N.K.S.

Before R. N. Mittal, J.

FOOD CORPORATION OF INDIA, PATIALA,—*Appellant*

versus

GARIB SINGH,—*Respondent.*

Regular Second Appeal No. 1267 *of* 1980.

December 5, 1983.

Food Corporation of India (Staff) Regulations, 1971—*Regulations* 19(2) (b), 53, 54 *and* 58—*Order terminating the services of an employee by way of penalty passed without following the procedure prescribed by the Regulations—Such order—Whether void—Void order—Whether could be challenged at any time.*

Held, that from the provisions of Regulations 53, 54 and 58 of the Food Corporation of India (Staff) Regulations, 1971, it is clear that an employee cannot be removed from the service of the Corporation by way of penalty unless an inquiry is held against him under the aforesaid Regulations. It is well settled that in order to find out whether or not an order terminating the services of a temporary employee or a probationer is by way of punishment, it is the substance of the matter that has to be looked into and not the form of the order. Where an employee, before removal from service, was given a show cause notice containing the statement of allegations against him and it was stated that he was not performing his duties with devotion and responsibility and was also found absent from duty playing cards and even if he admitted one of the charges, it is clear that the order terminating his services was not an innocuous order but was by way of penalty and before passing such an order, it

was incumbent upon the Corporation to hold a regular inquiry as provided in Regulation 58 of the Regulations. If the order of dismissal is passed in breach of a mandatory provision of the Rules subject to which only the power of punishment could be exercised, it is totally invalid. The order of dismissal has, therefore, no legal existence and it is not necessary to have that order set aside by the Court. Since the procedure provided by the Regulations was not followed, the order is void.

(*Paras* 6, 7, 10 and 11).

Held, that if the order is void, it is no order in the eye of law and can be challenged at any time.

(Para 12).

Regular Second Appeal from the decree of the Court of Sardar Mohinder Singh Luna Additional District Judge Patiala, dated 23rd January, 1980, reversing that of Shri Udey Singh Gera, P.C.S., Sub Judge II Class Patiala C, dated the 28th day of November 1978, and granting the plaintiff decree of declaration to the effect that the order of termination of his service was illegal, inoperative and that the plaintiff shall be deemed to have continued in service irrespective of the said order and that he is entitled to all benefits of service including pay and allowances etc. against the defendant with costs throughout and further ordering that the costs of stamp paper in the suit as well as in the appeal shall be a first charge on the amount realised through execution of the decree.

J. L. Gupta Sr. Advocate with Rakesh Advocate *for Appellant.*

S. K. Sharma Advocate with Ashok Sharma, Advocate *for Respondent.*

JUDGMENT

Rajendra Nath Mittal, J.

(1) This second appeal has been filed by the defendant against the judgment and decree of the Additional District Judge, Patiala, dated 29th January, 1980.

(2) Briefly, the facts are that the plaintiff was appointed as Chowkidar on 21st December, 1971, at Navyug Godown, Sirhind Road, Patiala. He was served with a show-cause notice, dated 16th August, 1972, to the effect that on the basis of the statement of allegations annexed it was proposed to terminate his services and he should show-cause against the action proposed to be taken. In the statement of allegations it was stated that the plaintiff, while

functioning as Chowkidar, did not perform his duties with devotion and responsibility as he abstained himself from his duty post on 4th June, 1972, and that he was found playing cards during the duty hours. Subsequently, his services were terminated,—*vide* order, dated 10th/12th October, 1972, Exhibit P.5. It is averred that the order of termination amounts to dismissal as while passing the orders, the procedure prescribed in the Staff Regulations, 1971 (hereinafter referred to as the Regulations) was not followed and the order was, therefore, void. It is further averred that the show-cause notice was served along with the plaintiff on two other temporary employees but the services of the petitioner were terminated but not those of the other employees and as such the order was discriminatory. He, therefore, filed a suit for the recovery of Rs. 5,000 as arrears of pay.

(3) The suit was contested by the defendant who denied the allegations of the plaintiff and *inter alia* pleaded that the order of termination was valid and that the suit was not within limitation.

(4) The learned trial Court held that the order of termination was valid and that the suit was barred by limitation. Consequently, it dismissed the suit. On appeal by the plaintiff, the Additional District Judge reversed the findings of the trial Court on both the issues and decreed the suit. The defendant has come up in second appeal to this Court.

(5) The first question that arises for determination is whether the order, dated 10th/12th October, 1972, Exhibit P. 5, is a void order.

