

Dipti Singh Vs. Dr. Prem Narayan

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Court : Delhi

Decided On : Mar-11-1983

Reported in : 1983(5)DRJ89; 1983RLR453; 1983(2)SLJ245(Delhi)

Judge : A.B. Rohatgi, J.

Acts : [Constitution of India](#) - Articles 14 and 16; ;Central Civil Services (Temporary Service) Rules 1965 - Rule 5(1)

Appeal No. : C.W. No. 178 of 1983

Appellant : Dipti Singh

Respondent : Dr. Prem Narayan

Advocate for Def. : C.K. Mahajan and ; R.M. Sinha, Adv.

Advocate for Pet/Ap. : Ranjan Divedi, Adv

Disposition : Petition allowed

Judgement :

A.B. Rohatgi, J.

1. This petition raises a short question. The petitioner joined the post of a Technical Assistant in the Indian Agricultural Statistics Research Institute (I.C.A.R.) New Delhi on 12.9.197). There was an advertisement for the post. hE

applied. He was selected. An appointment letter dated 26.7.1979 was issued to him, though he actually joined on 12.9.1979. On 20.8.1982 his services were terminated on the ground that he is not a fit person to be retained in the service of the Institute as he believes in Anand Margi 'ideology'. The petitioner brought this writ petition on 25.1.1983 challenging the order of termination on a variety of grounds.

2. Mr. C.K. Mahajan on behalf of the Institute has shown me the note of the Assistant Administrative Officer dated 17.8.1982 suggesting to the Director that the services of the petitioner be terminated with immediate effect. It is not disputed that this order is the foundation of the impugned action.

3. From this note it appears that the only ground which seems to have weighed with the Assistant Administrative Officer was the report of the Deputy Commissioner of Police, Delhi. The Institute asked the Police to verify the character and antecedents of the petitioner. The Deputy Commissioner submitted a report. In the report it is said that the petitioner was an active member of Anand Margis and took part in their demonstrations on 27.3.1973. He was arrested at that time and was lodged in jail for about 7 days to serve the sentence. It is then said that he remained in detention under the Maintenance of Internal Security Act (MISA) during the period from 30.10.1976 to 21.3.1977.

4. From the Police report the Administrative Officer concluded that the petitioner was not a desirable person to continue in the service of the Institute because he was an adherent of Anand Margi 'ideology'. His services were accordingly terminated vide order dated 20.8.1982, passed by the Director of the Institute, Dr. Prem Narayan, respondent.

5. A division bench of this court issued rule on 10.2.1983. The Institute has filed a counter-affidavit. Mr. Mahajan has shown me the original note of the Assistant Administrative Officer. There is no other ground for terminating the services of the petitioner except the report of the Deputy Commissioner of Police on which the Administrative Officer based his decision. The question is : Is this a valid ground for terminating the services of the petitioner ?

6. The question is now concluded by a decision of the Supreme Court in State of Madhya Pradesh v. Ramashanker Raghuvanshi and Anr., S.L.P. (Civil) No. 4679 of 1980 decided on 21.2.1983. The Supreme Court has held that unless the Government servant engages himself in political activities during the tenure of his employment, his services cannot be terminated on the ground of his past political activities.

7. Two things were alleged against the petitioner. One that in 1973 he participated in some demonstration of Anand Margis. That was before he entered the Government service and, therefore, it must be ruled out of consideration. It must be mentioned here that the petitioner entered the service of the Government of India, Ministry of Planning in 1976. He served there till 11th September, 1979. After he was relieved from that post he joined the service of the Institute on 12.9.1979. It will, therefore, appear that the detention for seven days in 1973 is inconsequential. It is so remote in point of time.

8. The second thing alleged against the petitioner and which is made a ground for termination of services is that he was detained under MISA from 30.10.1976 to 21.3.1977. This was at a time when the petitioner was in the service of the Ministry of Planning. This detention was duly taken note of by that Ministry. The petitioner has filed papers on the record where it was brought to the notice of the Government of India that the petitioner had been detained under MISA for some time. It is not disputed before me that in spite of the petitioner's detention under MISA the Government of India Ministry of Planning, reinstated the petitioner on the expiry of the period of detention. It will, therefore, be not right to take into account the factum of detention under MISA against the petitioner, once the Government of India had reinstated the petitioner and did not make it a ground to terminate services. Nor did they take any action against him. On the other hand they reinstated him in service.

