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NAR SINGH PAL

v.

UNION OF INDIA AND ORS.

MARCH 29, 2000

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[S. SAGHIR AHMAD AND R.P. SETHI, JJ.]

Labour Laws :

C

Industrial Disputes Act, 1947—Section 25-F—Termination of Service—Casual Labour acquired temporary status—Involvement in criminal case—Order of termination passed pending trial—Trial resulting in clear acquittal—Order of termination upheld by High Court and Tribunal—On appeal Held, order of termination being punitive regular departmental enquiry was necessary—Stigma of involvement in a criminal case disappears after acquittal—Order passed on the basis of mere preliminary enquiry without issuing charge sheet and giving opportunity of being heard cannot be sustained—Reinstatement ordered with payment of all arrears and consequential benefits.

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E

Retrenchment—Payment of retrenchment compensation after termination—Acceptance of payment does not disentitle workman from challenging retrenchment—No constitutional rights or Fundamental rights surrendered—No estoppel against exercise of Fundamental Rights.

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G

Constitution of India—Article 311—Retrenchment—Workmen entitled to certain benefits and constitutional protection after acquiring temporary status.

Appellant, initially a casual labour had acquired the status of a temporary employee in the telephone department, was prosecuted under Sections 324, 427, 504 IPC. His services were terminated without holding a regular departmental enquiry after paying retrenchment compensation during the trial, in which he was ultimately acquitted. He accepted the amount and filed a petition before the Administrative Tribunal challenging the order of termination, which was dismissed. High Court dismissed his writ petition challenging the order of the Tribunal. Hence this appeal.

H

The appellant contended before this Court that as the order of termination was punitive in nature a regular departmental enquiry was mandatory.

The respondents contended before this Court that the appellant was involved in a criminal case so his services could be terminated under Section 25-F of the Industrial Disputes Act by a written notice along with retrenchment compensation.

Allowing the appeal, this Court

HELD : 1. If an order had been passed by way of punishment and was punitive in nature, holding of a regular departmental enquiry becomes necessary and the services of the appellant could not have been terminated arbitrarily by paying retrenchment compensation. It is wholly incorrect that there is a choice between holding a regular departmental enquiry and termination of services by payment of retrenchment compensation. The order having been passed on the basis of a preliminary enquiry and not on the basis of any regular departmental enquiry without issuing a charge sheet or giving an opportunity of hearing to the appellant, cannot be sustained. [756-C-E; 757-H]

Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha, [1980] 2 SCC 593, relied on.

2. The appellant had acquired temporary status, entitling him to certain benefits and the constitutional protection envisaged by Article 311 of the Constitution and other Articles dealing with services under the Union of India. [756-F]

3. It is not a correct approach that once retrenchment compensation was accepted, the appellant could not challenge his retrenchment. He had to sustain himself and his family and had no option except utilizing the said amount as there was no hope left for payment of salary in future. He never surrendered his Constitutional rights and Fundamental Rights, as they cannot be bartered away. They cannot be compromised nor can there be any estoppel against the exercise of Fundamental Rights available under the Constitution. [759-D-F]

4. The involvement of the appellant in a criminal case could not have been made the basis for terminating his services. Since he was acquitted, and it was a clear acquittal, the stigma attached to him should have been treated to have disappeared. [759-B-C]

5. The order of termination is quashed. The appellant shall be put back in service with payment of all arrears up to date and other consequen-

A **tial benefits under the rules. [760-A]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2280 of 2000.

B From the Judgment and Order dated 30.10.98 of the Delhi High Court in C.W. No. 5534 of 1998.

R.C. Pandey, R.D. Rathore and K.K. Gupta for the Appellant.

Altaf Ahmad, Additional Solicitor General, Ms. Halida Khatun and P. Parmeswaran for the Respondents.

C The Judgment of the Court was delivered by

S. SAGHIR AHMAD, J. Leave granted.

D The appellant, who was engaged as casual labour in October, 1982 by the Telecom Department at Agra, had worked continuously as such for more than ten years and had also acquired 'temporary' status, was prosecuted for an offence, under Sections 324, 427 and 504 IPC, said to have been committed on 20.4.1992. The trial dragged on for many years and ultimately by judgment and order dated 27.2.1998 passed by the Chief Judicial Magistrate, Agra, he was acquitted, but in the meantime, by order dated 20.5.1992, his services were terminated against which he made a representation to the General Manager, Telecom Department, G.M.T. Office, Lucknow, on 21.7.1992 but the representation was not heeded to and, therefore, the appellant filed a petition before the Central Administrative Tribunal, Principal Bench, New Delhi (for short, 'the Tribunal'), on 25.8.1992 which was dismissed on 4.12.1997. The order of the Tribunal was challenged in a Writ Petition filed in the Delhi High Court but the High Court, by its order dated October 30, 1998, dismissed the Writ Petition.

