BABU LAL

v.

STATE OF HARYANA AND ORS.

JANUARY 16, 1991

[B.C. RAY AND J.S. VERMA, JJ.]

Food Supplies Department—Sub-Inspector—Appointed on ad-hoc temporary basis—Service terminated because of pendency of criminal proceedings—Later acquitted—Order terminating services held illegal—Entitled to regularisation of service.

The appellant was appointed as Sub-Inspector, Food & Supplies by respondent No. 2 on 13.4.1975 on *ad-hoc* basis against service-man quota; the post being purely temporary liable to be terminated without notice and without assigning any reasons or on arrival of a regular candidate. The appellant continued in service on that post till November 17, 1980, when his services were terminated. Prior to the termination of his service he was placed under suspension on April 15, 1980 in view of the criminal proceedings under Section 420, IPC pending against him and before the culmination of criminal proceedings, his services were terminated by order dated November 17, 1980, as aforesaid. Criminal case against the appellant was decided on October 21, 1981 wherein he was acquitted of the charge. The appellant on receiving the order of termination of his services filed Civil Suit 453 of 1981 in the court of Senior Sub-Judge, Narnaul praying for a declaration that the orders of suspension as also termination were illegal, wrong, arbitrary and without jurisdiction and that the appellant was entitled to reinstatement and regularisation of his service under the Government notification dated 1.1.1980 issued by the Chief Secretary to the Government of Haryana authorising regularisation of such *ad-hoc* employees who held the Class III posts for a minimum period of two years. According to the appellant his case was covered by the said notification and as such he was entitled to all the benefits of service. The Senior Sub Judge held that as the appellant was acquitted of the offence, the authorities should have revoked the suspension order and have paid the pay for the period for which the appellant remained under suspension and thus allowed to the appellant all the benefits. An appeal was taken by the respondents to the Addl. District Judge who affirmed the order of the trial court holding that no enquiry was conducted before termination of the service of the appellant. Against the order of the Addl. District Judge, the respondents preferred an appeal

A before the High Court and the High Court allowed the appeal holding that the appellant was not entitled to be regularised automatically unless he fulfilled all the conditions given in the notification. It was also held that the case of the appellant was considered for regularisation by the Department but the same was not found suitable; the services of the appellant were terminated in accordance with the terms of his appoint-
B ment. The appellant has filed this appeal against that order in this court after obtaining special leave.

Allowing the appeal, this Court,

HELD: The order of suspension made by the respondent No. 2 is
C admittedly on the sole ground that criminal proceeding was pending against the appellant. The order of termination had been made illegally during the pendency of the order of suspension and also during the pendency of the criminal proceeding which ultimately ended with the acquittal of the appellant. The settled position in law is that the appellant who was suspended on the ground of pendency of criminal proceed-
D ing against him, on being acquitted of the criminal charge is entitled to be reinstated in service. His acquittal from the criminal charge does not debar the disciplinary authorities to initiate disciplinary proceedings and after giving an opportunity of hearing to the appellant pass an order of termination on the basis of the terms and conditions of the order of his appointment. [78C-E]

E

As the appellant whose name was sent through Employment Exchange and who was appointed and has completed two years service on 31.12.1979, he is entitled to be considered for regularisation in the post of Sub-Inspector, Food and Supplies. [78E]

F *Smt. Rajinder Kaur* v. *State of Punjab and Anr.*, [1986] 4 S.C.C. 141; *Anoop Jaiswal* v. *Government of India,* [1984] 2 S.C.R. 453; *Hardeep Singh* v. *State of Haryana and Ors.*, [1987] 4 S.L.R. 576, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No.
G 1309 of 1986.

From the Judgment and Order dated 8.8.1985 of the Punjab and Haryana High Court in Regular Second Appeal No. 307 of 1985.

A.B. Rohtagi, Ranbir Singh Yadav and H.M. Singh for the
H Appellant.

A.G. Prasad and Mahabir Singh for the Respondents. A

The Judgment of the Court was delivered by

RAY, J. This appeal on special leave is against the judgment and order passed by the High Court of Punjab & Haryana in Regular Second Appeal No. 307 of 1985 whereby the High Court upheld the B order of termination of services of the appellant made on November 17, 1980 passed by the respondent No. 2, the Director of Food and Supplies and Deputy Secretary to Government of Haryana, Chandigarh.

The salient facts that gave rise to the instant appeal are as follows: C

The appellant was appointed as Sub-Inspector, Food and Supplies in the Department of Food and Supplies by the Respondent No. 2 by order dated April 13, 1975 on *ad hoc* basis against the ex-servicemen quota. As per the service rules the terms and conditions of the said appointment are as hereunder: D

> "(i) The post is purely temporary. Your appointment is purely on *ad hoc* basis and shall not exceed six months. Your services are liable to be terminated at any time during this period without any notice and without assigning any reason. Your services are also liable to be terminated at E any time without notice on arrival of regular candidates from the Haryana Subordinate Services Selection Board."

