The Punjab State Club, Simla
v.
The Municipal Committee, Simla

Bishan Narain, J.

succeeded in showing that it is Committee's tenant on which basis the present petition was filed.

For all these reasons, this petition fails and I dismiss it with costs. Counsel's fee Rs 100. These costs will be paid by the three members of the Punjab State Club who have filed this position.

D. K. M.

CIVIL WRIT

Before Bishan Narain, J.

K. R. SHARMA,—*Petitioner*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 681 of 1957.

1957

Sept., 12th

Constitution of India—Articles 226 and 311(2)—Government servant—Departmental enquiry against—Nature of—Code of Criminal Procedure (V of 1898)—Section 173(4)—Whether applicable to such departmental enquiry—Non-compliance with the provisions of section 173(4)—Whether an irregularity—Whether can be set aside under Article 226—Punjab Civil Services Rules—Nature of—Whether create an offence.

Held, that the purpose of a departmental inquiry is merely to help the Government to come to a definite conclusion regarding the conduct of a government servant and to decide what penalty, if any, should be imposed upon him. The nature of this inquiry is neither criminal nor quasi-criminal. If any thing, its nature appears to be a kin to civil proceedings. It relates to the terms of service between the Government and its employee. The final order at best puts an end to the contract of service between them. If any term of service is contravened, then the aggrieved employee can file a suit in civil Courts against his wrongful dismissal and for damages for breach of contract.

Held, that section 173(4) of the Code of Criminal Procedure has no application to a departmental inquiry. The Inquiry Officer is not a Court within the Criminal Procedure

Code, nor is the Government servant accused of any offence, nor is he liable to be sentenced for the commission of an offence under any penal law. These proceedings cannot be said to be of quasi-criminal nature because the ultimate effect of these proceedings at the most is dismissal of the Government servant from service and the imposition of this penalty cannot be held to be of criminal nature. There is no provision in these rules which makes it incumbent on the Inquiry Officer to hold enquiry in accordance witht he procedure laid down in the Criminal Procedure Code or to observe the provisions of section 173(4) of that Code. In this view of the matter it cannot possibly be held that the Inquiry Officer is bound to see that the provisions of section 173 (4) are observed before he proceeds to record evidence in the inquiry. If an Inquiry Officer refused to comply with the provisions of section 173(4), then it cannot be held that it is liable to be set aside by the High Court in the exercise of jurisdiction conferred upon it under Article 226 of the Constitution.

Held, that before a trial can be held to be vitiated on the ground of non-compliance with the provisions of section 173(4), Criminal Procedure Code, the accused must show that its non-observance has prejudiced him and it has resulted in failure of justice. The irregularity, however, grave, does not *per se* vitiate the trial. The non-supply of the copy of the previous statement of a witness may seriously reduce and impair the value of the statement of that witness but cannot render it inadmissible.

Held, that the Punjab Civil Services Rules are only statutory rules regulating terms of service between the Government and its employees and do not create any offence.

S. A. Venkataraman v. *Union of India and another* (1), and *Pulukuri Kottaya and others* v. *Emperor* (2), relied on.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of mandamus be issued quashing the order of the Enquiry Officer, dated 9th April, 1957, and the new order passed by Shri Sarup Kishan, I.C.S. and further praying that the Enquiry Officer be ordered to supply the petitioner attested copies of the statements made by

(1) A.I.R. 1954 S.C. 375.
(2) 74 I. A. 65.

the prosecution witnesses to the Police under sections 161, 162 and 164 of Cr. P. C. and also praying that the proceedings before the Enquiry Officer be stayed.

N. C. CHATTERJI, K. N. TEWARI and ABNASHA SINGH, for Petitioner.

S. M. SIKRI, Advocate-General, for Respondent.

JUDGEMENT.

Bishan Narain, J.

BISHAN NARAIN J.—This is a petition under Article 226 of the Constitution of India for an order or direction in the nature of a writ of *certiorari* or of mandamums *quashing* the stitution of India for an order direction in the nature petitioner's application requiring the respondent to make available to the petitioner copies of statements made by persons (who are scheduled to be examined during the inquiry) in the course of investigation against the petitioner for offences under section 5(2) of the Prevention of Corruption Act, 1947 and under sections 161 and 109, Indian Penal Code.

The petitioner was recruited in the Punjab Service of Engineers in 1924 and was confirmed in that service in 1925. He was appointed as Superintending Engineer, Nirwana Circle, Ambala, in 1951, and in 1954 he was posted in Bhakra Dam Circle, Nangal. In April, 1955, he was promoted as Director of Central Designs, Simla. When the petitioner was about to join this new post he was arrested on the 24th of April, 1955, for offences under section 5(2) of the Prevention of Corruption Act and under sections 161 and 109, Indian Penal Code. The police investigated the case for about two years and examined a great number of persons under sections 161(3) and 164, Criminal Procedure Code. The Punjab Government then instead of prosecuting the petitioner ordered a departmental inquiry. Shri Raghbir Singh was appointed the Inquiry Officer. The inquiry was started on the 5th

of April, 1957, and on the first date the petitioner applied before him for the supply of copies of statements made during the investigation by persons who were proposed to be examined in the inquiry. Shri Raghbir Singh rejected the application and apparently took no other proceedings and the case was ultimately transferred to Shri Sarup Kishan. He started the enquiry on the 8th of July, 1957, and the petitioner again applied to him for copies of those statements. The Inquiry Officer rejected the application on the same day and fixed the 11th of July, 1957, for recording evidence. The petitioner made the present application on the 10th of July, 1957, i.e. a day before the evidence was due to be started, challenging the validity of the order dated the 8th of July, 1957.

