

MOHAMMAD ABDUL SALAM KHAN

v.

SARFARAZ AHMAD KHAN & OTHERS

March 5, 1975

[A. N. RAY, C.J., K. K. MATHEW, V. R. KRISHNA IYER,
AND A. C. GUPTA, JJ.]

U.P. Town Areas Act, (II of 1914) s. 6K—Scope of—Dismissed Government servant—If could be elected as Chairman of Town Area Committee—Dismissal—Meaning of.

Punjab Police Rules—Rule 16(2)(iii)—Scope of—Publication of dismissal in Police Gazette—Effect of.

Section 6-K of the U.P. Town Areas Act provides that a person, notwithstanding that he is otherwise qualified, shall be disqualified for being chosen as, and for being a member or Chairman of a Committee if he is a dismissed servant of a local authority, the State or Central Government and is debarred from re-employment therein. Rule 16(2)(iii) of the Punjab Police Rules, which apply to respondent No. 1 at the relevant time, states that when a police officer is convicted judicially and dismissed, or dismissed as a result of a departmental enquiry, the conviction and dismissal and its cause shall be published in the Police Gazette. In other cases of dismissal when it is desired to ensure that the officer dismissed shall not be re-employed elsewhere, a full descriptive roll, with particulars of the punishments, shall be sent for publication in the Police Gazette.

The first respondent, a dismissed police constable, was elected as Chairman of the Town Area Committee. The appellant, who was the defeated candidate, assailed the election of the respondent. The Election Tribunal constituted under the U.P. Town Areas Act set aside the election and declared the appellant as the Chairman. In a writ petition under Art. 226, a single Judge of the High Court affirmed the order of the Tribunal as regards the election of the respondent No. 1 but in relation to the relief directed against the declaration of the appellant as Chairman.

A Division Bench of the High Court allowed the appeal of respondent No. 1 holding that s. 6-K spoke of two components, namely, (a) dismissal and (b) being debarred from re-employment and since the second ingredient was not present in the order of termination against the constable, the formula for disqualification was not fulfilled.

Allowing the appeal,

HELD : (1) There is no escape from the conclusion that the first respondent was punished under the former part of r. 16(2)(iii) and incurred the extreme wrath of the law including disbarment from re-employment. Logically, therefore, he suffered disqualification under s. 6-K of the Act and the Tribunal, in removing him from Chairmanship, acted legally. [866 F]

Section 7 of the Police Act speaks of dismissal as a single category of punishment, not as two twigs from the same branch, that is, dismissal *without* and *with* embargo on re-entry into State service. When s. 7 uses the expression 'dismissal', it must be deemed to have conveyed the official semantics attached to that expression, namely, removal from service *plus* a ban on re-employment by the State. The non-enumeration of 'removal' as a distinct form of punishment does not divest the appointing authority from exercising, subject to legal restrictions, the power to remove from service without inflicting the more serious punishment of dismissal. [864 C; F]

A (2) The words 'dismissal' and 'removal' have one distinction, namely, that the former disqualifies from future employment while the latter does not. Therefore, dismissal is removal with a prohibition super-added. [864 H; 865 D]

Khem Chand v. Union of India [1958] S.C.R. 1080, 1089 and *Shyamlat's* case, A.I.R. 1954 S.C. 369, 374, referred to.

B (3) (a) "Dismissal" removes the man from his office and super-adds debarment from re-employment. Such being its meaning in the Indian Constitution, in the relevant rules which have been in force in this country over the decades "dismissal" has to be understood, as punishment imposed upon the constable in this case, as one which embodies the latent penalty of disability from being re-employed. [866 B]

C (b) Rule 16(2) (iii) does not state "in other cases of dismissal" the bar against re-employment operates only where there is publication in the Police Gazette to that effect. Dismissal, as such, carries with it this additional penalty in both classes of cases but in the first category covered by the rule, publication is a duty cast upon the authority while in the second category the authority is left with the option to publish or not to publish. If the dismissing authority desires to ensure itself that unwittingly some other department may not employ the dismissed official, it may, by way of abundant caution, resort to publication of the punishment in the Police Gazette. The language is clear that to ensure that the officer dismissed shall not be re-employed the concerned authority shall send for publication the relevant particulars. Not that without such publication a right to re-employment inheres in the dismissed official, but that to make sure that any unknowing slip may not be committed by another department, the dismissing officer may take care to forward the particulars of punishment for proper publication. It is enabling, so far as the dismissing authority is concerned, and is legally unnecessary to spell the two-in-one punishment of dismissal. [866 C-E]

