

PATNA HIGH COURT

Mahadev Prasad Roy

Vs

S.N. Chatterjee

Misc. Judicial Case No. 483 of 1953

(Ramaswami and Choudhary, JJ.)

22.01.1954

JUDGMENT

Ramaswami, J.

1. In this case the petitioner Mahadev Prasad Roy has moved this Court for a writ in the nature of certiorari to quash the order of respondent No. 1, Mr. S.N. Chatterjee, Deputy Superintendent of the Bihar Government Press, dated 16-9-1953, dismissing the petitioner from service.

2. The petitioner was appointed as a lino-operator in the Government Printing Press, Gulzarbagh, on 16-7-1928. The appointment was made by the Superintendent of the Government Printing Press. The petitioner was confirmed in service in 1931. He was promoted to be a lino-foreman in 1942. On 2-10-1951 the Deputy Superintendent started proceedings against the petitioner on the allegation that the petitioner committed theft of lino-metal. A report was made to the police by one Lachminarain Lal, an employee of the Press, based upon the same facts. The police submitted charge-sheet against the petitioner under Section 381, Penal Code. The case was tried before Mr. S.P. Varma, Judicial Magistrate. The defence of the petitioner was that the metal was planted upon him and the allegation of theft was false. By his judgment dated 26-3-1952 the Magistrate acquitted the petitioner of the charge. Thereafter the petitioner wrote to the Deputy Superintendent stating that he had been acquitted of the charge and that he should be reinstated in service. On 10-7-1952 the Deputy Superintendent initiated a second proceeding against the petitioner based upon the same facts. The petitioner submitted explanation but the Deputy Superintendent considered that the charge of theft was proved against the petitioner and made an order dismissing him from service. The case of the petitioner is that the Deputy Superintendent had no jurisdiction to start the proceeding or to dismiss the petitioner from service. The contention on behalf of the petitioner is that there was a violation of Article 311 (1) of the Constitution which requires that no civil servant shall be dismissed or removed by an authority subordinate to that by which he has been appointed. It is also objected on behalf of the petitioner that there has been a violation of Article 320 (3) of the Constitution which requires that the State Public Service Commission should be consulted on all disciplinary matters affecting a person serving under the Government of the State in a civil capacity.

3. Cause has been shown in this case on behalf of the State of Bihar and the other respondents to whom notice of the rule has been given. The first question to be determined is whether there has been a violation of Article 320 (3) of the Constitution. On behalf of the respondents Government Advocate referred to the proviso to Article 320 (3) which states :

"Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor or Rajpramukh, as the case may be, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted."

Counsel referred also to R. 3 of the Public Service Commission Rules framed by the Government of Bihar under Section 266, Government of India Act, 1935. This rule states :

"It shall not be necessary to consult the Commission on any of the matters specified in Clauses (a) and (b) of sub-section (3) of Section 266 of the Act concerning services and posts to which appointments are made by authorities subordinate to the Provincial Government or by the Chief Justice."

Section 266 (3), Government of India Act corresponds to Article 320 (3) of the Constitution and reads as follows :

"The Secretary of State as respects services and posts to which appointments are made by him, the Governor-General in his discretion as respects other services and posts in connection with the affairs of the Federation, and the Governor in his discretion as respects other services and posts in connection with the affairs of a Province, may make regulations specifying the matters on which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted but, subject to regulations so made and to the provisions of the next succeeding sub-section, the Federal Commission, or as the case may be, the Provincial Commission shall be consulted..... (c) on all disciplinary matters affecting a person serving His Majesty in a Civil capacity in India, including memorials or petitions relating to such matters."

In this connection reference should also be made to Article 313 of the Constitution which states :

"Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an all-India service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution."

Reading all these provisions together it is manifest that the proviso to Article 320 (3) of the Constitution applies to the present case and it was not necessary on the part of the Deputy Superintendent to consult the Public Service Commission before passing an order of suspension or dismissal against the petitioner. The argument of the petitioner on this point must fail.

4. The second question arising in this case is whether the order of dismissal could be validly made by the Deputy Superintendent in view of the provision of Article 311 (1) of the Constitution which states :

"No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed."

The argument put forward by Mr. B.C. Ghosh is that the Deputy Superintendent had no authority to dismiss the petitioner whose appointment had been made by the Superintendent of the Government Press. On this point the Government Advocate referred to an order of the Government dated 20-6-1952 which is annexure 'A' to the counter-affidavit. It appears from this Government order that the Deputy Superintendent was authorised to exercise all the powers and functions exercised by the Superintendent in respect of the Press Section of the Government Press of Gulzarbagh. The letter of the Government proceeds to say that the Deputy Superintendent would be treated as Head of an office in respect of the Press Section of the Government Press and would exercise all the powers including power of appointment, suspension and dismissal under the different Codes and Manuals which the Heads of offices ordinarily exercise. The argument of the Government Advocate is that the Deputy Superintendent has been completely vested with powers of appointment and dismissal of the staff. It was contended that the Deputy Superintendent was not subordinate to the Superintendent but his authority was coextensive with that of the Superintendent. It was argued that the designation of a particular officer was immaterial but, on the contrary, we must look to the powers and duties conferred on a particular officer. The question at issue turns therefore upon the proper interpretation of Article 311 of the Constitution; in other words, what is the meaning of the word 'subordinate' used in this article? In my opinion the word 'subordinate' must be properly construed to mean subordination in rank and not subordination of function; otherwise the protection referred to in Article 311 would be illusory. If the argument of the Government Advocate is correct, either the Legislature or the Governor or Rajpramukh may enact a rule under Article 309 vesting power of dismissal in a subordinate authority, an authority Subordinate in rank to the authority which had appointed the civil servant, and the constitutional protection contained in Article 311 could be wiped out and destroyed by the exercise of the power conferred under Article 309.