9. In my opinion the Institute cannot make detention of the petitioner under MISA a ground for termination of his services. More so because during 1976 and 1977 the employer of the petitioner was the Ministry of Planning where the whole thing was considered and after taking everything into account the petitioner was restored to

his post.

10. The respondent Institute is State within the meaning of Article 12 of the [Constitution of India](#). It is wholly financed by the Ministry of Agriculture. therefore, it will not be right to say for the Institute that they are entitled to terminate the services of the petitioner for something that happened in 1976 and 1977 and on a ground which did not weigh with the then employer, namely, the Ministry of Planning, Government of India. The Supreme Court in the case of State of Madhya Pradesh (supra) has held that the mere fact that some one belonged once to Jan Sangh or R.S.S. is not a good ground for terminating his services.

11. It is significant to note that the petitioner's services were not terminated on the ground that he was not a good worker. On the other hand, the Joint Director has given a commendation certificate saying that the petitioner is 'an excellent man with nice behavior and very good knowledge of computer operations as well as information relating to operating systems and file structures'. This shows that the petitioner is very good at his work and proficient in the job to which he was appointed. But this rating of the Joint Director was dismissed by the Director in his affidavit on the ground that he did not deal with the administration of the Institute and his opinion has no value.

12. The petitioner's services were terminated under Rule 5(1) of the Central Civil Services (Temporary Service) Rules 1965, by giving him one month's pay in lieu of notice. The Director has affirmed on affidavit that the petitioner's detention under MISA has 'no relevance' with the termination by the Institute. He lays that the philosophy of Anand Margi is also 'not relevant for the purposes of the case as his services were terminated under Rule 5(1) of the C.C.S. (Temporary Services) Rules 1965'. At the same time he holds the petitioner guilty of 'suppression of material facts and information', and that as an investigator in the Ministry of Planning, Government of India, he was 'indulging in subversive activities'.

13. It appears to me that the stand taken by the Director is not only contradictory but also arbitrary. It is contradictory because it was admitted before me that the petitioner's espousal of the Anand Margi ideology was the reason and cause for termination of services. The action is arbitrary because the reason or the motive

for termination was the petitioner's 'ideology' of Anand Marg. The ground is not that the petitioner is unsuitable for the job or that his work is unsatisfactory.

14. The action of the Director is plainly in contravention of Articles 14 and 16 of the Constitution because the petitioner is being discriminated against on the ground of his opinion, his way of thinking and his doctrines because he accepts and conforms to a particular 'ideology'. Because he is an advocate or adherent of a particular system, a body of ideas on which that system is based. He is a mere theorist, a person occupied with ideas. The manner or the content of his thinking is characteristic of an Anand Margi. This is all. But no man can be tried for his thoughts. No punitive action can be taken because an individual subscribes to a particular school of thought, religious or secular. The Assistant Administrative Officer's order says that because of Anand Margi's 'ideology' of the petitioner he should be thrown out of public employment immediately.

15. The Supreme Court in State of M.P. (supra) has ruled that this is against the fundamental rights guaranteed under the Constitution. Our Constitution guarantees 'free trade in ideas', to use Justice Holme's phrase. This, at any rate, is the theory of the Constitution. If beliefs issue in violence, 'when principles break out into overt acts against peace and good order', as Thoman Jefferson said, such activities have to be restrained. 'Governments need and have ample power to punish treasonable acts. But it does not follow that they must have a further power to punish thought and speech as distinguished from acts'. No one can be allowed to indulge in deleterious activities. Once he becomes a government servant, he is subject to various rules regulating his conduct and his activities must naturally be subject to all the rules made in conformity with the Constitution. But he cannot be punished for past political activities, the Supreme Court has said.

