PETITIONER:
DEWAN SINGH

Vs.

RESPONDENT:
STATE OF HARYANA & ANOTHER

DATE OF JUDGMENT07/05/1976

BENCH:
GOSWAMI, P.K.
BENCH:
GOSWAMI, P.K.
KHANNA, HANS RAJ
KRISHNAIYER, V.R.

CITATION:
1976 AIR 1921 1976 SCR 630
1977 SCC (1) 46

ACT:
Natural jusitce-Meaning of-If mandatory-Punjab Panchayat Samitis and Zilla Parishad Act 1961-Sec. 124(2)-Reasonable opportunity before dismissing an employee.

HEADNOTE:
The appellant was a Veterinary Compounder serving under the Panehayat Samiti, Hansi. The Zilla Parishad Tribunaul tranferred him from Hansi to Singhani. The Chairman of the Panchayat Samiti. Hansi requested the Chairman of Zilla Parishad Tribunal served a notice on the appellant to show cause why he should not be dismissed for not having handed over the charge of the dispensary to the person who was appointed in his place and also on the ground that when the Secretary of the Zilla Parishaod Tribunal with the help of the compounder, who was directed to take charge from the appellant, was prepaering a list of stock, the appellant and others entered the office and one of the persons out of the appellant's group snatched the papers from the Secretry and manhandled him. The appellant submitted an interim explanation and reserved his right to submit a final reply after inspection of certain records was given to him. The Zilla Parishad Tribunal did not give any opportunity to the appellant for inspecation of record nor sent any communication to him rejecting the request giving any justifiable reasons. However, the appellant was served with a letter dismissisng him from service. Section 124(2) of the Punjab Panchayat. Samitis & Zilla Parishad. Act, 1961, authorises the Tribunal to impose any punishment including the punishment of dismissal on any servant of the Panchayat Samiti or Zilla Parishad. The proviso,howvever. requires the Tribunal before passing any order of dismissal or removal to give a notice to the servant to show cause against the action proposed to be taken against him

The appellant filed a writ petition in the High Court challengaing the dismissal order. The High Court dismissed the writ petition.

Allowing the appeal by special leave,

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HELD: (1) A perusal of s. 124(2) goes to show that before any action is taken for dismissal or removal of an

employee the Tribunal has to enquire into his conduct justifying such action. This enquiry must necessarily be made in the presence of the employee giving him an opportunity to rebut the allegations made against him. It is only after affourding him a reasonable opportunity to rebut the allegations in the charge and after the Tribunal is satisfied that the misconduct is established, the question of final punitive action either of dismissal or removal has to be considered. The employee must be given a full and fair. reasonable opportunity to meet the charges. [633D-E]

(2) In the instant case apart from giving the show cause notice no other communication was made to the appellant except the order of dismissal. This is a clear case where the reasonable opportunity envisaged under s. 124(2) has not been afforded to the appellant for making an effective representation to establish his innocence. Even in respect of the incident of 15-8-1967, the appellant was acquitted in a criminal case lodged against him. In the instant case the provisions of s. 124(2) which embody the principles of natural justice and which are of a mandatory character have been violated vitiating the order of dismissal. [633G. 634A-C]

(3) In the ordinary course it would have been open to the authority to institute a fresh enquiry after the reinstatement. But in this case, that procedure was not permitted because the appellant was dismissed in December, 1967, and

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has been out of employment for over 8 years. Secondly, he does not have many years to serve. Thirdly, the serious allegations regarding the incident of 15-8-1967 have not been found to be established in a judicial trial. The Court, therefore, quashed the order of dismissal and directed that the appellant should be treated on leave without pay and further directed that no further enquiry into the allegations forming the subject matter of charge should be made. [634C-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 27 of 1971.

(Appeal by special leave from the judgment and order dated 21st May 1970 of the Punjab & Haryana High Court at Chandigarh in civil writ No. 197 of 1968)

J. Ramamurthi, for the appellant..

Naunit Lal and R. N. Sachthey, for respondents Nos. 1 and 2.

