

State of Jammu Kashmir

Vs

Mir Gulam Rasul

Civil Appeal No. 31 of 1957

(K. N. Wanchoo, P. B. Gajendragadkar, K. C. Das Gupta, N. Rajgopala Ayyangar, A. K. Sarkar JJ)

23.02.1961

JUDGMENT

SARKAR, J. -

The respondent is a Civil Engineer who held various positions under the appellant, the Government of the State of Jammu and Kashmir. On September 8, 1954, while the respondent was holding the post of Development Commissioner, he was placed under suspension by an order made by the appellant on that date. Later, the appellant passed another order on February 12, 1955, demoting the petitioner to the post of a Divisional Engineer.

On May 12, 1955, the respondent moved the High Court of Jammu and Kashmir under Art. 32(2A) of the Constitution of India as applied to the State of Jammu and Kashmir, for a writ directing the appellant not to give effect to the order dated February 12, 1955, and to recognise him as the Chief Engineer, the substantive post held by him when he was suspended, with effect from the date of suspension and with all emoluments of that office. The High Court issued the writ as prayed. The State appeals from the judgment of the High Court.

In the view that, we think, must be taken of this case, it is unnecessary to go into the facts a great deal. At one stage of his career under the appellant, the respondent held a job of some responsibility in what was called the Sindh Valley Hydro Electric Scheme. The Scheme was for generating electric power by dams erected in the Sindh water course and for using the water for irrigation purposes. The work on this Scheme seems to have commenced some time ago. The respondent was connected with the Scheme from 1949 till he was transferred from the work in 1953. It appears that the appellant was dissatisfied with the progress of the work and the manner in which it had been carried out and decided to establish a Commission of Inquiry (a) to investigate into the reasons for (i) progressive rise in the estimates, (ii) the defective planning and the delay in the execution of the work and (iii) the other irregularities and (b) to fix responsibility upon the persons concerned and make appropriate recommendations. Pending the investigation various officers associated with the planning and execution of the Scheme including the respondent, were placed under suspension on September 8, 1958. Thereafter on October 20, 1954, a commission was set up by the appellant consisting of various persons. The Commission made certain enquiries and eventually submitted its report to the appellant. The appellant then made the order demoting the respondent purporting to act on the basis of the report. It is not necessary to set out the facts any more.

The respondent, in his application for the writ, questioned the validity of the orders suspending and demoting him on these grounds. He alleged that the Commission did not conduct the enquiry according to the rules of natural justice. He said that he was not even informed of the charges

against him nor given a proper hearing and that if he had been given proper opportunity, he would have proved that he had not been at fault at all. He also said that the appointment of the Commission could only have been made under s. 2 of the Public Servants (Inquiries) Act, 1977 (Kashmir era), and must, therefore, be deemed to have been so made. He complained that the provisions of this Act were not observed by the Commission in making the enquiry. Lastly, he said that the respondent could be reduced in rank only in accordance with the procedure laid down in the Kashmir Civil Service Rules passed by the State Council Order No. 81-C of 1939 and his procedure had not been followed. In the High Court, the question as to whether these Rules had the status of law seems to have been debated at great length. The High Court took the view that they had. We will proceed on the basis that the High Court was right and the allegations made by the respondent in his petition had been substantiated.

Now, the High Court was moved to exercise its powers under Art. 32(2A) of the Constitution of India. The order made by it cannot be upheld if it was not justified by that provision. This is not in dispute. That provision is in these terms :

Art. 32(2A). "Without prejudice to the powers conferred by clauses (1) and (2), the High Court shall have power throughout the territories in relation to which it exercise jurisdiction to issue to any person or authority, including in appropriate cases any Government within those territories, directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by this Part."

The High Court can then exercise its powers under Art. 32(2A) only "for the enforcement of any of the rights conferred by this Part". The Part referred to is Part III and the rights conferred by it are the fundamental rights. Therefore, the High Court can act under cl. (2A) of Art. 32 only to enforce a fundamental rights.

The only fundamental right, however, on the violation of which learned counsel for the respondent could rely in support of the order of the High Court was that conferred of Art. 14, namely, the right to the equal protection of the laws. He said that the respondent was entitled to have the procedure prescribed by the Kashmir Civil Service Rules followed before the order demoting him could be made and as that procedure was not followed, his client had been denied the equal protection of the laws. It seems to us that even if the Rules are a law and the respondent has not been given the benefit of them, all that can be said to have happened is that the appellant has acted in breach of the law. But that does not amount to a violation of the right to the equal protection of the laws. Otherwise, every breach of law by a Government would amount to a denial of the equal protection of the laws. We are not aware of any authority in support of that proposition and none has been cited to us. Nor are we able to find any support for it in principle. It is not the respondent's case that other servants of the appellant had been given the benefit of those Rules and such benefit has been designedly denied only to him. It seems to us that the appeal must be allowed on the simple ground that the respondent's petition does not show a violation of any fundamental right. The High Court had no power to act under Art. 32(2A) at all.

We think it right to point out that Arts. 226 and 311(2) of the Constitution of India had not been applied to the State of Jammu and Kashmir at any material time. No question of the respondent's application being maintainable in view of these articles, therefore, arises.

The appeal is accordingly allowed. There will be no order as to costs.

Appeal allowed.

</html