

GUJARAT HIGH COURT

Ramesh C. Mashruwala

Vs.

State of Gujarat

Special C.A. No. 306 of 1973

(A.D. Desai and D.P. Desai, JJ.)

19.04.1974

JUDGMENT

A.D. Desai, J.

1. The petitioner was appointed as a Registrar of the Small Causes Court, Ahmadabad on September 12, 1969 on probation for a period of 2 years. The order of appointment is at Annexure "B" to the petition. The probation period was extended from time to time by the Government. On a complaint filed by Mr. N.C. Thakker, an advocate a preliminary inquiry was held by the High Court and ultimately a charge sheet at Annexure "D" under the signature of respondent No. 2 who is the Registrar of the High Court, was served on the petitioner and the charges were as under:

"(1) That you while serving as Registrar, Small Causes Court, Ahmadabad, on or about May 5, 1970, demanded Rs. 30/- which amount thereafter was reduced to Rs. 25/-, for the work of affirmations of affidavits before you, which was not your legal remuneration, and refused to get the affidavits affirmed before you unless you were paid the amount.

(2) That the act on your part amounts to grave misconduct as a Government Servant."

On October 6, 1970, the Principal Judge, City Civil Court, Ahmadabad was appointed as an inquiry officer by the High Court. After completion of the Departmental Inquiry, he submitted his report to the High Court on December 7, 1970, holding that the charges against the petitioner were not proved. On January 1, 1971 the High Court by confidential letter directed the Inquiry Officer to record the statement of Mr. V.R. Bhatt, an advocate. After recording the statement of the said Advocate in the presence of the petitioner, the Inquiry Officer made a further report on January 20, 1971 holding that the charges against the petitioner were not proved. After receiving the report, the High Court by its order dated April 15, 1972, directed a show cause notice to be issued to the petitioner. Such a notice was issued stating that the High Court did not agree with

the findings of the Inquiry Officer that it had come provisionally to the conclusion that both the charges leveled against the petitioner had been duly proved and asked the petitioner to show cause why he should not be dismissed from the service. On receipt of the show cause notice the petitioner showed cause. Ultimately the High Court forwarded the papers of the Departmental Inquiry to the Government recommending the punishment of dismissal. The Government issued notice dated November 30, 1971 against the petitioner to show cause why the charges should not be held proved, and proposed punishment of dismissal should not be passed. After considering the reply of the petitioner to the said show cause notice the Government passed order dated December 6, 1972 which is at Annexure "N", dismissing the petitioner from service. It is this order of dismissal which is challenged and the grounds of challenge are as under:

(1) That the petitioner is not a member of judicial service but belongs to General State Service. The High Court was not his appointing authority. High Court has no authority to make the preliminary inquiry or to hold Departmental Inquiry after appointing the Inquiry Officer because the petitioner did not belong to the judicial service of the State. The Government alone had the power to hold the preliminary inquiry and take disciplinary action.

(2) The High Court had no authority to direct further inquiry to be made in respect of recording the statement of Mr. Bhatt or to consider the reports made by the inquiry officer and come to a conclusion about the guilt of the petitioner or to issue show cause notice of punishment.

(3) The direction of the High Court that the statement of Mr. Bhatt be recorded was passed without hearing the petitioner and this violated the rule of natural justice.

(4) The failure to give copies of certain documents demanded by the petitioner deprived the petitioner of a reasonable opportunity to defend himself and, therefore, the inquiry was contrary to the provisions of Article 311 of the Constitution.

(5) That the impugned order was passed by the Government without consulting the Public Service Commission and, therefore, the same was illegal and bad in law.

2. The point which is argued at length is the first point and the decision on the point will finally dispose of the petition. We will, therefore, consider the arguments in respect of the first point only. There is no dispute that the petitioner was appointed to the post of Registrar of the Small Causes Court, Ahmadabad in the General State Service Class II. This is evident from Annexure "C" which is annexed to the petition. Section 13 of the Presidency Small Cause Courts Act, 1882, provides for the appointment of Registrar to the Court of the Presidency Small Cause Courts. The said section, so far relevant, provides that there shall be appointed an officer to be called the Registrar of the Court who shall be the chief ministerial officer of the Court. It also provides for the appointment of the Deputy Registrar and clerks and other ministerial officers. It further provides that the Registrar and other ministerial so appointed shall exercise such powers and discharge such duties of ministerial nature, as the Chief Judge from time to time may direct. The contention raised on behalf of the petitioner is that the post of a Registrar to which the

