SUPREME COURT OF INDIA

State of M.P.

Vs.

Ramashanker Raghuvanshi"

Petn. for Spl. Leave to Appeal (Civil) No. 4679 of 1980

(S. Murtaza Fazl Ali and O. Chinnappa Reddy, JJ.)

21.02.1983

JUDGEMENT

FAZAL ALI, J.:-

1. Since we are clearly of the view that the special leave petition should be dismissed in limine on merits, I would not like to go any further into the details of the facts of the case. I would, therefore, refrain from expressing any opinion on the observations made by my learned brother Chinnappa Reddy, J.

2. **CHINNAPPA REDDY, J :-.**

This special leave petition has to be dismissed. There is no merit in it. The respondent was a teacher employed in a municipal school. The school was taken over by the Government in June, 1971. The respondent was absorbed in Government service by an order dated Feb. 28, 1972. The order recited

that the absorption was subject to 'verification of antecedents' and medical fitness. The services of the respondent were terminated on Nov. 5, 1974. Though the order terminating the services of the respondent did not purport to stigmatise him in any manner, it was not disputed before the High Court and it is no longer disputed before us that the order was founded on a report made by the Superintendent of Police, Raigarh on October 31, 1974, to the effect that the respondent was not a fit person to be entertained in Government service, as he had taken part in 'RSS and Jansangh activities'. The High Court held that the order of termination of service was of a punitive character, and quashed it on the ground that the provisions of Art. 311 of the Constitution had not been complied with. The State of Madhya Pradesh has sought leave to appeal to this Court under Art. 136 of the Constitution.

3. India is not a police State. India is a democratic republic. More than 30 years ago, on Jan. 26, 1950, the people of India resolved to constitute India into a democratic republic and to secure to all its citizens "Liberty of thought, expression, belief, faith and worship; Equality of status and opportunity"; and to promote "Fraternity, assuring the dignity of the individual". This determination of the people, let us hope, is not a forgotten chapter of history. The determination has been written into the articles of the Constitution in the shape of Fundamental Rights and they are what makes India a democratic republic and what marks India from authoritarian or police States. The right to freedom of speech and expression, the right to form associations and unions, the right to assemble peaceably and without arms, the right to equality before the law and the equal protection of the laws, the right to equality of opportunity in matters relating to employment or appointment to any office under the State are declared Fundamental Rights. Yet the Government of Madhya Pradesh seeks to deny employment to the respondent on the ground that the report of a Police Officer stated that he once belonged to some political organisation. It is important to note that the action sought to be taken against the respondent is not any disciplinary action on the ground of his present involvement in political activity after entering the service of the Government, contrary to some Service Conduct Rule. It is further to be noted that it is not alleged that the respondent ever participated in any illegal, vicious or subversive activity. There is no hint that the respondent was or is a perpetrator of violent deeds, or that be exhorted anyone to commit violent deeds. There is no reference to any addiction to violence or vice or any incident involving violence, vice or other crime. All that is said is that before he was absorbed in Government service, he had taken part in some 'RSS or Jansangh activities'. What those activities were has never been disclosed. Neither the RSS nor the Jansangh is alleged to be engaged in any subversive or other illegal activity; nor are the organisations banned. Most people, including intellectuals, may not agree with the programme and philosophy of the Jansangh and the RSS or, for that matter, of many other political parties and organisations of an altogether different hue. But that is irrelevant. Everyone is entitled to his thoughts and views. There are no barriers. Our Constitution guarantees that. In fact members of these organisations continue to be members of Parliament and State Legislatures. They are heard often with respect, inside and outside the Parliament. What then was the sin that the respondent committed in participating in some political activity before his absorption into Government service? What was wrong in his being a member of an organisation which is not even alleged to be devoted to subversive or illegal activities? The whole idea of seeking a police report on the political faith and the past political activity of a candidate for public employment appears to our mind to cut at the very root of the Fundamental Rights of equality of opportunity in the matter of employment, freedom of expression and freedom of association. It is a different matter altogether if a police report is sought on the question of the involvement of the candidate in any criminal or subversive activity in order to find out his suitability for public employment. But why seek a police report on

