

SUPREME COURT OF INDIA

Advisory Jurisdiction Reference No. 1/2006
U/A 317 (I) of the Constitution of India, CPSC
OPINION

(CJI K.G. Balakrishnan, Dalveer Bhandari and J.M. Panchal JJ.)

08.07.2009

JUDGMENT

K.G. Balakrishnan, CJI.

1. Under Clause (1) of Article 317, the President of India referred the matter to the Supreme Court of India for an inquiry and report as to whether Shri Ashok Darbari, Chairman of the Chattisgarh Public Service Commission ought to be removed from the office of Chairman of the Commission on the grounds of misbehaviour. This was done by the President pursuant to the request made by the Governor of Chattisgarh on 24.2.2006 containing certain allegations of misbehaviour against the Chairman of the Public Service Commission. Notice was given to the Chairman of the Public Service Commission, Attorney General of India and also the Advocate General of the State of Chattisgarh. On behalf of the State, certain specific allegations have been made. The State proposed to adduce evidence in support of the allegations. 20 witnesses were examined in support of the allegations and 3 witnesses were examined in support of the Chairman of the Public Service Commission. Several documents were also produced.

2. We heard the Shri Amarendra Sharan, ASG, Additional Advocate General of the State of Chattisgarh and also learned Senior Counsel Shri S.K. Gambhir for the Chattisgarh PSC and also Shri Vivek K. Tankha, learned senior Counsel on behalf of Shri Ashok Darbari, Chairman, PSC.

3. The State PSC is constituted under Article 315 of the Constitution. Constitutional makers decided to have an independent body to recruit civil servants by open competition and with that object, an independent and impartial body was proposed to be constituted as the Public Service Commission. With a view to uphold the dignity and independence of the body, salaries, allowance and pension payable to the members of the staff of the Commission are to be charged on the Consolidated Fund of the State and the Chairman of the Public Service Commission is removable only by following the procedure laid down under the Constitution of India. Under sub-clause (1) of Article 317, the Chairman or any member of the Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf under Article 145, on a report that the Chairman or such other member, ought to be removed from the office. Article 317 of the Constitution does not define 'misbehaviour' or enumerate

what acts would constitute 'misbehaviour'. It is only after a fact finding inquiry is held, it could be said whether the alleged acts committed by the Chairman amount to 'misbehaviour'. The Chairman of the Public Service Commission is expected to show absolute integrity and impartiality in exercising the powers and duties as Chairman. His actions shall be transparent and he shall discharge his functions with utmost sincerity and integrity. If there is any failure on his part, or he commits any act which is not befitting the honour and prestige as a Chairman of the Public Service Commission, it would amount to misbehaviour as contemplated under the Constitution. If it is proved that he has shown any favour to the candidate during the selection process, that would certainly be an act of misbehaviour. The charges levelled against the Chairman of the Public Service Commission Shri Ashok Darbari are to be viewed in this background.

4. It is alleged that ever since Shri Ashok Darbari had been appointed, there were complaints in respect of his working ability and impartiality as Chairman of the Public Service Commission. In this case, four specific charges have been alleged against Shri Ashok Darbari. We will consider each charge allegedly made against him.

5. The first charge made against him is that he committed grave irregularities and mismanagement in conducting the preliminary examination conducted by the Chattisgarh Public Service Commission for the year 2005. To prove this charge, PW1, PW 10, PW 16, PW 17, PW 18, PW 19, PW 20 and RW 1 were examined. It may be noticed that for the conduct of the examination, there is Controller of Examinations in the Public Service Commission. The Chairman along with other members of the Commission decide the policies regarding priorities and dates of examination. The main complaint regarding the Preliminary Civil Examination held in 2005 was that for General Studies paper, there was a mixing up of model answer keys which prompted the leader of a political party to make a complaint to the Chief Minister. RW 2 who was the Secretary to the Governor deposed that the answer keys and the questions got mixed up due to computer error. The witnesses examined did not depose that there was any negligence on the part of the Chairman of the Public Service Commission. A series of individual complaints have been referred to but in these matters, the Chairman of the Public Service Commission was not found responsible. The Deputy Controller of Examinations was examined as PW 10. He was specifically asked whether Mr. Ashok Darbari was responsible for the irregularities, if any and he could not give a satisfactory answer to these questions. It has come in evidence that on the basis of irregularities, a departmental inquiry was initiated by the then Controller of Examinations and that PW 10 was a witness in the departmental inquiry and he gave evidence against the then Controller of Examinations. All these facts would only indicate that the Chairman of the Public Service Commission was unnecessarily dragged on to this controversy and in view of the evidence adduced, it is clear that if any irregularities had taken place in the conduct of the examination, it was due to the fault of some of the officers of the Public Service Commission and not by Shri Ashok Darbari, Chairman of the Public Service Commission.

