

(1965) 10 P&H CK 0012

High Court Of Punjab And Haryana At Chandigarh

Case No: Letters Patent Appeal No. 143 of 1962

Union of India and Another

APPELLANT

Vs

Shankar Singh

RESPONDENT

Date of Decision: Oct. 11, 1965

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 141, 151

Hon'ble Judges: Khanna, J; Falshaw, J

Bench: Division Bench

Advocate: C.D. Dewan, Deputy A.G, for the Appellant; J.K. Khosla, for the Respondent

Final Decision: Dismissed

Judgement

Falshaw, C.J.

This is an appeal filed by the Union of India and another against the order of the learned Single Judge dismissing a petition filed under Order 47 rule 1 read with section 141 and section 151, CPC for review of his order of the 14th of September 1961 by which he partially allowed a petition filed under Article 226 of the Constitution by Shankar Singh respondent.

2. The facts are that Shankar Singh was serving as an employee of the Union in the Posts & Telegraphs Department and in 1958 he held the permanent post of Daftri in the office of the Divisional Engineer, Telegraphs, at Jullundur. In October 1958 he was served with a show cause notice by the Deputy Divisional Engineer, Telegraphs, on a charge that he had been absent from duty without prior leave, and at the same time the Deputy Divisional Engineer passed an order suspending him pending the enquiry, In the enquiry the charge was found to be established against him and order was passed by the Deputy Divisional Engineer removing him from service on the 17th of February 1959. The result of his appeal against this order to the Divisional Engineer was that on the 81st of March 1959 his punishment was changed from removal from service to reduction from the post of Daftri to that of

peon.

3. Shankar Singh then filed a writ petition in this Court, Civil Writ No. 1330 of 1959. which was dismissed by Dulat J. on the 4th of March 1960 as having become anfractuous because of a change in the circumstances. This change was in the form of an order of the President of India communicated by the Assistant Director General of Posts & Telegraphs, New Delhi, to the Postmaster General, Punjab Circle, in a letter dated the 7th of January 1960. It was stated therein that on a review of the case it had been noticed that the penalty of removal from service had been imposed by the Deputy Divisional Engineer, Telegraphs, who was an authority lower than the authority which had appointed Shankar Singh to the post of Daftri namely, the Divisional Engineer, which contravened the provisions of rule 14 (4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, and since the Divisional Engineer did not himself make enquiries while modifying the penalty to that of reduction to a lower grade, the original defect in the proceedings was not rectified. The consequent order of the President reads-

In exercise of the powers conferred by rule 32 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, the President is therefore pleased to set aside the orders imposing the penalty of removal from service contained in the memo No. Q.1137/ Col. II/KW/40 dated the 17th of February 1959 from the Deputy Divisional Engineer, Telegraphs, Jullundur, and also the appellate order modifying the penalty to that of reduction to the cadre of peon contained in memo Mo. Q-1137/Col. II/KW/12 dated the 31st of March 1959 from the Divisional Engineer, Telegraphs, Jullundur, and to remit the case to the Divisional Engineer, Telegraph, Jullundur, for de novo proceedings.

4. In pursuance of this order the Divisional Engineer passed an order on the 16th of January 1960 relating the above circumstances and at the same time ordering that under rule 12(3) Shankar Singh would continue to be in the service of the Posts and Telegraphs Department as a Daftri under suspension from the date he was initially placed under suspension by the order of the Deputy Divisional Engineer until the de novo proceedings were finalized or the suspension order was lifted. It is this order which was challenged in the writ petition filed by Shankar Singh which gives rise to this appeal.

5. The writ petition was heard by Grover J. on the 14th of September 1961 and he came to the conclusion that the original order of suspension passed by the Deputy Divisional Engineer was not lawful and he allowed the writ petition to the extent of issuing a direction to the respondents to treat the suspension of the petitioner prior to the 16th of January 1930 i.e. the date of the order of the Divisional Engineer, as ineffective. Having failed to file an appeal under clause 10 of the Letters Patent against that order within time, the original respondents filed the review petition on the 9th of December, 1961, and as I have said it has been dismissed.

6. The main ground for review was that the finding of the learned Single Judge that the Deputy Divisional Engineer was not competent to pass the original order of suspension was an error patent on the record in view of the following notification :

S.R.O. 608. In exercise of the powers conferred by sub-rule (1) of rule 12 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 the President hereby directs that the power to place a Government servant under suspension may also be exercised by an authority competent to impose on that Government servant any of the penalties specified in rule 13 of the said rules. New Delhi, the 28th of February "57.

In the Schedule attached to the Rules the Deputy Divisional Engineer is mentioned as the authority competent to impose penalties with reference to all penalties mentioned in rule 13 on members holding all posts in Class IV in which the post of Daftri is included. Reliance was also placed on sub-rule (3) of rule 12 which reads-

Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

7. In view of the notification and the terms of the schedule it can no longer be contended that the Deputy Divisional Engineer was incompetent to pass the order placing Shankar Singh under suspension, but the question which was decided against the authorities by the learned Single Judge still remains, namely whether the case is covered by rule 12(3) or whether once the order removing Shankar Singh had been set aside and he had merely been reduced to the rank of a peon a fresh order of suspension was necessary.

