

State of Orissa and Others

Vs

Shiva Parashad Das

And

State of Orissa and Others

Vs

Ram Parshad

Civil Appeals Nos. 200 (N) and 201

(V. B. Eradi, D. A. Desai, A. N. Sen JJ)

22.02.1985

JUDGMENT

V. BALAKRISHNA ERADI, J. -

1. In these two appeals filed by special leave against two judgments of the Orissa High Court, the question raised is identical namely, whether an order of suspension from service passed against a Government servant falls within the scope and purview of Article 311 of the Constitution. The judgment appealed against in Civil Appeal No. 201 of 1971 is prior in point of time and in the judgment under challenge in C.A. No. 200 of 1971 the High Court has merely followed the former judgment. We shall, therefore, refer only to the facts relating to C.A. No. 201 of 1971.

2. The respondent - Shri Ram Parshad - was appointed as a Forester by the Conservator of Forests, Berhampur, District Ganjam, on July 17, 1952. Subsequently, while working as a Forester under the District Forest Officer, Ghumsur North Division, the respondent was placed under suspension by an order dated February 26, 1969 passed by the said District Officer, pending enquiry into charges of negligence of duties. The respondent thereupon filed a writ petition in the High Court of Orissa under Article 226 of the Constitution challenging the order of suspension passed against him on the ground that it was made in contravention of Article 311 of the Constitution as well as Rule 12 of the Orissa Civil Services (Classification Control and Appeal) Rules, 1962 (hereinafter called the 'Rules'). The High Court by its impugned judgment allowed the writ petition and quashed the order of suspension holding the same to be in contravention of Article 311(1) of the Constitution. The High Court took the view that inasmuch as the respondent had been appointed as Forester by the Conservator of Forests, he could not have been validly suspended from service by the District Forest Officer, who is an authority sub-ordinate to the Conservator of Forests. The correctness of this view taken by the High Court is called in question by the appellant - the State of Orissa in these two appeals.

3. An order of suspension passed against a Government servant pending disciplinary enquiry is neither one of dismissal nor of removal from service within Article 311 of the Constitution. This

position was clearly laid down by a Constitution Bench of this Court in Mohammad Ghouse v. State of Andhra (1957 SCR 414 : AIR 1957 SC 246 : 1957 SCJ 225). It is unfortunate that this decision was not brought to the notice of the learned Judges of the High Court. Clause (1) of Article 311 will get attracted only when a person who is a member of Civil Service of the Union or an All-India Service or a Civil State or one who holds a civil post under the Union or a State is 'dismissed' or 'removed' from service. The provisions of the said clause have no application whatever to a situation where a Government servant has been merely placed under suspension pending departmental enquiry since such action does not constitute either dismissal or removal from service. The High Court was, therefore, manifestly in error in quashing the order of suspension passed against the respondent on the ground that it was violative of clause (1) of Article 311 of the Constitution.

4. Rule 12 of the Rules lays down that the appointing authority or any authority to which it is subordinate or any authority empowered by the Governor or the appointing authority in that behalf may place a Government servant under suspension, where a disciplinary proceeding against him is either contemplated or is pending. It is not in dispute that under a Notification issued by the State Government in exercise of the powers conferred by Rule 11 of the Rules, the District Forest Officer was constituted "the appointing authority" in respect of Foresters with effect from May 7, 1962. It is therefore clear that on the date on which the impugned order of suspension was passed - February 26, 1969, the District Forest Officer under whom the respondent was working in the Ghumsur North Division was fully competent to pass the impugned order of suspension. Hence the High Court was perfectly right in rejecting the further contention advanced before it by the respondent herein that the impugned action had been taken in violation of the provisions of Rule 12.

5. We accordingly allow this appeal - C.A. No. 201 of 1971, set aside the judgment of the High Court and dismiss the writ petition in O.J.C. No. 10 of 1970. The parties will bear their respective costs for this Court.

6. In the light of the legal position enunciated above, it follows that C.A. No. 200 of 1971 has also to be allowed. The judgment of the High Court is accordingly set aside and the writ petition filed by the respondent therein - O.J.C. No. 101 of 1970 will also stand dismissed. The parties will bear their respective costs in this appeal also.

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