

Union of India and Another

Vs

K. S. Subramanian

Civil Appeal No. 212 of 1975

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

30.07.1976

JUDGMENT

BEG, J.-

1. The Union of India and the Commander, Officer-in-charge, Naval Base, Cochin, are the appellants before us by grant of special leave against a judgment and decree of a Division Bench of the High Court of Kerala. The Division Bench had affirmed the decision of a learned Judge of the High Court dismissing an appeal from a judgment and decree of a subordinate Judge awarding Rs. 25,000 as damages, together with interest @ 6% per annum, to the plaintiff-respondent for the illegal termination of the respondent's services. The Plaintiff-respondent was serving as a Welder, Grade II, in the Civilian Defence Forces at the Naval Base, Cochin, at the time of this allegedly illegal termination of service by an order of October 25, 1968, of the Government of India, Ministry of Defence.
2. Special leave was granted on condition that the appellants will bear the costs of the respondent in any event. The point of law sought to be canvassed before us is : Does the doctrine that a Central Government servant holds his post "at the pleasure of the President", contained in Article 310 of the Constitution authorise the passing of an order of termination of services, without assigning any reason whatsoever of the holder of a post "connected with defence" ?
3. There is no finding anywhere that the services of the plaintiff-respondent were terminated as a measure of punishment for any wrong done by him or for incompetence, although, a perusal of the pleadings would show that the appellants denied the assertions of the plaintiff-respondent that he was efficient and entitled to promotions as he had qualified for them by passing certain tests.
4. The Subordinate Judge had awarded only Rs. 25,000 out of a claim of Rs. 75,000 made on the ground that, but for illegal termination of the service of the plaintiff-respondent, the plaintiff would have continued in service upto the age of 60 years and duly promoted instead of being thrown out of service at the age of 41. The plaintiff-respondent alleged that the termination of his service, without giving any reason whatsoever, was contrary to rules made under Article 309. A glance at paragraph 4 of the plaint shows that the violation of rules relating to conduct of disciplinary proceedings was alleged by the petitioner. In paragraph 5 of the plaint, however, he alleged :

As per the terms of appointment and the rules governing the service of the petitioner, he is entitled normally to continue in service till the age of 60. If his service had not been terminated as per the impugned order, the petitioner would have been entitled to continue for a further period of 19 years and 8 months.

He proceeded to assert :

Due to the illegal termination, the petitioner had lost a valuable right vested in him by virtue of his appointment and guaranteed by the Constitution of India and the rules framed thereunder namely a right to continue in service for the full period of 19 years and 8 months and thus to gain a livelihood for himself and his family.

5. A perusal of the judgment of the Division Bench shows that the only point really considered by it was whether the pleasure of the President mentioned in Article 310 of the Constitution, can override rules made under Article 309 of the Constitution.

6. The High Court had explained away a passage cited from *State of U. P. v. Babu Ram Upadhyaya* (AIR 1961 SC 751 : (1961) 2 SCR 679 : (1961) 1 Cri LJ 773) by observing that it did not support the argument that rules made under Article 309 of the Constitution did not control the pleasure of the President, under Article 310, which was to be subject to matters otherwise expressly provided in the Constitution. The passage so explained away runs as follows :

If there is a specific provision in some part of the Constitution giving to a government servant a tenure different from that provided for in Article 310, that government servant is excluded from the operation of Article 310. The said words refer, inter alia, to Articles 124, 148, 218 and 324 which provide that the Judges of the Supreme Court, the Auditor General, the Judges of the High Courts and the Chief Elections Commissioner shall not be removed from their offices except in the manner laid down in those articles. If the provisions of the Constitution specifically prescribing different tenures were excluded from Article 310, the purpose of that clause would be exhausted and thereafter the article would be free from any other restrictive operation. In that event, Articles 309 and 310 should be read together, excluding the opening words in the latter article, namely, "Except as expressly provided by this Constitution". Learned Counsel seeks to confine the operation of the words in Article 309 to the provisions of the Constitution which empower other authorities to make rules relating the conditions of service of certain classes of public servants, namely Article 146(2), 148(5) and 229(2). That may be so, but there is no reason why Article 310 should be excluded therefrom. It follows that while Article 310 provided for a tenure at 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.

7. The Kerala High Court relied on *Union of India v. J. N. Sinha* (AIR 1971 SC 40 : (1970) 2 SCC 458) to hold that the doctrine of office held at the pleasure of the President was subject to rules made under Article 309 of the Constitution, and pointed out that it was held, inter alia, by a Division Bench of this Court (at p. 42) : [SCC p. 460, para 8]

A government servant serving under the Union of India holds his office at the pleasure of the President as provided in Article 310 of the Constitution. But this "pleasure" doctrine is subject to the rules or law made under Article 309 as well as to the conditions prescribed under Article 311.

