

Bk. Sardari Lal

Vs

Union of India and Others

Civil Appeal No. 576 of 1969

(S. K. Hegde, A. N. Grover, G. K. Mitter JJ)

21.01.1971

JUDGMENT

GROVER, J. -

1. This an appeal by certificate from a common judgment of the Delhi High Court which disposed of a batch of 14 petitions under Article 226 of the Constitution. The question involved is of importance and relates to the exercise of powers expressly conferred on the President by clause (c) of the proviso to Article 311(2) of the Constitution.

2. On 14th April, 1967, appellant and 17 other members of the Delhi Police Force were dismissed from service. The order dismissing the appellant is reproduced blow :

ORDER

Whereas, you Shri Sardari Lal, Sub-Inspector, Delhi Police No. 331/D, Police Station Kamla Market, Delhi, hold your office during the pleasure of the President, and

Whereas the President is satisfied that you are unfit to be retained in the public service and ought to be dismissed from service, and

Whereas the President is further satisfied under sub-clause (c) of proviso to clause (2) of Article 311 of the Constitution that in the interest of the security of the State it is not expedient to hold an inquiry,

Now, therefore, the President is pleased to dismiss you from service with immediate effect.

# By order and in the name of the President of India (Sd.) (B. Venkataraman) Joint Secretary to the Government of India in the Ministry of Home Affairs.##

3. It was common ground before the High Court and has not been disputed before us that the President had no occasion to deal with the case of the appellant himself and the order was made by Shri Venkataraman, Joint Secretary to the Government of India in the Ministry of Home Affairs. It was claimed by him that he was competent to make the order by virtue of the authority which he derived under the Government of India (Allocation of Business) Rules, 1961, made under Article 77(3) of the Constitution. Before the High Court, the controversy was confined to the narrow point whether the function which is to be performed by the President under clause (c) of the proviso to Article 311(2) could be performed by the authority to whom such function had been allocated under the aforesaid Rules. The High Court negated the contention raised on behalf of the appellant that

such a function could not have been delegated by the President to any other authority. The High Court also relied on the provisions of Article 77(2) which provides for the authentication of orders made in the name of the President.

4. Under Article 53(1) the Executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Article 77(1) lays down that all executive action of the Government of India shall be expressed to be taken in the name of the President. Clause (3) of that Article enables the President to make rules for the more convenient transaction of the business of the Government of India. Chapter I of Part XIV contains inter alia the three main provisions relating to the services. Article 309, 310 and 311 may be set out to the extent necessary :

"309. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State :

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this Article, and any rules so made shall have effect subject to the provisions of any such Act."

"310. (1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

#(2) .. .. .##

311. (1) No person who is member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charge against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry :

Provided that this clause shall not apply -

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

5. These Articles have come up for consideration before this Court in several cases and in connection with diverse points. The view that has been taken with regard to their true content, scope and inter-connection and the nature of the power exercisable under them is that while Article 310 provides for the tenure at the pleasure of the President or the Governor, Article 309 enables the Legislature or the Executive as the case may be to make any law or rule in regard inter alia to conditions of service without impinging upon the overriding power recognised under Article 310, read with Article 311. The power to dismiss a public servant at pleasure is outside the scope of Articles 53 and 154 of the Constitution and cannot be delegated by the President or the Governor, to a subordinate officer and can be exercised by him only in the manner prescribed by the Constitution. This, however, does not mean that a law cannot be made under Article 309 or a rule cannot be framed under the proviso to the said Article prescribing the procedure by which and the authority by whom the said pleasure can be exercised, vide *Moti Ram Deka etc., v. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.*, ((1964) 5 SCR 683 : 1964 SC 600 : (1964) 2 SCA 372.) Article 311 contains the main safeguards for civil servants in the matter of dismissal or removal or reduction in rank while the procedure provided in clause (2) must be followed before the dismissal or removal or reduction in rank of a civil servant can be ordered, there are certain exceptions which have been made where it is not necessary to comply with the requirements of the substantive part of clause (2) of Article 311. These exceptions are contained in the three clauses (a), (b) and (c) of the proviso to clause (2).

