

D. Parraju Vs. General Manager, B.N. Railway and ors.

D. Parraju Vs. General Manager, B.N. Railway and ors.

SooperKanoon Citation : sooperkanoon.com/874393

Court : Kolkata

Decided On : Aug-16-1951

Reported in : AIR1952Cal610,56CWN264

Judge : Das, J.

Acts : [Constitution of India](#) - Articles 32 and 226; ; Adaptation of Laws Order, 1950; ; Specific Relief Act, 1877 - Section 50

Appeal No. : Civil Rule No. 1085 of 1951

Appellant : D. Parraju

Respondent : General Manager, B.N. Railway and ors.

Advocate for Def. : Chandra Sekhar Sen and ; Dwijendra N. Mukherjee, Advs.

Advocate for Pet/Ap. : Nalin Chandra Banerjee and ; Prasun Chandra Ghose, Advs.

Judgement :

ORDER

Das, J.

1. This rule was issued on 18-5-1951, calling upon the opposite parties to show cause why the order complained of in the petition should not be revoked or

cancelled or why a writ in the nature of Mandamus or in the nature of Prohibition should not issue to the opposite parties prohibiting them or directing them to forbear from giving effect to the said orders complained of or why such other appropriate order or orders under Article 226 of the Constitution should not be made as to this court may seem fit and proper.

2. The orders complained of are dated 18-11-1950 and 13-11-1950. By the order dated 18-11-1950, the petitioner was informed by a communication received from the District Transportation Officer that the petitioner has been removed from his service. By the order dated the 13th of December 1950, passed by the District Transportation Officer the petitioner was informed that the matter of his removal has been finally heard and that the appeal preferred by the petitioner could not be forwarded.

3. The opposite parties to this rule are the General Manager, Bengal Nagpur Railway, the District Transportation Officer, Bengal Nagpur Railway, and the Deputy Transportation Manager, Bengal Nagpur Railway.

4. The facts alleged in the petition are that the petitioner was appointed as a Guard which is a non-gazetted post, on the 14th of October 1943. That on 1-10-1944, the Bengal Nagpur Railway Administration was taken over by the State. On 1-1-1949, the petitioner was confirmed in his appointment. On 31-1-1950, certain incidents took place at Cuttack, that on the report submitted by Mr. N. C. Zerath, Assistant Corruption Officer, of the Bengal Nagpur Railway, the petitioner was served on 29-8-1950, with a charge sheet requiring him to show cause why he should not be dismissed from service. The petitioner's allegation is that on the 3rd of September, 1950, the petitioner showed cause. That the petitioner was later suspended from service on the 11th of October 1950. On the 14th of October, 1950, the petitioner wrote a letter to the Assistant Transportation officer demanding an enquiry as provided for by the rules. On 12-11-1950, the petitioner sent a reminder to the Transportation Officer for a departmental enquiry. On 18-11-1950, as I have already stated, the petitioner received a communication from the District Transportation Officer that his services were dispensed with, that the communication contained a statement to the effect that the petitioner was entitled

to appeal to the Transportation Manager within one month, that on the 29th of November 1950, the petitioner preferred an appeal to the Transportation Manager, that on the 16-12-1950, the petitioner received a communication that his memorandum of appeal could not be forwarded, that on the 15-1-1951, the petitioner wrote a letter to the General Manager for reconsideration of the order passed on him. On 12-4-1951, the petitioner received a communication from the Transportation Manager that there was no ground for reconsideration of the order made removing him from service. The petitioner thereupon moved this court and obtained the rule, as stated above, on 18-5-1951.

5. Mr. Banerjee appearing on behalf of the petitioner has contended that the order of removal passed in this case was illegal under Article 311(1) of the Constitution inasmuch as the petitioner was removed from service by an officer subordinate to the officer who appointed him.

6. Mr. Banerjee has also contended that the petitioner had no reasonable opportunity of showing cause against his removal, that, at any rate, the petitioner was not afforded a further opportunity against the action proposed by the Railway Administration after the order was served on him. It was, accordingly, contended that the order of removal was void under Article 311(2) of the Constitution. Reference was made to the case of 'HIGH COMMISSIONERS FOR INDIA AND PAKISTAN v. I. M. LALL', 75 Ind App 225 (PC), in support of the proposition that before a Civil servant could be removed from office he must be given opportunity of showing cause against his removal.

7. In the third place, Mr. Banerjee has contended that the State Public Service Commissioner should have been consulted before any disciplinary action was taken against him as provided for by Article 320(3)(c) of the Constitution.

