क्रमांक 1771-5 जी0 एस0-1-73/9016

प्रेषक

मुख्य सचिव, हरियाणा सरकार।

सेवा में

1. हरियाणा के सभी विभागाध्यक्ष, अम्बाला और हिसार के आयुक्त, हरियाणा के सभी उपायुक्त और उप मण्डल अधिकारी।
2. रजिस्ट्रार, पंजाब तथा हरियाणा उच्च न्यायालय तथा हरियाणा के सभी जिला एवं सत्रन्यायाधीश ।

दिनांक चण्डीगढ़ 5-4-1973 ।

विषय :—निलम्बन के दौरान सरकारी अधिकारी/कर्मचारी को निर्वाह भत्ता के बारे में सर्वोच्च न्यायालय का निर्णय ।

महोदय,

मुझे निदेश हुआ है कि मैं उपर्युक्त विषय पर आपका ध्यान दिलाऊं और आपको सूचित करूं कि 23-2-73 को सुप्रीम कोर्ट में घनश्याम दास श्रीवास्तवा वरसिज मध्य प्रदेश सरकार के केस में यह निर्णय किया है (प्रति संलग्न है) कि जब किसी अधिकारी/कर्मचारी को निलम्बित किया जाता है और उसके विरूद्ध विभागीय जांच की जाती है तो जितने समय के लिए उसे निर्वाह भत्ता न दिया जाये और वह विभागीय जांच से अनुपस्थित रहे, उतने समय के लिए विभागीय जांच अवैध होगी तथा इस विभागीय जांच के फलस्वरूप यदि किसी अधिकारी/कर्मचारी को डिसमिस कर दिया गया हो तो वह संविधान की धारा 311 के विरुद्ध होगा, क्योंकि अधिकारी/कर्मचारी को निर्वाह भत्ता न दिये जाने के कारण वह अपने आपको डिफैण्ड करने को अवसर प्राप्त नहीं कर सकता है।

2. सरकार ने सुप्रीम कोर्ट के इस फैसले पर विचार किया है और यह निर्णय किया है कि इसे सभी विभाग ध्यान पूर्वक नोट करलें और यह सुनिश्चत करें कि विभागीय जांच के दौरान निलम्बित कर्मचारी का निर्वाह भत्ता किसी भी अवस्था में न रोका जाये यदि निर्वाह भत्ता न दिये जाने के कारण कोई विभागीय जांच बाद में अवैध हो गई तो सम्बन्धित अधिकारी कर्मचारी, जिसने लापरवाही दिखाई है उसके विरुद्ध कड़ी अनुशासनिक कार्यवाही की जाये और उससे सरकार को हुए नुकसान की वसूली की जाये ।

3. आपसे अनुरोध किया जाता है कि आप इन हिदायतों को ध्यान पूर्वक नोट कर लें और अपने विभाग के सम्बन्धित अधिकारीयों/कर्मचारियों के नोटिस में ला दें और उनसे कहें कि वह इन हिदायतों का दृढ़तापूर्वक पालन करें। कृपया इस पत्र की पावती भी भेजी जायें ।

हस्त:
उप सचिव, राजनैतिक एवं सेवाएं
कृते: मुख्य सचिव, हरियाणा सरकार ।

एक एक प्रति गिम्नलिखित को सूचनार्थ और आवश्यक कार्यवाही के लिए भेजी जाती है :—

(1) वित्तायुक्त राजस्व, हरियाणा ।
(2) कमी प्रशासकीय सचिव, हरियाणा ।

SUPREME COURT OF INDIA

Before :—S.M. Sikri, C.J., A.N. Ray, D.G. Palekar, S.M. Dwivedi and A.K. Mukherjea, JJ.

Civil Appeal No. 588 of 1972.

Decided on 23-2-1973.

Ghanshyam Das Shrivastava — Appellant

Versus

State of Madhya Pardesh — Respondent

Suspension Enqury, Pay and allowances. Constitution of India, Article 311 (2)-Suspension pending departmental enquiry—Suspension allowance not paid—Official not attending the enquiry for non payment of suspension allowance—Order of dismissal hit by Article 311 (2)-Employee was not afforded opportunity to defend,

(Para 5).

JUDGEMENT

Dwivedi J.—The appellant, Ghanshyam Das Shrivastava, was employed as a Forest Ranger by the State of Madhya Pardesh. By a Government order, dated 31, 1964 he was put under suspension with effect from October 30, 1964. The Divisional Forest Officer, South Baster Division, directed him to remain at Jagdalpur during the period of suspension. Certain charges wete framed against him, and an enquiry was initiated. He did not participate in the enquiry. The enquiry proceeded ex-parte. On May 3, 1965 the enquiry officer submitted his report to the Government. He found the charges proved. He recommended that the appellants should be dismissed from service. On June 8, 1966, the Government passed an order dismissing him from service. Then he filed a write petition in the High Court at Jabalpur. The writ petition was dismissed. He filed an appeal in this Court on the strength of a certificate granted by the High Court.