The appellant had been continuing in the said post of Sub-Inspector without any break till November 17, 1980 i.e. the date of termination of his services. The appellant, however, was served with F an order of suspension made by the Respondent No. 2 on April 15, 1980 in view of the criminal proceedings pending against the appellant u/s 420 of the Indian Penal Code during the pendency of which the order of termination was made on November 17, 1980. The said criminal proceeding being Criminal Case No. 1413 of 1981 was decided on October 21, 1981 wherein he has been acquitted of the said charge. G The Additional Chief Judicial Magistrate, Narnual had found that:-

> "..... Babu Ram accused was not present at the spot and he had no role to play in the distribution of the cement. The Appellant could not point out even a single factor from the file by which the participation of this accused can be said to H

A have been proved by the prosecution. As such, accused, Babu Ram cannot be held guilty of the offence charged and he is acquitted of the same."

The plaintiff-appellant immediately on receiving the order of termination after giving the requisite notice brought an action being B Civil Suit No. 453 of 1981 in the court of Senior Sub Judge, Narnual praying for a declaration to the effect that the order of suspension dated 15.4.1980 and the order of termination dated 17.11.1980 passed by the respondent No. 2 were illegal, wrong, arbitrary and without jurisdiction and the appellant is entitled to reinstatement with effect from the date of his suspension and so further entitled to be regularised and to all the benefits of the service. It had been stated in the C pleadings of the appellant that a notification dated 1st January, 1980 issued by the Chief Secretary to the Government of Haryana addressed to all the Head of the Departments vide memo No. G.S.R./Const./ Art. 309/80 stating that such *ad hoc* employees who hold the class III posts for a minimum period of two years on 31.12.1979 are to be D regularised if they fulfil the following conditions:

(a) Only such *ad hoc* employees as have completed a minimum of two years service on 31.12.1979 should be made regular. However, break in service rendered on *ad hoc* basis upto a period of one month may be condoned but break accruing because the E concerned employee had left service of his own volition or where the *ad hoc* appointment was against a post/vacancy for which no regular recruitment was required/intended to be made, i.e. leave arrangements or filling up of other short-time vacancies, may not be condoned.

F (b) Only such *ad hoc* employees as have been recruited through the Employment Exchange should be made regular.

(c) The work and conduct of the *ad hoc* employees proposed to be regularised should be of an overall good category.

G The plaintiff-appellant pleaded that he having put in the minimum period of two years of service on 31.12.1979 became entitled to have his service regularised in view of the said Notification. He further pleaded that the alleged order of termination was in fact an order of dismissal and so it amounts to punishment and the same being penal in nature is null and void because it contravened the provisions of Con- H stitution of India. The Senior Sub Judge, Narnaul after hearing the

parties held that as the petitioner-appellant was acquitted of the said offence, the authorities should have revoked the suspension order and have paid the pay for the period for which the appellant remained under suspension. The Court further held that the appellant will be entitled to all the benefits of his service. A

Against this judgment and decree, an appeal was filed being C.A. No. 129 of 1983 in the Court of Addl. District Judge, Narnaul by the State. The Addl. District Judge by his judgment dated 18.10.1984 affirmed the judgment and decree of the learned Sub-Judge holding that no enquiry was conducted before termination of the service of the appellant. The Addl. District Judge also held that: B

> ".....the plaintiff had completed two years of service and according to executive instructions his services were bound to be regularised. Reasonable opportunity to defend was not given to the plaintiff before termination of his services. Order of termination of services was merely a camouflage for an order of dismissal for misconduct. He was still under suspension when he was terminated. All these facts lead only to one conclusion that the impugned order of termination of the services of the plaintiff is bad in law ....." C D

Against this judgment and order R.S.A. No. 307 of 1985 was filed by the said respondents in the High Court of Punjab and Haryana at Chandigarh. The High Court allowed the appeal on setting aside the judgment and decree of the courts below holding that the appellant was not entitled to be regularised automatically unless he fulfilled all the conditions given in the Notification. It was further held that when the case of the appellant came up for regularisation the Department found that the appellant's work and conduct was not of the required standard so as to justify his regularisation and consequently his services were not regularised. It was further held that since the appellant was *ad hoc* employee therefore, the Department instead of waiting for the result of the criminal proceedings thought it fit under the circumstances to dispense with the services of the appellant in accordance with the terms of his appointment. E F G

This judgment is under challenge in this appeal. The pivotal question that poses itself for consideration before this Court is firstly whether during the period of suspension in view of the criminal proceeding which ultimately ended with the acquittal, an order of termi- H

