FULL BENCH

Before R. S. Narula, Bal Raj Tuli and Muni Lal Verma, JJ.

RAJ KUMAR EX-BUILDING INSPECTOR,—*Appellant.*

versus

MUNICIPAL COMMITTEE, JULLUNDUR,—*Respondent.*

Letters Patent Appeal No. 181 of 1970.

March 21, 1974.

Punjab Municipal Act (III of 1911)—Section 31(h)—Punjab Civil Services (Punishment and Appeal) Rules (1952)—Rule 7—Wrongful dismissal of a municipal employee—Such employee—Whether can obtain a declaratory decree from a civil Court, regarding the order of dismissal being void—Relief for his reinstatement—Whether can be granted and by whom.

Held, that a Municipal Committee formed or created under the Punjab Municipal Act, 1911 is a "quasi-governmental statutory body" whose orders dismissing its employees otherwise than in accordance with the statutory obligations placed on it by its rules, regulations or bye-laws or passed in contravention of the well-known principles of natural justice are liable to be declared as void, invalid and ineffective in a suit filed by the employee. A municipal employee whose dismissal is found to be wrongful because of the procedure prescribed by a statute or statutory rules or regulations or bye-laws not having been followed, or because of the violation of the principles of natural justice is entitled to obtain a declaratory decree from a Civil Court to the effect that the order of his dismissal from service is void and non-existent in the eye of law, and he continues to enjoy the status of a municipal employee which was enjoyed by him before the wrongful order was passed against him. No decree for reinstatement can be passed by the Civil Court in a suit for declaration though in a suitable case a writ in the nature of Mandamus may be issued by the High Court under Article 226 of the Constitution directing reinstatement of a municipal employee from a Court or Tribunal established under the Industrial Disputes Act in case of any industrial dispute arising between them and the Municipal Committee.

(Paras 9 and 10)

Case referred by Hon'ble Mr. Justice Prem Chand Pandit and Hon'ble Mr. Justice Gopal Singh to the Full Bench on 2nd December, 1971 for decision of the following important question of law involved in the case. The

Full Bench Consisting of Hon'ble Mr. Justice R. S. Narula, Hon'ble Mr. Justice Bal Raj Tuli and Hon'ble Mr. Justice Muni Lal Verma after deciding the question referred to, returned the case to the Division Bench on 21st March, 1974 for decision of the case.

"Can a municipal employee, whose dismissal is found to be wrongful, because proper procedure was not followed, get a declaration that he be reinstated in service?".

Letters Patent Appeal under Clause X of the Letters Patent against the judgment dated 9th December, 1969 passed by Hon'ble Mr. Justice H. R. Sodhi in Regular Second Appeal No. 595 of 1968 reversing that of Shri Jagwant Singh, Additional District Judge, Jullundur, dated the 27th February, 1968 and restoring that of Shri Bakhshish Singh, Sub-Judge, IIIrd Class, Jullundur, dated the 14th July, 1967, dismissing the suit of the plaintiff-respondent with no order as to costs.

S. P. Goyal, Advocate, *for the appellant.*

B. S. Bindra and Mrs. S. K. Bindra, Advocates, *for the respondent.*

ORDER

NARULA, J.—(1) Rajkumar appellant (hereinafter called the plaintiff) was dismissed from municipal service from the post of a Building Inspector by a resolution of the Municipal Committee, Jullundur (hereinafter referred to as the defendant), dated October 17, 1963, on the basis of the report of an inquiry committee appointed by the defendant to inquire into the charges of corruption, etc. His appeal against the order of dismissal having been rejected by the Commissioner, Jullundur Division, he filed the civil suit from which this appeal has ultimately arisen, on January 22, 1966, claiming a declaration to the effect that the order of his dismissal from service, dated October 17, 1963, passed by the defendant was wrong, illegal, nuconstitutional, without jurisdiction, void, capricious, arbitrary, *mala fide* and against natural justice, and that the plaintiff was still a regular employee of the defendant entitled to that legal status and claiming such other relief as the Court may deem proper or find him to be entitled to. While contesting the plaintiff's suit, the defendant took up in its written statement a preliminary objection to the effect that the suit in the form in which it had been filed

was not legally maintainable and was, therefore, liable to be dismissed. The above-mentioned preliminary objection gave rise to the first issue framed in the case to the effect:—

"Whether the suit is not maintainable?"

