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Union of India Vs. Gopal Dass

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Court : Delhi

Decided On : Jul-10-1973

Reported in : ILR1974Delhi19; 1974RLR488

Judge : P.N. Khanna and; M.R.A. Ansari, JJ.

Acts : Constitution of India - Article 311(2); Probation of Offenders Act, 1958 - Sections 4(1)

Appeal No. : First Appeal No. 78 of 1969

Appellant : Union of India

Respondent : Gopal Dass

Advocate for Pet/Ap. : B. Kirpal, Adv

Judgement :

P.N. Khanna, J.

(1) The only question involved in this appeal is about the effect of sections 4(1) and 12 of the Probation of Offenders Act, 1958 on the procedure for the dismissal of a Government servant convicted of a criminal offence, but put on probation under the said Probation of Offenders Act. In other words, does the removal of disqualification attaching to a conviction, has the effect of still requiring an inquiry as envisaged by clause (2) of Article 311 of the Constitution, to be held before

dismissal, removal or reduction in rank of the Government servant concerned

(2) The respondent who was a Government servant, was convicted under section 409 of the Indian Penal Code and sentenced to imprisonment till the rising of the Court and a fine of Rs. 40.00. The High Court, in appeal, affirmed the order of conviction, but set aside the sentence. He was ordered to be released on his executing a bond in the amount of Rs. 1000.00 with one surety in the like amount, to appear and receive sentence when called upon to do so during a period of one year and in the meantime to keep peace and be of good behavior. The respondent entered into the necessary bond furnishing the required surety. In the meantime, he had been dismissed from service on the basis of the order of conviction and without any further inquiry. After the appellate order of the High Court, the respondent applied to the Competent Authority for reinstatement on the ground that his sentence had been quashed and he had been ordered to be released on probation for, good conduct. The Superintendent of Post Office, New Delhi, rejected his application and refused to set aside the order of dismissal. The respondent's appeal to the Director General of Post & Telegraph was dismissed likewise. It was then that the respondent instituted the suit, out of which the present appeal has arisen; and which was contested by the Union of India on the ground that the dismissal from service was in accordance with law.

(3) 'THE trial court held that the provisions of Article 311(2) of the Constitution were not attracted as his dismissal from service was on the ground of conduct which led to his conviction on a criminal charge. The respondent was, thereforee, held not entitled to any opportunity of showing cause against his dismissal and not to any relief. His dismissal was said to have been brought about in accordance with law. The suit was dismissed without any order as to costs.

(4) In appeal, the learned Additional District Judge did not agree with the trial court and held that as he was not to suffer disqualification, if any, attaching to conviction, on account of section 12 of the Probation of Offenders Act, the respondent's case was not covered by proviso (a) to Article 311(2) of the Constitution and, thereforee, he was entitled to be given a reasonable opportunity of showing cause against his dismissal from service. He accepted the appeal, set

aside the Judgment and decree of the trial court and remanded the case for trial in accordance with law. The present appeal by the Union of India is against the said order of remand.

(5) Article 311(2) of .the Constitution (So far as it is relevant for the present purposes) reads as follows:

'(2)No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry: Provided that this clause shall not apply- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ; ** ** ** ** ** **'

Proviso (a) to clause (2) of Article 311 of the Constitution, thus, is applicable when a person is dismissed or removed or reduced in rank on the ground of his, conduct which has led to his conviction on a criminal charge. The emphasis is on the conduct of the person concerned and not on his conviction, which merely plays the role of proof of his conduct. Under section 12 of the Probation of Offenders Act, 1958, the person concerned is not to suffer disqualification, if any, attaching to a conviction of an offence when he has been dealt with under the provision of section 3 or section 4 of the said Act. The disqualification, if any, attaching to conviction, has thus been removed in the case of a person dealt with under the said Act; but the conviction itself is not set aside or obliterated. The conviction would be the result of the conduct of the person concerned; and the Probation of Offenders Act does not remove disqualification, if any, which may attach to such type of conduct. The applicability of clause (2) of Article 311 is avoided by proviso (a) in the case of a person whose dismissal, removal or reduction in rank has been brought about by his conduct and not by his conviction. The conviction on a criminal charge, as stated already, serves as a sufficient proof of his conduct and no more. Section 12 of the Probation of Offenders Act, thereforee, does not come

in conflict with the aforesaid provision of Article 311 of the Constitution. The conviction of the person concerned, on a criminal charge, may not amount to his disqualification, on account of the said provision of the Probation of Offenders Act; but is sufficient proof of undesirable conduct on his part, which may entail his dismissal, removal or reduction in rank, without any further enquiry, which would be required under clause (2) of Article 311 of the Constitution, if proviso (a) had not applied. This view finds support from a Full Bench judgment of this court in Director of Postal Services and another v. Daya Nand, 1972 Slr 325. We are, thereforee, unable to maintain the judgment of the Additional District Judge. The dismissal in this case has been brought about by the conduct of the respondent which led to his conviction. Proviso (a) to clause (2) of Article 311 of the Constitution, thereforee, is fully applicable and the said clause (2) would not apply to the respondent. No further inquiry was necessary in his case, when his dismissal was ordered.

(6) In view of the above, the appeal is accepted, the judgment of the Additional District judge is set aside, while that of the trial court is restored. The respondent's suit accordingly shall stand dismissed. There shall be no order as to costs.

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