

Baradakanta Mishra

Vs

High Court of Orissa and Another

Civil Appeal Nos. 1512 and 1513 of 1974

(CJI A.N. Ray, M.H. Beg, Jaswant Singh JJ)

06.05.1976

JUDGMENT

RAY, C.J. -

1. This appeal arises out of the judgment dated December 3, 1973 of the High Court of Orissa.
2. The appellant filed a writ petition for quashing the order of the High Court dated December 3, 1972 reducing the appellant in rank and for quashing orders dated December 8, 1973 passed by the High Court dismissing the appellant from service.
3. The High Court dismissed the petition of the appellant.
4. The questions for consideration are two. First, whether the High Court was competent to reduce the appellant in rank. Second, whether the High Court could pass orders dismissing the appellant from service.
5. The appellant was appointed by the Governor as a Munsif in the State of Orissa in 1947. He was in course of time promoted to the post of a Subordinate Judge. The appellant was appointed by the Governor on March 28, 1962 as Additional District Magistrate (Judicial).
6. In 1961 a separate cadre of Additional District Magistrates (Judicial) was created by the Government. This new cadre was called "Superior Judicial Service Junior Branch". This cadre is not the same as that of District Judges and Additional District Judges who belonged to Superior Judicial Service Senior Branch.
7. The appellant was on January 15, 1963 reverted from the post of Additional District Magistrate (Judicial) to the rank of subordinate Judge. The appellant challenged the order of reversion in a writ petition in the High Court of Orissa. The writ petition was dismissed as will appear from the judgment reported in ILR 1966 Cut 503. The appellant made an application for special leave to appeal to this Court being Special Leave Petition (Civil) No. 53 of 1967. The application was rejected.
8. On February 5, 1968 the High Court appointed the appellant to the post of Additional District Magistrate (Judicial) by promotion. It is said that under Rule 10 of the Orissa Superior Judicial Service Rules, 1963 the High Court is the appointing authority empowered to appoint Additional District Magistrates (Judicial) by promotion from the rank of Subordinate Judge.
9. On July 31, 1968 the appellant was appointed by the Governor as an Additional District Judge.

10. On December 8, 1972 the High Court imposed on the appellant the punishment of reduction in rank from the post of Additional District and Sessions Judge to an Additional District Magistrate (Judicial). The order passed by the High Court dated December 8, 1972 records that in pursuance of the control vested in the High Court under Article 235 of the Constitution in a disciplinary proceeding initiated on charges dated April 29, 1972 against the appellant an officiating member of the Orissa Superior Judicial Service Senior Branch the appellant is reduced in rank with immediate effect and is released from suspension.

11. On March 30, 1972 the High Court passed an order in exercise of powers under Article 235 to the effect that the appellant was placed under suspension forthwith because a disciplinary proceeding against the appellant was contemplated.

12. On April 29, 1972 charges were served on the appellant. He was asked to submit an explanation. He did not do so. He thereafter asked for inspection of certain documents. A date was appointed but he did not inspect any document. With regard to the enquiry pursuant to the charges delivered to the appellant on April 29, 1972 the learned Judge of the High Court who was the enquiring Judge came to the conclusion that one of the charges was established that the appellant after pronouncing judgment on June 22, 1971 penned through his signatures on the judgment and entered into the order-sheet that it was not delivered. The enquiring Judge also found the appellant guilty of tampering with the records of the court. The enquiring Judge also found the appellant guilty of the charge that though the appellant was ordered by the court pending enquiry and during his suspension to fix the headquarters at Cuttack he did not comply with the order.

13. In the background of this enquiry the High Court ordered that the appellant be reduced to the rank of Additional Magistrate. The appellant challenged this order.