(2) By his judgment, dated July 14, 1967, Shri Bakshish Singh, Subordinate Judge Third Class, Jullundur, dismissed the plaintiff's suit on merits. His finding on issue No. 1 was couched in the following language:—

> "The learned counsel for the defendant has not pressed for this issue. The plaintiff in support of his contention has produced authority 1958 Allahabad. Since the learned counsel for defendant has not at all pressed for this issue and the burden was upon them to prove this issue, I, therefore, decided this issue in favour of plaintiff and against the defendant."

The plaintiff's appeal against the decree of the trial Court was allowed by the Court of Shri Jagwant Singh, Additional District Judge, Jullundur, on February 27, 1968, on merits. A perusal of the judgment of the learned Additional District Judge shows that the defendant did not urge anything in support of the plea of non-maintainability of the suit even at that stage. After dealing with the merits of the controversy, the lower appellate Court has stated in its judgment that no other point had been urged before it by the learned counsel for the parties. The Additional District Judge granted a decree to the effect that the order of plaintiff's dismissal, dated October 17, 1963, is void and inoperative and that he continues to remain a servant of the respondent Municipal Committee.

(3) The defendant's second appeal (R.S.A. 595 of 1968) was allowed by the judgment of a learned Single Judge of this Court (Sodhi, J.), dated December 9, 1969. After discussing the merits of the controversy and after recording a finding in favour of the defendant thereon, the learned Judge proceeded to observe as below:—

> "The last contention of Mr. Sachar is that the first appellate Court has erred in law in directing reinstatement of the plaintiff-respondent, even if it could be held that the enquiry proceedings were in any way irregular and led to his wrongful dismissal. The submission is that the only

remedy was by way of a suit for damages. He has, in this connection, cited a number of authorities and invited my attention to the latest judgment of their Lordships of the Supreme Court in *Executive Committee of U.P. State Warehousing Corporation Limited* v. *Chandra Karan Tyagi* (1) in which it has been held that when there is no violation of any statute or statutory rules, nor has the plaintiff acquired any statutory status, the rule of law is that a contract of personal service cannot be enforced, and that there are only the following three well-recognised exceptions to this rule :—

(1) a public servant who has been dismissed from service in contravention of Article 311 ;

(2) reinstatement of a dismissed worker can be directed under Industrial Law by Labour or Industrial Tribunals; and

(3) a declaration resulting in the reinstatement of an employee can also be granted where a statutory body has acted in breach of a mandatory obligation, imposed by statute.

Even if there was some irregularity in the enquiry proceedings, which resulted in the wrongful dismissal of the plaintiff-respondent, he could not be imposed upon the employers against their will, unless his case fell under any of the aforesaid three exceptions. The learned counsel for the plaintiff-respondent has not been able to convince me that the case of the plaintiff is covered by any of the said exceptions, and there has been a breach of any statutory rule."

The present appeal against the judgment and decree of the learned Single Judge was filed on a certificate granted under clause 10 of the Letters Patent. At the hearing of this appeal before the Division Bench (Pandit and Gopal Singh, JJ.), one of the questions agitated was whether the plaintiff could claim a declaration regarding his status as an employee of the Municipal Committee even if his dismissal was held to be wrongful on the ground that proper procedure was not followed while passing the order of his dismissal;

(1) (1969) 2 S.C.C. 883=(1970) 2 S.C.R. 250.

or, in those circumstances, the plaintiff could only be left to claim damages. After referring to various earlier judgments of this Court, the learned Judges framed the following question of law and directed that the papers of this appeal may be placed before the learned Chief Justice for constituting a Full Bench for answering the same:—

> "Can a municipal employee, whose dismissal is found to be wrongful, because proper procedure was not followed, get a declaration that he be reinstated in service?"

This is how the appeal has been placed before us for answering the above-quoted question.