6. As in the cases mentioned in the proviso, the procedure laid down in clause (2) has not to be followed and the only protection which is conferred on a civil servant cannot be availed of by him, we must look at them carefully. A dichotomy has been introduced in clauses (b) and (c) with regard to the authority or the functionary who has to be satisfied about the matters stated therein. In clause (b), it is only the authority empowered to dismiss or remove a person or to reduce him in rank who has to be satisfied that it is not reasonable practicable to hold the inquiry provided by clause (2) and his decision in terms of clause (3) of the Article shall be final. But in clause (c) it is the President or the Governor alone, as the case may be, who has to be satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

7. Now the argument on behalf of the appellant has proceeded on these lines. Article 53(1) vests the Executive power of the Union in the President but Article 77 deals only with executive action of the Government of India. There are several Articles under which the President is required to be satisfied before an action is taken. Clause (c) of the proviso to clause (2) of Article 311 is one of such provisions. The other provision which also deals with the question of satisfaction about the security of India being threatened etc., is the one contained in Article 352 which relates to Proclamation of Emergency. Article 356 says that if the President on receipt of a report from the Governor of a State

or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution, he may make a Proclamation as provided in the Article. Article 360 which contains provisions relating to financial emergency also employs the language "if the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part of the territory thereof is threatened, he may by a proclamation make a declaration to that effect". The enumeration of the aforesaid Articles is merely illustrative and not exhaustive. In such cases, it is the President who has to be personally satisfied on the material placed before him about the various matters on which action has to be taken. Such functions may pertain to the executive power of the Union which is vested in him under Article 53(1) but these cannot fall within Article 77(1) which is confined to executive action of the Government of India. Apart from the Articles mentioned above, there are several other Articles which may also be considered in this connection. It would be best to refer to the observations in *Jayantilal Amrit Lal Shodhan v. F. N. Rana and Others.* ((1964) 5 SCR 294 : AIR 1964 SC 648 : (1964) 2 SCA 284.)

"The power to promulgate Ordinances under Article 123; to suspend the provisions of Articles 268 to 279 during an emergency; to declare failure of the Constitutional machinery in States under Article 356; to declare a financial emergency under Article 360; to make rules regarding the recruitment and conditions of service of persons appointed to posts and services in connection with the affairs of the Union under Article 309 - to enumerate a few out of the various powers - are not powers of the Union Government; these are powers vested in the President by the Constitution and are incapable of being delegated or entrusted to any other body or authority under Article 258(1). The plea that the very nature of these powers is such that they could not be intended to be entrusted under Article 258(1) to the State or officer of the State, and therefore, that clause must have a limited content, proceeds upon an obvious fallacy. Those powers cannot be delegated under Article 258(1) because they are not the powers of the Union, and not because of their special character. There is a vast array of other powers exercisable by the President - to mention only a few - appointment of Judges : Articles 124 and 217, appointment of Committees of Official Languages Act : Article 344, appointment of Commissions to investigate conditions of backward classes : Article 340, appointment of Special Officer for Scheduled Castes and Tribes : Article 338, exercise of his pleasure to terminate employment : Article 310, declaration that in the interest of the security of the State it is not expedient to give to a public servant sought to be dismissed an opportunity contemplated by Article 311(2) - these are executive powers of the President and may not be delegated or entrusted to another body or officer because they do not fall within Article 258."

8. It seems to us that there is a good deal of substance in the argument raised on behalf of the appellant and on the principles which have been enunciated by this Court, the function in clause (c) of the proviso to Article 311(2) cannot be delegated by the President to any one else in the case if a civil servant of the Union. In other words he has to be satisfied personally that in the interest of the security of the State, it is not expedient to hold the inquiry prescribed by clause (2). In the first place, the general consensus has been that executive functions of the nature entrusted by the Articles, some of which have been mentioned before and in particular those Articles in which the President has to be satisfied himself about the existence of certain fact or state of affairs cannot be delegated by him to any one else. Secondly even with regard to clause (c) of the proviso, there is a specific observation in the passage extracted above from the case of *Jayantilal Amrit Lal Shodhan*

that the powers of the President under that provision cannot be delegated. Thirdly the dichotomy which has been specifically introduced between the authority mentioned in clause (b) and the President mentioned in clause (c) of the proviso cannot be without significance. The Constitution makers apparently felt that a matter in which the interest of the security of the State had to be considered should receive the personal attention of the President or the Head of the State and he should be himself satisfied that an inquiry under the substantive part of clause (2) of Article 311 was not expedient for the reasons stated in clause (c) of the proviso in the case of a particular servant.

9. We are not impressed with the reasoning of the High Court with reference to Article 77(2). If the function or the power exercisable under clause (c) of the proviso under consideration could not be delegated or allocated to any one else by the President, Article 77(2) will not stand in the way of the Court in the matter of examining the validity of the Order.

10. For all the above reasons this appeal is allowed and the judgment of the High Court is set aside. The impugned order by which the appellant was dismissed from service shall stand quashed on the ground that it was illegal, ultra vires and void. The appellant shall be entitled to costs in this Court and the High Court.

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