Bishamber Lal, for respondent No. 3.

The Judgment of the Court was delivered by

GOSWAMI, J.-This appeal by special leave is directed against the judgment of the Division Bench of the Punjab and Haryana High Court by which the appellant’s application under article 226 of the Constitution was rejected.

The appellant was a veterinary compounder serving at the material time under the Chairman, Panchayat Samiti, Hansi-I. The Zila Parishad Trihunal transferred him from Hansi-I Block to Singhani (Loharu Block) by its resolution of June 30, 1967. The order appear to be transmitted by Memo No. 3201-A of July 6, 1967. On July 27, 1967, the Chairman of the Panchayat Samiti, Hansi-I, requested the Chairman of the Zila Parishad, Hissar, to reconsider the decision of transfer and to allow him to continue at his village Umra in public interest. A copy of this letter writen to the Zila

Parishad was forwarded to the appellant. Since the appellant did not comply with the order of transfer, the Chairman, Zila Parishad mal, served a notice upon him on August 13, 1967., to show cause as to why he should not be dismissed from service on the grounds mentioned in the notice. It is mentioned in the notice that this action has been taken under section 124 of the Punjab Panchayat Samitis and Zila Parishads Act,1961 (briefly the Act).

The particulars of charge described in the show cause notice are briefly as under:-

(1) You did not hand over charge of veterinary dispensary to Balwan Singh, Veterinary Compounder, on 25-7-1967. in compliance with the transfer order dated 6-7-1967.

(2) You also did not hand over charge to the District Animal Husbandry officer who was ordered to personally take over charge from you on 26-7-1967.

(3) You were again asked by letter dated 2-8-67 to hand over charge to Balwan Singh Veterinary Compounder, but you did not hand over the charge.

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(4) When Ch. Bir Singh Lamba, Secretary, Zila Parishad Tribunal, along with Balwan Singh reached Umra on 10-8-67 between 4.30 and 5.00 P.M. in order to take charge from you they found you absent and the dispensary locked.

(5) That on 15-8-67 at about 4.00 P.M. when Balwan Singh went to take charge from him along with Ch. Bir Singh Lamba, Secretary, Zila Parishad Tribunal, along with Ch. Balbir Singh, Chairman, Zila Parishad, Hissar and Kali Ram, Member, Panchayat Samiti, Hissar, you refused to hand over charge to Balwan Singh Veterinary Compounder.

(6) When on 15-8-67 Ch. Bir Singh Lamba, Secretary Zila Parishad Tribunal, with the help of Balwan Singh, was preparing a list of stock in the presence of the Chairman and others, you with Rattan Singh, Sarpanch, Gram Panchayat, Umra, Giani Ram of village Majahadpur and three or four other unknown villagers entered the office. Giani Ram out of your group snatched the paper from Ch. Bir Singh Secretary, Zila Parishad Tribunal and threatened them to leave the dispensary before they manhandled him. You are thus at the root of all this incident.

The appellant submitted a reply on September 13, 1967, describing it as an interim explanation and reserving his right to submit a final reply after inspection of certain records and he requested for a date for inspection of the records. In this reply he admitted to have received the transfer order and pleaded that he did not hand over charge to Balwan Singh on 25-7-1967 under instructions from the Chairman, Panchayat Samiti, who, according to him, was the appointing authority and he was carrying out his orders. He particularly denied the incident of August 15, 1967, for which he was held principally responsible in the show cause notice.

It does not appear that the Zila Parishad Tribunal gave any opportunity to the appellant for inspection of records, nor sent any communication to him rejecting the request giving any justifiable reason. The appellant seemed to have

been waiting for some communication to his interim reply in order to submit final explanation when on December 5, 1967 he received the order of the Zila Parishad Tribunal dismissing him from service with immediate effect in pursuance of its resolution of December 1, 1967. The resolution states:

> "The Tribunal has come to a conclusion that your reply is not a satisfactory one. And the allegations made against him (sic) seemed to be correct".