8. The High Court also relied on *State of Madhya Pradesh v. Shardul Singh* ((1970) 1 SCC 108,

111), where the same Division Bench of this Court had held inter alia (at p. 111) : (para 7)

Article 310(1) of the Constitution declares that every person who is a member of civil service of a State or holds any civil post in a State holds office during the pleasure of the Governor of a State. But the pleasure doctrine embodied therein is subject to the other provisions in the Constitution. Two other articles in the Constitution which cut down the width of the power given under Article 310(1) are Articles 309 and 311. Article 309 provides that subject to the provisions of the 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. Proviso to that article says :

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.

9. The High Court then referred to *N. Ramanatha Pillai v. State of Kerala* (AIR 1973 SC 2641, 2645 : (1973) 2 SCC 650 : 1973 SCC (L & S) 560), a decision of 5 learned Judges of this Court, in which Ray, C.J., speaking for the Constitution Bench of this Court, while considering the power of the Government to create, continue, and abolish a post and said (at p. 2645) : [SCC p. 655 : SCC (L&S) p. 565, para 17]

Article 309 provides that subject to the provisions of the Constitution, acts of the appropriate Legislature may regulate the recruitment and conditions of service of person appointed, to public services and posts in connection with the affairs of the Union or of any State. Therefore, Acts in respect of terms and conditions of service of persons are contemplated. Such Acts of Legislature must however be subject to the provisions of the Constitution. This attracts Article 310(1). The proviso to Article 309 makes it competent to 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, appointed, to such services and posts under the Union and the State. These rules and the exercise of power conferred on the delegate must be subject to Article 310. The result is that Article 309 cannot impair or affect the pleasure of the President or the Governor therein specified. Article 309 is, therefore, to be read subject to Article 310.

10. The High Court, after citing the passage set out above, said :

We do not understand the above passage as suggesting that Article 310 cannot in any manner be controlled by rules framed under Article 309.

After a consideration of decisions this Court in this manner it expressed its views as follows :

These cases, we think, sufficiently indicate that while it may be open to the President or to the Governor to dismiss a civil servant at pleasure, if rules have been framed under Article 309 of the Constitution to regulate the mode and manner of termination of service, these have to be complied with. This, we think, is reasonable and understandable enough on first principle. If the untrammelled pleasure of the President has been subjected to rules framed by the President himself in regard to the manner of termination of service, the pleasure must be subject to such rules.

11. The Divisions Bench of the High Court then recorded its conclusion :

We are therefore of the opinion that in the instant case, the Civil Services (Classification Control and Appeal) Rules, having been framed under Article 309 of the Constitution, the same had to be followed before the respondent's service was terminated. The same not having been admittedly complied with, the finding of the court below that the termination is illegal was correct and requires no interference. No argument were addressed on the quantum of damages awarded.

12. We do not think that the difficulty before the High Court could be resolved by it by following what it considered to be the view of a Division Bench of this Court in two cases and by merely quoting the views expressed by larger benches of this Court and then observing that these were insufficient for deciding the point before the High Court. It is true that, in each of the cases cited before the High Court, observations of this Court occur in a context different from that of the case before us. But, we do not think that the High Court acted correctly in skirting the views expressed by larger benches of this Court in the manner in which it had done this. The proper course for a High Court, in such a case, is to try to find out and follow the opinions expressed by larger benches of this Court in preference to those expressed by larger benches of this Court. That is the practice followed by this Court itself. The practice has now crystallized into a rule of law declared by this Court. If however, the High Court was of opinion that the views expressed by large benches of this Court itself. The practice has now crystallized into a rule of law declared by this Court. If, however, the High Court was of opinion that the views expressed by larger benches of this Court were not applicable to the facts of the instant case it should have said so giving reasons supporting its point of view.

13. We have perused the Central Civil Services (Classification Control and Appeal) Rules of 1965, (hereinafter referred to as '1965 Rules') which deal principally with procedure for disciplinary proceedings and penalties and appeals and reviews against orders passed under the rules. There is no rule there dealing with the conditions under which a service such as that of the plaintiff respondent may be terminated. We fail to see any rule made under Article 309 of the Constitution which was violated by the impugned order of termination of service of the plaintiff-respondent. We do not consider ourselves called upon to decide a question which has really not arisen in the case before us.

14. The 1965 Rules are applicable when disciplinary proceedings are taken. They do not make disciplinary proceedings under the rules incumbent or obligatory whenever the services of a person covered by these rules are terminated. The obligation to follow the procedure for punishment laid down in the rules flows from the provisions of Article 311 of the Constitution. And, as the opening words of Article 310 show, the doctrine of office held at the pleasure of the President does not apply to cases covered by Article 311.

15. Rule 3 of the above mentioned rules begins as follows :

3. Application. - (1) These rules shall apply to every Government servant including every civilian Government servant in Defence Services, but shall not apply to -

(a) any railway servant, as defined in Rule 102 of Volume I of the Indian Railway Establishment Code.

