

Jai Jai Ram and Others

Vs

U. P. State Road Transport Corporation, Lucknow, and Others

Civil Appeal No. 2267 of 1981

(S. C. Agrawal, G. T. Nanavati JJ)

09.07.1996

JUDGEMENT

NANAVATI, J.:-

1. This appeal by special leave is directed against the judgment and order passed by the Allahabad High Court in Writ Petition No. 150 of 1980 and Writ Petition Nos. 168, 169, 175, 177, 178, 179, 716, 720, 724, 761, 762, 764, 765, 880, 885 and 892 of 1980.

2. The question that arises for consideration in this appeal is whether disciplinary action could have been taken against the appellants, who are/were Government servants and who have/had been sent to the U.P. State Road Transport Corporation on deputation, by those Government officers who have/had been sent to the Corporation on deputation along with the appellants. There is no dispute on the point that some of the appellants were appointed by those officers. Other officers whose actions have been challenged are/were superior in rank or of the same rank but not subordinate in the rank or grade to the appointing officers of the remaining appellants.

3. Before June 1, 1972, the U.P. Government was running a passenger transport service known as the U.P. Government roadways in various parts of the State. The said department undertaking was then headed by Transport Commissioner. By notification dated 10th May, 1954, issued by the State Government under Article 309 of the Constitution, the Transport Commissioner, the Deputy Transport Commissioner, General Managers and the Assistant Regional Managers were notified as appointing authorities in respect of those categories of posts which were mentioned in the said notification. The Assistant Regional Managers were designated as appointing authorities, inter alia, for the posts of conductors and drivers. The appellants are or were holding such posts. Assistant Regional Managers were subsequently redesignated as Assistant General Managers and w.e.f. June 1, 1972, as Assistant Zonal Managers. The Corporation was established w.e.f. June 1, 1972 by notification dated May 31, 1972 and all the officers and employees connected with the work of roadways were deemed to be on deputation with the Corporation w.e.f. June 1, 1972. In course of time the Corporation appointed its own officers and employees but all those Government officers and other employees who were sent on deputation continued to remain on deputation and were not absorbed in the service of the Corporation. Disciplinary actions were taken against some of the employees and they were challenged on several grounds. In this appeal we are concerned with those employees who had continued as Government employees till their services came to be terminated or those against whom disciplinary actions have been initiated or were taken by those officers working in the Corporation who were sent on deputation and who also continued to be on deputation till

impugned actions were taken by them. Some of the employees had filed applications before the tribunal challenging the disciplinary actions taken against them. Those applications were allowed by the tribunal on the ground that as the applicants had continued to be on deputation with the Corporation the State continued to be their employer and, therefore, the Corporation was not competent to take disciplinary action against them. Aggrieved by the orders passed on those applications, the Corporation had filed the above writ petitions except writ petition No.150 of 1980 in the Allahabad High Court. Writ Petition No.150 of 1980 was filed by those deputationists/employees who have been suspended pending disciplinary actions against them. In that petition they have challenged their suspension. All those actions and orders were challenged on the ground that the Corporation and its officers including those officers who were/have been sent on deputation had no power to pass such orders as the petitioners being Government servants only the officers serving under Government could have passed such orders. All these petitions were heard together by the Allahabad High Court. In view of the conflicting opinions expressed by different Benches of the High Court these petitions were heard by a Full Bench. The Full Bench, by majority (Hari Swaroop and T.S. Mishra, JJ.), held that the disciplinary actions taken by those Deputy General Managers, Regional and Assistant Regional Managers of the Corporation who are/were Government servants and who have/had been sent to the Corporation on deputation had either appointed the delinquent employees or were superior in rank or of the same rank or grade and were not subordinate in rank to the appointing officers and therefore competent to take the impugned disciplinary actions. K.N. Goyal, J in his concurring judgment held that all officers of the Corporation who were not subordinate in rank to the appointing officers were competent to take the impugned disciplinary action. The Full Bench thus decided the point in favour of the Corporation and against the employees and allowed the writ petitions filed against the orders passed by Tribunal. As the tribunal had not decided all the questions raised before it the Full Bench directed the tribunal to decide those cases on other points in accordance with law. So far as Writ Petitions No.150 of 1980 is concerned the Full Bench has directed it to be listed before a Division Bench for disposal.

4. The view taken by the High Court is challenged on the ground that the disciplinary actions which have either been initiated or taken are by those authorities which were acting as officers of the Corporation and not as officers of the Government and as the appellants continued to be the Government servants no action could have been taken by those authorities. In support of his contention the learned counsel for the appellants drew our attention to the notifications under which the Corporation was established and the services of the appellants were lent to the Corporation. He also drew our attention to the Uttar Pradesh Fundamental Rules. It is, however, not necessary to discuss those notifications or the rules as it is not disputed now before us that the appellants even after their services were lent to the Corporation continued to be the Government servants. We may, however, refer to Rule 9 (7-B) which defines Government servant for the purposes of those rules to mean a person appointed to a Civil post or a civil service under the State Government in India, and serving in connection with the affairs of the Uttar Pradesh, whose conditions of service have been or may be prescribed by the Governor under Section 241(2)(b) of the Act, as it has some bearing on one of the submission made by the learned counsel for the appellants. It is also not in dispute that as the appellants were Government servants even while serving under the Corporation they were entitled to the protection of Article 311 of the Constitution. Like the appellants the officers, whose actions/orders have been challenged, have/had also continued as Government servants even though they have/had been on deputation with the Corporation. Realising the difficulty in describing them as officers of the Corporation the learned counsel for the appellants submitted that under Rule 9 (7-B) a person can be said to be a Government servant only if he is serving in connection with the affairs of the Uttar Pradesh and as the said officers, at the relevant time, were serving in the

