

R. JEEVARATNAM

A

v.

THE STATE OF MADRAS

October 13, 1965

[K. SUBBA RAO, J. R. MUDHOLKAR AND R. S. BACHAWAT, JJ.]

B

Disciplinary Proceedings—Inquiry—Same counsel representing appellant as some others—No conflict of interest—Whether reasonable opportunity to defend given.

Dismissal Order—With retrospective effect—Effect of.

C

Disciplinary proceedings were started against the appellant, a Deputy Tahsildar, and three of his subordinates on charge of accepting illegal gratification. On May 20, 1949, he was placed under suspension and relieved of his duties. The Disciplinary Proceedings Tribunal directed the consolidation and common hearing of the enquiries against the appellant and the other three civil servants. Although the Tribunal refused an earlier application of the appellant for permission to engage counsel, at the hearing of the enquiry on being told that he could engage the same counsel who appeared for the other three civil servants, the appellant engaged that counsel and was represented by him throughout the enquiry. The Tribunal declined to grant a prayer of the appellant on June 13, 1949, to grant an adjournment of the hearing and the enquiry was held on June 13, 14 and 15. Upon the Tribunal recommending the appellant's dismissal and after he had been served with a show cause notice and had replied thereto, on October 17, 1950, the Government directed that he be dismissed from service with effect from May 20, 1949.

D

The appellant then instituted a suit and sought a declaration that the order dated October 17, 1950 was illegal and void. The trial court dismissed the suit and this decision was affirmed on appeal by the High Court.

E

It was contended on behalf of the appellant that in view of the refusal of the appellant's prayer to engage counsel of his own choice and of his prayer for adjournment on June 13, he had been denied a reasonable opportunity to defend himself against the charges; and furthermore, that the order of dismissal dated October 17, 1950 having been passed with retrospective effect from the date of suspension was illegal and inoperative.

F

HELD: (i) The appellant had been given a reasonable opportunity to defend himself against the charges. [206 D]

G

There was no conflict of interests between the appellant and the other three civil servants; there was nothing to show that the counsel representing the other three was unable to conduct the appellant's defence properly. [206 C]

(ii) The order of dismissal as from October 17, 1950, was valid and effective. [207 A]

H

An order of dismissal with retrospective effect is, in substance, an order of dismissal as from the date of the order with the superadded direction that the order should operate as from an anterior date. The

A two parts of the order are clearly severable. Assuming that the second part of the order is invalid, there is no reason why the first part of the order should not be given the fullest effect. [207 G-H; 208 A]

Hemanta Kumar v. S. N. Mukherjee, (1953) 58 C.W.N. 1—referred to. *Abdul Hamid v. The District School Board, 24-Parganas* (1957) 61 C.W.N. 880; *Sudhir Ranjan Haldar v. State of W. Bengal* A.I.R. 1961 Cal. 626, 630 : disapproved.

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 232 of 1964.

Appeal from the Judgment and order dated the 23rd October, 1960 of the Madras High Court in Appeal No. 237 of 1958.

C *R. Thiagarajan* and *R. Ganapathy Iyer*, for the appellant.

A. Ranganadham Chetty and *A. V. Rangam*, for the respondent.

The Judgment of the Court was delivered by

D **Bachawat J.** The appellant held the post of Deputy Tahsildar in the Revenue Department of the Government of Madras. Disciplinary proceedings were started against him on twelve charges of acceptance of illegal gratification during his office as Special Loans Deputy Tahsildar, Cuddalore, South Arcot District. Disciplinary proceedings were started against three of his subordinates also on similar charges. On May, 20, 1949, he was placed under suspension and relieved of his duties. The Disciplinary Proceedings Tribunal directed the consolidation and common hearing of the enquiries against the appellant and the other three civil servants. The appellant asked for permission to engage a counsel at the enquiry. By an order dated May 31, 1949, the Tribunal refused to give the permission. The enquiry was held on June 13, 14 and 15. At the hearing, the other three civil servants were represented by counsel, Sri. Kalyanasundaram. On June 13, the appellant prayed for an adjournment. The Tribunal declined to grant the adjournment and told the appellant that he was at liberty to engage Sri. Kalyanasundaram as his counsel. The appellant thereupon availed himself of the services of Sri. Kalyanasundaram, and was represented by him throughout the enquiry. On June 30, the Tribunal submitted a report stating that the charges against the appellant were proved and recommending his dismissal. On September 16, the Government issued a notice to him asking him to show cause why he should not be dismissed from service. On November 12, 1949, he submitted his written representation. On October 17, 1950, the Government directed

that he be dismissed from service with effect from May 20, 1949. The appellant instituted the suit asking for a declaration that the order dated October 17, 1950 dismissing him from service is illegal and void. The trial Court dismissed the suit, and this decree was affirmed on appeal by the High Court of Madras. The appellant now appeals to this Court by special leave.