A nation can be made against the appellant by the respondent No. 2 terminating his *ad hoc* services without reinstating him as he was acquitted from the charge u/s 420 I.P.C. and secondly whether the impugned order of termination from his service can be made straight away without reinstating him in the service after he earned acquittal in the criminal case and thereafter without initiating any proceeding for B termination of his service as the impugned order of termination was of penal nature having civil consequences. It has also to be considered in this connection that the respondent No. 2 has also not considered the case of the appellant for regularisation of his services even though he had completed two years of service as on 31.12.1979 fulfilling all the requisite terms and conditions mentioned in the said Notification. The order of suspension made by the respondent No. 2 is admittedly on the C sole ground that criminal proceeding was pending against the appellant. The order of termination had been made illegally during the pendency of the order of suspension and also during the pendency of the criminal proceeding which ultimately ended with the acquittal of the appellant. It is the settled position in law that the appellant who D was suspended on the ground of pendency of criminal proceeding against him, on being acquitted of the criminal charge is entitled to be reinstated in service. His acquittal from the criminal charge does not debar the disciplinary authorities to initiate disciplinary proceedings and after giving an opportunity of hearing to the appellant pass an order of termination on the basis of the terms and conditions of the E order of his appointment. Furthermore as the appellant whose name was sent through Employment Exchange and who was appointed and has completed two years service on 31.12.1979 is entitled to be considered for regularisation in the post Sub-Inspector, Food and Supplies. The High Court had observed that:

> F "... In these circumstances, when his case came up for regularisation, the Department found that the plaintiff's work and conduct was not of the required standard so as to justify his regularisation and consequently his services were not regularised."

This finding of the High Court is totally baseless in as much as the G counsel for the said respondent could not produce any order or documentary evidence to show that the respondents considered the case of the appellant for the purpose of regularisation in accordance with the Notification dated 1st January, 1980. As such the finding of the High Court is wholly bad and illegal. The other finding of the High Court that the acquittal of the appellant by the criminal court was of H no consequence as his services were terminated before the order of acquittal was made because the appellant was no more in service is also

against the well settled legal position. It has also to be borne in mind that under the Notification dated 1st January, 1980 issued by the Government, the appellant having fulfilled the condition of two years of service is entitled to be considered by the Government for regularisation of his service in accordance with the said executive instructions issued by the Government. As we have said hereinbefore that there is nothing on record to show that the Government has ever considered the case of the appellant for regularisation of his service in the light of the instructions contained in the said Notification dated 1st January, 1980, the impugned order of termination of service made by the Government is illegal and arbitrary and so it is liable to be quashed and set aside.

Moreover, from the sequences of facts of this case the inference is irresistible that the impugned order of termination of the service of the appellant is of penal nature having civil consequence. It is well settled by several decisions of this Court that though the order is innocuous on the face of it still then the Court if necessary, for the ends of fair play and justice can lift the veil and find out the real nature of the order and if it is found that the impugned order is penal in nature even though it is couched with the order of termination in accordance with the terms and conditions of the order of appointment, the order will be set aside. Reference may be made in this connection to the decision of this Court in *Smt. Rajinder Kaur* v. *State of Punjab and Another*, [1989] 4 SCC 181 in which one of us is a party. It has been held that:

> "The impugned order of discharge though stated to be made in accordance with the provisions of Rule 12.21 of the Punjab Police Rules, 1934, was really made on the basis of the misconduct as found on enquiry into the allegation behind her back. Though couched in innocuous terms, the order was merely a camouflage for an order of dismissal from service on the ground of misconduct. This order had been made without serving the appellant any charge-sheet, without asking for any explanation from her and without giving any opportunity to show cause against the purported order of dismissal from service and without giving any opportunity to cross-examine the witnesses examined. The order was thus, made in total contravention of the provisions of Article 311(2) and was therefore, liable to be quashed and set aside."

This case relied on the observations made by this Court in the case of *Anoop Jaiswal* v. *Government of India*, [1984] 2 S.C.R. 453

wherein it has been observed that:

> ".... Where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee."

Similar observation has been made by this Court in the case of *Hardeep Singh* v. *State of Haryana and Ors.*, [1987] 4 S.L.R. 576. It has been held in this case as under:

> "In the instant case, it is clear and evident from the averments made in paragraph 3, sub-para (i) to (iii) and paragraph (v) of the counter-affidavit that the impugned order of removal/dismissal from service was in substance and in effect an order made by way of punishment after considering the service conduct of petitioner. There is no doubt the impugned order casts a stigma on the service career of the petitioner and the order being made by way of punishment, the petitioner is entitled to the protection afforded by the provisions of Article 311(2) of the Constitution as well as by the provisions of Rule 16.24 (IX)(b) of the Punjab Police Rules, 1984 ....."

In the premises aforesaid, we are constrained to hold that the judgment rendered by the High Court is wholly illegal and unwarranted and as such we quash and set aside the same and affirm the judgment of the courts below. We direct that the appellant be reinstated in the service immediately and be paid all his emoluments i.e. pay and allowances from the date of the order of his suspension i.e. 15.4.1980 till the date of reinstatement into service minus the suspension allowance that had been received by the appellant during the period of his suspension (if any). The respondents are at liberty to consider the case of the appellant for regularisation in the light of the norms laid down in the executive instructions issued on 1st January, 1980 by Notification No. G.S.R./Const./Art. 309/80. The appeal is allowed. There will be no order as to costs in the facts the circumstances of the case.

Y. Lal Appeal allowed.