ARGUMENTS

E *For the Appellant :*

F From a plain reading of s. 6-K of the U.P. Town Areas Act it is clear that if a man is dismissed from service of a local authority, Central Government or State Government by way of punishment and is debarred from re-employment thereunder, he cannot contest the election for the Chairman of the Town Area Committee. From a plain reading of s. 6-K it becomes clear that the intention of the legislature in enacting this law was that the persons who have been dismissed from service by way of punishment will not be qualified for election to the post of Chairman, Town Area Committee. This section contemplates only such dismissed servants who have been dismissed from service by way of punishment for mis-conduct, and indiscipline.

For Respondent No. 1 :

G Respondent no. 1 was removed from the Delhi Police Service and was not a dismissed servant within the meaning of s. 6-K of the U.P. Town Area Act. The words 'dismissed servant' used in s. 6-K in that Act were used in a broader sense and meant a servant whose services were terminated. The words 'and is debarred from re-employment therein used in that section clearly indicate that the election petitioner will have to prove that the services of respondent No. 1 were terminated and he was debarred from re-employment. Section 7 of the Indian Police Act and r. 16(2)(iii) of the Punjab Police Rules were applicable to Delhi.

H If a Police Officer is convicted by a Court of law and is dismissed as a result of the departmental enquiry in consequence of corrupt practices, such a dismissal would *ipso facto* mean dismissal by way of punishment. However, if the termination of service was on account of any other reason, then if the authority terminating the services desires to ensure that the officer dismissed shall not be re-employed elsewhere, a full descriptive roll with particulars of the punishment shall be sent for publication in the Police Gazette. In the present case the ser-

vices of the respondent no. 1 were terminated in departmental inquiries, the dismissal was not on account of corrupt practice falling under the first part of r. 16(2)(iii) of the Punjab Police Rules. Secondly there was no publication in the Police Gazette. It must therefore follow that it was a case of removal and not dismissal.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1200 of 1974.

Appeal by special leave from the judgment and order dated the 4th April, 1973 of the Allahabad High Court in Special Appeal No. 34 of 1973.

R. K. Jain, N. R. Choudhary, Rajesh Prasad Singh and K. K. Mohan, for the appellants.

J. P. Goyal and G. S. Chatterjee for respondent No. 1.

The Judgment of the Court was delivered by

KRISHNA IYER, J.—A single legal issue presents itself for solution in this appeal. The question is whether a public servant dismissed for misconduct is not *ipso jure* disbarred from employment under the State. If 'yes', the 1st respondent is ineligible for the public office of Chairmanship of Town Area Bugrasi from where he has been removed on the ground of dismissal from government service, resulting in the eruption of this election dispute. If 'no', restoration to the lost office inevitably follows.

The appellant and 1st respondent were rivals for Chairmanship of Town Area Bugrasi in U.P. The latter, a dismissed police constable, was returned by the electorate and the former, chagrined by the defeat, successfully petitioned the Election Tribunal.

The Ground

The appellant and the 1st respondent were two of the three candidates for Chairmanship of the Town Area of Bugrasi. The 1st respondent secured the highest number of votes and was declared elected by the Returning Officer. Thereupon the appellant moved the statutory tribunal by an election petition which was allowed on the score of disqualification for being chosen as Chairman by virtue of s. 6-K of the U.P. Town Areas Act (Act 11 of 1914). The disqualification stemmed from dismissal of the 1st respondent on September 26, 1963 from the Delhi Police Force. When the Election Tribunal set aside the 1st respondent's election and declared the appellant as the Chairman, the unseated candidate invoked the writ jurisdiction of the High Court. The learned Single Judge who heard the petition affirmed the order of the Tribunal substantially but in relation to the relief directed against the declaration of the appellant as Chairman, the order was vacated. That question was left to be decided afresh in the light of certain observations of the learned Judge. Dissatisfied by the result, of both the appellant and the 1st respondent filed Writ Appeals before a Division Bench of the High Court which ended in the allowance of the claim of the 1st respondent to be Chairman and consequential dismissal of the appeal of the other. The aggrieved appellant has, therefore, come up to this Court by special leave for relief based on the construction of two slightly ambiguous rules having some impact on this village election.