8. On behalf of the opposite parties Mr. Sen has contended that as the petitioner had an adequate remedy by way of a civil suit the present petition should not be maintained on an application under Article 226(1) of the Constitution.

9. Mr. Sen has further contended that in this case the appointing Authority was the District Transportation Officer as the initial pay of the petitioner was only Rs. 60/-.

Reference was made to certain rules appearing in the Establishment Manual.

10. Mr. Sen has further contended that Article 311 has no application in the facts of the present case because the present case comes within proviso (b) of Article 311, that by virtue of rule 1709 of the State Railway Establishment Manual the petitioner could be dismissed from service by resorting to an abbreviated procedure as contemplated by the rules.

11. Mr. Sen has also contended that as the representation made by the petitioner was considered by the proper authority, the fact that the appeal preferred by the petitioner was not forwarded does not affect the position.

12. I have first to consider the preliminary objection raised on behalf of the opposite parties.

13. The preliminary objection concerns the powers of the High Court to interfere under Article 226(1) of the Constitution. The Constitution came into force on January 26, 1950. The provisions of the Constitution relating to the issue of directions, orders or writs are set forth in Arts. 32, 139 and 226. Article 32(2) runs as follows:

'The Supreme Court shall have power to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this part.'

14. The part referred to is Part III of the Constitution which deals with fundamental rights.

Article 226(1) of the Constitution runs as follows:

'Notwithstanding anything contained in Article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories, directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, or any of

them, for the enforcement of any of the rights conferred by Part III and for any other purpose.'

15. Article 32(3) confers on Parliament authority to empower any Subordinate Court to exercise the powers contained in Article 32(2).

16. Article 139 empowers Parliament to confer upon the Supreme Court authority to issue directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, certiorari or any of them, for any purpose other than those mentioned in Cl. (2) of Article 32.

17. A comparison of Article 32 and Article 226 indicates that the ambit of the powers of the High Court is at present wider than the powers of the Supreme Court as regards the purposes for which the direction, order and writ can be issued but is more restricted as regards the territories wherein and the persons on whom the direction, order or writ can be issued. So far as the High Courts are concerned the powers are defined in Article 226(1) which I have already quoted.

18. Being a provision contained in a written Constitution the Article must receive a construction which is most beneficial to the widest possible amplitude of its powers see 'BRITISH COAL CORPORATION v. THE KING', 1935 A C 500 at page 518 (PC).

19. An analysis of the Article will also show the solicitude of the framers of the Constitution to safeguard the rights of the people.

20. Article 226 confers on the High Court the power to issue directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari. The word 'including' connotes an amplification of the ordinary meaning of the expression 'writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari' see 'DILWORTH v. COMMISSIONERS FOR LAND AND INCOME TAX', LR (1899) A C 99 at page 105. Thus the High Court in issuing directions, orders and writs can travel beyond the content of the writs which are normally issued as writs of habeas corpus, mandamus, prohibition, quo warranto, and certiorari.

21. The Article also states that the directions, orders and writs can be issued for the enforcement of fundamental rights as also for any other purpose; they can be issued to any person or authority including, in appropriate cases, the Government.

22. The expression 'any other purpose' has been construed in the case of 'JESHING BHAI v. EMPEROR', 52 Bom LR 544 and in the case of 'BAGARAM TULONLE v. THE STATE OF BIHAR,' : AIR1950 Pat387 (FB). In the latter case, Meredith C. J. observed as follows:

'Undoubtedly therefore Article 226 contemplates the issue of writs and directions for purposes other than the enforcement of the fundamental rights. At the same time the words can hardly mean that the High Courts can issue writs for any purpose it pleases. I think the correct interpretation is that the words mean for the enforcement of any legal right and the performance of legal duty. To that extent the words must be read ejus-dem generis which is ordinary principle of construction.'

23. The meaning of the expression 'for any other purpose' has not been considered by the Supreme court as yet. I prefer to reserve my opinion on this question as it is not necessary for the purpose of the present case.

24. I may however observe that the expression 'person' or 'any other purpose' must receive a meaning which has reference to the context in which they were used. A contrary view would render the use of the words 'in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari' redundant.

