Supreme Court of India

Municipal Corporation Of Delhi vs Sh. Ram Pratap Singh on 8 January, 1976

Equivalent citations: 1977 (34) FLR 7, (1977) ILLJ 303 SC, (1976) 4 SCC 828, 1977 (9) UJ 14 SC

Author: V.R. Krishna Iyer

Bench: A Gupta, N Untwalia, V K Iyer

JUDGMENT v.R. Krishna Iyer, J

1. The appellant, Municipal Corporation of Delhi, has by special leave come up in appeal attacking the decree of the High Court which affirmed the concurrent judgments of the Courts below declaring the order of dismissal of the respondent void.

2. The facts so far as they are relevant for this appeal may be briefly set out. The respondent was a Sewer Inspector appointed in 1958 by the Commissioner of the Municipal Corporation. In 1961, he was suspended for alleged delinquency. This was followed by a departmental disciplinary enquiry which resulted in his dismissal by the Deputy Commissioner on October 25, 1962. Of course, this order had been preceded by a regular enquiry after giving an opportunity to the delinquent officer to be heard. After the dismissal order by the Deputy Commissioner, an appeal was carried to the Commissioner by the respondent but it proved fruitless because the Commissioner after examining the merits of the matter concurred in the conclusion regarding the guilt and punishment. Thereafter, the respondent brought a suit challenging the validity of the order of dismissal and for a declaration that he is deemed to have continued in service despite the dismissal. He succeeded in the trial Court and the appeals by the Corporation were all dismissed. The main ground on which the order of dismissal was set aside was that the appointing authority was the Commissioner while the dismissing authority was the Deputy Commissioner. This flies in the fact of the proviso to Section 95(1) of the Delhi Municipal Corporation Act, 1957 which reads thus:

Provided that no such officer or other employee as aforsaid shall be reduced in rank, compulsorily retired, removed or dismissed by any authority subordinate to that by which he was appointed.

xx xx xx We are satisfied that in the light of the decision reported in Management D.T.U. v. B.B.L. Hajelay 1973-2 S.C.R. 114 the High Court's view is correct. The essence of the matter is the station or rank of the authority empowered to dismiss and the officer subjected to dismissal. That rank cannot be delegated and therefore the delegatee if he is subordinate, cannot arrogate to himself the power to dismiss which the original appointing authority enjoyed. It follows that the order of dismissal in the present case is bad.

3. This does not bring the story to end. After all an enquiry had been conducted in accordance with the rules and the canons of natural justice and an enquiry report had been submitted. The illegality crept in when the Deputy Commissioner decided. From then on, what was done was also illegal. We think it correct in law and in accordance with justice to hold that the Commissioner will be entitled to consider the enquiry report with an open mind and reach his own conclusion as to the culpability or otherwise of the respondent. It is no longer necessary to hold a fresh enquiry regarding the alleged misconduct since the record is complete upto that stage. There is no need to reopen that part of the proceeding. Of course, when making representations before the Commissioner it may well be

open to the respondent to urge any infirmities about the enquiry he may like to press and the Commissioner will give due consideration to it.

4. The Commissioner will consider the merits of the matter untramelled by the conclusions reached by the Deputy Commissioner on the earlier occasion or by the Commissioner himself on appeal. It is open to the Commissioner while passing final orders regarding the appropriate punishment in the event of his holding the delinquent guilty to take into consideration the subsequent record of service one way or the other, since on this aspect both sides are agreed. Subject to these directions, we dismiss the appeal. The parties will bear their costs in this Court.