

G. S. Nagmoti

Vs

The State of Mysore

Civil Appeal No. 1736 of 1967

(CJI J. C. Shah, V. Ramaswami-I, A. N. Grover JJ)

22.08.1969

JUDGMENT

RAMASWAMI, J. –

1. This appeal is brought by certificate from the judgment of the Mysore High Court dated July 10, 1965 dismissing in limine the writ petition No. 1819 of 1965, filed by the appellant.
2. The appellant was working as the Principal Subordinate judge in Bangalore in the year 1963. On October 8, 1963 one Anaappa Setty, P. W. 9, submitted a petition to the Director, Anti-corruption, Bangalore making certain allegations against the appellant regarding the disposal of a Godrej Steel almirah which had been attached in an execution case pending before the appellant. The petition was forwarded to the Mysore High Court by the Director of Anti-corruption on October 13, 1963. Under the direction of the Chief justice a preliminary enquiry was held by Mr. justice Barayana Pai. On receipt of his report, the High Court addressed a letter to the Government under S. O. No. NCC. 3163/63, dated October 23, 1963 requesting that the Governor may be moved to appoint Mr. justice K. S. Hegde as Specially Empowered Authority to hold the departmental enquiry into the conduct of the appellant under Rule 11 of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1967 (hereinafter referred to as the Rules). Accordingly the Government of Mysore appointed Mr. justice K. S. Hegde as the Specially Empowered Authority to conduct the departmental enquiry. Thereafter Hegde J., framed charges against the appellant, received his explanation and concluded the enquiry. The appellant was found guilty of the charge and in his report to the Governor Hegde J., recommended that the appellant may be reduced to the rank of a Civil judge, junior Division (Munsiff) and that he shall not be considered for promotion as a Civil Judge, Senior Division (or as Subordinate judge) for a period of two years. On receipt of the report the Governor of Mysore considered the case of the appellant and held that the charge was fully established. By his order dated May 17, 1964 the Governor of Mysore issued a notification under Article 311 (2) of the Constitution to the appellant asking him to show cause why he should not be compulsorily retired from service. The appellant submitted his representation to the Governor of Mysore. Thereafter the Governor passed an order, dated October 31, 1964 directing compulsory retirement of the appellant. The appellant submitted an application dated September 24, 1964 to the Chief Minister of Mysore and another application dated December 14, 1961 to the Governor of Mysore to review the order. The review application was rejected by order dated April 1, 1965 passed by the Governor. The appellant thereafter filed a writ petition No. 1313 of 1965 before the Mysore High Court challenging the order of the Governor and praying that he should be reinstated in service with all consequential benefits. The writ petition was dismissed by the High Court on July 16, 1965 at the stage of admission without notice to the respondent.

3. It was argued on behalf of the appellant that disciplinary proceedings initiated by the Governor on May 17, 1964 culminating in his order dated October 31, 1964 and April 1, 1965 holding that the charge against the appellant was proved and imposing punishment of compulsory retirement are in contravention of Article 235 of the Constitution and are liable to be set aside. It was pointed out that under Article 235 the High Court alone had the power to hold disciplinary proceedings against Officers belonging to the judicial service of a State holding posts inferior to that of a District judge and no other Authority was competent to initiate disciplinary proceedings or to impose punishment against Subordinate Judges. It was also contended that Rules 8, 9 and 11 of the Mysore Rules are ultra vires of Article 235 of the Constitution.

Article 235 of the Constitution reads :

"The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding, any post inferior to the post of District judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law."

The relevant provisions of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1967 are as follows :

"2. Interpretation. - In these rules, unless the context otherwise requires -

(a) .. .. .

(b) .. .. .

(c) 'Disciplinary Authority' in relation to the imposition of a penalty on a Government servant, means the authority competent under these rules to impose on him that penalty

(d) .. .. .

(e) 'Governor' means the Governor of Mysore acting on the advice of the Council of Ministers

Rule 8 states :

"8. Nature of penalties. - The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on Government servants, namely :

(i) fine in the case of Government servants belonging to State Civil Service, Class IV;

(ii) censure;

(iii) withholding of increments or promotion;

(iv) recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders to the State Government, or to the Central Government, any other State Government, any person, body or authority to whom the service of the Officer had been lost;

(v) reduction to a lower service, grade or post, or to a lower time-scale or to a lower stage in a time-scale;

(vi) compulsory retirement;

(vii) removal from service which shall not be a disqualification for future employment;

(viii) dismissal from service which shall ordinarily be a disqualification for future employment."

Rule 9 states

"Disciplinary authorities. - (1) The Governor may impose any of the penalties specified in Rule 3 on any Government servant.