petitioner was appointed is an administrative post which is not included within the expression "judicial service" as defined in Article 236 of the Constitution in respect of which the High Court has control under Article 235. Consequently, the argument ran, the High Court had no power to take disciplinary proceeding against the petitioner as Article 235 of the Constitution empowers the High Court to take disciplinary proceedings only in respect of the judicial officers presiding the District Court or Courts subordinate thereto. The arguments of the learned advocates centered round the interpretation of Article 235 of the Constitution. We shall, therefore, refer to the relevant Articles of the Constitution relating to the judicial service of the State. Chapter VI of Part IV of the Constitution makes provisions for Courts subordinate to High Court. Article 233 refers to the appointment of District Judges. Under Sub-section (1) of Article 233 the appointment can be by promotion and such appointment has to be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. Sub-section (2) of Article 233 provides for direct appointments as District Judges and provides for qualifications for persons to be appointed and such appointments are to be made on the recommendation of the High Court. Article 234 provides for recruitments of persons other than District Judges to the judicial service. It is stated in the Article that appointments of persons other than the District Judges to the judicial service of the State shall be made by the Governor of the State in accordance with the rules made by him in that behalf after consultation with the Sub Public Service Commission and the High Court exercising jurisdiction in relation to such State. Having provided for such appointments the Constitution then provides for the control of the subordinate Courts and this power is provided in Article 235 of the Constitution. The said Article provides that the control over District Courts and Courts subordinate thereto including the posting and promotion of, and granting of leave to persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge shall be vested in the High Court, but nothing in the Article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorizing the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under the law. Article 236 provides that expression "judicial service" means a service consisting exclusively of persons intended to fill the post of District Judge and other civil judicial posts inferior to the post of District Judge. These are the material provisions relating to the subordinate Courts. Articles 233 and 235 came up for interpretation before the Supreme Court in the *State of West Bengal and Anr. v. Nripendra Nath Bagchi*¹, The Court before interpreting the said Articles referred to the legislative history, and it was pointed out by the Court that under the Government of India Act of 1915 the judicial service formed part of the general State service. The judicial service was thus not independent of the executive. The same position prevailed under the Government of India Act, 1935. There was a demand for an independent judiciary and in pursuance of the demand the framers of the Constitution made provisions for subordinate Courts in Part IV and this part deals with judicial service of the State. The judicial service was taken out from the preview of services of the Union and the State which are dealt with in part XIV of the Constitution. Keeping in mind this legislative changes the Court interpreted Articles 233 and 235 of the Constitution and observed that these Articles deal with the appointment of

persons to be and the postings and promotions of the District Judges and appointments, postings and promotions of the Judges subordinate to the District Judge and the control over the District Court and the Courts subordinate thereto, This group of Articles, observed the Court, is intended to make special provision for the judicial service of the State. The Court further held that the High Court was made the sole custodian and the Court alone had the control over the judiciary. Control under Article 235 of the High Court, therefore, is not merely the power to arrange the day to day working of the Court but contemplates disciplinary jurisdiction over the presiding Judge. The Court then referred to Article 227 of the Constitution which provides for superintendence over these Courts, and held that the word "control" in Article 235 must

¹ A.I.R. 1966 S.C. 447

have a different content. It includes something in addition to mere superintendence. It is control over the conduct and discipline of the Judges. The control which is vested in the High Court is complete control subject only to the power of the Governor in the matter of appointment including dismissal and removal, posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold inquiry, impose punishment other than dismissal or removal subject however to the conditions of service and right of appeal granted by the conditions of service and to the giving of an opportunity of showing cause as required by Article 311 of the Constitution, unless such opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause. In fact what was held by the Court was that the High Court alone had the jurisdiction to take disciplinary proceedings against the members of judicial service working in the District Court or the Court subordinate thereto with this limitation that the power of dismissal or removal vested in the Governor. The High Court has thus acquired a control over the State judicial service. The judicial service is defined in Article 236(b) meaning a service consisting exclusively of persons intended to fill the post of District Judge or other Civil judicial posts inferior to the post of District Judge. The judicial service, therefore, must consist only of persons intended to fill the posts of District Judge or other civil judicial posts inferior to the post of District Judge. The important expression in Article 236 is "intended to fill" and this expression refers to the intention with which the person is appointed to the post in judicial service. Mr. Nanavati argued that true interpretation of Article 235 is that the High Court has control over the District Court and subordinate Courts and that control includes the power of taking disciplinary action against the person presiding the Court even though such a person is not a member of the judicial service. We are unable to accept this argument of Mr. Nanavati. The object with which Articles 233 to 235 were enacted was to secure independence of the judiciary so that they may be free in discharge of their judicial function. Article 233 provides for appointments of District Judges. Article 234 provides for recruitment of persons other than District Judge to the judicial service. Thereafter comes the provision of Article 235 providing control over the Courts and the persons presiding the Court and who belong to the judicial service as defined in Article 236(b) of the Constitution. This is the true and correct effect of all the Articles are read together. When a power to discharge judicial function is conferred upon a person, the person discharging such power cannot be said to have been appointed to the post. Conferment of judicial power and appointment to a judicial post are two distinct matters.