the political faith of a candidate and act upon it? Politics is no crime. Does it mean that only True Believers in the political faith of the party in power for the time being are entitled to public employment? Would it not lead to devastating results, if such a policy is pursued by each of the Governments of the constituent States of India where different political parties may happen to wield power, for the time being ? Is public employment reserved for "the cringing and the craven, in the words of Mr. Justice Black of the United States Supreme Court? Is it not destructive of the dignity of the individual mentioned in the preamble of the Constitution? Is it to be put against a youngman that before the cold climate of age and office freezes him into immobility, he takes part in some political activity in a mild manner. Most students and most youngmen are exhorted by national leaders to take part in political activities and if they do get involved in some form of agitation or the other, is it to be to their ever-lasting discredit? Some times they get involved because they feel strongly and badly about injustice, because they are possessed of integrity and because they are fired by idealism. They get involved because they are pushed into the forefront by elderly leaders who lead and occasionally mislead them. Should all these youngmen be debarred from public employment? Is Government service such a heaven that only angels should seek entry into it ? We do not have the slightest doubt that the whole business of seeking police reports, about the political faith, belief and association and the past political activity of a candidate for public employment is repugnant to the basic rights guaranteed by the Constitution and entirely misplaced in a democratic republic dedicated to the ideals set forth in the preamble of the Constitution. We think it offends the Fundamental Rights guaranteed by Arts. 14 and 16 of the Constitution to deny employment to an individual because of his past political affinities, unless such affinities are considered likely to affect the integrity and efficiency of the individual's service. To hold otherwise would be to introduce 'McCarthyism' into India. 'McCarthyism' is obnoxious to the whole philosophy of our Constitution. We do not want it.

4. In the fifties the practice of baiting and crucifying teachers, public servants and a host of others in the United States, as Communists came to be known as 'McCarthyism'. Its baleful effects were described by late President Eisenhower, himself an anticommunist, as follows :-

"McCarthyism took its toll on many individuals and on the Nation. No one was safe from charges recklessly made from inside the walls of congressional immunity. Teachers, Government employees, and even ministers became vulnerable. Innocent people accused of Communist associations or party membership have not to this day been able to clear their names fully. For a few, of course, the cost was little, - where the accused was a figure who stood high in Public trust and respect, personal damage, if any could be ignored or laughed away, But where, without proof of guilt, or because of some accidental or early-in-life association with suspected persons, a man or woman had lost a job or the confidence and trust of superiors and associates, the cost was often tragic, both emotionally and occupationally." The late President also said,

"They .... fear other people's ideas - every new idea. They .... talk about censoring the sources and the communication of ideas ....without exhaustive debate - even heated debate - of ideas and programs, free Government would weaken and wither. But if we allow ourselves to be persuaded that every individual, or party, that takes issue with our own convictions

is necessarily wicked or treasonous - then we an approaching the end of freedom's road

5. In Wieman v. Updegraff, (1952) 344 US 183, Black, J. said, in one of the notorious loyalty oath cases and, it is worth quoting in full :

"History indicates that individual liberty is intermittently subjected to extraordinary perils. Even countries dedicated to Government by the people are not free from such cyclical dangers. The first years of our Republic marked such a period. Enforcement of the Alien and Sedition Laws by zealous patriots who feared ideas made it highly dangerous for people to think, speak, or write critically about Government, its agents, or its policies, either foreign or domestic. Our constitutional liberties survived the ordeal of this regrettable period because there were influential men and powerful organized groups bold enough to champion the undiluted right of individuals to publish and argue for their beliefs however unorthodox or loathsome. Today, however, few individuals and organizations of power and influence argue that unpopular advocacy has this same wholly unqualified immunity from governmental interference. For this and other reasons the present period of fear seems more ominously dangerous to speech and press than was that of the Alien and Sedition Laws. Suppressive laws and practices are the fashion. The Oklahoma oath statute is but one manifestation of a national network of laws aimed at coercing and controlling the minds of men. Test oaths are notorious tools of tyranny. When used to shackle the mind they are, or at least they should be, unspeakably odious to a free people. Test oaths are made still more dangerous when combined with bills of attainder which like this Oklahoma statute impose pains and penalties for past lawful associations and utterances.

"Governments need and have ample power to punish treasonable acts. But it does not follow that they must have a further power to punish thought and speech as distinguished from acts. Our own free society should never forget that laws which stigmatize and penalize thought and speech of the unorthodox have a way of reaching, ensnaring and silencing many more people than at first intended. We must have freedom of speech for all or we will in the long run have it for none but the cringing and the craven. And I cannot too often repeat my belief that the right to speak on matters of public concern must be wholly lost."

"It seems self-evident that all speech criticizing Government rulers and challenging current beliefs may be dangerous to the status quo. With full knowledge of this danger the Framers rested our First Amendment on the premise that the slightest suppression of thought, speech, press, or public assembly is still more dangerous. This means that individuals are guaranteed an undiluted and unequivocal right to express themselves on questions of current public interest. It means that Americans discuss such questions as of right and not on sufferance of legislatures, Courts or any other governmental agencies. It means that Courts are without power to appraise and penalize utterances upon their notion that these utterances are dangerous. In my view this uncompromising interpretation of the Bill of Rights is the one that must prevail if its freedoms are to be saved. Tyrannical totalitarian Governments cannot safely allow their people to speak with complete

freedom. I believe with the Framers that our free Government can."

