

State of M. P. and Others

Vs

Dr. Yashwant Trimbak

Civil Appeal No. 11536 of 1995

(S. C. Agarwal, G. B. Pattanaik JJ)

04.12.1995

JUDGMENT

PATTANAİK, J. –

1. Leave granted.

2. This appeal is directed against the order dated 30-4-1993 of the Madhya Pradesh Administrative Tribunal (Indore Bench) in the Transfer Application No. 3551 of 1988. By the impugned order the Tribunal has held that the departmental enquiry against the respondent was instituted without a proper and valid sanction as contemplated by Rule 9(2)(b)(i) and (ii) of the Madhya Pradesh Civil Services Pension Rules, 1976 (hereinafter as 'Pension Rules') and as such it is not sustainable and deserves to be quashed. Being aggrieved by the aforesaid order of the Tribunal the State of Madhya Pradesh has approached this Court.

3. The respondent had retired from the post of Director, Institute of Animal Health and Veterinary Biological Products, Mhow on 31-7-1983. His retiral benefits had been sanctioned by the appropriate authority. At that point of time, gross financial irregularities having come to the notice of the Secretary to the Government of Madhya Pradesh, Department of Animal and Cattle Wealth during the period while the respondent was continuing in the post of Director, Institute of Animal Health and Veterinary Biological Products from 1977 onwards, a letter was issued to the said respondent proposing an enquiry against him on 6-4-1985. Thereafter, a charge-sheet was served upon the respondent on 2-4-1986 and a departmental enquiry was ordered against him. The appropriate authority further withheld 50 per cent of his pension and a part of the gratuity amount of the respondent. The respondent being aggrieved by the said order moved the High Court of Madhya Pradesh for quashing the aforesaid enquiry as well as for quashing the order of withholding a part of the pension and gratuity, inter alia on the ground that without the sanction of the Governor as contemplated under Rule 9(2)(b)(i) of the Pension Rules, the proceeding is vitiated and also the consequential order withholding a part of the pension and gratuity. During the pendency of the application before the Madhya Pradesh High Court, the State Tribunal having been constituted, the proceeding was transferred to the Administrative Tribunal and the Tribunal finally disposed of the matter.

4. In the return filed by the State and its officers it was contended that the respondent had committed grave financial irregularities during his tenure relating to the period of 1977 onwards. The said financial irregularities came to the notice of the appropriate authority after the pension case of the respondent was forwarded by the Director of Veterinary Services. In fact the respondent before his superannuation got the no-demand and no-enquiry certificate issued in his favour on

misrepresentation of facts. When the financial irregularities and embezzlement committed by the respondent came to the notice of the appropriate authority, as a result of the investigation started by the Economic Wing of the Police, the appropriate authority took the decision to initiate the departmental proceedings. Before initiation of the departmental proceedings against the respondent under the provision of Pension Rules of 1976, due sanction of the Council of Ministers had been obtained and the order in question was communicated to the respondent by a duly authenticated order purported to have been passed by order of the Governor of Madhya Pradesh. The order in question though had been signed by the Under-Secretary to the Government of Madhya Pradesh, Department of Animal Husbandry, but it has been clearly stated :

"IN THE NAME AND BY ORDERS OF THE GOVERNOR OF MADHYA PRADESH"

5. The Tribunal on examining the provisions of Pension Rules more particularly Rule 9(2)(b)(i), came to the conclusion that the sanction of the Governor himself is necessary and therefore departmental proceedings could not be initiated under the orders of the Council of Ministers. Accordingly, the Tribunal quashed the departmental proceedings initiated against the respondent and also the order withholding a part of the pension and gratuity of the respondent.

6. Mr. Chitale, learned Senior Counsel appearing for the appellant, raised two contentions assailing the legality of the order of the Tribunal :

(1) The order initiating the departmental enquiry proceeding which was served on the respondent having been passed in the name and by order of the Governor in terms of Article 166(2) of the Constitution of India, the validity of the order cannot be called in question on the ground that it is not an order executed by the Governor and the Tribunal, therefore, committed gross error of law in quashing the departmental proceedings on a finding that there has been no sanction of the Governor.

(2) The power to accord sanction under Rule 9(2)(b)(i) of the Pension Rules being an executive power of the State Government and the Governor having allocated the business of the State Government to be transacted by the different Ministers under the Rule of Business made under sub-article (3) of Article 166 of the Constitution and admittedly the Council of Ministers having accorded sanction, there is no infirmity with the same and further the sanction of the Governor himself is not necessary.

