

U. P. Public Service Commission at Allahabad

Vs

Suresh Chandra Tewari and Another

Special Leave Petition (Civil) No. 3865 of 1987

(E. S. Venkataramiah, K. N. Singh JJ)

07.08.1987

ORDER

VENKATARAMIAH, J. -

1. The Uttar Pradesh Public Service Commission (hereinafter referred to as 'the Commission') is the Petitioner in this petition. It has questioned the correctness of the order passed by the High Court of Allahabad in Writ Petition No. 17082 of 1986 directing it to comply with the order dated August 30, 1986 passed by the State Government on a appeal filed by respondent 1 against the order passed by the Commission in a disciplinary proceeding held against him.

2. Respondent 1 was working as a Section Officer in the office of the Commission. On July, 18, 1981 he was placed under suspension on certain charges and a departmental enquiry was initiated against him. In the said enquiry he was found guilty and he was reverted to the rank of a Upper Division Assistant by the order dated April 24, 1982 and by another order passed on the same day he was dismissed from service. Against these orders respondent 1 preferred an appeal before the State Government. The State Government found that respondent 1 had not been given opportunity to cross-examine the witnesses produced at the disciplinary enquiry, that he had not been given a reasonable opportunity to produce evidence from his side and that therefore, the punishment imposed on him was violative of Article 311 (2) of the Constitution. Accordingly, the order of dismissal passed against him in the disciplinary enquiry was set aside and the Commission was directed to hold a fresh enquiry in accordance with law. The order of the State Government further directed the Commission to reinstate respondent 1 as an Upper Division Assistant pending final decision in the disciplinary enquiry. It was also ordered that the salary and allowances due to respondent 1 from the date of his dismissal till the date of reinstatement should be paid to him. The above order was passed on August 30, 1986. Respondent 1 applied to the Commission on September 3, 1986 to permit him to rejoin the service as ordered by the State Government. When the Commission declined to comply with the order of the State Government respondent 1 instituted the writ petition, referred to above in the High Court of Allahabad for the issue of a direction to the Commission to comply with the order of the State Government. After hearing the learned counsel for respondent 1 and the Commission, the High Court allowed the writ petition and issued the directions as stated above. Aggrieved by the decision of the High Court, the Commission has filed this petition.

3. Two contentions are urged before us on behalf of the Commission -

(i) since the Commission, which is a constitutional authority, is not subordinate to the State Government, the State Government could not have heard the appeal filed against the order

passed by the Commission in a disciplinary proceedings, and

(ii) in any even the appeal should have been disposed of by the Governor himself and not by the Governor in accordance with the advice of the State Government.

4. The conditions of service of the members of the staff of the Commission are regulated by U. P Public Service Commission (Conditions of Service) Regulations, 1937 made under Section 265(2) of the Government of India Act, 1935 (corresponding to Article 318 of the Constitution) as they have been continued under the provisions of the Constitution. Regulations 20 of the said Regulations, as amended by the Uttar Pradesh Public Service Commission (Conditions of Service) (Amendment) Regulations, 1978 made by the Governor under Article 318 of the Constitution reads as follows :

20. Appointments to the gazetted ministerial posts other than those of the Under Secretary and the Assistant Secretary shall be made by the Commission.

(Appeals against the order of the Commission shall be to the Governor)

5. Regulation 28 of the U. P. Public Service Commission Staff Regulations, 1942 lays down as follows :

28. Regulations of pay, leave allowance, pension and other conditions of service :- Except as provided in these regulations or in any special declaration or order made by the Governor, all matters relating to the pay, allowances, pension, gratuity, leave retirement and other conditions of service of the persons appointed to the staff shall be regulated by the rules, declarations and others applicable generally from time to time to servants of the State of similar classes under the control of the Uttar Pradesh Government insofar as they are not inconsistent with any provisions expressly made in these regulations or in the Uttar Pradesh Public Service Commission (Conditions of Service) Regulations.