6. In another loyalty oath case, Garner v. Board of Public Works, (1950) 341 US 716, Douglas, J. had this to say :

"Here the past conduct for which punishment is exacted is single-advocacy within the past five years of the overthrow of the Government by force and violence. In the other cases the acts for which Cummings land Garland stood condemned covered a wider range and involved some conduct which might be vague and uncertain. But those differences seized on here in hostility to the constitutional provisions, are wholly irrelevant. Deprivation of a man's means of livelihood by reason of past conduct, not subject to this penalty when committed, is punishment whether he is a professional man, a day labourer who works for private industry, or a Government employee. The deprivation is nonetheless unconstitutional whether it be for one single past act or a series of past acts...

Petitioners were disqualified from office not for what they are today, not because of any program they currently espouse (cf. Gerende v. Board of Supervisors, (1950) 341 US 56), not because of standards related to fitness for the office, cf. Dent v. West Virginia, (1887-88) 129 US 114; Hawker v. New York, (1897) 170 US 189, but for what they once advocated ...."

6-A. In the same cam Frankfurter, J. observed :

"The needs of security do not require such curbs on what may well be innocuous feelings and associations. Such curbs are indeed self-defeating. They are not merely unjustifiable restraints on individuals. They are not merely productive of an atmosphere of repression uncongenial to the spiritual vitality of a democratic society. The inhibitions which they engender are hostile to the best conditions for securing a high-minded and high-spirited public service."

7. In Lerner v. Casey, (1958) 357 US 469, Douglas, J. said :

"We deal here only with a matter of belief. We have no evidence in either case that the employee in question ever committed a crime, ever moved in treasonable opposition against this country. The only mark against them - if it can be called such - is a refusal to answer questions concerning Communist Party membership. This is said to give rise to doubts concerning the competence of the teacher in the Beilan case and doubts as to the trustworthiness and reliability of the subway

conductor in the Lerner cast....................

There are areas, where Government may not probe .... But Government has no business penalizing a citizen merely for his beliefs or associations. It is Government action that we have here. It is Government action that the Fourteenth and First Amendments protect against ....Many join associations, societies, and fratenities with less than full endorsement of all their aims."

8. In Speiser v. Randall, (1958) 357 US 513, Black, J. said :

"This case offers just another example of a wide-scale effort by Government in this country to impose penalties and disabilities on everyone who is or is suspected of being a 'Communist' or who is not ready at all times and all places to swear his loyality to State and Nation .... I am convinced that this whole of business of penalizing people because of their views and expressions concerning Government is hopelessly repugnant to the principles of freedom upon which this Nation was founded ....

Loyalty oaths, as well as other contemporary 'security measures', tend to stifle all forms of unorthodox or unpopular thinking or expression - the kind of thought and expression which has played such a vital and beneficial role in the History of this Nation. The result is a stultifying conformity which in the end may well turn out to be more destructive to our free society than foreign agents could ever hope to be."

9. In the same case, Douglas, J., said :

"Advocacy which is in no way brigaded with action should always be protected by the First Amendment. That protection should extend even to the ideas we despise. As Mr. Justice Holmes, wrote in dissent in Gitlow v. New York, (1924) 268 US 652 : 69 L Ed 1138, 1148 : 45 S Ct 625. 'If in the long run the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they should be given their chance and have their way'. It is time for Government - State or federal - to become concerned with the citizen's advocacy when his ideas and beliefs move into the realm of action."

We may end our excursion to the United States of America with a reference to the words of wisdom uttered by Thomas Jefferson more than two centuries ago :

"...................... the opinions of men are not the object of civil Government, nor under its jurisdiction; .... it is time enough for the rightful purposes of civil Government for its officers to interfere when principles break out into overt acts against peace and good order."

10. We are not for a moment suggesting, that even after entry into Government service, a person may engage himself in political activities. All that we say is that he cannot be turned back at the very threshold on the ground of his past political activities. Once he becomes a Government servant, he becomes subject to the various rules regulating his conduct and his activities must naturally be subject to all rules made in conformity with the Constitution.

11. Let us once more remind ourselves of what Gurudev Rabindranath Tagore said :

"Where the mind is without fear and the head is held high : where knowledge is free;

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where the clear stream of reason has not lost its way into the dreary desert sand of dead habit :

Where the mind is led forward by thee into ever widening thought and action ...... let my country awake."

12. The application is dismissed.

Application dismissed.