

Om Prakash Gupta Swadheen

Vs

Union of India and Others

Civil Appeal No. 2021 of 1970

(V. R. Krishna Iyer, R. S. Sarkaria, A. C. Gupta JJ)

01.05.1975

JUDGMENT

GUPTA, J. -

1. The appellant was appointed to the temporary post of caretaker in the Geological Survey of India by an order, dated April 4, 1963. The order which was signed by the Director of Administration, Geological Survey of India, begins, with the following words :

The Director General, Geological Survey of India hereby appoints

It is accepted by both sides that the appointment had been made by the Director General, Geological Survey of India. The order of appointment stated that the

appointee was to be on trial for a period of 2 year and his retention in the post for further period will be subject to the assessment of his work and during the trial period.

It appears that the appellant continued to work till January 25, 1966, when he received a notice terminating his service as Caretaker, Geological Survey of India, Northern Region, from the date of expiry of one calendar month from the date on which the notice was served on him. The notice of termination was issued on the signature of Shri G. K. Moghe, Director of Administration. As the appellant did not give up charge of his office even on the expiry of the said period of one month, he was relieved on his charge by an order, dated February 24, 1966.

2. The appellant challenged both the notice of termination as well as the subsequent order relieving him of his charge by a writ petition filed before the Allahabad High Court (Lucknow Bench). A learned Judge of the High Court by his judgment and order, dated December 12, 1968 allowed the petition and quashed the orders complained of on the view that the Director of Administration on whose signature the notice of termination was issued was not the competent authority to make that order. On appeal preferred by the Union of India, a Division Bench of the High Court reversed this decision and dismissed the writ petition holding that the Director of Administration was competent to terminate the services of the appellant.

3. The impugned notice of termination was issued under Rule 5(1)(a) of the Central Civil Services (Temporary Service) Rules, 1965 which is in these terms :

The Service of a temporary government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the government servant to the appointing authority or by the appointing authority to the government servant.

It is not claimed that the appellant was in quasi-permanent service. The learned Single Judge had held that the notice given by the Director of Administration was invalid because he was not the appointing authority. "Appointing authority" has been defined in Rule 2(a) of the Central Civil Service (Temporary Service) Rules, 1965 as follows :

Appointing authority means, in relation to a specified post the authority declared as such, under the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

"Specified post" has also been defined in clause (c) of Rule 2 as meaning the particular post, or the particular grade of posts within a cadre, in respect of which a government servant is declared to be quasi-permanent under Rule 3. It thus appears that the expression "appointing authority" as defined in Rule 2(a) applies only in relation to 'specified posts' and will not apply to the case of the appellant who did not hold a 'specified post'. The learned Single Judge hearing the writ petition relied on the definition of 'appointing authority' in Rule 2(a) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. That definition is as follows :

(a) 'appointing authority' in relation to a government servant means -

(i) the authority empowered to make appointment to the Service of which the government servant is for the time being a member or to the grade of the Service in which the government servant is for the time being included, or

(ii) the authority empowered to make appointments to the post which the government servant for the time being holds, or

(iii) the authority which appointed the government servant to such Service, grade or post, as the case may be, or

(iv) where the government servant having been a permanent member of any other Service or having substantively held any permanent post, has been in continuous employment of the Government, the authority which appointed him to that Service or to any grade in that Service or to that post, whichever authority is the highest authority.

4. Applying this definition to the facts of this case the learned Judge observed :

Under clause (ii) of the above cited definition the authority empowered to make appointment to the post which a government servant for the time being holds has to be deemed to be the appointing authority, and as such Sri G. K. Moghe, who by virtue of being the head of office is empowered to make appointment to the post held by the petitioner, may be deemed to be the appointing authority but in view of the concluding words in the above cited definition, namely "whichever authority is the highest authority" Sri G. K. Moghe cannot be considered to be the appointing

authority of the petitioner for the reason that the petitioner was appointed by the Director General of Geological Survey of India, and as such his case would be covered by clause (iii) of the definition cited above.

The learned Judge explained that the authority which appointed the petitioner being different from the authority empowered to make the appointment to the post held by the petitioner, the 'appointing authority' in relation to the petitioner would be the higher of two authorities, in this case the Director General, Geological Survey of India.