A Before opening a political chapter, respondent No. 1 had ended his official career as police constable under dismissal order dated September 26, 1963 :

B “Constable No. 3048 Sarfraz Ahmad Khan is dismissed from the forenoon of 25-9-1963 of having been in illicit relation with Mrs. Chatterjee and her daughter. The conduct of the constable is most reprehensible, adulterous and unworthy of a Police Officer who is supposed to protect the Society from such vices.”

C He ran for Panchayat Chairmanship and won, defeating the appellant and the 2nd respondent. The disability for election in the present instance is said to spring from the dismissal of the 1st respondent from government service as aforesaid.

Let us examine the relevant legal texts. The pertinent part of s. 6-K, relied on by the appellant as fatal disqualification, reads :

“6-K. *Disqualification for members and Chairman—*

D A person notwithstanding that he is otherwise qualified, shall be disqualified for being chosen as, and for being, a member or Chairman of a Committee, if he—

(a) is a dismissed servant of a local authority, the State or Central Government and is debarred from re-employment therein,

* * * * *

E Is the contesting respondent ‘a dismissed servant of the State Government and is debarred from re-employment therein’? That is the question. The statute is of 1914 vintage, but amended from time to time, and we have to interpret it in the light of legal provisions and constitutional developments. Does ‘dismissal’ automatically spell ‘disbarment from re-employment’? The argument which weighed with the High Court is that s. 6-K speaks of two components (a) dismissal; (b) *and* being debarred from re-employment. The second ingredient is not present in the terminal order against the constable and so the formula for disqualification is not fulfilled.

G We are not impressed with this dualism. If dismissal simpliciter carries within it the ban on re-employment as a necessary jural incident, then both the elements are present implicitly in the order. It is not as if the interdict against re-employment should be separately stated in the rule or order if by force of law an effective bar in that behalf can be read into the order cashiering the constable. So we are thrown back on the order itself which, admittedly, is silent on prohibition of re-employment.

H Counsel for the contestant, Shri Goyal, strenuously argued that the Police Act and the relevant rules bearing on disciplinary action are telling and must be treated as decisive. Brushing aside the ripples of confusion raised in the course of arguments about the source of power for framing these rules—no party, at any stage, has challenged

the vires of the rules—we may reproduce r. 16(2)(iii) which governs the situation. Before that, a glance at s. 7 of the Police Act :

'Subject to the provisions of Article 311 of the Constitution and to such rules as the State Government may from time to time make under this Act, the Inspector General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents, of Police may at any time dismiss, suspend or reduce any police-officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty or unfit for the same.'

It is clear that s. 7 speaks of dismissal as a single category of punishment, not as two twigs from the same branch i.e., dismissal *without* and *with* embargo on re-entry into State service. It may, however, be noticed that there is no specific reference to *removal* from service, a recognised form of punishment sanctified by the Constitution Acts, including Art. 311. Since s. 7 expressly subjects itself to the paramount law of the Constitution it is obvious that the power to remove is not eroded and vests in the appointing authority apart from the power to dismiss. Indeed, the Central and State rules regulating disciplinary control, all over the country, have, for a long period, made distinction between dismissal and removal, the former carrying the more injurious incident of removal *plus* refusal of future re-employment. Anyone conversant with disciplinary control of government servants in India will agree that this fundamental difference between mere removal and dismissal exists. Art. 311 enumerates dismissal and removal as two different punishments, one more serious than the other. It is perfectly plain that, understood in this environment of legal control of government servants prevalent historically in this country, s. 7 of the Police Act, when it uses the expression 'dismissal' must be deemed to have conveyed the official semantics attached to that expression, viz., removal from service *plus* a ban on re-employment by the State. The non-enumeration of 'removal' as a distinct form of punishment does not divest the appointing authority from exercising, subject to legal restrictions, the power to remove from service without inflicting the more serious punishment of dismissal.

The expressions 'dismissal' and 'removal' look alike for the laity but in law they have acquired technical meanings sanctified by long usage in Service Rules. In *Khem Chand v. Union of India*(¹) this Court observed :

"...the expressions 'dismissed', 'removed' and 'reduced in rank' are technical words taken from the service rules where they are used to denote the three major categories of punishment."

As has been rightly pointed out in a recent book(²), the words 'dismissal' and 'removal' have one distinction, viz., that the former dis-

(1) [1958] S.C.R. 1080, 1089.