(b) any member of the All India Services,

(c) any person in casual employment,

(d) any person subject to discharge from service on less than one month's notice,

(e) any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions

(2) Notwithstanding anything contained in sub-rule (1), the President may by order exclude any class of Government servants from the operation of all or any of these rules.

(3) Notwithstanding anything contained in sub-rule (1), or the Indian Railway Establishment Code, these rules shall apply to every Government servant temporarily transferred to a Service or post coming within exception (a) or (e) in sub-rule (1), to whom, but for such transfer, these rules would apply.

(4) If any doubt arises -

(a) whether these rules or any of them apply to any person, or

(b) whether any person to whom these rules apply belongs to a particular service, the matter shall be referred to the President, who shall decide the same.

16. Even if the parties were governed by these rules, because the plaintiff held a civil post in one of the defence departments, yet, there must be some violation of one of these rules, which were no doubt Article 309 read with clause (5) of Article 148 of the Constitution, before any question of a conflict between a rule framed under Article 309 and the provisions of Article 310 could possibly arise. We fail to see much a conflict here.

17. These rules merely lay down procedure for matters covered by Article 311 of the Constitution. There is no doubt that proceedings under Article 311 of the Constitution constitute an exception to the doctrine of pleasure contained in Article 310 of the Constitution. But, in the case before us, no question of any disciplinary proceedings has been discussed because it did not arise at all. There is no finding that any punishment was imposed upon the plaintiff-respondent. It may be that mere termination of service, when the plaintiff-respondent was holding a permanent post and entitled to continue in service until 60 years of age, may constitute punishment per se even when the termination of service is not meant as a punishment. But, in that event, there had to be a finding on the rule or order under which the plaintiff was entitled to continue in service until he reached the age of 60 years. The High Court had cited no rule made under Article 309 to show that there was

any such provision.

18. In *P. L. Dhingra v. Union of India* (AIR 1958 SC 36, 47 : 1958 SCR 828 : (1958) 1 LLJ 544), Das, C.J., speaking for the majority of a Bench of five judges of this Court, said (said p. 47) :

It has already been said that where a person is appointed substantively to a permanent post in government service, he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule, he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Article 311(2). Termination of service of such a servant so appointed must per se be a punishment, for it operates as a forfeiture of the servant's rights and brings about a premature end of his employment.

19. The propositions laid down in Dhingra's case (supra) by this Court mean that, unless a legally justifiable ground is made out for the termination of the service of government servant in permanent service, in the sense that he is entitled to remain in service until he reaches the age of retirement, he could be deemed in a given case to be punished by apparently innocent order of termination of service. If, however, the respondent belonged to a class of government servants the tenure or condition of whose service was subject to the overriding and unqualified sway of the power to terminate his services at will, by reason of Article 310(1) of the Constitution, we doubt whether he could claim to be a "permanent" servant who could continue, as of right in service until he reaches the age of superannuation. At any rate he could not be a "permanent" government servant of the same class as one protected by Article 311.

20. Even if we were to hold that the plaintiff-respondent was constructively punished, the provisions of Article 311, unfortunately, do not apply to such a government servant as the respondent was. Whereas the power contained in Article 310 governs all government servants, including those in the service connected with defence, the benefits of Article 311, which impose limitations on the exercise of this power in cases of punishment, do not extend to those who hold posts "connected with defence". A Constitution Bench of this Court has held, after a review of relevant authorities, this to be the position of the holder of a post such as that of the plaintiff-respondent in *L. R. Khurana v. Union of India* ((1971) 3 SCR 908 : (1971) 1 SCC 780).

21. As the plaintiff-respondent was not entitled to the protection of Article 311, the only effect of the 1965 Rules upon his case is that they could be applied if disciplinary proceedings had been taken against him as the holder of a post "connected with defence". In other cases of such servants where no such disciplinary proceedings are instituted (and none were started against the plaintiff-respondent), the 1965 Rules, governing procedure for punishment to be imposed, will not apply at all. There is no legal obligation to apply those rules here. The legal obligation to apply them to every case of punishment, flowing from Article 311, is confined to holders of posts covered by Article 311. On this question, we are bound by the decision of a bench of five learned Judges of this Court in the Khurana's case.

22. We were asked to import the obligation to apply the procedure prescribed by Article 311 to a case such as the one before us by invoking the aids of Articles 14 and 16. Apart from the fact that these articles could not be invoked against a discrimination made by constitutional made by constitutional provisions, no such case was set up earlier. We cannot permit it at this stage.

23. The only ground on which the respondent had assailed the order of termination of his service was non-compliance of 1965 Rules, which meant that he claimed the protection of Article 311 of the Constitution. But, for the reasons given above, this protection is not available to him. Therefore, this appeal must succeed.

24. Consequently, we allow this appeal, set aside the judgment and decree of the High Court and dismiss the plaintiff's suit. But, in the circumstances of the case, the appellant will, in keeping with the under taking given at the time of grant of special leave, bear the costs of both sides throughout.

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