8. It is contended on Shankar Singh's behalf that although the President considered it necessary to set aside the order of the Deputy Divisional Engineer removing him from service, that order, by the time the President took action in the matter, had already been merged in or superseded by the order of the Divisional Engineer reducing the punishment to reduction in rank, and therefore rule 12(3) will not apply, since in terms it refers only to the setting aside of orders removing a Government servant from service in one manner or another.

9. On the other hand it was contended that the order removing Shankar Singh from service still subsisted and had not in any way merged in the order reducing his punishment. Reliance was placed on the decision in T.P. Kumaran v. R. Kothandaraman, Commissioner of Income Tax, Gujarat AIR 1968 Guj. 6. The facts in that case are that the petitioner before the High Court under Article 226 of the Constitution had been an Income Tax Officer and he had been removed from service by an order of the Commissioner after an enquiry into certain charges of

corruption had been held against him. He had also appealed against the order of the Commissioner to the President, and his appeal had been dismissed. Although on the face of it, before Article 226 of the Constitution was amended, a writ petition challenging his dismissal thus confirmed in appeal by the President lay in this Court, the petitioner moved the Gujarat High Court only impleading the Commissioner as a respondent and ignoring the President and his order, and it was held by J.M. Shelat and M.R. Mody JJ. that an original order of the inferior authority ceased to be an outstanding order once an appeal or revision therefrom is disposed of, it making no difference whether the appellate authority confirms, reverses or modifies the original order. Prima facie this decision appears to be against the learned counsel for the State, but nevertheless reliance was placed on certain passages in the judgment dealing with the argument raised on behalf of the petitioner that even assuming that the order of Commissioner had merged in the order passed by the appellate authority, the original order was a nullity in that it infringed the principles of natural justice, and, being a nullity, it could be quashed. This argument was apparently supported by reference to a passage of the judgment of the Supreme Court in *State of U.P. v. Mohd. Nooh* AIR 1958 S.C. 86. to which I think it would be better to refer directly.

10. That was a case in which a police officer had been dismissed for misconduct after enquiry by an order of the Superintendent of Police on the 21st of December, 1948. His appeal was dismissed sometime in 1949 by the D. I. G., and the only order which was passed after the Constitution had come into force was the order of the Inspector General dismissing his revision petition on the 22nd of April 1950. The Allahabad High Court had accepted his writ petition and set aside the impugned orders, and had directed that if a further enquiry were to be held into the alleged acts of misconduct it should be held by some one other than the Superintendent of Police who had passed the original order of dismissal. The facts leave no doubt that there was ample ground for interference since it appears that in order to settle some question of fact which was in dispute the Superintendent of Police who was holding the enquiry had had his own statement as a witness recorded and based his finding on this point of the case on his evidence.

11. The main question before the Supreme Court had nothing to do with the merits of the case and related to the question whether the High Court could quash the orders which had been passed before its powers under Article 226 of the Constitution were conferred on it, and the majority of the learned Judges decided that it could not. Some part of the argument related to the scope of the Court's power under Article 226 and the following passage occurs in paragraph 11:-

On the authorities referred to above it appears to us that there may conceivably be cases-and the instant case is in point-where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior Court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible

stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior Court or tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior Court's sense of fair play the superior Court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the Court or tribunal of first instance, even if an appeal to another inferior Court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what *ex facie* was a nullity for reasons aforementioned. This would be so all the more if the tribunals holding the original trial and the tribunals hearing the appeal or revision were merely departmental tribunals composed of persons belonging to the departmental hierarchy without adequate legal training and background and whose glaring lapses occasionally come to our notice. The superior Court will ordinarily decline to interfere by issuing certiorari and all we say is that in a proper case of the kind mentioned above it has the power to do so and may and should exercise it. We say no more than that.

In my opinion this has little relevance to the present question since in the appeal which Shankar Singh filed the order of the original authority was not altogether upheld, but was modified by a reduction of the penalty from removal from service to reduction in rank. The learned counsel for the authorities perhaps advisably did not cite the Supreme Court case before us, but merely relied on the reference made to it in the decision of the Gujarat High Court and as I have said, the decision of the learned Judges of the Gujarat High Court does not support his contention at all.

12. Thus while undoubtedly the order of the Deputy Divisional Engineer removing Shankar Singh from service was set aside by the President, this was merely part of his order setting aside the whole proceedings and ordering *de novo* proceedings, and in fact the order of removal had already been superseded by the order of the Divisional Engineer reducing Shankar Singh in rank. Such being the case in my opinion rule 12(3) would not apply. Hence, as the learned Single Judge has held, the original suspension was not served and a fresh order from the Divisional Engineer placing Shankar Singh under suspension was necessary. It was therefore quite properly decided that the order of the Divisional Engineer placing Shankar Singh under suspension from the date he was initially suspended by order of the Deputy Divisional Engineer was to be effective only from the date on which this order was passed, namely, the 16th of January, 1960. The result is that I would dismiss the appeal with costs.

Khanna, J.

I agree.