Supreme Court of India
Somnath Sahu vs The State Of Orissa And Ors. on 21 March, 1969
Equivalent citations: 1969 (19) FLR 135, (1969) 3 SCC 384
Author: V Ramaswami
Bench: A G Shah, V Ramaswami
JUDGMENT V. Ramaswami, J.

1. This appeal is brought by special leave from the judgment of the Orissa High Court dated March 11, 1964 in OJC No. 205 of 1963.

2. The appellant was appointed as Welfare Officer by the Indian Aluminium Co., Ltd., Calcutta, respondent No. 4 (hereinafter referred to as the Company) at its Hirakud factory in its personnel department with effect from July 16, 1956. By its letter elated January 31, 1959 the Company informed the Labour Commissioner, Orissa that the appellant was a Welfare Officer. On March 11, 1960 the appellant was dismissed by the Company's letter of the same date. It was to the following effect:

Your services are hereby terminated with effect from March 11, 1960 on the following grounds:

In a Conference held in writer's Office on the afternoon of March 10, 1960 in which our Personnel Manager Mr. P.K. Krishna Pillai, Production Manager, Mr. S.S. Narayan, Personnel Superintendent Mr. S. Misra, yourself and the writer were present, you have stated:

1. That you have no confidence in the fair dealings of the Company.

2. That you would be looking for another job elsewhere and that you are only continuing your services with the Company till you secure another job.

3. That you have stated in the presence of the above mentioned Officers of the Company and the writer that you have no interest in the Company and further that you will not be showing any general interest in your work, and

4. That you will not be extending co-operation to, the Personnel Superintendent who is your immediate Superior Officer.

You will also recall that in the past you had taken up an attitude of non-co-operation with your Departmental Head and that the writer had to advise you on several occasions to change your attitude and to improve your performance.

On the above grounds we have completely lost confidence in you and, therefore, it is not in the interest of the Company to keep you in our service in the responsible position of Welfare Officer.

You will please vacate the Company quarter which you are presently occupying and collect your dues including one month's notice pay which the company is pleased to give ex gratia though under the

terms of contract you are not entitled to it.

3. The appellant took the matter in appeal to the State Government but the appeal was dismissed by the Order of the State Government dated January 2, 1962. The appellant thereafter moved the Orissa High Court for the grant of a writ in the nature of certiorari under Article 226 of the Constitution to quash the appellate order of the State Government dated January 2, 1962 and the order of dismissal made by respondent No. 4 dated March 11, 1960. The application was dismissed by the High Court by its judgment dated March 11, 1964. The main question for consideration in this appeal is whether the order of dismissal dated March 11, 1960 was illegal because no notice was given to the appellant for his alleged misconduct and no inquiry was held by respondent No. 4 into the alleged misconduct before the order of dismissal was made. It was contended for the appellant that there was a violation of principle of natural justice and the order of dismissal was defective as no notice of the allegation was given to the appellant and no enquiry was held by respondent No. 4. We are unable to accept this argument as correct. The order of dismissal was made by respondent No. 4 not because of any imputation of misconduct but in terms of the contract of service incorporated in the letter of respondent No. 4 dated June 25, 1956 which states:

We have the pleasure in offering you a position in our Hirakud project for a trial period of six months commencing from July 16, 1956. You will be confirmed in the post on your satisfactory completion of the probationary period.

* * * * * You will be subject to the staff rules fixed or modified from time to time and after confirmation of your appointment you will also be entitled to the privilege of the Company as fixed or modified from time to time. You will undertake not to divulge any information concerning the Company or its activities and to treat as Confidential all processes, activities, figures or any other information that may become known to you in the course of your duties. Infringement of this rule or any other misconduct, negligence or disobedience of your superiors will make you liable to instant and summary dismissal without notice or salary in lieu of notice.

The Company will have the right to dispense with your services at any time without assigning any reason on giving you one calendar month's notice dating from the time of such notice or alternatively, salary in lieu of notice. This clause in no way affects the Company's rights to determine your engagement summarily as provided above for the infringement of certain rules, misconduct, negligence of orders of your superiOrs.