14. After the order of reduction of December 8, 1972 the High Court issued orders posting the appellant as Additional District Magistrate, Sambalpur and directed him to join at his new station. The appellant did not join the new station nor did he apply for leave. A fresh disciplinary proceeding was started against the appellant for willful absence from duty. The matter was enquired into by a judge of the High Court. The appellant submitted that the order reducing him was beyond the powers of the High Court. The enquiring Judge found him guilty. The appellant was given an opportunity to show cause against the order. The appellant did not do so. The High Court thereupon imposed the punishment of dismissal on the appellant and dismissed him. One of the orders of dismissal recited that in pursuance of the order passed by the Court in exercise of its powers under Article 235 of the Constitution in a disciplinary proceeding initiated on charges dated February 1, 1973 the appellant an officer of the Orissa Judicial Service Class I officiating in the Junior Branch of the Orissa Judicial Service is dismissed from service with immediate effect. Another order of December 3, 1973 recited that in pursuance of the order passed by the court in exercise of its powers under Article 235 the appellant an officer of the Orissa Judicial Service Class I, officiating in the Junior Branch of the Orissa Superior Judicial Service, who has been convicted on the charge of criminal contempt by Judgment of the Orissa High Court reported in I L R 1973 Cut 134 (Registrar of the Orissa High Court v. Baradakanta) (AIR 1973 Ori 244 (FB)) which was confirmed by the Supreme Court by judgment dated November 19, 1973 (Baradakanta Mishra v. Registrar, Orissa High Court) ((1974) 1 SCC 374 : 1974 SCC (Cri) 128) in Criminal Appeal No. 41 of 1973 is on the ground of conduct leading to such conviction, dismissed from service with immediate effect. The judgment of this Court is reported in (1974) 2 SCR 282.

15. The respondents contended that the High Court has disciplinary control over District Judges and

in exercise of that power the High Court can hold an enquiry and can impose all punishments other than dismissal or removal. The punishment of reduction in rank is said by the respondents not to be dismissal or removal because reduction in rank does not result in ouster from service. The respondents, therefore, submit that the order of December 8, 1972 reducing the appellant in rank was within the control vested under Article 235 of the Constitution in the High Court.

16. With regard to the orders of dismissal the respondents submitted that the appellant preferred appeals from the orders. The appeals were heard and dismissed by the Governor. The respondents, therefore, submit that the dismissal in effect and substance is by the Governor. The orders of dismissal are said by the High Court to be recommendation to the Governor of dismissal of the appellant. The respondents submit that the applicant did not challenge the order of the Governor, and, therefore, the orders have become final.

17. Article 233 provides that the appointment, posting and promotion of District Judges is by the Governor. The posting of a District Judge is the initial or the first posting as District Judge. The promotion of District Judge is appointment of persons by promotion to District Judges. When a Subordinate Judge is appointed as a District Judge the appointment is by promotion but it is a fresh appointment by promotion to be a District Judge.

18. Article 234 provides that appointment of persons other than District Judges to the Judicial Service of a State shall be made by the Governor in consultation with the State Public Service Commission and with the High Court.

19. Article 235 is relevant for the purpose of present appeal. The article states that 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 Judges 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.

20. The scope of Article 235 has been examined by this Court in several decisions. The important decisions are *State of West Bengal v. Nripendra Nath Bagchi* ((1966) 1 SCR 771 : AIR 1966 SC 447 : (1968) 1 LLJ 270); *High Court of Calcutta v. Amal Kumar Roy* ((1963) 1 SCR 437 : AIR 1962 SC 1704); *High Court of Punjab and Haryana v. State of Haryana (In the matter of N. S. Rao)*. ((1975) 3 SCR 365 : (1975) 1 SCC 843 : 1975 SCC (L & S) 229) The effect of the decisions is this. The word "control" as used in Article 235 includes disciplinary control over District Judges and judges inferior to the post of District Judge. This control is vested in the High Court to effectuate the purpose of securing independence of the subordinate judiciary and unless it included disciplinary control as well the very object would be frustrated. The word "control" is accompanied by the word "vest" which shows that the High Court is made the sole custodian of the control over the judiciary. Control is not merely the power to arrange the day-to-day working of the court but contemplates disciplinary jurisdiction on the presiding judge. The word "control" includes something in addition to the mere superintendence of these courts. The control is over the conduct and discipline of judges. The inclusion of a right of appeal against the orders of the High Court in the conditions of service indicates an order passed in disciplinary jurisdiction. The word "deal" in Article 235 also indicates that the control is over disciplinary and not mere administrative jurisdiction. The control which is vested in the High Court is complete control subject only to the power of the Governor in the manner of appointment including initial posting and promotion of District Judges and dismissal,

removal, reduction in rank of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal subject however to the conditions of service to a right of appeal if granted by the conditions of service, and to the giving of an opportunity of showing cause as required by clause (2) of Article 311 unless such an opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause. The High Court alone could make enquiries into disciplinary conduct.

21. In *N. S. Rao's case* (supra) this Court said :

The Governor has power to pass an order of dismissal, removal or termination on the recommendations of the High Court which are made in exercise of the power of control vested in the High Court. The High Court of course cannot terminate the services or impose any punishment on District Judge by removal or reduction. The control over District Judge is that disciplinary proceedings are commenced by the High Court. If as a result of any disciplinary proceeding are commenced by the High Court. If as a result of any disciplinary proceeding any District Judge is to be removed from service or any punishment is to be imposed, that will be in accordance with the conditions of service.