2. In this court the appellant's main argument was that in the special circumstances of the case he got no opportunity to defend himself before the enquiry officer. The place of enquiry was Jagdalpur which is 500 kilo meters away from Rewa where he was residing during his suspension. No subsistence allowance was paid to him, and he had no money to go to Jagdalpur to face the enquiry. This Court took the view that if no subsistence allowance was paid to him and if he could not go to Jagdalpur and face the enquiry on account of non-payment of subsistence allowance, the enquiry would be vitiated and the order of dismissal could no be sustained. As the High Court had not investigated the point raised by the appellant before this Court, the case was remanded to the High Court with the direction that the High Court should hear the parties on the question: "whether the appellant was paid the subsistence allowance at any time before the disposal of the hearing before the Enquiry Officer, and whether on account of non-payment of the subsistence allowance he was unable to appear before the Enquiry Officer". The High Court was directed to dispose of the writ petition in the light of its finding on the question.

3. In the High Court the appellant and the respondent fiiled affidavits in support of their case on the question. On a perusal of the entire evidence on record the High Court answered the question against the appellant. This appeal by special leave is directed against the order of the High Court dismissing the writ petition.

4. The Court has found the following facts. The hearing of the case started before the Enquiry Officer at Jagdalpur in February, 1965. The case was heard on February 10, 11 and March 13, 1965. It appears that a part of the evidence for the Government was recorded on these dates. On March 20, 1965, the appellant received Rs. 312/- as subsistance allowance for the months of November and December, 1964 and January, 1965. Further evidence for the Government was recorded on April 3, 6 and 15, 1965. A second payment of Rs. 213/- as subsistenee allowance was made to the appellant on May 13,1965. As already stated the Enquiry Officer submitted his report to the Government on May 28, 1965. These facts plainly show that a part of the evidence had already been recorded before the first payment of subsistence allowance was made to the appellant. Nevertheless, the High Court has held that he was not unable to appear before the Enquiry Officer on account of the non-payment of his subsistence allowance. The principal reasons given by the High Court in support of its view are these.

the enquiry as he had not been paid subsistance allowance and had no means of his own to meet the expenses of going to Jagdalpur from Rewa for facing the enquiry.

(2) His affidavit gives no particulars about the sources of his income and the estimate of expenses to be incurred by him in the enquiry and does not explain how he was unbale to meet those expenses.

(3) The third class railway fare from Rewa to Jagdalpur is about Rs. 20/-. He would need a few more rupees for expenses during his stay at Jagdalpur. He had been drawing a pay of Rs. 300/- per month.

(4) After he was dismissed from service, he filed a writ petition in the High Court. After his writ petition was dismissed by the High Court he came in appeal to this Court. This shows that he had enough money to attend the enquiry at Jagdalpur. The High Court summed up: "In all these circumstances we find that it was not financial stringency which prevented the petitioner from co-operating in the departmental enquiry but that he was otherwise unwilling to do so".

5. With respect, we find it difficult to share the view taken by the High Court. Paragraph 5 of the writ petition expressly alleges that on December 5, 1964, the appellant sent a letter to the Enquiry Officer informing that unless he was paid subsistence allowance he would not be able to face the enquiry proceedings. The letter was filed along with the petition. It is annexure H. The letter staded that "Until and unless I am paid subsistence allowance —— I categorically refuse to face any proceedings as *I have no capacity to do so because of acute shortage of funds*". (emphasis added). This is obviously specific pleading on the point that for non-payment of subsistence allowance he was short of funds and could not attend the enquiry. It is true that his affidavit does not give any particulars about his sources of income and the estimate of expenses to be incurred in the enquiry. But it would prima facie suggest that he had not other source of income except his pay. If he had no other sources of income, he could not invent them for the purpose of mentioning them in the affidavit. More significantly, the Government affidavit does not allege that he had any other source of income except pay. The fact that he had been drawing a monthly pay of Rs. 300/- till October 1964 would not necessarily show that he had sufficient money to enable him to go to Jagdalpur to attend the enquiry in February, 1965. He was suspended on October 30, 1964 and thereafter he did not get susbsistence allowance until March 20, 1965. Having regard to the prevailing high prices, it is not possible to draw any adverse inference against him from the mere circumstance that he had been receiving a monthly pay of Rs. 300/- till October, 1964. The fact that he filed a writ petition immediately on passing of the order of dismissal and thereafter came in appeal to this Court, would not establish that he had enough resources to enable him to attend the enquiry. It seems to us that on the whole the High Court has gone by conjectures and surmises. There is nothing on the record to show that he has any other source of income except pay. As he did not receive subsistence allowance which was made to him on March 20, 1965 after a part of the evidence had already been recorded on February 9, 10 and 11, 1965. The enquiry proceedings during those days are vitiated accordingly. The report of the Enquiry Officer based on that evidence is infected with the same defect. Accordingly, the order of the Government dismissing him from service cannot stand. It was passed in violation of the provisions of Art. 311 (2) of the Constitution for the appellant did not receive a reasonable opportunity of defending himself in the enquiry proceedings.

6. Accordingly, we allow the appeal with costs. Setting aside the order of the High Court, we allow the writ petition and quash the order of the Government dated June 8, 1966 whereby the appellant was dismissed from service. It will be open to the Government to start a fresh enquiry in accordance with law against the appellant.