4. It is clear from this letter that respondent No. 4 had a contractual right to terminate the service of the appellant without assigning any reason by giving one months' notice or one months' salary in lieu of notice. Upon a reading of the letter dated March 11, 1960 we are of opinion that the removal of the appellant was effected in accordance with the terms of the contract. It is true that in the first part of the letter respondent No. 4 has said that the appellant had refused to disclose the names of the members of the Supervisory Staff taking part in the union activities and the appellant had not extended cooperation to the Personnel Superintendent who was his immediate superior officer. For these reasons respondent No. 4 thought that the appellant failed in his duty of obedience to superior officers and was also not showing loyalty to the management. But no finding of misconduct was

recorded by respondent No. 4 and the order of removal dated March 11, 1960 was really tantamount to a simple order of discharge under the terms of the contract. There is no element of punitive action in the order of respondent No. 4 dated March 11, 1960. In form and substance it is no more than an order of discharge effected under the terms of contract and it cannot in law be regarded as an order of dismissal because respondent No. 4 was actuated by the motive that the appellant did not deserve to be continued in service for alleged misconduct. We are, therefore, of opinion that respondent No. 4 was not required to issue notice to the appellant or to make an enquiry and there was no violation of principle of natural justice. We shall, however, assume in favour of the appellant that the order of respondent No. 4 dated March 11, 1960 was illegal because no enquiry into the alleged misconduct was made before making that order. Even on that assumption we are of opinion that the appellant is not entitled to the grant of a writ under Article 226 of the Constitution. The reason is that the appellant preferred an appeal to the State Government against the order of respondent No. 4, under rule 6(2) of the Orissa Welfare Officers' (Recruitment and Conditions of Service) Rules, 1961. Rule 6 (2) states:

The conditions of service of a Welfare Officer shall be the same as of other members of the corresponding status in the factory; provided that, in the case of discharge or dismissal, the Welfare Officer shall have a right of appeal to the State Government whose decision thereon shall be final and binding upon the occupier.

5. The appellant was heard by the State Government in support of his appeal and ultimately the State Government dismissed the appeal in its order dated January 2, 1962. In these circumstances we are of opinion that the order of respondent No. 4 dated March 11, I960 has merged in the appellate order of the State Govt. dated January 2, 1962 and it is the appellate decision alone which subsists and is operative in law and is capable of enforcement. In other words the original decision of respondent No. 4 dated March 11, 1960 no longer subsists for it has merged in the appellate decision of the State Government and unless the appellant is able to establish that the appellate decision of the State Government is defective in law the appellant will not be entitled to the grant of any relief. There can be no doubt that if an appeal is provided by a statutory rule against an order passed by a tribunal the decision of the appellate authority is the operative decision in law if the appellate authority modifies or reverses it. In law the position would be just the some even if the appellate decision merely confirms the decision of the Tribunal. As a result of the confirmation or affirmance of the decision of the Tribunal by the appellate authority the original decision merges in the appellate decision and it is the appellate decision alone which is subsisting and is operative and capable of enforcement. See the decisions of this Court in C. I. T. v. Amritlal Bhagilal and Co. 1959 S.C.R. 713 and Madan Gopal Rungta v. Secretary to the Government of Orissa 1962 Supp. 3 S.C.R. 906.

6. It is not, however, shown by the appellant in the present case that the appellate order of the State Government dated January 2, 1962 is defective in law. It is contended that non-disclosure of the names of the members of the Supervisory Staff by the appellant was not one of the duties enjoined in Rule 7 of the Orissa Welfare Officers' (Recruitment and Conditions of Service) Rules, 1951. But Rule 7 is not exhaustive of the duties required to be performed by the appellant. Apart from the duties mentioned in Rule 7 the contractual terms of employment incorporated in the letter dated

January 25, 1956 also impose additional obligations on the appellant. It has been found by the appellate authority that there was evidence to support the finding of respondent No. 4 that the appellant was guilty of disobedience to superior officers and an act of disloyalty to the management in refusing to disclose the names of members of the supervisory staff taking part in Union activities. The appellate authority also found that there was no colourable exercise of power on the part of respondent No. 4. The High Court is not constituted under Article 226 of the Constitution as a court of appeal over the decision of a statutory authority hearing the appeal. Where there is some evidence which the appellate authority has accepted and which evidence may reasonably support the conclusion that the officer was guilty of improper conduct, it is not the function of the High Court in a petition for writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the statutory authority has acted without or in excess of its jurisdiction or where it has committed an error of law apparent on the face of the record. In the present, case, however, it is not shown on behalf of the appellant that the statutory authority has committed any error of jurisdiction or the appellate order dated January 2, 1962 is defective in law.

7. For these reasons we hold that the appellant had made out no case for the grant of a writ under Article 226 of the Constitution and this appeal must be dismissed. In the circumstances of the case we do not propose to make any order as to costs.