

Mysore State Road Transport Corporation

Vs

Mirja Khasim Ali Beg and Another

Civil Appeal Nos. 1601-1609 of 1968

State of Mysore

Vs

S.M. Ahmed and Another

Civil Appeal Nos. 2402-2405 of 1968

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

01.12.1976

JUDGMENT

JASWANT SINGH, J. –

1. This batch of appeals by special leave, the first one out of which is directed against the judgment and decree dated February 7, 1968, of Somnath Iyer, J. of the Mysore High Court in R.S.A. 627 of 1964, and the rest whereof are directed against the common judgment and decree dated March 26, 1968 of M. Santhosh, another learned Judge of that Court, in R.S.A. 120, 881, 117 to 119 and 882 to 884 of 1967 shall be disposed of by this judgment as they raise a common question as to the validity of orders of dismissal from service of persons who are arrayed as first respondents in all these appeals.

2. The facts leading to the appeals are : The first respondent in each of these appeals was working as a conductor in the Road Transport Department of the erstwhile State of Hyderabad prior to the coming into force of the States Reorganisation Act, 1956. On the reorganisation of the States with effect from November 1, 1956, consequent upon the coming into force of the said Act, the said respondents were allotted to the new State of Mysore but their employment as conductors was continued in the Depots which became parts of the Mysore Government Road Transport Department. As a result of the disciplinary proceedings taken against them for certain cash and ticket irregularities alleged to have been committed by them, they were dismissed from service by the Divisional Controller of the Mysore Government Road Transport Department in December, 1960. The orders of their dismissal from service were affirmed by the General Manager of the Mysore Government Road Transport Department. Thereupon they filed separate suits for declaration that the aforesaid orders of their dismissal from service passed by the Divisional Controller were illegal, void and inoperative and they continued to be in service and were entitled to full pay. The challenge by the said respondents against their orders of dismissal from service was based on the ground that their appointments having been made by the Superintendent, Road Transport Department of the erstwhile State of Hyderabad, who was the head of that Department, their dismissal from service could only be by the head of the Mysore Government Road Transport

Department, i.e., by the General Manager of that Department and consequently their dismissal by the Divisional Controller who was not the head of that Department but a subordinate of his was in violation of the right guaranteed to them under Article 311 (1) of the Constitution. The contentions of the first respondents regarding the invalidity of their dismissal due to the contravention of Article 311 (1) of the Constitution having ultimately prevailed and all the suits filed by them having been decreed in their favour, the State of Mysore and the Mysore Government Road Transport Corporation (hereinafter referred to as 'the Corporation') have come up in the appeal to this Court.

3. Appearing in support of the appeals, Mrs. Shyamla Pappu, counsel for the appellants, has raised the following contentions :

1. That as the post of the Superintendent of the Traffic Department did not exist in the new State of Mysore and the Divisional Controller of the Mysore Government Road Transport Department was competent to appoint and dismiss servants of the category to which the first respondents (plaintiffs) belonged, the orders of their dismissal from service could not be held to have been passed in violation of Article 311(1) of the Constitution in view of Section 116(2) of the States Reorganisation Act, 1956.
2. That in any event, as the General Manager of the Mysore Government Road Transport Department confirmed on appeal the order of dismissal from service of the first respondents, there was substantial compliance with the provisions of Article 311 of the Constitution.
3. That the posts held by the first respondents not being civil posts under the State, there could be no question of violation of Article 311(1) of the Constitution.
4. That the discretionary relief of declaration of continuance in service could not and should not have been granted on the facts of the present suits.
5. That in view of the fact that the first respondents were dismissed from service before the establishment of the Corporation and they did not choose to become its employees by exercising the option given to them to serve under it, no decree could be passed against the Corporation.

4. The principal and pivotal question that arises for our consideration in these appeals is whether the impugned orders of dismissal from service were passed by the competent authority. The answer to this question depends on the answer to the question as to who could be considered to be the appointing authority in case of the first respondents and whether they were dismissed from service by that authority or by an authority subordinate to it.

5. For a proper decision of this question, it is necessary to advert to Sections 115(7) and 116 of the States Reorganisation Act, 1956, Article 311(1) of the Constitution as also to contention 4 raised by the Corporation in the Statement of Case filed by it before this Court and the admission made by the appellants in answer to the interrogatories served on them by the first respondents under Order 11, Rule 2 of the Code of Civil Procedure which are in these terms :

Section 115(7). - Nothing in this section shall be deemed to affect after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in

connection with the affairs of the Union or any State :

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government.

