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R.Rajamanickam. Vs. the Assistant Director of Rural Development, and ors.

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Court : Chennai

Decided On : Aug-27-2010

Judge : D.Hariparanthaman, J.

Acts : Constitution Of India - Article 226

Appeal No. : W.P.NO.26189 OF 2009 AND M.P.NOS.1 TO 3 OF 2009

Appellant : R.Rajamanickam.

Respondent : The Assistant Director of Rural Development, and ors.

Advocate for Def. : Mrs.Lita Srinivasan; Mr.A.Arumugam, Advs.

Advocate for Pet/Ap. : Mr.M.Ilango, Adv.

Judgement :

1.Heard the submissions made on either side and perused the materials available on record.

2.The petitioner was appointed as a Water Tank Motor Operator in the third respondent Panchayat, vide resolution dated 25.05.1999, on a consolidated salary of Rs.600/- per month. He has been paid Rs.600/- as monthly salary for the past 10 years.

3.While so, the third respondent passed the impugned order dated 18.09.2009 terminating the petitioner from service, based on the proceedings dated

30.09.2008 of the fourth respondent, the proceedings dated 25.10.2008 of the Assistant Director of Rural Development, Salem and the proceedings dated 19.12.2008 of the Block Development Officer.

4.Admittedly, the aforesaid proceedings are not furnished to the petitioner. It is not known on what basis the petitioner was terminated from service. It is well settled that before passing any order resulting in serious civil consequences, the concerned person should be heard before passing such order, as held by the Honourable Apex Court in BHAGVAN SHUKLA VS. UNION OF INDIA reported in 1994 (6) SCC 154.

5.The petitioner has rendered ten years of service in the third respondent Panchayat. The service of the petitioner was terminated in flagrant violations of principles of natural justice. In this regard, paras 7, 8 and 9 of the judgment of the Honourable Apex Court in UMA NATH PANDEY AND OTHERS VS. STATE OF U.P AND ANOTHER reported in 2009 (2) CTC 185 are extracted hereunder:

"7.The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

8.The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is

but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works, 1863 (143) ER 414, the principle was thus stated: "Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" say God, "where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat".

9.Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond."

6.Furthermore, the learned counsel for the petitioner submits that the third respondent employs other Water Tank Motor Operators and three of them have approached this Court and obtained an interim order on 26.02.2010 in M.P.Nos.1 and 2 of 2009 in W.P.Nos.21991, 25987 and 25988 of 2009 in their favour. He further submits that those persons are continued in service till date.

7.In this regard, paras 2 and 3 of the order dated 26.02.2010 passed in M.P.Nos.1 and 2 of 2009 in W.P.Nos.21991, 25987 and 25988 of 2009 are extracted hereunder: "2.Now, more than ten years have been lapsed. But, according to the learned counsel for the respondent department, already, the petitioners had filed W.P.No.7839 of 2009 and by order dated 16.09.2009, the writ petition has been dismissed. 3.But, a perusal of the order copy furnished by the learned counsel for the petitioners reveals that the writ petition was filed prior to getting the impugned order of termination. Consequently, on the ground that on the date of filing of the said writ petition, no order was served to them, that writ petition was dismissed. Now, the present writ petitions are filed challenging the termination order. Consequently, this stand taken by the learned counsel for the respondents will not hold good. However, even as per G.O.Ms.No.22, Personnel and Administrative

Reforms Department dated 28.02.2006 on the completion of ten years of service, one is eligible for regularisation. Under such circumstances, I am of the opinion that the petitioners are entitled for the interim order. Hence, there shall be an order of interim stay."

8.At this juncture, the learned counsel for the petitioner has brought to the notice of this Court G.O.Ms.No.22, Personnel and Administrative Reforms Department, dated 28.02.2006, wherein the Government has taken a policy decision to regularise irregular appointments of persons, who served for 10 years and thousands of workmen were regularised based on the said Government Order. The principles laid down in the Government Order is also applicable, even if the Government Order as such could not be applied in the case of the third respondent Panchayat, since the learned counsel for the third respondent disputes that the said Government Order is not applicable to Panchayats. Further, there is an another defect in the impugned order, as the impugned order was passed with retrospective effect. This is not permissible.

9.In view of the aforesaid facts, the judgment of the Honourable Apex Court in MOHD. ASHIF AND OTHERS VS. STATE OF BIHAR AND OTHERS reported in 2010 (5) SCC 475 relied on by the learned counsel for the third respondent is not applicable to the facts of this case.

10.The learned counsel for the petitioner submits that the petitioner will be satisfied, if he reinstated in service and he does not press for backwages.

11.In these circumstances, the impugned order dated 18.09.2009 of the third respondent is quashed and the third respondent is directed to reinstate the petitioner in service, within two weeks from today. 12.The writ petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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