Corporation which is an independent legal entity it cannot be said that they were serving in connection with the affairs of the Uttar Pradesh. Thus, they were not the Government servants when disciplinary action was taken by them against the appellants and, therefore, the impugned actions taken or orders passed by them must be regarded as invalid and illegal. In our opinion, there is no substance in this contention. In the first place the definition of term "Government servant" is for the purposes of the said rules and, therefore, not relevant for the purpose of Article 311 of the Constitution. Again, a Government servant remains a Government servant even when he is sent on deputation to foreign service and therefore the definition of the term Government servant will not have the same meaning in the context of a Government servant sent on deputation. But the learned counsel for the appellants drew our attention to the decision of this Court in *S.S. Chanoa v. Municipal Corporation, Delhi*, (1981) 3 SCC 431 : (AIR 1981 SC 1395), wherein a Joint Commissioner in the Ministry of Agriculture whose services were placed at the disposal of the Corporation for his appointment as a General Manager of Super Bazar was not considered as a person employed in connection with the affairs of the Union. In that case the Court was concerned with the question as to whether such a person can be said to be a 'public servant' within the meaning of clause Twelfth (b) of Section 21 of the Indian Penal Code and was entitled to the protection of Section 197 of the Code of Criminal Procedure, 1973. In that context it was observed by this Court that "Legally speaking, the Super Bazars are owned and managed by the Society and not by the Central Government and, therefore, the appellant was not employed in connection with the affairs of the Union within the meaning of Section 197 of the Code of Criminal Procedure, 1973". This Court pointed out that the Joint Commissioner who was deputed to work as a General Manager of Super Bazar did not answer any of the description of a 'public servant' mentioned in Section 21 of the I.P.C. during his period of deputation and therefore was not entitled to the protection of Section 197 of Code of Criminal Procedure. This decision, therefore, does not support the contention raised by the learned counsel for the appellants. As we are of the view that the officers, who had taken the impugned disciplinary actions against the appellants, were the Government servant at the time when the said actions were taken, the decision in *Krishna Kumar v. Divisional Assistant Electrical Engineer*, (1979) 4 SCC 289 : (AIR 1979 SC 1912), is also of no help to the appellants.

5. It was next contended that the officers who had taken action against the appellants had no power to make appointments in Government service or on civil posts while they were on deputation with the Corporation and, therefore, they could have not taken any action against the appellants in view of the protection afforded by Article 311. It was submitted that the authority contemplated by Article 311 is the authority which should have power to appoint a person on a civil post under the Union or a State, as the case may be. We do not find any substance in this contention also. Article 311 gives protection to a member of a civil service of the Union or an all-India service or a civil service of a State or to a person holding a civil post under the Union or a State against dismissal or removal by an authority subordinate to that by which he was appointed. Article 311 does not provide that a member of a civil service or a person holding a civil post either under the Union or a State cannot be dismissed or removed by an authority except the appointing authority. There is no requirement that the authority which takes disciplinary action must continue to have the power of making appointment to the civil service or on a civil post under the Union or a State. It can be any other authority so long as it is not subordinate in rank or grade to the authority by which the delinquent Government servant was appointed. That is the only requirement of Article 311 and we cannot read anything more into it. In *State of U.P. v. Ram Naresh Lal*, (1970) 3 SCC 173 : (AIR 1970 SC 1263), this Court has in clear terms held that there is nothing in the Constitution which debars a Government from conferring powers on an officer other than the appointing authority to dismiss a Government servant provided he is not subordinate in rank to the appointing officer or

authority.

6. Since the only question before the Full Bench of the High Court was whether the officers who had taken such actions were competent to do so in view of the protection afforded by Article 311 of the Constitution and as that is the only question which we have to decide it is not necessary to deal with the decision of this Court in *Manager, M/s. Pyarchand Kesarimal Porwal Bidi Factory v. Omkar Laxman Thange*, (1969) 2 SCR 272 : (AIR 1970 SC 823), wherein it has been held that the right of dismissal vests with the employer even though the employer might have lent their services to the third party, as in spite of such arrangement he continues to be in the employment of the employer. It may be stated that that was a case of private employment. It is also not necessary to deal with the decision of this Court in *Marathwada University v. Seshrao Balwant Rao Chavan*, (1989) 3 SCC 132 : (AIR 1989 SC 1582), as we are of the opinion that the impugned disciplinary actions and the judgment of the High Court can be sustained without reference to Section 34 of the Road Transport Corporation Act, 1950 which empowers the State Government to give directions to a Corporation established under the Act, inter alia, with respect to recruitment and conditions of service of the employees of the Corporation.

7. As we do not find any substance in any of the contentions raised on behalf of the appellants this appeal fails and is dismissed. No order as to costs. Appeal dismissed.