Section 116. - Provision as to continuance of officers in the same posts, (i) Every person who immediately before the appointed day is holding or discharging the duties of any post or office in connection with the affairs of the Union or of an existing State in any area which on that day falls within another existing State or a new State or a Union territory shall, except where by virtue or in consequence of the provisions of this Act such post or office ceases to exist on that day, continue to hold the same post or office in the other existing State or new State or Union territory in which such area is included on that day, and shall be deemed as from that day to have been duly appointed to such post or office by the Government of, or other appropriate authority in such State, or by the Central Government or other appropriate authority in such Union territory as the case may be.

(2) Nothing in this section shall be deemed to prevent a competent authority after the appointed day, from passing in relation to any such person any order affecting his continuance in such post or office.

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

Contention No. 4 - The High Court failed to see that the post of Super -intendent was abolished and was not in existence and that, therefore, an authority of equal rank would be an authority competent to appoint and dismiss the employees.

Admission. - On November 1, 1956, the General Manager of the Mysore Government Road Transport Department was the head of the Mysore Government Road Transport Department and he was subordinate to none except the Government of Mysore.

The post of Divisional Controller is subordinate in rank to that of the General Manager.

6. A bare perusal of sub-section (7) of Section 115 of the States Reorganisation Act, 1956, reproduced above, makes it clear that nothing contained in that section could, after the appointed day, i.e., November 1, 1956, affect the operation of the provisions of Chapter I of Part XIV of the Constitution which includes Article 311 thereof in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State and the conditions of service applicable immediately before the appointed day to any person who is allotted to another State could not be varied to his prejudice except with the previous approval of the Central Government. Reference in this connection may be made to two decisions of this Court in *M. D. Shukla v. State of Gujarat* ([1970] 3 SCR 515 : [1970] 1 SCC 419) and *N. Raghavendra Rao v. Deputy Commissioner, South Kanara, Mangalore* ([1964] 7 SCR 549 : AIR 1965 SC 136 : (1965) 1

SCJ 327). In the latter case, it was held by this Court that the effect of sub-section (7) of Section 115 of the States Reorganisation Act is to preserve of power of the State to make rules under Article 309 of the Constitution but the proviso imposes a limitation on the exercise of that power, the limitation being that the State cannot vary the conditions of service applicable immediately before November 1, 1956, to the disadvantage of persons mentioned in sub-sections (1) and (2) of Section 115 of the Act. In the view of the Court, the broad purpose underlying the proviso to Section 115(7) of the Act was to ensure that the conditions of service of the aforesaid persons shall not be changed except with the prior approval of the Central Government, i.e., before embarking on varying the conditions of service, the State Governments should obtain the concurrence of the Central Government. Now as pointed out by the Judicial Committee of the Privy Council in *North West Frontier Province v. Suraj Narain Anand* (AIR 1949 PC 112 : 75 IA 343 : 50 Cri LJ 383) and by this Court in *Pradyat Kumar Bose v. The Hon'ble the Chief Justice of Calcutta High Court* ([1955] 2 SCR 1331 : AIR 1956 SC 285 : 1956 SCJ 259) and *State of Madhya Pradesh v. Shardul Singh* ([1970] 3 SCR 302 : [1970] 1 SCC 108), the expression 'conditions of service' is an expression of wide import and the dismissal from service is a matter which falls within the conditions of service of public servants. It is also well settled that it is not possible by means of any legislative provision or rule to take away the guarantee provided by Article 311 (1) of the Constitution which lays down that no public servant shall be dismissed by an authority subordinate to that by which he was appointed and if any such legislative provisions or rule lays down otherwise, it will clearly be ultra vires. (See *R. T. Rangachari v. Secretary of State* (64 IA 40 : AIR 1937 PC 27 : 166 IC 513)), *North West Frontier Province v. Suraj Narain Anand* (supra) and *State of U.P. v. Babu Ram Upadhyaya* ([1961] 2 SCR 679 : AIR 1961 SC 751 : (1961) 1 Cri LJ 773). It follows, therefore, that the protections including the Constitutional protection enshrined in Article 311 (1) of the Constitution enjoyed by persons holding civil posts under the State like the first respondents prior to the coming into force of the States Reorganisation Act, 1956, could not, after the appointed day i.e., November 1, 1956, be taken away, whittled down or impaired by any legislative enactment or rule.