6. The second charge against Shri Ashok Darbari, Chairman of the Public Service Commission was that he had unauthorisedly misused the Government vehicles, drivers and orderlies which were provided to him during his officiation in the post of Director General of

Police and he had not surrendered his vehicles or discharged the drivers or orderlies from service, after his appointment on 21.10.2004 as the Chairman of the Public Service Commission. Prior to the appointment of Shri Ashok Darbari as the Chairman of the Public Service Commission, he was Director General of Police of the State of Chattisgarh. Shri Ashok Darbari who was examined as RW 1 stated that the Chief Minister required him to join as Chairman of the Public Service Commission. Till July 2004, Shri Ashok Darbari was continuing as DGP of Chattisgarh. A person who was much junior to him was proposed to be appointed as DGP of the State. This was approved by the Central Ministry of Home Affairs and at that time the Chief Minister required him to join as the Chairman of the Public Service Commission. As Shri Ashok Darbari had been the Director General of Police of the State which was affected by Naxalites, he required additional police protection and the security cover included security vehicles, a motor cycle and some staff members in the form of guards and orderlies. RW 1 deposed that the Chief Minister agreed to give the security cover and it was under these circumstances that some of the vehicles were being used by him. The fact that these vehicles were being used must have been with the consent of the departmental authorities. They could have very well withdrawn the security arrangements given to Shri Ashok Darbari. There is no case that he willfully disobeyed any orders. From the allegations made against Shri Darbari, it could only be assumed that he being ex-DGP of the Naxalite affected State, was given some additional security while discharging his duties as the Chairman of the Public Service Commission. Hence, we are unable to find any proved misbehaviour and impropriety on his part.

7. The third allegation made against Shri Ashok Darbari is that he claimed house rent allowance not admissible to him under law. It was contended that as the Chairman of the Public Service Commission, he was entitled to the perquisites of a Grade I Officer of the State Government and the main allegation was that Shri Ashok Darbari was staying in a police mess and yet he was drawing HRA which was not admissible to him. Shri Ashok Darbari has explained that after his assumption of office, he requested the Chief Secretary to allot the official residence which was formerly occupied by his predecessor-in-office but Mr. Ashok Darbari was not allotted the building and he had no other option but to continue to occupy a room in the "Police Club" which was the safe place available to him and all retired IPS Officers are entitled to use the mess during their lifetime. He also received communication from the department that he was entitled to HRA @ 15% as per the rules. To explain the position further, the Accountant General of the State of Chattisgarh was examined as RW 3 and he deposed that Rule 14 and 18 did not say anything about house rent allowance and Rule 19 deals with House Rent Allowance and under Rule 2(f) Chairman is governed by Rule 19 and in view of Rule 19 coupled with Rule 2 (f), the HRA was applicable to the Chairman as per the rules issued by the Chattisgarh Government and he also deposed that on 10.4.2006, all the doubts regarding the admissibility of allowance stood clarified and there was nothing irregular in Shri Ashok Darbari claiming the house rent allowance. We do not find any basis for the allegation made against the Chairman, Chattisgarh Public Service Commission. On appointment as Chairman of Public Service Commission, the State Government should have provided him official quarters befitting the honour and respectability of the office which he occupied. The State had not provided any such building at the disposal of the Chairman and he had to stay in the police mess almost

throughout his career as the Chairman of the Public Service Commission. It is quite surprising that the Chairman, Public Service Commission was forced to occupy the police mess and had to suffer these type of allegations that he had drawn HRA for the period he had stayed in the police mess.

8. The fourth allegation made against Shri Ashok Darbari is that in discharging his official functions as the Chairman of the Public Service Commission, he acted in a dictatorial manner and that his style of functioning was objectionable. The Chairman of the Public Service Commission as RW 1 deposed that when he took over as Chairman of the Public Service Commission, there were four other members and 50% of them did not belong to Government service having 10 years experience as provided for under proviso 1 of clause (1) of Article 316 of the Constitution. Many of them were appointed on account of their political background. He further deposed that all these members wanted to know the confidential matters like where the question papers were printed and who sets the question papers, etc. Some of the members gave a list of persons who should be appointed as the question paper setters. Though the meetings of the committees were on fixed schedules, these members used to come very late. It is alleged that these members did not like the Chairman taking strict actions regarding the conduct of the examination and other official functions. So in respect of the charge alleged that Shri Ashok Darbari acted in a dictatorial manner, the details are not divulged and no evidence has been adduced to show in what manner Shri Ashok Darbari acted in dictatorial manner. As regards the conduct of the examination, some problem had arisen and they cannot be attributed to Shri Ashok Darbari and the Controller of Examinations and some other officials were responsible for committing such irregularities. The postponement of examination was also decided upon by the Commission and other members also participated in that meeting. RW 1 was extensively cross-examined by the learned Counsel for the State but nothing has been brought out in his evidence as to how he had acted in a dictatorial manner. We are unable to find any merits in this allegation. We hold that Shri Ashok Darbari has not exhibited any improper behaviour and all the charges levelled against him are baseless and there is not even prima facie proof of misbehaviour on the part of Shri Ashok Darbari, Chairman of the Public Service Commission.

9. In our opinion, there is no evidence of proved misbehaviour against Shri Ashok Darbari. Hence, reference is answered in negative and it is deemed that he should have continued in his office till the time his appointment might ordinarily had come to an end. As a result, he should be given all pecuniary benefits which would have been due to him but for the suspension. The reference stands answered accordingly.