7. Mr. Jain, learned counsel appearing for the respondent on the other hand contended that the Pension Rules being a Rule framed under Article 309 of the Constitution and the said Rule having conferred power of sanction on the Governor, it is the Governor alone who is entitled to sanction and the Council of Ministers could not have exercised that power. He further contended that when the sanction has not been accorded by the Governor himself, the bar under Article 166(2) of the Constitution cannot be attracted, and therefore, the Tribunal was fully justified in quashing the order initiating the departmental proceeding.

8. In view of the rival submission at the Bar two questions really arise for consideration :

(1) On the admitted position that the order initiating the departmental proceeding was served upon the respondent by a duly authenticated order passed in the name of the

Governor, is it open to the Court to examine the validity of the same in view of the provisions contained in Article 166(2) of the Constitution ?

(2) Whether the power to sanction conferred on the Governor under Rule 9(2)(b)(i) of the Pension Rules can at all be conferred on the Council of Ministers by making rules for convenient transaction of the business of the Government of State under Article 166(3) of the Constitution ?

9. Before embarking upon an enquiry to the aforesaid two questions, it will be appropriate to extract the provisions of Rule 9(2)(b) of the Pension Rules :

"9. (2)(b) The departmental proceeding, if not instituted while the government servant was in service whether before his retirement or during his re-employment :

(i) shall not be instituted save with the sanction of the Governor;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings -

(a) in which an order of dismissal from service could be made in relation to the government servant during his service in case it is proposed to withhold or withdraw a pension or part thereof whether permanently or for a specified period; or

(b) in which an order of recovery from his pay or the whole or part of pay pecuniary loss caused by him to the Government by negligence or breach of orders could be made in relation to the government servant during his service it is proposed to order recovery from his pension of the whole or part of any pecuniary loss caused to the Government."

10. Coming to the first question, from a bare look at the order which was served on the respondent, it is implicitly clear that the said order has been executed in the name of the Governor and has been duly authenticated by the signature of the Under-Secretary to the Government and therefore the bar to judicial enquiry with regard to the validity of such order engrafted in Article 166(2) of the Constitution will be attracted. The order which is expressed in the name of the Governor and is duly authenticated cannot be questioned in any court on the ground that it is not made or executed by the Governor. The signature of the Secretary or Under-Secretary concerned who is authorised under the authentication rules to sign the document signifies the consent of the Governor as well as the acceptance of the advice rendered by the Minister concerned. It is not the case of the respondent and Mr. Jain appearing for the respondent in this Court did not urge that the order in question is not an order within the meaning of Article 166(2) of the Constitution. But according to Mr. Jain under the Rules the Governor being the authority to sanction and the Governor not having sanctioned, the prohibition contained in sub-article (2) of Article 166 of the Constitution cannot be attracted and the court's power to examine is not taken away. We are unable to accept this contention of Mr. Jain, appearing for the respondent.

11. This Court in the case of State of Bihar v. Rani Sonabati Kumari [(1961) 1 SCR 728 : AIR 1961 SC 221], considered this question with reference to a notification issued under Section 3(1) of the

Bihar Land Reforms Act, 1950 and held :

"The order of Government in the present case is expressed to be made 'in the name of the Governor' and is authenticated as prescribed by Article 166(2), and consequently 'the validity of the order or instrument cannot be called in question on the ground that it is not an order or instrument made or executed by the Government'."

12. Even where an order is issued by Secretary of the Government without indicating that it is by order of the Central Government or by order of the President, this Court came to the conclusion that the immunity in Article 166(2) would be available if it appears from other material that in fact the decision had been taken by the Government. In *Municipal Corpn. of Delhi v. Birla Cotton, Spg. and Wvg. Mills* [(1968) 3 SCR 251 : AIR 1968 SC 1232] this Court came to the conclusion that in fact sanction had been given by the Central Government as required under the Act though the order did not indicate to be so.

13. This being the position and the order initiating the departmental proceeding having been signed by the Under-Secretary to the Government by order of the Governor, the same is immune from attack on the ground that it is not an order executed by the Governor as provided under Article 166(2) of the Constitution. As such the Tribunal was wholly incompetent to examine the legality of the same. In fact Article 166(2) of the Constitution has not been looked into at all by the Tribunal. In our opinion, the Tribunal was wholly in error in quashing the order on the ground that the Governor has not executed the same. In view of our conclusion on the first question, though the appeal is bound to succeed, we think it proper to examine the second question also.

14. The Rule in question no doubt provides that departmental proceedings if not instituted while the government servant was in service whether before his retirement or during his re-employment, shall not be instituted save with the sanction of the Governor. The question that arises for consideration is whether it requires the sanction of the Governor himself or the Council of Ministers in whose favour the Governor under the Rules of Business has allocated the matter, can also sanction. It is undisputed that under Article 166(3) of the Constitution the Governor has made rule for convenient transaction of the business of the Government and the question of sanction to prosecuted in the case in hand was dealt with by the Council of Ministers in accordance with the Rules of Business. Under Article 154 of the Constitution, the executive power of the State vests in the Governor and is exercised by him either directly or through officers subordinate to him in accordance with the Constitution. The expression "executive power" is wide enough to connote the residue of the governmental function that remains after the legislative and judicial functions are taken away.