(2) Without prejudice to the provision of sub-rule (1), but subject to the provisions of sub-rule (3) :

(a) the High Court of Mysore may impose on Government servants belonging to Mysore judicial Service holding posts inferior to the post of a District judge, any of the penalties specified in clauses (ii), (iii) and (iv) of Rule 3;

(b) .. .. .

(3) Notwithstanding anything contained in this rule, no penalty specified in clauses (v) to (viii) of Rule 3 shall be imposed by any authority lower than the Appointing Authority."

Rule 11.

"Procedure for imposing major penalties. - (1) Without prejudice to the provisions of any law applicable to the Government servant, no order imposing on the Government servant any of the penalties specified in clauses (v) to (viii) of Rule 8 shall be passed except after an inquiry held, as far as may be, in the matter hereinafter provided.

(2) The Disciplinary Authority or any authority specially empowered by it in this behalf (hereinafter in this rule referred to as "specially empowered authority") shall frame definite charges on the basis of the allegations on which the inquiry is proposed to be held. Such charges, together with a statement of the allegations on which they are based, shall be communicated in writing to the Government servant, and he shall be required to submit, within such time as may be specified by the Disciplinary Authority or any authority specially empowered by it in this behalf, a written statement of his defence and also to state whether he desires to be heard in person.

(3) The Government servant shall, for the purpose of preparing his defence, be permitted to inspect and take extracts from such official records as he may specify, provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the Disciplinary Authority or specially empowered authority such records are not relevant for the purpose or it is against the public interest to allow him access thereto.

(4) .. . . .

(5) .. . . .

(6) .. . . .

(7) At the conclusion of the inquiry the Inquiring Authority shall prepare a report of the inquiry, record its findings on each of the charges together with the reasons therefor. If in the opinion of such authority the proceedings of the inquiry establish charges different from those originally framed, it may record findings on such charges provided that findings on such charges shall not be recorded unless the Government servant has admitted the facts constituting them or has had no opportunity of defending himself against them.

(8) .. . . .

(9) .. . . .

(10) (i) If the Disciplinary Authority, having regard to its findings on the charges, is of the opinion that any of the penalties specified in clauses (v) to (viii) of Rule 8 should be imposed, it shall -

(a) furnish to the Government servant a copy of the report of the Inquiring Authority and, where the Disciplinary Authority is not the Inquiring Authority a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Inquiring Authority; and

(b) give him a notice stating the action proposed to be taken in regard to him and calling upon him to submit within a specified time such representation as he may wish to make against the proposed action.

(ii) (a) In every case in which it is necessary to consult the Commission, the record of the inquiry, together with a copy of the notice given under clause (i) and the representation made in response to such notice, if any, shall be forwarded by the Disciplinary Authority to the Commission for its advice.

(b) On receipt of the advice of the Commission, the Disciplinary Authority shall consider the representation, if any, made by the Government servant as aforesaid, and the advice given by the Commission and determine what penalty, if any, should be imposed on the Government servant and pass appropriate orders on the case.

(iii) In any case in which it is not necessary to consult the Commission, the Disciplinary Authority shall consider the representation, if any, made by the

Government servant in response to the notice under clause (i) and determine what penalty, if any, should be imposed on the Government servant and pass appropriate orders on the case."

4. In *The State of West Bengal v. Nrinpendra Nath Baschi* it was held by this Court that the word 'control' as used in Article 235 includes disciplinary control or jurisdiction over District judges. By that Article the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding judge. The question that fell for consideration in that case was whether the enquiry ordered by the Government and conducted by an Executive Officer of the Government against a District and Sessions judge contravened the provisions of Article 235 of the Constitution which vested in the High Court the control over the District Court and the Courts subordinate thereto. In our opinion the principle of this decision applies to the present case. It was, however, contended on behalf of the respondent that by its letter, dated October 23, 1963 the High Court had itself requested the Government to appoint Mr. Justice K. S. Hegde as Specially Empowered Authority to hold departmental enquiry into the conduct of the appellant. It was said that the provisions of Article 235 of the Constitution have been substantially complied with. A copy of the letter of the High Court is Enclosure 1 to the affidavit filed by the respondent in this Court. It is not possible for us to examine the validity of this argument because the writ petition of the appellant was dismissed in limine by the High Court and we have not the advantage of the Judgment of the High Court on the disputed facts of this case.

5. In these circumstances we consider that this appeal should be allowed and the judgment of the High Court dated July 16, 1965 should be set aside and the case should be remanded to the High Court for being disposed of according to law. The High Court should make an order admitting the writ petition and issue notice to the respondent giving it an opportunity to file any counter affidavit. Thereafter the High Court should deal with the case in accordance with the law laid down by this Court in *Baschi's* case. It is desirable that the case should be dealt with as expeditiously as possible.

6. Parties will bear their own costs up to this stage.

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