7. Sub-section (2) of Section 116 of the States Reorganisation Act, 1956 which is the sheet anchor of the first contention raised on behalf of the appellants but on which no reliance was rightly placed on their behalf either in the court of the first instance or in the trial Court is of no assistance to the appellants. As observed by the learned Chief Justice while speaking for the Constitution Bench of this Court in *Gammon India Ltd. v. Union of India* ([1974] 1 SCC 566 : 1974 SCC (L & S) 252), every clause of a statute is to be construed with reference to the context and other provisions of the Act to make a consistent and harmonious meaning of the statute relating to the subject matter. The interpretation of the words has to be by looking at the context, the collocation of the words and the object of the words relating to the matters. The words are not to be viewed detached from the context of the statute. The words are to be viewed in relation to the whole context. The expression 'competent authority' occurring in sub-section (2) of Section 116 of the Act cannot, therefore, be considered in isolation apart from the rest of the provisions of the Act. It has to be read in conjunction with, construed and understood as having the same meaning as the expression 'appropriate authority' contemplated by sub-section (1) of that section which in turn according to Article 311(1) of the Constitution means the appointing authority or an authority equivalent to or co-ordinate in rank with the appointing authority. The Constitution being the transcendental law, the Legislature by enacting Section 115(7) or the States Reorganisation Act, 1956 took care to see that the constitution guarantee enshrined in Article 311(1) of the Constitution which was available to the civil servants before the States Reorganisation Act, 1956, was not destroyed or wiped away on their allotment to a new State. That the construction placed by us on the expression 'competent authority' is in consonance with the meaning and import of the word 'subordinate' occurring in Article 311(1)

of the Constitution is apparent from a catena of decisions.

8. In *N. Somasundaram v. State of Madras* (AIR 1956 Mad 419 : [1956] 1 LLJ 537) where the petitioner was appointed as Deputy Jailor by the Inspector General of Prisons but the order of his dismissal from service was made by the Superintendent of the Jail, it was observed :

The competence of the authority to order removal or dismissal will have to be determined with reference to the requirements of Article 311(1) of the Constitution; and one of the requirements is that the authority that orders the dismissal or removal should not be one subordinate in rank to that by which the civil servant in question was appointed. The principle would appear to be that it is the factum of the appointment of the civil servant who claims the guarantee, that determines the scope of the guarantee conferred by Article 311(1).

9. In *Sobhagmal v. State* (AIR 1954 Raj 207 : ILR 1954 Raj 733) where the applicant was informed in March, 1948 by the Revenue Secretary of the former State of Jaipur that he had been appointed as Inspector in the Customs and Excise Department and he was removed from service after departmental enquiry by the Commissioner, Customs and Excise, of the State of Rajasthan in July, 1952 and the order of his removal was confirmed on appeal by the Government of Rajasthan, Wanchoo, C.J. while holding that the order of removal could not be sustained said :

What Article 311(1) provides is that the authority dismissing should not be subordinate in rank to that by which the appointment was made. The intention seems to be that the authority dismissing should be co-ordinate in rank to the authority appointing, and not that in the absence of direct subordination any authority could dismiss even though the authority appointing might be a higher authority in rank. The dismissing authority should be at least co-ordinate in rank with the appointing authority and should not be subordinate in rank. Thus if a person is appointed by a Head of one department, and he is transferred to another department, he can only be dismissed or removed by the Head of the other department.

10. In *Gurmukh Singh v. Union of India* (AIR 1963 Punj 370 : 65 Punj LR 964), where the petitioner was appointed as an Assistant Sub-Inspector of Police in the Delhi State Police Force by the Deputy Inspector General of Police who was at the relevant time, the head of the Delhi Police and the post of Deputy Inspector General afterwards ceased to exist and the two senior-most officers in the Police Force at the relevant period were the Inspector General and the Senior Superintendent of Police and the petitioner was dismissed by the order of the Senior Superintendent of Police who had been invested with the powers of Deputy Inspector General, Falshaw, C.J. accepting the contention of the petitioner that his dismissal contravened Article 311 since the Superintendent of Police even where he is designated as Senior Superintendent is subordinate to the Deputy Inspector General of Police observed :

The word 'subordinate' in Article 311(1) of the Constitution means subordinate, in rank and not with reference to the functions exercised. Consequently, when no officer of equal rank to the appointing officer is available then the order of dismissal or removal will have to be passed by an officer of superior rank. In no circumstances can such an order be passed by an officer of lesser rank. Any rule of statute which permits such an action, must be held to be ultra vires as infringing the provisions of Article 311(1) of the Constitution.