3. The question then arises is whether the petitioner was intended to be appointed to a post in judicial service. The petitioner was appointed as Registrar of the Small Causes Court, Ahmadabad by the State Government in pursuance of the provisions of Section 13 of the Presidency Small Causes Courts Act. The petitioner was appointed as a Registrar to discharge duties of ministerial nature. The appointment of the petitioner as Registrar, therefore, was purely for administrative purpose. The post of Registrar is an administrative post. The appointment of a person to the post of Registrar, under Section 13 of the Presidency Small Cause Courts Act, therefore, is not intended to fill a post in the judicial service of the State as defined in Article 236 of the Constitution. Section 14 of the Presidency Small Cause Courts Act provides that the Registrar may be vested with powers of a Judge under the Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. This Section deals with the conferment of the power and it does not refer to the creation of a post in judicial service. Section 9(1)(aa) of the Presidency Small Cause Courts Act empowers the High Court to authorize the Registrar to hear and dispose of undefended suits and interlocutory applications or matters. The High Court has framed rules in exercise of power conferred on it under Section 9(1)(aa) of the Presidency Small Cause Courts Act and Rule 8 provides for exercise of certain judicial powers by the Registrar of the Small Causes Court subject to the orders of the Chief Judge. This provision also relates to the conferment of powers. These powers are conferred on an individual by designation. The conferment of the power under Sections 9 and 14 are quite different than making an appointment of any individual to a post in judicial service. Merely because the powers have been conferred on the Registrar under the provisions of Section 9(1)(aa) and Rule 8, it cannot be said that the Registrar has been intended to be appointed to a post in judicial service. Section 13 indicates the intention with which an appointment of the Registrar is to be made. The intention is not to appoint to fill in a post in judicial service. The intention of the legislature is very clear and the said intention is to appoint a Registrar to discharge the duties of the chief ministerial officer of the Court. It must be noted that when the Registrar decides judicial matters in pursuance of powers conferred upon him under Section 13 or Rule 8, the decisions so made are subject to the superintendence of the High Court under Article 227 of the Constitution. Merely because certain judicial powers are conferred upon the Registrar, it cannot be concluded that his appointment was intended to fill in the post in the judicial service. For the reasons aforesaid the High Court can have no control over the petitioner in respect of disciplinary action as the petitioner was appointed by the State Government under Section 13 of the Presidency Small Cause Courts Act in General State Service. Any disciplinary action can be taken against the petitioner only by the State Government and not the High Court. The initiation of the proceedings, the appointment of the inquiry officer, framing of the charges of misconduct, and taking disciplinary proceedings and the final order to be passed in the disciplinary proceeding rest with the State Government so far as the petitioner is concerned. In the present case the High Court held the preliminary inquiry against the petitioner in respect of the charges leveled against him. The Inquiry Officer was also appointed by the High Court. The High Court considered the reports of the Inquiry Officer. In effect the disciplinary proceedings were initiated and conducted

under the orders of the High Court and this the High Court had no jurisdiction to do. The consequence is that the Departmental Proceeding initiated and conducted under the orders of the High Court against the petitioner are without jurisdiction and the final order passed by the Government as a result of the said proceedings is also illegal and nullity.

4. The result is that the impugned order dated December 6, 1972, Annexure "N", passed in pursuance of the said Departmental Inquiry is quashed. It is declared that the petitioner continued in service till the date of this petition and the respondents are restrained from taking any action in pursuance of the said illegal order of dismissal. We may make it clear that it is open to the State Government to take such fresh action in respect of the alleged misconduct of the petitioner as it thinks fit. Rule issued on the petition is made absolute with no order as to costs.

Rule made absolute.