F The order dated 20.5.1992 by which the services of the appellant were terminated reads as under:-

G "To

Shri Nar Singh Pal,
Casual Employee,
S/o Shri Hari Prasad,
Village Sarai Jairam,
P/O Barhan, Distt. Agra.

H

Letter – D.E. Planning (Admn) N.S. Pal/92-93/5 dated 20.5.92.

Dear,

You had beaten with iron article and had bitten with teeth to Shri Mahender Singh, son of Shri Ratan Singh, gateman, Tax Bhawan, Agra on 20.4.92 in the evening at 8.00 P.M. who was on duty. Due to the above-said conduct, you are not deserved/competent to be in the Govt. service any more and you are casual employee. Therefore, your services are terminated with immediate effect. Nevertheless, you are being paid Retrenchment benefit. The under-mentioned cheque is being annexed with this letter:

Sd/-

D.E. PHONE (ADM)
TELECOM DISTT.
AGRA - 282001.

ANNEXURE - ONE CHEQUE

Cheque No.13 425777

Dt. 19.5.92

Bank - State Bank of India, Agra.

Rs.6350

(Six thousand three hundred fifty only)"

This order, *ex facie*, is punitive in nature. It was, therefore, contended before the Tribunal that the services of the appellant could not be terminated without holding a regular departmental enquiry. The question was dealt with by the Tribunal as follows:-

"4. After perusing the record and considering the rival arguments, we are of the view that the respondents could either initiate departmental enquiry against the applicant for the alleged misconduct, or terminate his services by payment of retrenchment compensation, overlooking the misconduct alleged against him. In the present case, the retrenchment compensation was paid and it appears that the same was accepted by encashing the cheque by the applicant. Accordingly, he cannot now be allowed to urge that the termination was bad because there was no enquiry into the alleged misconduct against him.

A 5. From the allegations made in para 4 of the application, we
find that a report was also lodged against the applicant with the
Police in respect of the same incident and a case was registered
against him for offences under Sections 324, 427 and 504 IPC. The
B applicant was also arrested and a chargesheet was filed against him
in the court. The case was pending on the date of the application
and we do not know what happened to the prosecution thereafter,
but it appears that there was prima facie some material against the
applicant to hold that his services were not satisfactory and to
C retrench his services on that basis. Accordingly for the aforesaid
reasons, we find no merit in this OA and it deserves to be
dismissed.”

The reasoning of the Tribunal is fallacious. If an order had been passed
by way of punishment and was punitive in nature, it was the duty of the
respondents to hold a regular departmental enquiry and they could not have
D terminated the services of the appellant arbitrarily by paying him the
retrenchment compensation. The observation of the Tribunal that the re-
spondents had a choice either to hold a regular departmental enquiry or to
terminate the services by payment of retrenchment compensation is wholly
E incorrect.

The appellant, no doubt, was a casual labour but as observed by the
Tribunal, he had acquired temporary status with effect from 1.10.1989. Once
an employee attains the ‘temporary’ status, he becomes entitled to certain
benefits one of which is that he becomes entitled to the constitutional
F protection envisaged by Article 311 of the Constitution and other Articles
dealing with services under the Union of India. A perusal of the impugned
order by which the services of the appellant were terminated indicates that
since the appellant had beaten one Mahender Singh with iron rod and had
also bitten him with teeth on 20.4.1992 at 8.00 P.M. while the said Mahender
G Singh was on duty as Gateman, Tax Bhawan, Agra, therefore, his services
were terminated with immediate effect. Thus the services were terminated on
account of the allegation of assault made against the appellant. This Court
on 24.1.2000 passed the following Order:-

H “Learned counsel appearing for the respondents is granted six weeks’
time to seek instructions whether regular departmental proceedings

were taken in this matter or not.”

When the case was next taken up, the entire papers relating to the enquiry were placed before us by the counsel for the respondents which indicate that a regular departmental enquiry was not held and only a preliminary enquiry was held against the appellant on the basis of which his services were terminated. The letter dated 21st of April, 1992, from Assistant Engineer Trunks, T.M.X. Tax Bhawan, Agra-3, to Shri Shital Din, Divisional Engineer, Phones (Planning & Administration), Agra, recites, *inter alia*, as under:-

“Shri Nar Singh Pal, Ty. Mazdoor of this unit assaulted on Shri Mahendra Singh, Gate Man who was on duty at Main gate of Tax Bhawan, Agra and was performing 14.00 to 22.00 hrs duty on 20.4.92. This mishappening occurred at 20.00 hrs. on 20.4.92. At the time of incident, I was in Trunk Exchange, Agra, when Shri Mahendra Singh, Gate Man approached to the undersigned in injured condition for help. I rushed to the gate of Tax Bhawan for spot verification and making detailed enquiry of the case. I found that the culprit Shri Nar Singh Pal was abusing Shri Mahendra Singh, Gateman. Shri Nar Singh Pal, Ty. Mazdoor not only assaulted on Shri Mahendra Singh, Gateman but he also threatened to kill me when I was making spot enquiry. As per my observation Shri Nar Singh Pal, Ty. Mazdoor was under drunk condition. I immediately informed to you and thereafter S.O. Rakabga Police Station on phone regarding this incidence.”