11. In *Mahadev Prasad Roy v. S. N. Chatterjee* (AIR 1954 Pat 285 : ILR 1954 Pat 148) where the petitioner was appointed in 1928 as lino operator in the Government Press by the Superintendent of the Press and the Government order was passed on June 20, 1952, delegating the power of appointment and dismissal to the Deputy Superintendent who initiated proceedings against the petitioner on a charge of theft and passed an order dismissing the petitioner from service on September 16, 1953, Ramaswami, J. (as he then was) accepting the contention of the petitioner that he could be dismissed only by the Superintendent of the Government Press or by any higher authority and the order passed by the Deputy Superintendent was invalid and inoperative observed :

The word 'subordinate' in Article 311(1) must be properly construed to mean subordination in rank and no subordination of function; otherwise, the protection referred to in Article 311 would be illusory.

12. Similar view was expressed by a Full Bench of the High Court of Jammu & Kashmir in *State of J & K v. Raj Mohammad* (1971 J & K LR 558). In *The State of U.P. v. Ram Naresh Lal* ([1970] 3 SCC 173), that Court held that the power can be conferred on an officer other than the appointing authority to dismiss a Government servant provided he is not subordinate in rank to the appointing officer or authority.

13. In the instant cases, the first respondents were undeniably appointed by the Superintendent of the Traffic Department of the erstwhile State of Hyderabad who was the head of the Road Transport Department of that State. On the coming into force of the States Reorganisation Act, 1956 on November 1, 1956, they were to be deemed by virtue of sub-section (1) of Section 116 of the States Reorganisation Act to have been appointed with effect from that date to the posts held by them on that date by the appropriate authority in the new State of Mysore which could not in the context mean an authority other than the one equivalent to or co-ordinate in rank with the aforesaid authority in the erstwhile State of Hyderabad. The authority equivalent to or co-ordinate in rank with the aforesaid authority on the relevant date being the General Manager of the Mysore Government Road Transport Department according to the appellant's own admission as contained in answer to the aforesaid interrogatories served on them by the first respondents, he alone could be considered to be the 'competent authority' in terms of sub-section (2) of Section 116 of the States Reorganisation Act, 1956. The fact that there was no post of Superintendent of the Traffic in the Mysore Government Road Transport Department in the State of Mysore is of no consequence. Such being the position, the first respondents could not have been dismissed from service by an authority lower or subordinate in rank to the General Manager of the Transport Department as it would tantamount to deprivation of the guarantee enshrined in Article 311 of the Constitution read with Section 115(7) of the States Reorganisation Act, 1956. The first contention urged on behalf of the appellants which runs counter not only to contention No. 4 raised by the Corporation in its Statement of Case before this Court and the admission made by it in answer to the aforesaid interrogatories but also to Section 115(7) and Section 116 of the States Reorganisation Act, 1956 is, therefore, rejected.

14. The second contention urged on behalf of the appellants that as the General Manager of the Mysore Government Road Transport Department confirmed on appeal the orders of dismissal of the first respondents that should be considered as substantial compliance with the provisions of Article 311(1) of the Constitution is, in our judgment, devoid of substance. The original order of dismissal of the first respondents being without jurisdiction and as such void and inoperative having been passed in contravention of the provisions of Article 311(1) of the Constitution, the order passed on appeal by the General Manager could not cure the initial defect. In similar circumstances, the

appellate order passed by the Director General of Prisons was not considered by the Madras High Court in N. Somasundaram's case (supra) to remedy the invalidity of the original order passed by the Superintendent of Jails. To the same effect is the decision of the Nagpur High Court in Provincial Government, Central Provinces and Berar v. Shamshul Hussain Siraj Hussain (AIR 1949 Nag 118 : 1948 NLJ 365 : ILR 1948 NS 76).

15. Again in Suraj Narain Anand v. The North-West Frontier Province (1941 FCR 37 : AIR 1942 FC 3), it was held by the Federal Court that the rejection of appeal by a higher authority against dismissal is not equivalent to a dismissal by that authority itself, so as to satisfy the provisions of sub-section (2) of Section 240 of the Government of India Act, 1935.

16. There is also no force in the third contention of counsel for the appellants that the posts held by the first respondents not being civil posts under the State, there could be no question of violation of Article 311(1) of the Constitution. The argument seems to overlook that both at the time of coming into force of the States Reorganisation Act, 1956 and at the time of the passing of the impugned orders, the first respondents were holding civil posts in connection with the affairs of the State and they could not but be treated as holding civil posts under the State.