The petitioner's case in substance is that if he is not supplied these copies, then he will not be able to defend himself adequately and he would be deprived of the right of cross-examining the prosecution witnesses effectively. The deprivation of this right, according to the petitioner, will necessarily vitiate the inquiry as thereby provisions of Article 311(2) of the Constitution would be violated.

It has been argued on behalf of the petitioner that an Inquiry Officer performs in the course of inquiry *quasi*-judicial functions and the proceedings held by him are in the nature of criminal or at least *quasi*-criminal proceedings, and, therefore, he must comply, at least in substance, with the provisions of section 173(4) of the Criminal Procedure Code. It is, therefore, necessary to determine the nature of the inquiry held under the Punjab Civil Services (Punishment and Appeal) Rules, 1952. It is stated before me that the charges which the petitioner has been called upon to meet are in substance the same as will be covered by section

K. R. Sharma
v.
State of Punjab and another

Bishan Narain, J.

5(2) of the Prevention of Corruption Act and sections 161 and 109 of the Indian Penal Code, and I shall decide this case on this assumption.

Rule 7(2) lays down the procedure which should be observed in the course of an inquiry. It reads:—

> "The grounds on which it is proposed to take such action, shall be reduced to the form of a definite charge or charges which shall be communicated in writing to the person charged, and shall be required within a reasonable time to state in writing whether he admits the truth of all, or any, of the charges, what explanation or defence, if any, he has to offer and whether he desires to be heard in person. If he so desires, or if the authority empowered to dismiss, remove or reduce him so directs, an oral inquiry shall be held at which all evidence shall be *heard as to such of the charges as are not admitted. The person charged shall, subject to the conditions described in sub-rule (3), be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses, called as he may wish, provided that the officer conducting the inquiry may, for reasons to be recorded in writing, refuse to call any witness. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof:
>
> Provided that * * *"

(It is not necessary to reproduce the terms of the provisos to this rule.)

It is further laid down in the Rules that the public servant concerned can engage a counsel to defend

himself with the permission of the Inquiry Officer and not otherwise. It is also laid down that if any action is proposed to be taken in respect of any statement made by the person charged in the course of his defence it will not be necessary to frame any additional charge. After completion of the inquiry the report is sent to the punishing authority who then, if necessary, takes proceedings in accordance with the provisions of Article 311 (2) of the Constitution. Thereafter the Rules give the right of appeal to the defaulter. These rules do not create any offence nor could they do so The Punjab Civil Services Rules are only statutory rules reghlating terms of service between the Government and its employees. The identical Rules called the Civil Services (Classification, Control and Appeal) Rules and also the provisions of the Public Servants (Inquiries) Act, 1850, were discussed by their Lordships of the Supreme Court in *S. A. Venkataraman* v. *Union of India and another* (1). Their Lordships held that the purpose of such an inquiry is merely to help the Government to come to a definite conclusion regarding the conduct of a Government servant and to decide what penalty, if any, should be imposed upon him. There is no other purpose which is served by this inquiry. The Inquiry Officer is appointed merely to find facts and it is clear from the Rules that it is not the Inquiry Officer's concern whether the facts established disclose the commission of a criminal offence punishable under the Indian Penal Code or any other law, or they disclose liability to imposition of penalties like censure, or reduction in rank, dismissal. He merely sends his report to the proper authority who may or may not accept his conclusions on facts found by him on the evidence produced before him. In these circumstances, it is impossible to hold that proceedings before the Inquiry Officer are of criminal or *quasi*-crimial nature.

(1) A.I.R. 1954 S.C. 375.

K. R. Sharma
v.
State of Punjab and another

Bishan Narain, J.

Obviously such proceedings cannot be said to be criminal proceedings governed by the terms and provisions of the Criminal Procedure Code. The Inquiry Officer is not a Court within the Criminal Procedure Code, nor is the Government servant accused of any offence, nor is he liable to be sentenced for the commission of an offence under any penal law. These proceedings cannot be said to be of quasi-cri-criminal nature because the ultimate effect of these proceedings at the most is dismissal of the Government servant from service and the imposition of this penalty cannot be held to be of criminal nature. There is no provision in these rules which makes it incumbent on the Inquiry Officer to hold enquiry in accordance with the prodedure laid down in the Criminal Procedure Code or to observe the provisions of section 173(4) of that Code. In this view of the matter it cannot possibly be held that the Inquiry Officer is bound to see that the provisions of section 173(4) are observed before he proceeds to record evidence in the inquiry.. If an Inquiry Officer refuses to comply with the provisions of section 173(4), then it cannot be held that it is liable to be set aside by this Court in the exercise of jurisdiction conferred upon it under Article 226 of the Constitution.