(2) *The Civil Servant under the Law and the Constitution*—by Dr. N. Narayanan Nair—The Academy of Legal Publications, Trivandrum-1, Kerala (1973).

A qualifies from future employment while the latter does not. Likewise, there is reference to this distinction in *Shyamal's Case*⁽¹⁾ wherein it was said :

B "The position, therefore, is that both under the rules and according to the last mentioned decision of the Judicial Committee (*I.M. Lal's Case* : AIR 1948 PC 121) there is no distinction between a dismissal and a removal except that the former disqualifies from future employment while the latter does not . . . and it may be safely be taken, for reasons stated above, that . . . removal and dismissal stand on the same footing except as to future employment. In this sense removal is but a species of dismissal."

C Rule 49 of the Civil Services (Classification, Control & Appeal) Rules, 1930 provides *inter alia* :

"Removal is termination of service which does not disqualify from future employment. Dismissal is removal from service which ordinarily disqualifies from future employment."

D It follows that 'dismissal' is 'removal with a prohibition super-added'.

Against this background, here is r. 16(2) (iii) of the Punjab Police Rules which applied during the relevant time to the 1st respondent :

E "16(2)(iii). When a Police Officer is convicted judicially and dismissed, or dismissed as a result of a departmental enquiry, in consequence of corrupt practice, the conviction and dismissal and its cause shall be published in the Police Gazette. In other cases of dismissal, when it is desired to ensure that the Officer dismissed shall not be re-employed elsewhere, a full descriptive roll, with particulars of the punishments, shall be sent for publication in the Police Gazette".

F The submission made with some attractiveness by Shri Goyal receives verbal support from the text of the rule. It speaks of a police officer being dismissed in consequence of 'corrupt practice' in which case there is a mandate to the State Government that 'its cause shall be published in the Police Gazette'. 'In other cases of dismissal' the provision for publication in the Police Gazette is facultative.

G Counsel spins out the argument that if 'in other cases of dismissal' the authority intends to inflict the additional penalty of non-re-employment, it should also publish the punishment in the Police Gazette. In the present case there is no indication of any such publication and so the dismissal does not carry with it the forbidding factor regarding re-employment. Read with s. 6-K, which refers to dismissal together with debarment from re-employment, the conclusion is sought to be drawn that the 1st respondent's case does not attract the disqualification in s. 6-K.

H

(1) A.I.R. 1954 S.C. 369, 374.

We do not agree. The reasons are two-fold. As earlier explained, every 'dismissal' has a double consequence understood in its contextual connotation. It removes the man from his office and super-adds debarment from re-employment. Such being its meaning in the Indian Constitution, in the relevant rules which have been in force in the country over the decades and indeed has become part of our officialese, we have to understand the dismissal as punishment imposed upon the constable in this case as one which embodies the latent penalty of disability from being re-employed.

Secondly, even r. 16(2)(iii) carefully scanned, refuses to yield the helpful inference drawn from it by counsel for the 1st respondent. That rule does not state 'in other cases of dismissal' the bar against re-employment operates only where there is publication in the Police gazette to that effect. Dismissal, as such, carries with it this additional penalty in both classes of cases but in the first category covered by the rule, publication is a duty cast upon the authority while in the second type of cases the authority is left with the option to publish or not to publish. If the dismissing authority desires to ensure itself that unwittingly some other department may not employ the dismissed official, he may, by way of abundant caution, resort to publication of the punishment in the Police Gazette. The language is clear that to ensure that the officer dismissed shall not be re-employed the concerned authority shall send for publication the relevant particulars. Not that without such publication a right to re-employment inheres in the dismissed official, but that to make sure that any unknown slip may not be committed by another department, the dismissing officer may take care to forward the particulars of punishment for proper publication. It is enabling so far as the dismissing authority is concerned and is legally unnecessary to spell the two-in-one punishment of dismissal.

In this view of the matter there is no escape from the conclusion that the 1st respondent was punished under the former part of r. 16(2)(iii) and incurred the extreme wrath of the law including disbarment from re-employment. Logically therefore he suffered disqualification under s. 6-K of the Act and the Tribunal, in removing him from Chairmanship, acted legally.

No other point has been urged before us and therefore we allow the appeal and affirm the learned Single Judge's judgment. In the circumstances of the case we direct that the parties will bear their costs *in this Court*. The costs of the appellant in the courts below will be paid by the 1st respondent.

P.B.R.

Appeal allowed.

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