(4) It may be stated at this very stage that the plaintiff has not in fact made any direct claim for reinstatement in his plaint. The declaration claimed by him as well as the declaratory decree granted in his favour by the first appellate Court have already been quoted in an earlier part of this judgment. The grounds on which the plaintiff claimed the declaration may be summarised as below:—

(i) that the appointment of the Enquiry Sub-Committee and the entire procedure leading up to its appointment was without jurisdiction, *ultra vires*, illegal and against natural justice resulting in great injustice to the plaintiff as the members of the sub-committee were not impartial, independent or unprejudicial, they having already expressed their opinion and given their votes against the plaintiff in the meeting of the defendant-committee (paragraph 7 of the plaint);

(ii) that the proceedings before the enquiry sub-committee were vitiated and illegal inasmuch as full, legal and proper opportunity was not given to the plaintiff to prove his innocence. Thus the plaintiff was greatly handicapped and prejudiced. This was not only against the provisions of law and the rules applicable, but also against the very elementary principles of natural justice (paragraph 8 of the plaint);

(iii) that the report of the enquiry committee recommending dismissal of the plaintiff was mechanically dittoed and adopted by the defendant-committee without applying its mind, or giving its own independent findings about the so-called charges on October 17, 1963, by resolution No. 16 (paragraph 9 of the plaint);

(iv) that the second show-cause notice was neither proper nor legal, and no adequate opportunity was afforded to the plaintiff to meet the same (paragraph 10 of the plaint); and

(v) that the charges levelled against the plaintiff were all wrong, baseless and frivolous, and there was no independent, disinterested and reliable evidence to support the same. A group of disgruntled persons, against whom the plaintiff had reported in the course of his normal duties and convenient employees of the Municipal Committee, played in the hands of Shri K. S. Manor and his party, and figured as witnesses (paragraph 12 of the plaint).

5. Following instances of the alleged glaring inequities, illegalities and breaches of the principles of natural justice were given in paragraph 8 of the plaint:—

"(a) that the plaintiff was not allowed to engage a lawyer to defend his case, even though other employees were given this right. The plaintiff was illegally discriminated against ;

(b) that the plaintiff was not allowed and helped to summon the records and documents relevant to the enquiry both for cross-examination and defence;

(c) that the plaintiff was not given full and effective opportunity to cross-examine the witnesses for the prosecution;

(d) that the plaintiff was not allowed and helped to examine all his witnesses in defence;

(e) that the statements of the prosecution witnesses were wrongly and incorrectly dictated by Shri Sant Ram Kalra, its Secretary, the Prosecutor of the defendant instead of the members of the Enquiry Sub-Committee in spite of the protest of the plaintiff. Sarvshri Sarup Singh and Piara Lal did not know English language in which the proceedings were conducted;

(f) that as the statements were being recorded incorrectly, the request of the plaintiff to place tape-record at his own expense, was unjustifiably rejected;

(g) that the members often sought guidance from quarters and persons who were strangers to the enquiry, behind the back of the plaintiff;

(h) that the plaintiff was not supplied with the documents and materials to be produced against him before the enquiry."

(6) It is the common case of both sides that the rules applicable to proceedings for dismissal of a municipal employee of the respondent-committee was rule 7 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, which have been made applicable to the employees of the respondent-committee, according to its bye-laws framed under section 31(h) of the Punjab Municipal Act (3 of 1911) (hereinafter called the Act). We are called upon to answer the question referred to us on the assumption that the procedure prescribed by rule 7 was not followed, and that the principles of natural justice were not adhered to during the enquiry (by the Enquiry Sub-Committee) into the charges against the appellant.

(7) Mr. S. P. Goyal, the learned counsel for the appellant, rightly submitted that in view of the latest authoritative pronouncement of their Lordships of the Supreme Court in *Sirai Municipality* v. *Ceclia Kom Francis Tellis*, (2), it is unnecessary to traverse the ground covered by the earlier judgments of the Supreme Court on the question of the rights of a municipal employee to claim a declaration about an order of his dismissal from service being void and ineffective. The question that called for decision in the *Sirai Municipality case*, (2), (supra) was whether Tellis, who had been dismissed from service in pursuance of a resolution passed by the Serai Municipality, was or was not entitled to a declaration in a suit filed by her that her dismissal by the said Municipal Committee was illegal and void; and that she continued to be in the service of that Municipality and was entitled to her emoluments from the date of her dismissal till the date of the institution of her suit. Clause (g) of section 46 of the Bombay District Municipalities Act, 1901

(2) 1973 (1) S.L.R. 655.

(corresponding to section 31 of the Punjab Municipal Act) authorises the Municipality to frame rules regulating *inter alia* the period and conditions of service of the municipal employees. Rule 143 of the rules framed under section 46(g) of the Bombay Act provides:—

(i) that no employee of the Municipal Committee shall be dismissed from service without his being granted a reasonable opportunity, and without his being heard in his defence; and

(ii) that the order of dismissal has to be passed in writing and must specify the charges, the defence and the reasons for the order.

