
(1980) 03 BOM CK 0037

Bombay High Court

Case No: Writ Petition No. 87 of 1980

S.S. Sawant

APPELLANT

Vs

S.G. Rege and Others

RESPONDENT

Date of Decision: March 4, 1980

Acts Referred:

- Constitution of India, 1950 - Article 311(2)

Hon'ble Judges: P.S. Shah, J

Bench: Single Bench

Advocate: H.D. Sawant, for the Appellant; L.J. Manjrekar, for the Respondent

Judgement

P. Shah, J.

Rule in terms of prayers (a) and (b) made returnable today. Respondents waive service.

By consent, the petition is called out for final hearing today.

Heard Counsel on both the sides.

1. This petition must succeed, having regard to the fact that the petitioner has been removed from service on the basis of an enquiry which was conducted behind his back. The impugned order, therefore, clearly contravenes the provisions of Article 311(2) of the Constitution.

2. On certain charges, the petitioner who was serving as a Lower Division Clerk was suspended during the pendency of the enquiry. He was served with the regular charge-sheet in the month of January 1971, but the enquiry was commenced in the year 1978. The Enquiry Officer fixed the date as September 23, 1978, for recording the evidence of the witnesses. The intimation of this date was, however, received by the petitioner after that date on September 30, 1978. Without caring to see whether the petitioners was served with the notice of the date of the enquiry the Enquiry Officer

examined two witnesses on the date fixed i.e. on September 23, 1978. He continued to record the evidence of the other witnesses on September 25, 1978. All this evidence was recorded ex parte, in the absence of the petitioner who did not know of these dates of enquiry. On receipt of the intimation, the petitioner by his letter dated October 3, 1978, informed the Enquiry Officer that the intimation was received by him after the date fixed for hearing and, therefore, could not attend. He also made a grievance that he was not offered the services of a next friend for defending. Thereafter, the Enquiry Officer sent another letter dated December 1, 1978, to the petitioner informing him that further enquiry will be held on December 11, 13, 14 and 15, 1978, and also asked him to remain present for the cross-examination of the witnesses who were already examined by the Enquiry Officer. Along with this letter, the statements of the witnesses recorded were sent to the petitioner. Even this letter of the Enquiry Officer to the petitioner did not reach to him in time. It was actually received by him on 16th December 1978, with the result that he could not remain present on the dates fixed by the Enquiry Officer. In spite of a complaint, however, the Enquiry Officer did not fix any further date to enable the petitioner to cross-examine the witnesses, but chose to treat the enquiry as closed and submitted his report to the Disciplinary Authority.

3. These facts would clearly show that the petitioner was not given reasonable opportunity to defend. It was necessary for the Enquiry Officer to see that the petitioner was informed about the dates of hearing before he commenced to record the evidence. However, in the present case, admittedly, the petitioner got the intimations of the dates fixed by the Enquiry Office later and, therefore, the petitioner could not remain present at the time of the enquiry. The enquiry conducted by the Enquiry Officer behind the back of the petitioner is, therefore, clearly in violation of the principles of natural justice and equity. The petitioner was entitled to reasonable opportunity to defend himself, which was denied to him as he did not get the prior intimation of the dates fixed by the Enquiry Officer. It also appears that the petitioner had requested the Enquiry Officer to appoint Mr. Dhuru as his next friend to help him in his defence. However, Mr. Dhuru's services were denied to him in the ground that he was engaged as next friend in some other enquiry against other delinquent. The impugned order of removal of the petitioner dated March 5, 1979, is under the circumstances clearly illegal, void and inoperative, being contrary to the provisions of Article 311(2) of the Constitution.

4. The petitioner, therefore, is entitled to a declaration that the impugned order of his removal is illegal, void and inoperative and that he continues to be in service. The petitioner would be entitled to get arrears to pay and allowances from the date of the order of removal from service, According to the rules.

5. It is contended on behalf of the petitioner that he would be entitled to full salary and allowances from the date of the order of his suspension. It is, however, contended by Mr. Manjrekar for the respondents that the petitioner has been suspended not only because of the pendency of the present enquiry, but also because of the pendency of the prosecution.

6. The question as to whether the petitioner is entitled to full salary and allowances from the date of the suspension till the date of removal is kept open.

7. In view of the quashing of the impugned order, it would be kept open for respondents to consider the question as to whether a fresh enquiry against the petitioner should be held. In the event of the respondents deciding to hold an enquiry, they should finalise the proceedings expeditiously, within a period of six months from today, having regard to the fact that the petitioner is under suspension for the last 13 years.

8. As far as possible, the Enquiry Office should appoint Mr. Dhuru to help the petitioner as a friend in the conduct of the enquiry. I, therefore, pass the following order :

ORDER

The impugned order of removal of the petitioner from the service passed on March 5, 1979, is quashed and set aside and it is declared that the petitioner continues to be in service. The petitioner will also be entitled to arrears of pay and allowances from the date of the order of his removal from service, according to the rules.

Respondents to pay costs.

Rule is made absolute as above.