The learned counsel for the petitioner then urged that in any case the impugned order may be quashed on the ground that it necessarily deprives the petitioner of his right to get reasonable opportunity to defend himself which is his fundamental right guaranteed by Article 311(2) of the Constitution. The argument is this : A witness can be effectively discredited by putting his previous inconsistent statement to him, and if the previous statements are not supplied to the petitioner, then he cannot cross-examine these witnesses effectively. According to the learned counsel this is the reason which has led the

legislature to enact section 173(4) laying down that copies of statements should be supplied to an accused person before the commencement of inquiry or trial and that it embodies principles of natural justice. On these grounds it was submitted that this Court should interfere at the present stage to save unnecessary harassment to the petitioner. The learned counsel in support of this argument has relied on the observations of Sir John Beaumont in *Pulukuri Kottaya and others* v. *Emperor*, (1). His Lordship while discussing the provisions of the first proviso to section 162(1) (This section has been amended in 1955 and has been numbered as section 173 (4), observed:—

> "The right given to an accused person by this section is a very valuable one and often provides important material for crosss-examination of the prosecution witnesses. However slender the material for cross-examination may seem to be, it is difficult to gauge its possible effect. Minor inconsistencies in his several statements may not embarrass a truthful witness, but may cause an untruthful witness to prevaricate, and may lead to the ultimate break-down of the whole of his evidence."

In this very judgement the Privy Council has held that the contravention of this principle falls under section 537, Criminal Procedure Code, and the trial should be held valid notwithstanding the breach of this section. It follows that before a trial can be held to be vitiated on this ground the accused must show that its non-observance has prejudiced him and it has resulted in failure of justice. According to the Privy Council, however, grave the irregularity, it does not *per se* vitiate the trial. If such a contravention had been considered by the Privy

(1) 74 I.A. 65.

K. R. Sharma
v.
State of Punjab and another

Bishan Narain, J.

Councils to violate the principles of natural justice and to negative a fair trial, then obviously their Lordships would have held the contravention to be an illegality vitiating the entire trial. This they did not do. In this connection it must be remembered that a copy of the previous statement can only be used to contradict a witness and to discredit him *vide* section 145 and section 155(3) of the Indian Evidence Act). This is, however, only one of the ways of discrediting a witness. His previous statement cannot be used as such as evidence in the case. Therefore, the non-supply of the copy of the previous statement may seriously reduce and impair the value of the statement of that witness but cannot render it inadmissible. It follows that even if the present inquiry were held to be a criminal trial, the impugned order could not be set aside before the trial had been held. I have, however, already held that the nature of this inquiry is neither criminal nor quasi-criminal. If anything, its nature appears to be akin to civil proceedings. It relates to the terms of service between the Government and its employee. The final order at best puts an end to the contract of service between them. If any term of service is contravened, then the aggrieved employee can file a suit in Civil Courts against his wrongful dismissal and for damages for breach of contract. I am, therefore, of the opinion that section 173(4) of the Criminal Procedure Code has no application to this inquiry and the contravention of its provisions does not necessarily vitiate it.

In any case the only consequence of the impugned order, if at all, is that the petitioner has been deprived of one of the possible ways of discrediting witnesses deposing against him. It will not be out of place to mention here that according to the Advocate-General the Government is supplying to the petitioner a summary of previous statements though not verbatim statements of all these witnesses said

to be about 160 in number. If the petitioner considers, afer the inquiry has been completed, that this order has resulted in miscarriage of justice, then he will have ample opportunity of bringing this matter to the notice of the Inquiry Officer before the report is made and afterwards when, and if, he is called upon to show cause under Article 311(2) against the proposed action. This stage may, however, never arise. The Government after receiving the report may decide not to take any action under rule 4 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, and may decide not to impose any penalty on him. The present petition merely anticipates events which may never take place. Therefore the impugned order does not necessarily make a fair inquiry impossible and it is too early to determine the effect of this order on the inquiry.

In view of this decision it is no necessary to decide whether, if the petitioner had been successful, the required relief would have been granted by issue of a writ in the nature of *mandamus* or *certiorari*.

For all these reasons , I am of the opinion that this petition fails and I dismiss it with costs. Counsel's fee Rs. 100.

B. R. T.

APPELLATE CIVIL

Before Chopra and Gosian, JJ.

MST. HARDEVI AND OTHERS,—*Appellants*.

versus

HARMINDER SINGH AND OTHERS,—*Respondents*.

Regular Second Appeal No. 694 of 1949.

1957

Sept., 12th

Punjab Tenancy Act—(XVI of 1887) Section 59(1)—Scope of—Widowed mother of the deceased occupancy tenant whether entitled to succeed to the occupancy rights on the death of his widow—Construction of statutes—Rule as to, stated.