The complaints of Tellis in her suit were:—

(a) that she had been dismissed without having been afforded any reasonable opportunity of defending herself against the charge levelled against her; and

(b) that the impugned resolution had been passed by the Municipal Committee on a day when the agenda before it did not contain any item regarding her dismissal from service.

The defence of the Municipal Committee was that its rules and bye-laws were meant only for its own guidance, and Tellis could not challenge its resolution on the ground of violation of the rules and bye-laws. The declaratory decree passed in favour of Tellis having been upheld by the Bombay High Court, the Sirai Municipality appealed to the Supreme Court and contended before their Lordships that Tellis was not entitled to any declaration even if her dismissal was wrongful and the only remedy available to her was to claim damages. While repelling that contention and dismissing the appeal of the Sirai Municipality, the Supreme Court discussed all the previous relevant judgments and held as below :—

(i) the cases of dismissal of an employee fall under three broad heads, namely:—

(a) relationship of master and servant governed purely by the contract of employment;

(b) such relationship arising under Industrial Law; and

(c) cases of master and servant arising in regard to employment by the State or by other public or local authorities or bodies created under a statute;

(ii) the termination of employment or dismissal from service of what is described as a pure contract of master and servant cannot be declared to be a nullity, howsoever wrongful or illegal it may be, as remedy for such wrongful termination or any breach of a contract is by way of damages;

(iii) because of the special provisions under the Industrial Law, a workman who is wrongfully dismissed is entitled to claim reinstatement as an express departure has been made in the Industrial Law from the normal provisions of the Contract Act and the Specific Relief Act which normal provisions do not provide for reinstatement of an employee being forced on an employer;

(iv) in the case of a person who is in the service of the State or a local authority or a statutory body, the Courts have declared in appropriate cases the dismissal of its employees from service to be invalid if the dismissal is contrary to the rules of natural justice, or if the dismissal is in violation of the provisions of the relevant statutes. In the absence of any statutory provision, however, no declaration of the order of termination of service being a nullity can ordinarily be granted in favour of even a servant of the State or other local authority or statutory body;

(v) in order to keep the State and the public authorities within the limits of their statutory powers, the Courts may exercise jurisdiction to declare the order of dismissal of an employee to be void where the order of dismissal has been passed—

(a) in violation of the mandatory procedural requirements; or

(b) on the grounds which are not sanctioned or supported by the relevant statute; or

(c) in violation of the principles of natural justice as laid down in the *State of Orissa* v. *Dr. (Miss) Binapani Dei and others* (3) (per Beg J.).

(vi) the previous decisions of the Supreme Court enumerated in paragraph 24 of the judgment dealing with the powers of the statutory authorities and bodies establish that the dismissal of a servant by a statutory body including the local authority in breach of the provisions of the statute or orders or schemes made under a statute which regulate the exercise of their power is invalid or *ultra vires* and the ordinary principle of a pure contractual relationship of master and servant has no application to such cases;

(vii) the rules had been made in exercise of the power conferred on the Sirai Municipality by a statute and were, therefore, binding on the Municipality. The order of dismissal of Tellis had been passed in violation of rule 143 which imposed a mandatory obligation on the Municipal Committee, inasmuch as she had been dismissed—

(a) without having been afforded a reasonable opportunity of being heard in her defence;

(b) without recording her written statement which might have been tendered by her; and

(c) without passing an order of dismissal in writing.

(viii) from the provisions of sections 46 and 48 of the Bombay Act it is clear that the rules framed under that Act as well as the bye-laws framed by the Municipal Committee operated as laws which bound the local authority (per Beg, J.);

(ix) apart from the basic character of rule 143 as a procedural protection against unmerited dismissal of servants of the

(3) (1967) 2 S.C.R. 625.

Municipality, the local body was not competent to act upon the assumption that it had any power to dispense with the compliance with the said rule so long as it stood unaltered as even a bye-law has the force of law within the sphere of its legitimate operation (per Beg J.), and

(x) the principles which are applicable to the relationship between a private master and a servant, unregulated by a statute cannot apply to the case of a public statutory body exercising powers of punishment fettered or limited by statutes and by the relevant rules of procedure.

