

The State Vs. Mansinghrao

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Court : Madhya Pradesh

Decided On : May-10-1958

Reported in : AIR1958MP413; 1958CriLJ1485; (1958)IILLJ585MP

Judge : A.H. Khan, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 100 to 101; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 403; ;[Constitution of India](#) - Article 311

Appeal No. : Second Appeal No. 100 of 1957

Appellant : The State

Respondent : Mansinghrao

Advocate for Def. : Tribhuwan Nath, Adv.

Advocate for Pet/Ap. : Mungre, Govt. Adv.

Disposition : Appeal dismissed

Judgement :

A.H. Khan, J.

1. This second appeal arises out of a suit brought by the plaintiff against the State of Madhya Bharat in which he had sought a declaration that his dismissal by the

Revenue Minister is invalid and that he still continues to be in service. The suit was decreed by the Civil Judge, First Class, Bhind and on appeal the decision was affirmed by the District Judge.

2. The facts of the case lie within a short compass: The plaintiff was a Naib Tehsildar in year 1940 and was in the service of the Gwalior State. Near about that time, a complaint was filed against him by one Kishanlal. While the enquiry was proceeding, the then Maharaja of Gwalior went on a tour of the Mandsaur District and the matter was placed before him. The then Maharaja of Gwalior reprimanded the plaintiff and issued him a warning by way of punishment.

Thereafter he continued to be in service and on two subsequent occasions was promoted to higher grades also. On the formation of Madhya Bharat State, sometime in year 1950, he was served with a notice by the Revenue Minister of Madhya Bharat State to show cause why he should not be dismissed from the service in connection with the complaint of Kishanlal referred to above. In reply, it was submitted that the matter had been disposed of by the Ruler of Gwalior State and that having been punished in the form of a warning, it was not proper to punish him once again. The Madhya Bharat Government, however, dismissed him.

3. The Government of Madhya Bharat resisted the suit on the ground that the complaint of Kishanlal had not been disposed of and that the State was justified in dismissing him after giving a show cause notice. It was also urged on behalf of the Government that the Civil Court had no jurisdiction to entertain a suit of this nature.

4. As has been stated earlier, the trial Court overruled all the objections of the State and decreed the suit. And this decision of the trial Court was confirmed by the District Judge, Bhind.

5. The learned Government Advocate has pressed only two points: First, that the complaint by Kishanlal was still pending and that it had not been disposed of. Two, that even if the complaint had been validly disposed of, the State Government was within its right to pass the order of dismissal because there was no bar against it. It

was also submitted that the learned District Judge was in manifest error in granting relief to the plaintiff on the ground of natural justice.

6. With regard to the first point, namely, whether the enquiry against the plaintiff in respect of the conclusion of both the Courts below is that the complaint of Kishanlal had been closed or not, the enquiry had come to an end and that the matter had been closed by giving a warning to the plaintiff. It has been further held by the trial Court that this conclusion is supported by the circumstance that after the enquiry, the plaintiff was promoted successively to two higher grades by the Ruler of Gwalior.

The question whether the enquiry was closed or not is a question of fact and Section 100 of the Civil Procedure Code expressly bars second appeal on questions of fact.

7. With regard to the second point, it is submitted that even if the enquiry had been closed, the Government could dismiss the plaintiff on the basis of former complaint.

8. The learned District Judge, no doubt, has taken the view that once an enquiry is closed and a person is punished by way of warning issued to him, (and it is not disputed that a warning is a sort of punishment), then on the principles of natural justice, it is not proper to punish him again for the former lapse or duty. On moral grounds, no doubt, it is true and the principles embodied in Section 403 of the Code of Criminal Procedure are based on it. The general principle is that no one shall be put twice in jeopardy on the same set of facts. There is no doubt that it is a principle of great wisdom but the scope of Section 403 Criminal Procedure Code is restricted to Criminal Proceedings.

9. But there is authority for the proposition that once a properly constituted authority has arrived at a decision, then its successor in office cannot enter upon a reconsideration of the matter so as to arrive at another and totally different decision. I would refer to *R. T. Rangachari v. Secretary of State*, AIR 1937 PC 27 (A), in which their Lordships of the Privy Council made the following observations :

'In a case in which after Government officials duly competent and duly authorised in that behalf have arrived honestly at one decision, their successors in office, after the decision has been acted upon and is in effective operation, cannot purport to enter upon a reconsideration of the matter and to arrive at another and totally different decision.'

10. The facts of the case in which their Lordships of the Privy Council made the above observations in brief are that certain charges of irregular and improper conduct were made against a Police Sub-Inspector and they were the subject of an enquiry by one Mr. Charsley. In the meanwhile, the Police Sub-Inspector applied for retirement on grounds of ill-health. There was an important talk between Mr. Charsley and Mr. Kalimullah, the Superintendent of Police, who alone was competent to pass proper orders.

Two courses were open to consideration; the disciplinary action such as dismissal on one hand and retirement for reasons of health on the other. Mr. Charsley's opinion was adverse to the Sub-Inspector but the decision in the matter rested with Mr. Kalimullah, who was fully competent to drop the charges. The Sub-Inspector was invalid out of service and granted a pension. One Mr. Loveluck succeeded Mr. Kalimullah and he attached much importance to the adverse view of Mr. Charsley contained in his report about the Sub-Inspector.

The matter was referred to the Deputy Inspector General of Police who not only stopped the pension but also removed the Sub-Inspector from the service from the date on which the Sub-Inspector was invalided. The Sub-Inspector memorialised the Government of Madras against the decision but his memorial was rejected. The Sub-Inspector of Police brought a suit against the Government and it was in these circumstances that the above observations were made by their Lordships of the Privy Council.

The ratio decidendi seems to be that once a competent authority has taken a decision in a certain matter and that decision has been acted upon, then the authority succeeding it, should not reopen the matter so as to upset the former decision. In the instant case, according to the findings of both the Courts below, the enquiry against the plaintiff in respect of the complaint by Kishanlal had been

placed before the then Ruler of Gwalior State who administered a stern rebuke to the plaintiff and issued him a warning.

There the matter came to an end. Whatever the fault of the plaintiff may have been, it was condoned, for were it not so, he would not have been promoted on two subsequent occasions. This decision was taken by a competent authority and it was acted upon and it remained in force for four years. Then after four years, the succeeding authority in the words of the Privy Council cannot purport to enter upon a reconsideration of the matter so as to arrive at another and totally different decision.

11. There is therefore both reason and authority for the proposition that once a decision is arrived at honestly by a competent authority, its successor in office, after the decision has been acted upon and is in effective operation, cannot reconsider the matter so as to take a totally different decision. If the Government did not follow this wise dictum, then it will promote a feeling of insecurity among the service class. The hatchet once buried should not be un-earthed again and again.

12. For reasons stated above, the appeal is dismissed and the Judgment of the District Judge is confirmed. Parties to bear their own costs of this appeal.

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