25. The powers conferred on the Supreme court and the High Court are extraordinary powers. The expressions used are no doubt very wide. The complexities of modern life, the extensive resort to controls, the large powers which are delegated by modern legislations to judicial, quasi-judicial tribunals and administrative bodies and executive have necessitated the vesting of somewhat undefined powers in the superior courts of the land, but such powers must be exercised ordinarily for the purposes for which the writs mentioned are issued and in special cases for the purpose of advancing the course of justice by enforcing rights and duties alien to those envisaged in those writs. It also appears that in

England the, circumstances under which these writs can be issued have received a more liberal interpretation in recent times. In the case of *R. V. NORTHUMBERLAND COMPENSATION APPEAL TRIBUNAL*', (1951) 1 All ER 268, which was a case of a writ of certiorari, the order which was then before the court was set aside on the ground that the order on the face of it was contrary to law. It cannot be disputed that this is an extension of the rule as it was understood in England (see *RACECOURSE BETTING CONTROL BOARD v. SECY. OF STATE FOR AIR*', (1944) 1 All ER 60).

26. In spite of the words of Article 226, one must remember that the object of Article 32 or Article 226 was not to supplant the ordinary right of action or the remedy provided for by the ordinary law of the land. If a suitor can get an adequate and convenient and beneficial remedy by the normal process of a suit or by the remedy provided for by a Statute the, High Court will not, in my opinion, ordinarily exercise its powers under Article 226.

27. The view taken by me is in consonance with the view which has been taken in various cases to which I shall presently refer. In the case of *'RASHID AHMED v. THE MUNICIPAL BOARD'*, : [1950]1SCR566 , it was observed as follows:

'There is no question that the existence of an adequate legal remedy is a thing to be taken , into consideration in the matter of granting writs but the power given to this court under Article 32 are much wider and are not confined to issuing prerogative writs only.'

28. In that case the remedy available to the petitioner was by way of an appeal under a bye-law promulgated by the local Government. It was observed by the Supreme court that an appeal to the local Government which had promulgated the bye-law would not under those circumstances be considered as an adequate remedy.

29. So far as this court is concerned, the earliest decision is that of *'SHAMAPADA GANGULY v. ABANI MOHAN MUKHERJI'*, 55 Cal WN 326. The judgment in -this case was delivered on the 21-1-1951. Bose J. refused to interfere under Article 226 of the Constitution on the ground that the remedy by a suit for declaration that

the defendant was no longer the Chairman of the Bally Municipality and for an injunction was an adequate remedy and as such the court would not interfere by issuing a writ of mandamus or quo warranto which was prayed for in that case.

30. The next decision is that of 'SOORAJ-MULL NAGARMULL v. ASSISTANT CONTROLLER OF CUSTOMS', 55 Cal WN 528. The judgment was pronounced by Bose J. on the 16th of February 1951. That was a case where a writ of certiorari was prayed for. In that case, Bose J. was of the opinion that there was a violation of the rules of natural justice as the petitioner had no hearing before the appropriate tribunal. Bose J. observed that under those circumstances even though an appeal under the Sea Customs Act and a suit under the general law might have been available, yet this court could interfere under Article 226 of the Constitution.

31. In the case of 'SURESH CHANDRA DAS v. HIMANGSHU KUMAR', 55 Cal WN 605, decided on the 22nd of May, 1951, Bose J. vacated the order of dismissal of the petitioner on the ground that the petitioner was dismissed by an officer subordinate to the appointing authority. The contention raised on behalf of the opposite party that this court could not interfere under Article 226 and that the petitioner had another remedy by way of a suit was repelled by Bose J. No reasons appear to have been given. It must be observed that in this case the question turned on certain facts which admitted of no doubt, and that on these facts this court had merely to consider a question of law.

32. The decision of S. R. Das Gupta J. in 'ELBRIDGE WATSON v. R.K. DAS', 87 Cal LJ 109, has been reversed on appeal.

33. These are the only cases of this Court which I have been able to discover which have a bearing on this point. I shall now deal with certain cases decided by other High Courts in this country. In the case of 'BAGARAM v. STATE OF BIHAR', : AIR1950 Pat387 (F B), which was decided on the 5th of April, 1950 it was observed that it could not have been intended that resort could be had to the extraordinary procedure where an adequate remedy is available by legal process, for example, by suit. Otherwise, the ordinary legal procedure including the payment of court-fees would be abrogated. It was further observed that an

application under Article 226 was and must remain an extraordinary remedy to be used where ordinary legal process cannot give adequate and prompt relief.