22. It is indisputable that the appellant was promoted to the post of Additional and Sessions Judge. That is the cadre of District and Sessions Judge. He was reduced in rank. Reduction in rank is one of the major punishment mentioned in Article 311. The major punishment are dismissal, or reduction in rank. The words "dismiss, remove or reduce in rank" have a stigma, namely, the meaning which they bear as three major punishment in service rules. The difference between dismissal and removal is that dismissal ordinary disqualifies any future employment and removal does not (See *Parshotam Lal Dhingra v. Union of India*). ((1958 SCR 828 : AIR 1958 SC 36 : (1958) 1 LLJ 544) It one is reverted by way of punishment for misconduct Article 311 (2) is attracted. The expression "reduction in rank" means that the person who holds the position of a Subordinate Judge has been reduced to the post of a Munsif. The rank of a Subordinate Judge is higher than that of the Munsif. But Subordinate Judges in the same cadre hold the same rank though they have to be listed according to their seniority in the civil list. Therefore, losing some places in the seniority list in the same cadre does not amount to reduction in rank under Article 311(2). [See *High Court of Calcutta v. Amal Kumar Roy* (supra)]. Reduction in rank may be brought about in the garb of a reservation. (See *Debesh Chandra Das v. Union of India*.) ((1970 1 SCR 220 : (1969) 2 SCC 158)

23. It was argued in *N. N. Bagchi's case* (supra) that the extent of control exercisable by the High Court under Article 235 must be so cut down as to keep disciplinary jurisdiction out. This argument was not accepted by this Court. This Court said that the provisions that certain powers are to be exercised by the Governor and not by the High Court do not take away other powers from the High Courts. This Court however incidentally added that in exercising these special power in relation to inquires against District Judges, the Governor would always have regard to the opinion of the High Court in the matter. This Court concluded by holding that there is nothing in Article 311 which compel, the conclusion that the High Court is ousted of the jurisdiction to hold the enquiry.

24. The High Court within the power and control vested under Article 235 could hold disciplinary proceeding against the appellant and could recommend the imposition of punishment of reduction in rank on the appellant. The actual power of imposition of one of the major punishment, viz., reduction in rank is exercisable by the High Court on December 8, 1972 reducing the appellant in rank is unconstitutional and is quashed.

25. The two orders of dismissal dated December 3, 1973 are based on the order of December 8, 1972. The substratum of the orders of dismissal being being unconstitutional the orders of dismissal cannot have any legal force. Further, the contention of the High Court merged in the orders passed by the Governor cannot be accepted. If the order of the initial authority is void an order of the appellate authority cannot make it valid. The order of the Governor used word "confirm". The appellant filed appeals by the Governor cannot have any legal effect because that which is valid can be confirmed and not that which is void.

26. For the foregoing reasons as is pointed out in N. S. Rao's case the High Court cannot terminate the services or impose any punishment on the District Judge if as a result of a disciplinary proceeding any District Judge is to be removed from service or any punishment is to be imposed that should be in accordance with the conditions of service.

27. In the present case the conditions of the Civil Services (classification, Control and Appeal) Rules, 1962, framed under Article 309 provides in Rule 14(4) that the appointing authority alone can impose penalties as specified in clauses (vi) to (ix) of Rule 13. Clause (vi) is the penalty of reduction in rank and clause (ix) is dismissal from service. Therefore, under the conditions of service the High Court cannot reduce in rank or dismiss a District Judge.

28. If the reduction of the appellant is without jurisdiction then the appellant is deemed to continue as a District Judge. The High Court could not dismiss the appellant. Dismissal could only be by the Governor. This is clear from the decisions of this Court in N. S. Rao's case (supra) and Shamsheer Singh v. State of Punjab. ((1975) 1 SCR 814 : (1974) 2 SCC 831 : 1974 SCC (L & S) 550)

29. The appeal is, therefore, accepted. The judgment of the High Court is set aside. The orders passed by the High Court on December 8, 1972 and December 3, 1973 are quashed.

30. In view of the orders being quashed the appellant will be deemed to be an Additional District Judge up to the date he retired. Parties will pay and bear their own costs.

Order in Civil Appeal No. 1513 of 1974

31. This appeal was not pressed. The appeal is dismissed. There will be no order as to costs.

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