5. The Division Bench of the High Court hearing the appeal from the judgment of the learned Singh Judge thought that the definition of 'appointing authority' in Rule 2(a) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 would not apply because of the opening words of Rule 2 to the effect that the definition would be applicable "unless the context otherwise requires". According to the Division Bench sub-rule (2) of Rule 9 of the said Rules provides the contrary indication. Rule 9(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 reads :

All appointments to Central Civil posts, Class II, Class III and Class IV, included in the General Central Service shall be made by the authorities specified in that behalf by a general or special order of the President, or where no such order has been made, by the authorities specified in this behalf in the Schedule.

There is no dispute that the respondent held a Class III post in the General Central Service. It is also not disputed that there is no general or special order of the President applicable to this case. It appears from the Schedule referred to in this rule that with regard to Class III posts in non-Secretariat offices, "head of the office" is the specified authority competent to make appointments to such posts. The term 'head of the office' has been defined in Rule 3(j) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 as follows :

'head of the office', for the purpose of exercising the powers as appointing, disciplinary, appellate or reviewing authority, means the authority declared to be the head of the office under the General Financial Rules.

Annexure 'A' to the counter-affidavit filed in the High Court on behalf of the respondents before us is a communication dated May 21, 1962 addressed by the Director General, Geological Survey of India to the following authorities :

1. The Dy. Director of Audit, F. R., S. C. S. and M., G. A. D. Section, 8/2, Esplanade East, Calcutta.
2. - do - E. A. D. Section.
3. The Manager, Reserve Bank of India, Currency Deptt., Calcutta.
4. The Manager, Reserve Bank of India, Public Accounts Deptt., Calcutta.
5. The Agent, State Bank of India, Alipore.

In this documents the Director General, Geological Survey of India, states inter alia :

In term of Rule 3 of the G. F. R. Vol. 1, I do hereby declare Shri G. K. Moghe, Director of Administration, Geological Survey of India as the 'Head of Office'

From this the Division Bench concluded that Shri G. K. Moghe was the appointing authority in this case and as such was competent to make the order of termination.

6. Before us both sides proceeded on the footing, as the trial Court did, that the case was governed by the definition of 'appointing authority' in the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Counsel for the appellant contended that the fact that the communication dated May 21, 1962 was addressed only to the authorities in Calcutta indicated that Shri G. K. Moghe was declared Head of the Calcutta office only. It was argued that Shri G. K. Moghe could not therefore be considered as the appointing authority for the northern region where the appellant was posted when his service was terminated. This is a contention which cannot be rejected out of hand. However, this aspect of the matter does not appear to have been investigated in the High Court. But if the parties are agreed on the point, as they seemed to be, that the definition of 'appointing authority' in Rule 2(a) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 would apply to this case, there should be no doubt that Shri G. K. Moghe, assuming he was empowered to appoint the appellant, was not the appointing authority, the Director General, Geological Survey of India, who in fact appointed the appellant being the higher authority. We do not see how the provisions of Rule 9(2) are repugnant to the definition of appointing authority in Rule 2(a), as the Division Bench of the High Court appears to have thought. Rule 2(a) refers to the authorities who have the powers to appoint as also the authorities who did appoint a government servant and provides that whichever authority is the highest authority among them would be the appointing authority in relation to the government servant concerned. The definition plainly takes note of Rule 9(2) and no question can therefore arise that Rule 9(2) is repugnant to the definition of 'appointing authority' in Rule 2(a).

7. This should be enough to dispose of the appeal. However, despite the agreement among the parties on the point, it is possible to entertain some doubt as to whether the definition in Rule 2(a) would apply to this case. The Central Civil Service (Temporary Service) Rules, 1965 which govern the appellant's case also define 'appointing authority'. This definition refers to the definition of 'appointing authority' in the Central Civil Services (Classification, Control and Appeal) Rules, 1965 for one class of posts called the 'specified posts'. It might be reasonably argued that this indicated that the definition in the Central Civil Services (Classification, Control and Appeal) Rules, 1965 was not available for temporary government servants not holding specified posts. In the absence of any definition of 'appointing authority' in the Central Civil Services (Temporary Service) Rules, 1965 in relation to a temporary government servant not holding a specified post, as the appellant was, we think the term 'appointing authority' must be understood in its plain and natural meaning, namely, the authority which appointed him. From this point of view also the impugned notice of termination was given by an authority which was not the appointing authority, and as such did not satisfy the requirement of Rule 5(1)(a) of the Central Civil Services (Temporary Service) Rules, 1965.

8. Accordingly we allow the appeal, set aside the judgment and order of the Division Bench of the High Court and restore those of the learned Single Judge. Considering the circumstances of the case we direct the parties to bear their own costs throughout.

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