16. There is no proof that during the period of service in the Ministry of Planning or the Institute the petitioner indulged in 'subversive activities'. The Ministry of Planning was the best judge of his conduct. They allowed him to join the Institute. He came through proper channel to the Institute. They had nothing against the man. That such termination order violates Article 14 and 16 of the Constitution is now established by the Supreme Court decision in Government Branch Press v.

D. B. Belliappa : (1979)ILLJ156SC .

17. Fundamental rights like freedom of thought and speech and equality before law are guaranteed by the Constitution. Justice Jackson of the United States Supreme Court has said :

'Thought control is the copyright of totalitarianism, and we have no claim to it. It is not the function of the government to keep citizens from falling into error. It is the function of citizens to keep the government from falling into error.'

American Communications Association v. Charles T. Douds (1949) U.S. 382 ; 94 L Ed. 925).

Temporary Government servants are also entitled to call in aid Articles 14 and 16.

18. No one can kill ideas. Ideologies are occupied with ideas. Ideas may be orthodox or hetrodox. Some hate them. Some like them. Hates and loves ought not to matter. It is the action which matters and becomes the subject of control. As long as human societies are afflicted by crises and as long as man has need to be in direct contact with the sacred, ideologies will recur. As long as there is a discrepancy between the ideal and the actual, a strong impetus for ideologies will exist. Marxism is a notable example of this.

19. The Supreme Court has stayed the operation of the Memorandum dated 31.12.1980 preventing Government servants from participating in Anand Marg activities. The Court has stayed disciplinary proceedings based on the memorandum.

20. In State of M.P. (supra) the Court has given a reasoned order holding that past political activities cannot form the basis of punitive action. 'Every one is entitled to his thoughts and views', the Supreme Court has said. 'Deprivation of a man's means of livelihood by reason of past conduct, not subject to this penalty when committed is punishment, whether he is a professional man, a day labourer who works for private industry or a government employee'. But here the petitioner has lost his job on account of his 'ideology'. He was sacked for his manner of thinking and the contents of his thought. This is against Articles 14 and 16.

21. Following Douglas J of the American Supreme Court, the Supreme Court of India has said : 'Advocacy which is in no way brigaded with action should always be protected' by the Constitution. That protection should extend even to the ideas we despise. Even to the ideas that we hate, as Justice Holmes said *Gilton v. New York* 268 US 652).

Justice Chinnpa Reddy says :

'We think it offends the Fundamental rights guaranteed by Articles 14 and 16 of the Constitution to deny employment to an individual because of his past political affinities, unless such affinities are considered likely to affect the integrity and efficiency of the individual's service. To hold otherwise would be to introduce 'McCarthyism' into India. McCarthyism is obnoxious to the whole philosophy of our Constitution.'

Applying these principles I hold that the termination order of petitioner's services is illegal.

22. Mr. Mahajan says that the petition is directed against the Director and it is not against the Institute. The respondent has been described in the writ petition in this manner :

'Dr. Prem Narayan,

Director,

Indian Agriculture Statistics

Research Institute,

(I.C.A.R.) Library Avenue,

New Delhi-12.'

23. In substance the petition is against the Institute. The Director has been sued as the Director of the Institute. Or we may put it this way, it is the Institute which has been sued through the Director.

24. Indian Agricultural Statistics Research Institute is a society registered under the Societies Registration Act 1860. It can therefore be sued through the Director who passed the impugned order. Numerous authorities hold that the Society registered under the Societies Registration Act, 1860 is a legal entity not very different from that of a company incorporated under the provisions of the Companies Act 1956. It is an entity lasting for ever--ever green--entity not liable to death like a human being. (See notes to Sections 6 and 7 of the Act of 1860). It can sue and be sued in its own name. (See Satyavari Sidhantalankar and Ors. v. Arya Samaj. Bombay AIR 1946 Bom. 516, (21), N.B. Asram v. Commissioners of Nabadwip, : AIR1959 Cal361 , Sonar Bangla Bank v Calcutta Engineering College and Ors., : AIR1960 Cal409 . The Institute, I find, has been used in its own name. I reject this technical objection and hold that it has no substance.

25. For these reasons the writ petition is allowed. The order of termination is set aside. The petitioner is reinstated in service. There will, however, be no order as to costs.

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