 of the Constitution, being Special Civil Application No. 220 of 1966. The writ petition was allowed by an order dated March 20, 1970 whereby the order of dismissal was quashed by a learned Single Judge on the ground that the State Government was not competent to order and initiate the inquiry. Consequently the order of dismissal passed on the basis of such inquiry was void. The Letters Patent Appeal No. 71 of 1970 preferred by the State of Gujarat against the said order failed. Thereupon it would have been incumbent to reinstate him in service, but it appears that the High Court of Gujarat on the administrative side decided to initiate a fresh inquiry against him on the same charge. So by the order dated June 20, 1975 the delinquent was placed under suspension with effect from the date of the service of that order. The inquiry conducted pursuant to the High Court direction also ended in the dismissal of the delinquent from service. The delinquent, however, claimed a sum of Rs. 76579.62 p. as arrears of salary for the period from November 3, 1965 to June 26, 1975. This claim was resisted on the ground that he must be deemed to be under suspension from November 3, 1965 in view of Rule 5(4) of the Gujarat Civil Services (Discipline and Appeal) Rules, 1975 (the 'Rules' hereinafter). That Rule reads as under:

Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a court of law, and the disciplinary authority on a consideration of the circumstances of the case, decided to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed the government servant shall be deemed to have been placed under suspension by the appointing authority, from the date of the original

order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

The State Government refused to pay the salary from November 3, 1965 to June 26, 1975,: the date on which the suspension order passed by the High Court dated June 20, 1975 was served on the delinquent, invoking Rule 5(4) of the Rules. The delinquent, therefore, filed a suit to recover the arrear of Rs. 76,579.62 p. for the period between November 3, 1965 and June 26, 1975. The suit, however, failed in the trial court and that decision was confirmed in first appeal by a Division Bench of the High Court. Hence, this appeal by special leave. :

3. Mr. Krishan Mahajan, the learned Counsel for the appellant, formulated the point for consideration as under:

Whether an order passed in a departmental inquiry held in derogation of Article 235 of the Constitution of India, can be put to use for 'deemed suspension' under Rule 5(4) of the Rules?

He contended that if the Rule is so interpreted it would directly impinge on the 'control jurisdiction' of the High Court under Article 235 of the Constitution inasmuch as the result of the inquiry which can be described as non est would be used for the purpose of deemed suspension. On the other hand Mr. Sachthey, the learned counsel for the State, submitted that the validity of similar Rule 12(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 was questioned before this Court in Khem Chand v. Union of India 1963-I-LLJ-665, and this Court held that the said Rule was not unconstitutional. We do not think it necessary to go into the question of the constitutional validity of Rule 5(4) of the Rules. We propose to dispose of this appeal on the assumption that the said Rule is valid and intra vires the Constitution. Even on that assumption we think that in the facts and circumstances of this case that Rule could have no application.

4. The Constitution places control over subordinate courts in the High Court. Article 235 says that the control over the District Courts and the courts subordinate thereto including posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge shall vest in the High Court. It is, therefore, clear on a plain reading of this Article as explained by this Court in a catena of decisions beginning with the case of State of West Bengal v. Nripendra Nath Bagchi 1968-I-LLJ-270 and onwards that control to be exercised also relates to matters of discipline so far as judges of the subordinate courts are concerned which is an absolute necessity for the maintenance of judicial independence. Admittedly, in the instant case the inquiry was initiated by the State Government and the Enquiry Officer was also chosen and appointed by the State Government. The tentative decision to impose the penalty of dismissal was also formed by the State Government before the issuance of the 2nd show-cause notice to the delinquent. The final decision to impose the penalty of dismissal was also taken by the State Government and communicated on November 3, 1965. That was clearly in contravention of the control jurisdiction of the High Court under Article 235 of the Constitution. The entire proceedings beginning with the departmental enquiry and concluding with the order of dismissal was, therefore, by an authority which Article 235 did not countenance to exercise jurisdiction. The order of dismissal was, therefore, clearly passed in derogation of the concept of

judicial independence and control enshrined in Article 235 of the Constitution. Such an inquiry and consequential order passed pursuant thereto can have no efficacy in law. Rule 5(4) does not, therefore, deal with a situation of this type where the departmental inquiry is initiated and concluded by an authority which was precluded from doing so in view of the clear mandate of Article 235 of the Constitution. Such an order can have no existence in law and, therefore, has to be ignored. While it is true that Rule 5(4) of the Rules speaks of an order being declared or rendered void on being set aside by a court, it cannot relate to an order of this type which is an order passed by an authority which was not competent to initiate disciplinary proceedings against judicial officer who was under the control of the High Court because to so interpret the sub-rule would be to recognise, even for the limited purpose of 'deemed suspension', the order of dismissal passed in pursuance of the departmental inquiry initiated by such an authority. Rule would be applicable to orders which are passed by a competent authority but declared void by a court on grounds, such as, violation of the principle of natural justice, etc. We are, therefore, of the opinion that since the entire inquiry initiated by the State Government culminating in the order of removal dated November 3, 1965 can have no existence and efficacy in law, that has to be ignored. Therefore, when the High Court passed the order of suspension dated June 20, 1975 it did not rely on this sub-rule nor did it say that it will have retrospective operation. The Courts below were, therefore, not right in accepting the State's contention that the delinquent must be deemed to be under suspension with effect from November 3, 1965 by the thrust of Rule 5(4) of the Rules. We are, therefore, of the opinion that this appeal must be allowed.

5. The learned counsel for the appellant submitted that several years have passed and the appellant is now an old man and if he is to reap the benefit of this Court's order it would be desirable that this Court directs lump sum payment rather than leave it to the Government to calculate the amount after deducting what he had earned as a practitioner. He submitted that the suit was for Rs. 76,579.62 p. and having regard to the fact that he had earned by reverting to the profession, such deductions as may be considered appropriate, may be made and a lump sum payment, may be ordered. Even the learned counsel for the State did not see any reason to oppose such a prayer. Having taken into consideration all the facts and circumstances of the case and the nature of allegation levelled against the delinquent, we think it proper to direct lump sum payment of Rs. 50,000 in full and final settlement of the claim of the appellant. Payment to be made within three months from today. The appeal will stand so allowed with no order as to costs throughout.