15. Under Article 163(1) of the Constitution, excepting functions required by the Constitution to be exercised by the Governor in his discretion, the Governor acts on the aid and advice of the Council of Ministers. This Court in the case of *Samsher Singh v. State of Punjab* [(1974) 2 SCC 831 : 1974 SCC (L&S) 550] had indicated that any function vested in the Governor, whether executive, legislative or quasi-judicial in nature and whether vested by the Constitution or by a statute (sic can) be delegated by Rules of Business unless the contrary is clearly provided for by such constitution or statutory provision. The Court further held : (SCC p. 847, para 48)

"The President as well as the Governor is the constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in spheres where the Governor is required by or under the Constitution to

exercise his functions in his discretion. Whenever the Constitution requires the satisfaction of the President or the Governor for any exercise by the President or the Governor of any power or function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor but the satisfaction of the President or Governor in the constitutional sense in the Cabinet system of Government, that is, satisfaction of his council of Ministers on whose aid and advice the President or the Governor generally exercise all his powers and functions. The decision of any Minister or officer under Rules of Business made under any of these two Articles 77(3) and 166(3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of a Minister or officer under the Rules of Business is the decision of the President of the Governor."

16. After referring to the several previous authorities this Court further held : (SCC p. 849, 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 Union and the Chief Minister at the head in the case of State in all matters which vests in the Executive whether those functions are executive or legislative in character. Neither the President nor the Governor is to exercised the executive functions personally."

17. The order of sanction for prosecution of a retired government servant is undoubtedly an executive action of the Government. A Governor in exercised of his powers under Article 166(3) of the Constitution may allocate all his functions to different Ministers by framing rules of business except those in which the Governor is required by the Constitution to exercise his own discretion. The expression "business of the Government of the State" in Article 166(3) of the Constitution, comprises functions which the Governor is to exercise with the aid and advice of the Council of Ministers including those which he is empowered to exercise on his subjective satisfaction and including statutory functions of the State Government. The Court has held in *Godavari Shamrao Parulekar v. State of Maharashtra* [(1964) 6 SCR 446 : AIR 1964 SC 1128 : (1964) 2 Cri LJ 222] that even the functions and duties which are vested in a State Government by a statute may be allocated to Ministers by the Rules of Business framed under Article 166(3) of the Constitution. In *State of Bihar v. Rani Sonabati Kumari* [(1961) 1 SCR 728 : AIR 1961 SC 221], where power of issuing notification under Section 3(1) of the Bihar Land Reforms Act, 1950 have been conferred on the Governor of Bihar, this Court held :

"Section 3(1) of the Act confers the power of issuing notifications under it, not on any officer but on the State Government as such though the exercise of that power would be governed by the rules of business framed by the Governor under Article 166(3) of the Constitution."

18. Therefore, exception the matters with respect to which the Governor is required by or under the Constitution to act in his discretion, the personal satisfaction of the Governor is not required and any function may be allocated to Ministers.

19. Mr. Jain's contention is solely based on the ground that in the Rule itself both the expressions 'Governor' and 'Government' have been used and therefore the expression "sanction of the Governor" in Rule 9(2)(b)(i) would mean the personal sanction of the Governor. We are unable to

accept this contention. The power to sanction is nothing but an executive action of the Government provided under the Rules. This is not a matter with respect to which the Governor is required under the Constitution to act in his discretion. In this view of the matter when the Governor has framed Rules of Business under Article 166(3) of the Constitution allocating his functions and it is the Council of Ministers which has taken the decision to sanction prosecution of the respondent, we see no legal infirmity in the same. The Tribunal erred in law in coming to the conclusion that the sanction required under the rule is a sanction of the Governor.

20. In our considered opinion, in the facts and circumstances of the present case the power of the Governor under Rule 9(2)(b)(i) has been duly allocated in favour of the Council of Ministers under Article 166(3) of the Constitution and the said Council of Ministers has taken the decision to grant sanction for prosecution of the respondent.

21. In view of our aforesaid conclusion, the impugned order of the Tribunal is wholly unsustainable in law and we accordingly quash the same. The Transfer Application No. 3551 of 1988 filed by the respondent before the Madhya Pradesh Administrative Tribunal stand dismissed. The appropriate authority may now proceed with the departmental proceeding which has been initiated against the respondent.

22. This appeal is allowed, there will be no order as to costs.