6. Rule 69 of the Civil Service (Classification, Control and Appeal) Rules, 1930 is to the effect that the State Government may, of its own motion or otherwise, call for the record of any case decided by an authority subordinate to it in the exercise of any power conferred on such authority by these rules, and inter alia, confirm, modify or reverse the order passed by such authority or direct that a further enquiry be held in the case. Rule 69-A sets out the procedure to be followed in filing a petition under Rule 69. Rule 69 and Rule 69-A are substantially applicable to the members of the staff of the Commission by virtue of Regulation 28 of the Uttar Pradesh Public Service Staff Regulations, 1942, extracted above, even though the Commission may not be an authority subordinate to the State Government because while applying Rule 69 to the staff of the Commission the rule should be read with the necessary modification by substituting in the place of the words 'an authority subordinate to it' the words 'the Uttar Pradesh Public Service Commissions. In any event by virtue of the amendment made to Rule 20 in 1978 appeals against the orders of the Commission passed in respect of the gazetted ministerial officers other than the Under Secretary and the Assistant Secretary lie to the Governor. Respondent 1 being a gazetted officer holding the post of a Section Officer is entitled to prefer an appeal under Regulation 20 of the Uttar Pradesh Public Service Commission (Conditions of Service) Regulations, 1937 to the Governor. On the facts and in the circumstances of the case we feel the contention of the Commission that an order passed by it in a disciplinary proceeding cannot be subject to an appeal is untenable by virtue of Regulation 20 of

the Uttar Pradesh Public Service Commission (Conditions of Service) Regulations, 1937 and Regulation 28 of the Uttar Pradesh Service Commission Staff Regulations, 1942. It may be that as held by this Court in *Hargovind Pant v. Dr. Raghukul Tilak* ((1979) 3 SCR 972 : (1979) 3 SCC 458 : 1979 SCC (L&S) 299) the Commission may be a constitutional authority not subordinate to any other authority. But the orders passed by the Commission in disciplinary proceedings held against the members of its staff are subject to the appeal to the State Government under Rule 69 of the Civil Service (Classification, Control and Appeal) Rules read with Regulation 20 of the Uttar Pradesh Public Service Commission (Conditions of Service) Regulations, 1937. There is no ground for thinking that the independence of the Commission would be affected by the State Government exercising the appellatant power in disciplinary matters as provided by Regulation 20. We, therefore, reject the first contention.

7. We shall now deal with the second contention. It is not doubt true that Regulation 20 provides that appeals against the orders of the Commission shall be made to the Governor. But while exercising his powers under that regulation the Governor has to act on the advice given by the State Government by virtue of Article 163(1) of the Constitution which reads thus :-

163(1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except insofar as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

8. The function of hearing an appeal against an order passed by the Constitution in a disciplinary proceeding held against any member of its staff is not one of those functions which the Governor is required to exercise in his discretion under any of the provisions of the Constitution. The Governor has therefore, to act on the advise of the State Government. The provision has been settled by the decision of this Court in *Samsher Singh v. State of Punjab* ((1975)1 SCR 814 : (1974) 2 SCC 831 : 1974 SCC (L&S) 550 : (1974) LLJ 465). Ray, C. J. speaking for himself. Palekar, Mathew, Chandrachud and Alagiriswami. JJ. has observed at page 836 thus : [SSC p. 849, SCC (L&S) p. 568, para 57].

For the foregoing reasons we hold that the President or the Governor acts on the aid and advice of the Council of Ministers with the Prime Minister at the head in the case of the Union and the Chief Minister at the head in the case of State in all matters which vest in the executive whether those functions are executive or legislative in character. Neither the President nor the Governor is to exercise the executive functions personally.

9. The function of deciding an appeal against an order of punishment imposed in a disciplinary proceeding is an executive function. Hence, by acting in accordance with the advice tendered to him by the State Government, the Governor has not acted contrary to the provisions of the Regulations or of the Constitution. The appellatant power is exercised in the instant case in accordance with Article 166 of the Constitution too.

10. The petition is, therefore, dismissed.

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