Counsel for the appellant submitted that in view of the refusal of the appellant's prayer for engaging a counsel of his own choice and his prayer for adjournment of the hearing on June 13, 1949, the appellant had been denied a reasonable opportunity to defend himself against the charges. We are not inclined to accept this submission. There was no conflict of interests between him and the other three civil servants. Counsel representing the other three civil servants was allowed by the Tribunal also to represent him. The enquiry continued for three days. It is not proved that counsel was unable to conduct the defence properly. Even in his written representation dated November 12, 1949, the appellant did not allege that he was prejudiced in his defence. We are satisfied that the appellant had reasonable opportunity to defend himself against the charges.

Counsel for the appellant next contended that the order of dismissal dated October 17, 1950 having been passed with retrospective effect is illegal and inoperative. Counsel for the respondent submitted (1) the order of dismissal with retrospective effect as from the date of the suspension is valid in its entirety, and (2) in any event, the order is valid and effective as from October 17, 1950. The High Court accepted the first contention, and declined to express any opinion on the second contention. In our opinion, the second contention of the respondent is sound, and in this view of the matter, we decline to express any opinion on the first contention. Counsel for the appellant conceded that if the respondent's second contention is accepted, the appeal must fail.

The order dated October 17, 1950 directed that the appellant be dismissed from service with effect from the date of his suspension, that is to say, from May 20, 1949. In substance, this order directed that (1) the appellant be dismissed, and (2) the dismissal do operate retrospectively as from May 20, 1949. The two parts of this composite order are separable. The first part of the order operates as a dismissal of the appellant as from October 17, 1950. The invalidity of the second part of the order, assuming this part to be invalid, does not affect the first part of the order. The order

- A of dismissal as from October 17, 1950 is valid and effective. The appellant has been lawfully dismissed, and he is not entitled to claim that he is still in service.

- We may now notice the cases relied on by counsel for the appellant. In *Hemanta Kumar v. S. N. Mukherjee*⁽¹⁾, the Calcutta High Court had occasion to consider an order dated April 29, 1952 by which a civil servant had been placed under suspension with retrospective effect from January 16, 1951. While holding that the order of suspension for the period, January 16, 1951 up to April 28, 1952 was invalid and should be quashed, the Court held that the order of suspension was valid and effective as and from April 29, 1952 and this part of the order should be upheld. As a matter of fact, the validity of the suspension as from April 29, 1952 was not even questioned by counsel for the parties. Far from supporting the appellant, this decision is against him on the point under consideration. In *Abdul Hamid v. The District School Board, 24-Parganas*⁽²⁾, the Calcutta High Court had occasion to consider an order dated April 18, 1952 discharging a teacher employed by a District School Board from service with effect from July 15, 1951, the date on which he had been arrested in connection with a pending criminal case against him. While holding that the dismissal from the period from July 15, 1951 up to April 17, 1952 was invalid, the High Court also held that the order of dismissal was entirely bad and was not effective even from April 18, 1952. The High Court observed :

- “It appears to me that when the real intention of the Board was to discharge the petitioner with effect from the date when he was put under arrest it is not within the jurisdiction of the Court to substitute a different intention and maintain the order of discharge in a modified form. The order must stand or fall *in toto*. In this view of the matter it appears to me that the order of discharge as passed by the Board cannot stand.”

- G Our attention is drawn to similar observations in *Sudhir Ranjan Haldar v. State of West Bengal*⁽³⁾. With respect, we are unable to agree with this line of reasoning. An order of dismissal with retrospective effect is, in substance, an order of dismissal as from the date of the order with the superadded direction that the order should operate retrospectively as from an anterior date. The two parts of the order are clearly severable. Assuming that the second

(1) (1953) 58 C.W.N. 1.

(2) (1957) 61 C.W.N. 880.

(3) A.I.R. 1961 Cal. 626,630.

part of the order is invalid, there is no reason why the first part A
of the order should not be given the fullest effect. The Court
cannot pass a new order of dismissal, but surely it can give effect
to the valid and severable part of the order.

In the result, the appeal is dismissed. There will be no order B
as to costs. The appellant is exempted from paying court fees.

Appeal dismissed.