(8) While discussing the law laid down by the Supreme Court in the previous cases, it was observed by Beg, J. in the course of his Lordship's judgment in *Sirai Municipality case* (2) (supra) that his Lordship was unable to reconcile the earlier decision of the Supreme Court *in the Executive Committee of U. P. State Warehousing Corporation, Limited* v. *Chandra Kiran Tyagi*, (1) with the view taken by their Lordships in the *Sirai Municipality case*. The problem of reconciling the two views was ultimately solved by a Full Bench of the Delhi High Court in *Indian Institute of Technology* v. *Mangat Singh* (4). V. S. Deshpande, J. who prepared the judgment of the Court exhaustively dealt with almost all the previous judgments of the Supreme Court on the subject and ultimately came to the following conclusions :—

(i) no distinction can be made between the rules and regulations as to their general efficacy as law where the regulations partake of the nature of subordinate legislation of general application; and

(ii) a distinction has to be drawn between purely commercial statutory corporations and other statutory corporations which are quasi-governmental;

(iii) whereas *Chandra Kiran Tyagi's case* [*Executive Committee of U. P. State Warehousing Corporation Limited* v. *Chandra Kiran Tyagi* (1) (supra)], and the *Indian Airlines Corporation Case* [*Indian Airlines Corporation* v. *Sukhdeo Rai* (5)] will fall in the category of commercial statutory

(4) 1973 (2) S.L.R. 46.
(5) 1971 (1) S.L.R. 149.

corporations, *Naranjindas Barot's case* [*Naranjindas Barot* v. *Divisional Controller*, S.T.C. (6)], *Sirai Municipality case* (supra) and the case before the Full Bench of the Delhi High Court [(*Indian Institute of Technology* v. *Mangat Singh* (4) (supra)] would be governed by the law relating to quasi-governmental statutory corporations. By adopting this distinction, there remains no inconsistency between the two views taken by the Supreme Court in different cases from time to time.

(9) The law laid down by the Supreme Court in the *Sirai Municipality case* (2) (supra), and by the Full Bench of the Delhi High Court in the *case of Indian Institute of Technology* (4) (supra) leaves no doubt in my mind that a Municipal Committee formed or created under the Punjab Municipal Act is a "quasi-governmental statutory body" whose orders dismissing its employees otherwise than in accordance with the statutory obligations placed on the Municipal Committee by its rules, regulations or bye-laws or passed in contravention of the well-known principles of natural justice would be liable to be declared as void, invalid and ineffective in a suit filed by the employee. The view that relief by way of declaration of an order of termination of the services of a municipal employee being void and ineffective is available to the aggrieved municipal servant has already been taken by my learned brother Tuli, J. in *Amar Nath* v. *The Commissioner and others*, (7) *Raj Pal* v. *The Administrator and others* (8) *Nathu Ram Mehta* v. *Municipal Committee, Jagadhri, and others* (9) *Tilak Raj* v. *The State of Punjab and others* (10) and *Jaswant Rai Ahuja* v. *The State of Haryana and another* (11). A similar view has also been taken by a Division Bench of this Court (D. K. Mahajan and Gurdev Singh, JJ.) in *Dev Raj Sethi* v. *The Municipal Committee, Mandi Dabwali*, (12).

(6) (1966) 3 S.C.R. 40.

(7) 1960 Curr. L.J. 484.

(8) 1970 Curr. L.J. 406.

(9) 1971 P.L.R. 110.

(10) 1972 S.L.R. 666.

(11) 1973 (1) S.L.R. 283.

(12) C.W. No. 2124 of 1966 decided on 10th May, 1968.

(10) For the foregoing reasons, I would answer the question referred to this Full Bench in the following words :—

> "A municipal employee whose dismissal is found to be wrongful because of the procedure prescribed by a statute or statutory rules or regulations or bye-laws not having been followed, or because of the violation of the principles of natural justice is entitled to obtain a declaratory decree from a Civil Court to the effect that the order of his dismissal from service is void and non-existent in the eye of law, and he continues to enjoy the status of a municipal employee which was enjoyed by him before the wrongful order was passed against him. No decree for reinstatement can be passed by the Civil Court in a suit for declaration though in a suitable case a writ in the nature of Mandamus may be issued by the High Court under Article 226 of the Constitution directing reinstatement of a municipal employee. Reinstatement may also be claimed by certain municipal employees from a Court or Tribunal established under the Industrial Disputes Act in case of any industrial dispute arising between them and the Municipal Committee."

TULI, J.—I have carefully gone through the judgment prepared by my learned brother, Narula, J., and agree with the same.

VERMA, J.—I also agree.

K. S. K.

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