34. In the case of 'INDIAN SUGAR MILLS ASSOCIATION v. SECRETARY, GOVERNMENT OF UTTAR PRADESH', : AIR1951 All1 (FB), it was observed that Article 226 of the Constitution was not intended to provide an t alternative method of redress to the normal process of a decision in an action brought in ', the usual courts established by law, that the powers under this article should be sparingly used and only in those clear cases where the rights of a person have been seriously infringed and he has no other adequate and specific remedy available to him.

35. Again, in the case of 'MUTHIA CHETTIAR v. COMMISSIONER OF INCOME TAX', : [1951]19ITR402(Mad) , decided on the 7th of November, 1950 Rajamannar C. J. observed as follows:

'If the assessee seeks to obtain from the High Court any relief which he would have been entitled to obtain under any of the provisions of the Income Tax Act, then certainly the High Court would not exercise its power to issue prerogative writs to give such relief to an assessee.'

36. In the case of 'BHAGWAN PROSAD v. DEPUTY COMMISSIONER, REWA', AIR 1951 Vindhya Pra 41, it was held that although Article 226 of the Constitution was widely worded, the remedy was an extraordinary remedy conferred by the Constitution and should be availed of either when there is no alternative remedy or where the alternative remedy is inexpedient or round about.

37. It is not disputed that before the Constitution the Courts would not grant a mandamus if there was an alternative remedy which was equally effective, beneficial and convenient and that the specific legal remedy in Section 45(d) of the Specific Relief Act need not be a special remedy provided by an Act of legislature but may be an ordinary suit provided the applicant can get the precise relief he wants by an application under Section 45 of the Specific Relief Act (see 'NANI LAL ROY v. SATYENDRA NATH ROY', 55 Cal WN 636). It was however contended that the Adaptation Laws Order, 1950, repealed old Section 50 of the Specific

Relief Act and substituted therefor a new section 50 which runs as follows:

'Nothing in this Chapter shall affect the power conferred on a High Court by cl. (1) of Article 226 of the Constitution.'

38. It is contended that the effect of this Adaptation Order is to abrogate the rules which prevailed prior to the Constitution and which denied a suitor the issue of the writs of Mandamus where an adequate legal remedy was available.

39. In my opinion, the Adaptation Order to which reference has been made cannot be construed in that way. The only effect of that Order is to save the powers which are conferred on the High Court by Article 226 of the Constitution. What those powers are must depend on the terms of that Article. I have already dealt with the effect of Article 226 of the Constitution and I have stated my views in this matter.

40. I have now to consider how far the preliminary objection can prevail in the facts of this case. As was pointed out by the Judicial Committee in the case of 'HIGH COMMISSIONERS FOR INDIA AND PAKISTHAN v. I.M. LAL', 75 Ind App 225 (PC), the declaration made by the Federal court in that case (vide 'SECY. OF STATE v. I.M. LALL', 1945 FCR 103 at page 124), to the effect that the respondent I. M. Lal was wrongly dismissed was not a proper declaration. The Privy Council substituted therefor a declaration to the following effect, namely, the order dismissing the respondent was void and that the respondent remained a member of the service. The effect of this declaration was to hold that the respondent continued to be a member of the service and in substance to reinstate him. If the petitioner in the present case brings a suit he will get a declaration in the terms in which it was made in the case referred to above. It would give the petitioner a complete and adequate remedy.

41. It also appears to me that in the facts of this case a remedy by way of a suit is more convenient and effective. As I have stated the parties are in dispute on several questions, namely, the authority by which the petitioner was appointed, the nature of the inquiry if any made in the present case, the denial of a right of appeal, the alleged imperfect nature of the enquiry and the alleged arbitrary conduct of certain officers of the Railway Administration. It is difficult in my opinion,

to arrive at a satisfactory conclusion on these matters on mere affidavits. In order to get at truth it is necessary that the questions referred to above should be canvassed in a suit where the parties would have ample opportunity of examining their witnesses and the court would be better able to judge which version is correct. In these circumstances, in the facts of the present case, I am of opinion that the remedy by way of an application under Article 226 of the Constitution is not a proper substitute for a remedy by way of a suit. I accordingly hold that this Court should not exercise its powers under Article 226 of the Constitution in the facts of the present case.

42. I desire to make it clear that this judgment will not in any way prejudice the petitioner's right to bring proper actions for the appropriate relief if he is otherwise entitled to the same under the law.

43. The rule is accordingly discharged but having regard to the facts and circumstances of this case I direct that the parties do bear their own costs of this Rule.