

Hasmat Ullah Vs. District Magistrate, Basti and ors.

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Court : Allahabad

Decided On : Aug-11-1975

Reported in : AIR1976All62

Judge : K.B. Asthana, C.J. and ;R.L. Gulati, J.

Acts : Uttar Pradesh District Boards Act, 1922 - Sections 90(1)

Appeal No. : Special Appeal No. 379 of 1974

Appellant : Hasmat Ullah

Respondent : District Magistrate, Basti and ors.

Advocate for Def. : S.N. Kacker, ;G.N. Verma, Advs. and ;Standing Counsel

Advocate for Pet/Ap. : M. Asif Ansari, Adv.

Disposition : Appeal allowed

Judgement :

K.B. Asthana, C.J.

1. This is an appeal by the petitioner against the dismissal of his writ petition by a learned Single Judge. The petitioner had questioned the validity of an order of suspension. Passed against him by the District Magistrate, Basti exercising the powers of the Zila Parishad, of Basti. The petitioner was employed as an Engineer

at the material time in the Zila Parishad. Some reports were made against him and investigation into the allegations were made and the material so collected at the investigation satisfied the District Magistrate as being prima facie genuine. He directed that an enquiry into the conduct of the petitioner be made. By an order dated 22-8-1974 the District Magistrate appointed a committee of enquiry and framed charges. He further directed that the charges be served on the petitioner and pending enquiry he be suspended and 1/4th of his pay was ordered to be paid to him as subsistence allowance. In due course the charges were served on the petitioner and he was asked to explain the charges by the enquiry committee. The petitioner approached this Court under Article 226 of the Constitution questioning the validity of the suspension order, mainly on the ground that under Section. 90(1) (b) of the District Boards Act, which provisions were applicable to his case, he could not have been suspended by the District Magistrate exercising the powers of the Board on 22-8-1974 as there was no enquiry pending into his conduct. In its counter affidavit the respondent Zila Parishad took the stand that the District Magistrate had the power to suspend the petitioner on 22-8-1974 as an enquiry was contemplated against him as charges were framed and an enquiry committee appointed. The learned Single Judge on a consideration of the provisions of Section 90 (1) (b) of the District Boards Act, which admittedly were applicable to the case of the petitioner, held that as an enquiry was imminent the enquiry committee having been appointed and serving of charge sheet ordered, the District Magistrate in the circumstances was vested under the law with the power to pass a suspension order. The petition was dismissed.

2. The decision of this appeal will turn on the meaning and the scope of the words 'pending enquiry into his conduct', occurring in Section 90 (1) (b) of the U. P. Dist. Boards Act. It was urged on behalf of the appellant that mere appointment of an enquiry committee and direction to serve charges on the erring servant of the Zila Parishad would not amount to a pending enquiry into his conduct within the meaning of the said section, and inasmuch as the District Magistrate passed the order of suspension when no such enquiry into petitioner's conduct was pending, the order was without jurisdiction and lacked legal authority. On behalf of the respondents its learned counsel submitted in reply that 'enquiry' not having been defined or explained in any of the provisions of the U. P. District Boards Act or

Rules framed thereunder, will bear the ordinary dictionary meaning and even the preliminary stage what is known as fact finding investigation into the allegations made against the conduct of the servant of the Zila Parishad would be nothing but an enquiry into his conduct, therefore, the District Magistrate was within his rights and acted within the scope of his powers in suspending the appellant on 22-8-1974 as the enquiry against the petitioner had commenced much earlier within the meaning of the said section. To put it differently the submission of the learned Counsel for the respondents was that the fact finding investigation before the framing of the formal charges and then actual trial of the erring servant before the enquiry committee ultimately resulting in the award of punishment by the appropriate authority is one whole proceeding which can be termed as enquiry within the meaning of Section 90 (1) (b) of the U. P. District Boards Act. It is difficult for us to accept this submission put forward on behalf of the respondents. Preliminary investigation or enquiry on the receipt of the reports of alleged misconduct is not an enquiry into the conduct of the erring servant but it is merely intended to assure the punishing authority that there is prima facie truth or substance in the allegations. When an investigation is made by any authority to assure itself into the prima facie truth or falsity of the allegations made then it is not an enquiry into the conduct of the servant of the Board but is actually a process for satisfying himself as to the weight to be attached to the allegations made. It is only when the punishing authority prima facie is satisfied that there is substance and weight in the allegations and there is sufficient material to prove those allegations that it frames definite charges against the erring government servant. It is obvious, therefore, that when definite charges are framed against the erring servant then, an enquiry into his conduct will ensue. Prior to that stage though the investigation into the facts might have been made, with respect to the allegations alleging misconduct but that will not mean enquiry into misconduct. Enquiry into the misconduct of an erring servant would be when he is confronted with the definite charges and is called upon to explain the charges. We are of the opinion that this interpretation and construction of Section 90 (1) (b) is more appropriate and proper for that would prevent the abuse of power by the District Magistrate or by any other punishing authority to suspend a servant even on just hearing from some sources orally or in writing about some misconduct and suspending him at once.

To accept the interpretation of Section 90 (1) (b) as put forward by the learned counsel for the respondents, would mean that a servant of the Zila Parishad could be suspended even on mere information received of his misconduct which ultimately in the preliminary enquiry itself may be found to be baseless or without substance. This the Legislature would have never intended when the power of suspension pending enquiry into the conduct of a Government servant was conferred upon the punishing authority.

3. Learned counsel for the respondents relying upon the history of the Legislation submitted that the words 'pending enquiry into his conduct' would mean 'until the enquiry into his conduct'. But that does not solve the problem. Unless a point of time is determined when the enquiry will commence into the conduct of the servant, the starting point of the pendency cannot be fixed. In our judgment the words 'pending enquiry into his conduct' plainly mean 'during the enquiry into his conduct'. Even the appointment of an Enquiry Committee and direction to serve charges will not amount to commencement of the enquiry. It may be that the Committee of Enquiry appointed or the officer appointed to conduct that enquiry may not be able to act on account of unforeseen circumstances and another officer or Committee may have to be appointed. The enquiry cannot then be said to have commenced when the Enquiry Committee itself has not started the proceedings. The correct view to take is that an enquiry will commence when the enquiry officer or the Enquiry Committee takes cognizance and issues notice to the delinquent officer for answering the charges.

4. For the reasons stated above we allow the appeal, set aside the judgment and order of the learned Single Judge and quash that part of the order of the District Magistrate dated 22-8-1974 by which the petitioner was suspended. The petitioner will be entitled to his costs.

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