(6) Before dealing with the factual aspect of the case, it will be advantageous to refer to Regulations Nos. 53, 54 and 58 of the Regulations which relate to penalties and procedure for imposing major penalties, respectively. Removal from service, which does not amount to disqualification for future employment under the Corporation is a major penalty under clause (viii) of Regulation 54. Clause (1) of Regulation 58 *inter alia* provides that no order imposing any of the penalties specified in clauses (v) to (ix) of Regulation 54 shall be made except after an inquiry is held, as far as may be, in the manner provided in that Regulation, and Regulation 59. Clause (3) further provides that where it is proposed to hold an inquiry against an employee of the Corporation under the said Regulations, the disciplinary authority shall draw up or cause to be drawn up, (i)

the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge and (ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge which shall contain (a) a statement of all relevant facts including any admission or confession made by the employee, and (b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained. The remaining clauses deal with the procedure of conducting an inquiry. Regulation 59 relates to the action to be taken on the basis of the inquiry report. From the above provisions, it is clear that an employee cannot be removed from the service of the Corporation by way of penalty unless an inquiry is held against him under the aforesaid Regulations.

(7) Now, I advert to the facts of the present case. The respondent, before removal from service, was given a show-acuse notice containing the statement of allegations against him. In the allegations, it was stated that he was not performing his duties with devotion and responsiblity and was found absent from duty on 4th June, 1972. It was further stated that he was found playing cards on that date at about 6.15 P.M. The first charge was not admitted by him. However, he admitted that he was playing cards near the gate of the godown. Similar charges were made against two other Chowkidars, namely, Ramesh Kumar Mehta and Kasturi Lal. They also confessed the second charge. But while awarding punishment, they were not removed from service and services of the petitioner only were terminated by the appellant. It is well-settled that in order to find out whether or not an order terminating the services of a temporary employee or a probationer is by way of punishment, it is the substance of the matter that has to be looked into and not the form of the order [see *The State of Punjab* v. *P. S. Cheema*, (1)]. From the above circumstances it is clear that the order of termination was not an innocuous order but was by way of penalty.

(8) The learned counsel for the appellants has argued that services of the respondent were terminated by an innocuous order under Regulation 19(2) (b) of the Regulations. No doubt, the said regulation provides that the services of an employee belonging to category III or category IV appointed on *ad hoc* basis can be terminated by the competent authority by giving him seven days' notice or pay in lieu thereof. However, the fact remains whether

(1) A.I.R. 1975 S.C. 1096.

the termination is innocuous or by way of penalty. In case it is by way of penalty, the procedure which is prescribed in Regulation 58 has to be followed.

(9) It may also be highlighted that in the case of an inquiry an admission or confession of the employee has to be incorporated in the articles of charge under clause (3) of Regulation 58. Therefore, the punishing authority could not take any benefit of the admission of the respondent that he was playing cards at the gate unless he had been given an adequate opportunity to explain his conduct. In the above view, I am fortified by the observations of a Division Bench of Patna High Court in *T. K. Singh* v. *State of Bihar etc.*, (2) wherein it was held that if in the written statement in reply to the charges, the public servant admits all the facts, no oral enquiry may be required and the officer concerned may dispose of the proceeding after scrutinizing the charges and the written statement of the public servant, but, where some of the facts mentioned in the charges are denied and an oral inquiry is insisted upon by the public servant concerned, the superior officer should hold an oral inquiry. Similar view was expressed in *Ram Subhak Ojha* v. *The Commissioner of Police and others*, (3).

(10) After taking into consideration the aforesaid facts I am of the opinion that the order of termination was by way of punishment and before passing that order, it was incumbent upon the appellant to hold a regular inquiry as provided in Regulation 58 of the Regulations.

(11) Now, it is to be seen whether the order is void if the procedure prescribed in Regulation 58 has not been followed. It has been held by the Supreme Court in the State of *Madhya Pradesh* v. *Syed Qamarali*, (4) that if the order of dismissal has been made in breach of a mandatory provision of the rules subject to which only the power of punishment would be exercised, it is totally invalid. The order of dismissal has, therefore, no legal existence and it is not necessary to have that order set aside by a Court. As already stated above, the appellant did not follow the procedure provided by the Regulations. Consequently, the order Annexure P. 5, is a void order.

(2) 1969 S.L.R. 18.
(3) A.I.R. 1967 Calcutta 381.
(4) 1967 S.L.R. 228.

(12) The next question that arises for determination is whether the suit is within limitation. I have already held above that the order of termination is a void one. If the order is void, it is no order in the eye of law and can be challenged at any time. In the above view, I am fortified by the observations in *Syed Qamarali's case* (supra). In that case, a suit for recovery of pay was filed after seven years of the order of dismissal. However, in the suit, pay and allowances were claimed for three years immediately preceding the date of institution of the suit. The defendant took the plea that the suit was barred by limitation. The Supreme Court observed that the suit was not barred by limitation as the order of dismissal was void and had no legal existence. The present case is fully covered by the observations of the Supreme Court referred to above as the plaintiff-respondent claimed an amount of Rs. 5,000 regarding his salary on the same ground. The appellant has not been able to show that the claim of respondent is for a longer period than three years.

(13) For the aforesaid reasons, I do not find any merit in the appeal and dismiss the same with costs.

N.K.S.