The letter further recites as under:-

“I shall be grateful if you may kindly take a suitable action against Shri Nar Singh Pal, Ty. Mazdoor who has created hindrance in government work, damages of the government property and created the terror and horror amongst the staff due to his gunda activities and has threatened the undersinged.”

The documents which have been placed before us pertain to the preliminary enquiry made against the appellant in which the statement of certain persons who had seen the incident was recorded. The services of the appellant were, thereafter, terminated by paying him the retrenchment compensation through a cheque along with the order dated 20.5.1992. The order having been passed on the basis of preliminary enquiry and not on the basis of regular departmental enquiry without issuing a chargesheet or giving

A an opportunity of hearing to the appellant, cannot be sustained.

We may, at this stage, refer to the observations of Krishna Iyer, J. in *Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha*, [1980] 2 SCC 593, in which the learned Judge observed as under:-

B “53. Masters and servants cannot be permitted to play hide and
seek with the law of dismissals and the plain and proper criteria are
not to be misdirected by terminological cover-ups or by appeal to
psychic processes but must be grounded on the substantive reason for
C the order, whether disclosed or undisclosed. The Court will find out
from other proceedings or documents connected with the formal order
of termination what the true ground for the termination is. If, thus
scrutinised, the order has a punitive flavour in cause or consequence,
it is dismissal. If it falls short of this test, it cannot be called a
D punishment. To put it slightly differently, a termination effected
because the master *is satisfied of the misconduct* and of the consequent
desirability of terminating the service of the delinquent servant,
is a dismissal, even if he had the right in law to terminate with an
innocent order under the standing order or otherwise. Whether, in
such a case the grounds are recorded in a different proceeding from
E the formal order does not detract from its nature. Nor the fact that,
after being *satisfied* of the guilt, the master abandons the enquiry and
proceeds to terminate. Given an alleged misconduct and a live nexus
between it and the termination of service the conclusion is dismissal,
*even if full benefits as on simple termination, are given and non-
injurious terminology is used.*”

F (Emphasis supplied)

G Applying the above principles, the order in the instant case, cannot be
treated to be a simple order of retrenchment. It was an order passed by way
of punishment and, therefore, was an order of dismissal which, having been
passed without holding a regular departmental enquiry, cannot be sustained.

H Learned counsel for the respondents contended that the appellant was
involved in a criminal case having assaulted Mahendra Singh, Gateman, at the
Tax Bhawan, Agra and, therefore, his services could be terminated in terms
of Section 25-F of the Industrial Disputes Act by a notice in writing together
with retrenchment compensation which admittedly was paid to him through

the cheque regarding which the Tribunal has recorded a finding that it was encashed by the appellant. A

The fact that the appellant was involved in a criminal case is not disputed by the appellant. What is contended by him is that he was ultimately acquitted by the court of Chief Judicial Magistrate, Agra and, therefore, involvement of the appellant in a criminal case could not have been made the basis for terminating his services. Since the appellant was acquitted, and it was a clean acquittal, the stigma attached to him of having been prosecuted in a criminal case should have been treated to have disappeared and no argument can be allowed to be raised for justifying the order of dismissal on the ground of appellant's involvement in a criminal case. B C

The Tribunal as also the High Court, both appear to have been moved by the fact that the appellant had encashed the cheque through which retrenchment compensation was paid to him. They intended to say that once retrenchment compensation was accepted by the appellant, the chapter stands closed and it is no longer open to the appellant to challenge his retrenchment. This, we are constrained to observe, was wholly erroneous and was not the correct approach. The appellant was a casual labour who had attained the 'temporary' status after having put in ten years' of service. Like any other employee, he had to sustain himself, or, may be, his family members on the wages he got. On the termination of his services, there was no hope left for payment of salary in future. The retrenchment compensation paid to him, which was only a meagre amount of Rs.6,350, was utilised by him to sustain himself. This does not mean that he had surrendered all his constitutional rights in favour of the respondents. Fundamental Rights under the Constitution cannot be bartered away. They cannot be compromised nor can there be any estoppel against the exercise of Fundamental Rights available under the Constitution. As pointed out earlier, the termination of the appellant from service was punitive in nature and was in violation of the principles of natural justice and his Constitutional rights. Such an order cannot be sustained. D E F G

For the reasons stated above, the appeal is allowed. The judgment dated 4.12.1997, passed by the Tribunal as also the judgment dated 30.10.1998, passed by the High Court, are set aside and the claim petition of the appellant is allowed with costs throughout. The order dated 20.5.1992, by which the H

A services of the appellant were terminated, is quashed with the direction that the appellant shall be put back on duty on the post which he held on 20.5.1992 and shall be paid all the arrears upto date and other consequential benefits admissible under the rule.

B A.Q.

Appeal allowed.