That is surely not a correct method of interpretation of Article 311. My conclusion is therefore that Article 311 must be construed as referring to subordination in rank and not subordination in respect of powers and duties.

5. This view as to the construction of Article 311 is supported by the reasoning of the Judicial Committee in - '*North West Frontier Province v. Suraj Narain Anand*', In that case the respondent who had been appointed as sub-Inspector of Police on 1-3-1928, by the Inspector-General of Police, North-West Frontier Province, was dismissed by the Deputy Inspector-General

of Police under Rule 16 (1) of Chapter 16 of the North-West Frontier Province Police Rules, made under the Indian Police Act, and which authorised the dismissal or removal of a Sub-Inspector of Police by the Deputy Inspector-General. It was contended on behalf of the respondent that the order of dismissal was illegal and inoperative since the dismissing authority was subordinate in rank to the authority by whom he was appointed. This argument was accepted by the Judicial Committee and it was held affirming the judgment of the Federal Court that the respondent's dismissal was void and inoperative. At p. 113, Lord Thankerton states :

"At the date of the respondent's appointment in 1928 the North-West Frontier Police Rules, 1917, as amended from time to time were in force; the relevant rule was R. 17 (1) of Chapter 17, which had been made by a correction slip on 25-9-1919, which clearly provided that a Sub-Inspector could only be dismissed by the Inspector-General of Police, or by an officer of higher rank. On 24-1-1934, by a correction slip, R. 17 (1) was amended so as to substitute 'Deputy Inspector-General of Police' for 'Inspector-General of Police' as entitled to dismiss a Sub-Inspector. Having in view Section 96-B, Government of India Act, 1919, and the decision of this Board in - *Rangachari v. Secy. of State*², this amendment of 1934 was clearly invalid and inoperative.

Sub-section 1 of Section 96-B provided that no person in the civil service of the Crown in India may be dismissed by any authority subordinate to that by which he was appointed, and it was held in - *Rangachari's case* that this was a mandatory statutory restriction, which could not be affected by any rules. Lord Roche, in delivering the judgment of the Board, said 'It is manifest that the stipulation or proviso as to dismissal is itself of statutory force and stands on a footing quite other than any matters of rule which are of infinite variety and can be changed from time to time'. The rules then existing are dealt with in sub-section 4 of Section 96-B, which provided- 'For the removal of doubts, it is hereby declared that all rules or other provisions in operation at the time of the passing of the Government of India Act, 1919, whether made by the Secretary of State in Council or by any other authority, relating to the civil service of the Crown in India, were duly made in accordance with the powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied, or added to by rules or laws made under this section. It follows that the amendment of 1934 was inconsistent with the provisions of sub-section 1 of Section 96-B, and was therefore invalid and inoperative."

6. To the same effect is the previous decision of the Judicial Committee in - *'AIR 1937 PC 27'*. The question that arose in that case was whether the appellant who was a Sub-Inspector of Police could be validly removed from service by Mr. Filson, Deputy Inspector-General of Police. The appointment of the appellant had been made by the Inspector-General of Police and it was argued on appellant's behalf that Section 96-B, Government of India Act had been violated in his case. The argument was accepted by the Judicial Committee and it was held that the dismissal of the appellant was bad and inoperative. At p. 30, Lord Roche states :

"There is, however, another point raised, and in the Courts below decided adversely to the plaintiff, which has given their Lordships considerable anxiety. Section 96-B contains the following proviso : 'But no person in that service (the Civil Service of the Crown) may be dismissed by any authority subordinate to that by which he was appointed.' The purported

dismissal of the appellant on 28-2-1928, 'emanated from an official lower in rank than the Inspector-General' who appointed the appellant to his office. The Courts below held that the power of dismissal was in fact delegated, and was lawfully delegated, to the person who purported to exercise it. Counsel for the respondent candidly expressed a doubt as to the possibility of maintaining this view, and indeed it is manifest that if power to delegate this power could be taken under rules it would wipe out a proviso and destroy a protection contained not in rules but in the section itself. Their Lordships are clearly of opinion that the dismissal purporting to be thus ordered in February was by reason of its origin bad and inoperative."

It is important to notice that in both these decisions Section 96-B, Government of India Act, 1919, and Section 240 (2), Government of India Act, 1935, which correspond to Art, 311 (1) of the Constitution have been interpreted as referring to subordination in rank.

7. My view is therefore that the petitioner could be dismissed only by the Superintendent of the Government Press or by any higher authority and that the order of dismissal passed by the Deputy Superintendent is invalid and inoperative. The Government order delegating the power of appointment and dismissal to the Deputy Superintendent was made on 20-6-1952. That order would be valid with respect to persons appointed by the Deputy Superintendent after that date but that order cannot be valid so far as the petitioner is concerned. The reason is that the petitioner was appointed in 1928 by the Superintendent and the petitioner's case would be protected under Article 311 of the Constitution; in other words, the Government order dated 20-6-1952 would be repugnant to Article 311 so far as the petitioner's case is concerned and to that extent the Government order would be invalid.

8. For the reasons expressed I think that the order of dismissal passed on 16-9-1953 by the Deputy Superintendent against the petitioner is without jurisdiction. In my opinion a writ in the nature of certiorari should be issued quashing the order of the Deputy Superintendent dated 16-9-1953 dismissing the petitioner from service. I would accordingly allow the application.

Choudhary, J

9. I agree.

Application allowed.

Cases Referred.

¹ AIR 1949 PC 112

² AIR, 1937 PC 27