17. The fourth contention raised by counsel for the appellant that the discretionary relief of declaration could not and should not have been granted by the lower courts on the facts of the present suits is also devoid of merit. In Executive Committee of U.P. State Warehousing Corporation Limited v. Chandra Kiran Tyagi ([1970] 2 SCR 1006 250 : [1969] 2 SCC 838) and Executive Committee of Vaish Degree College, Shamli v. Lakshmi Narain ([1976] 2 SCR 1006 : (1976) 2 SCC 58 : 1976 SCC (L & S) 176) it was clearly held by this Court that declaration to enforce a contract of personal service can be granted in the following three cases :

- (i) appropriate cases of public servants who have been dismissed from service in contravention of Article 311;
- (ii) dismissed workers under Industrial and Labour Law; and
- (iii) when a statutory body has acted in breach of a mandatory obligation imposed by a statute.

18. This takes us to second limb of the fourth contention raised on behalf of the appellants. While it is true that the relief of declaration is discretionary, it is well settled that it is only if the discretion is not exercised by the lower court in the spirit of the statute or fairly or honestly or according to the rules of reason and justice, that the order passed by the lower court can be reversed by the superior court. Reference in this connection may usefully be made to a decision of the Privy Council in Charles Osenton & Company v. Johnston (1942 AC 130) where the legal position was succinctly stated as follows :

There remains the question whether, assuming that in the circumstance of this case Tucker, J. had jurisdiction to make the order of reference, his conclusion must stand on the ground that it was reached in the exercise of his discretion and that the exercise of such discretion should not be interfered with on appeal. So the respondent contends, while the appellants urge that, even if the discretion to make the order existed, it was wrongly exercised in view of the gravity of the charges made against them, of the impossibility of appeal from an official referee's finding of fact, and in

view of the practicability of the case being tried before a Judge without a jury. The law as to the reversal by a court of appeal of an order made by the judge below in the exercise of his discretion is well-established, and any difficulty that arises is due only to the application of well-settled principles in an individual case. The appellate tribunal is not at liberty merely to substitute its own exercise of discretion for the discretion already exercised by the judge. In other words, appellate authorities ought not to reverse the order merely because they would themselves have exercised the original discretion, had it attached to them, in a different way. But if the appellate tribunal reaches the clear conclusion that there has been a wrongful exercise of discretion in that no weight, or no sufficient weight, has been given to relevant considerations such as those urged before us by the appellant, then the reversal of the order on appeal may be justified. This matter was elaborately discussed in the decision of this House in *Evans v. Bartlam* (1937 AC 473), where the proposition was stated by my noble and learned friend, Lord Wright, as follows : "It is clear that the Court of Appeal should not interfere with the discretion of a judge acting within his jurisdiction unless the Court is clearly satisfied that he was wrong. But the Court is not entitled simply to say that if the judge had jurisdiction and had all the facts before him, the Court of appeal cannot review his order unless he is shown to have applied a wrong principle. The Court must if necessary examine anew the relevant facts and circumstances in order to exercise a discretion by way of review which may reverse or vary the order. Otherwise in interlocutory matters, the judge might be regarded as independent of supervision. Yet an interlocutory order of the judge may often be of decisive importance on the final issue of the case, and one which requires a careful examination by the Court of Appeal. Thus in *Gardner v. Jay* ([1885] 29 Ch D 50), Bowen, L.J. in discussing the discretion of the judge as regards mode of trial says : "That discretion, like other judicial discretion, must be exercised according to common sense and according to justice, and if there is a miscarriage in the exercise of it, it will be reviewed".

19. Bearing in mind the well settled principles regarding interference with the discretion and taking into consideration all the facts and circumstances of the present cases, we are unable to see how the discretion has been wrongly exercised in favour of the first respondents. The fourth contention urged on behalf of the appellants is, therefore, overruled.

20. We are also not impressed with the last submission made on behalf of the appellants that in view of the fact that the impugned orders of dismissal from service were passed before the establishment of the Corporation, no decree could be passed against it. The Corporation having itself made an application on September 7, 1964 before the trial Court endorsed by the Government Pleader requesting therein that since the State of Mysore had constituted a Road Transport Corporation and had transferred its rights and liabilities to the Corporation, the decree, if any be passed exclusively against it, it cannot now turn round and say that no decree should have been passed against it.

21. All the contentions raised on behalf of the appellants having failed, the appeals cannot succeed. They are accordingly dismissed but in the circumstances of the case without any order as to costs.

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