That led to the appellant's writ application in the High Court resulting in the impugned order.

The short question that arises for decision is whether the order of dismissal is in conformity with section 124 of the Act, or, in

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other words, whether the same is in violation of the principles of natural justice.

We may, therefore, read the material provision under section 124(2) of the Act:

> 124(2): "The tribunal may suo motu or on the move of the Panchayat Samiti or the Zila Parishad or on the application of any servant of a Panchayat Samiti or Zila Parishad other than a government servant placed at their disposal enquire into the conduct of any servant of the Panchayat Samiti or the Zila Parishad and after making such enquiry as it may deem fit pass such orders imposing any punishment including dismissal or removal as it may deem proper;
>
> Provided that the tribunal shall not pass any such order in respect of a servant having a right of appeal under section 116;
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> Provided further that the tribunal shall before passing any order of dismissal or removal give a notice to the servant to show cause against the action proposed to be taken against him".

A persual of section 124(2) goes to show that before any action is taken for dismissal or removal of an employee the Tribunal has to enquire into his conduct justifying such action. This enquiry must necessarily have to be made in the presence of the employee giving him an opportunity to rebut the allegations mentioned against him. It is only after affording him a reasonable opportunity to rebut the allegations in the charge and the Tribunal is satisfied that the misconduct is established the question of final punitive action either of dismissal or removal has to be considered.

Unlike as in article 311 of the Constitution, section 124(2) does not in terms mention two stages of a departmental enquiry for misconduct against an employee. Even so, the nature of an enquiry with an object to dismiss an employee is such that a full and fair reasonable opportunity must be given to him to meet the charges. The second proviso to section 124(2) provides in unmistakable terms that before passing any order of dismissal or removal a notice has To he given to the employee to show cause against the proposed action. The action of dismissal or removal cannot be proposed, in all fairness, unless the Tribunal had reached a conclusion about the guilt after making a proper enquiry giving the employee a reasonable opportunity to defend.

In the instant case, apart from giving the show cause notice, no other communication was made to the appellant except the order of sal. This is a clear case where the reasonable opportunity envisaged under section 124(2) has not been afforded to the appellant far marking an effective representation to establish his innocence. It is easy to see

that the summary order of dismissal must have been influenced by the allegations appreciation to the incident of August
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15,1967 for which, we understand, even a criminal case was instituted against the appellant. That criminal case, we are told, ended in acquittal of the appellant and others on June 10, 1970. At any rate the said incident being included in the articles of charge against the appellant he did not have any opportunity whatsoever to establish his innocence when he had clearly denied the allegations even in his interim reply.

The principles of natural justice are clearly ingrained in the provisions of section 124(2). It is a clear case where the provisions of section 124(2), which are of a mandatory character in a departmental enquiries have been violated vitiating the order of dismissal. The High Court, therefore, should have accepted the petition of the appellant under article 226 of the Constitution and quashed the order of dismissal.

Although in the ordinary course it would have been open to the authority to institute a fresh enquiry his reinstatement, after the order of dismissal has been set aside, we are clearly of opinion that this is not a case where that procedure should be permitted. For one reason the appellant was dismissed in December 1967 and he had been out of employment for over eight years. He has also not many years to serve. Besides, the serious allegations regarding the incident of August 15, 1967, which, according to us, must have influenced the authority to pass the order of dismissal, have not been found to be established in a judicial trial. While, therefore, quashing the impugned order of dismissal, which we hereby do, we direct that the appellant shall be reinstated in service with immediate effect and there shall be no further enquiry to the allegations forming the subject matter of charge against him. The period of absence shall be treated as leave without pay so that the appellant will not lose continuity of his service.

In the result the judgment of the High Court is set aside and the appeal is allowed with costs.

P.H.P. Appeal allowed.
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