Ranjit Kumar Majumdar

Vs

Union of India and Others

SLPs (C) No. 10901 of 1995

(S. B. Majmudar, B. P. Jeevan Reddy JJ)

28.11.1995

ORDER

1. This short order is to indicate the reasons for referring this matter to a larger bench of three Judges.

2. The petitioner is holding a civil post connected with defence. Pending inquiry into certain grave charges in respect of which a criminal prosecution was launched, he was suspended on 3-2-1995. The suspension is ordered under Rule 10(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (the Rules). On 9-2-1995 the petitioner approached the Central Administrative Tribunal, Calcutta Bench questioning the validity of the order of suspension on the ground inter alia that the 1965 Rules do not apply to civilian employees in defence services and, therefore, the suspension effected under the said Rules is incompetent and without jurisdiction. The petitioner relied upon a decision of this Court in Union of India v. K. S. Subramanian. The Tribunal, however, rejected the said contention relying upon the later decisions of this Court in Union of India v. Indrajit Datta and Director General of Ordnance Services v. P. N. Malhotra. The Tribunal observed that merely because Article 311(2) has no application to civilian employees in defence services, it cannot be said that the 1965 Rules have no application to them. It referred to Rule 3 of the said Rules which says inter alia, "(T)hese Rules shall apply to every government servant including civilian government servants in Defence Service...." The Tribunal further observed that inasmuch as the suspension in question was not pending any departmental inquiry but a criminal prosecution, the said order of suspension is not illegal. The Tribunal also referred to the implied power of an employer to suspend his employee. The correctness of the Tribunal's judgment is questioned herein.

3. In K. S. Subramanian, a bench of three learned Judges of this Court observed : (SCC p. 335, para 11)

> "The 1965 Rules among others, provide procedure for imposing the three major penalties that are set out under Article 311(2). When Article 311(2) itself stands excluded and the protection thereunder is withdrawn there is little that one could do under the 1965 Rules in favour of the respondent. The said Rules cannot independently play any part since the rule-making power under Article 309 is subject to Article 311. This would be the legal and logical conclusion."

4. The Court also observed that "the exclusionary effect of Article 311(2) deprives him (such employee) the protection which he is otherwise entitled to. In other words, there is no fetter in the exercise of the pleasure of the President or the Governor". In short, the reasoning is that in the

absence of the protective umbrella of Article 311(2), the 1965 Rules cannot fetter the exercise of the pleasure in Article 310(1).

5. So far as Indrajit Datta and P. N. Malhotra are concerned, it was held therein that merely because the 1965 Rules are followed - assuming that the said Rules have no application to civilian employees in defence services - no prejudice can be said to have occurred to them nor can the inquiry be held to be void on that account. In P. N. Malhotra, it was explained that the said Rules merely incorporate the principles of natural justice in an elaborate and more satisfactory manner and that following the said Rules is indeed to the advantage of the employee. The question in this case however is if the said Rules have no application, then under what power could the Government have suspended the petitioner? When we indicated that such a power is incidental to the relationship of master and servant (reference was to the decision of this Court in Hotel Imperial v. Workers' Union) and that all that it means is that the employer would be bound to pay the full salary and emoluments to the employee even during the period the latter is kept away from service, the learned Additional Solicitor General appearing for the Union Government demurred. He submitted that the decision of this Court in K. S. Subramanian requires reconsideration. He submitted that merely because Article 311(2) has no application to civilian employees in defence services, the 1965 Rules cannot be said to be inapplicable to them, more particularly when the said Rules expressly say that they apply to civilian employees in defence services. It is submitted that no prohibition against applying the said Rules can be inferred from the non-applicability of Article 311(2).

6. We are of the opinion that this is a matter which requires an authoritative pronouncement by this Court. In view of the fact that K. S. Subramanian was decided by a bench of three learned Judges, we think it appropriate that this matter is placed before a bench of three learned Judges for hearing. It is for that bench either to decide the matter themselves or to refer it to a larger bench, if they think it appropriate.

7. The matter may be placed before the Hon'ble Chief Justice for orders regarding the posting of the matter before a bench of three learned Judges.