The State Of Mysore vs H.L. Chablani on 3 December, 1957

Equivalent citations: AIR1958SC325

Author: S.K. Das

Bench: S.K. Das, A.K. Sarkar

JUDGMENT

S.K. Das, J.

1. This appeal by the State of Mysore on a certificate granted by the High Court of Judicature at Hyderabad under Article 132 of the Constitution can be disposed of on two very short grounds, and it is necessary to state such facts only as have reference to those two grounds.

2. The respondent, H. L. Chablani, was first appointed as Deputy Jailor at Jalna in the State of Hyderabad, as it was then called, on December 14, 1948. On April 7, 1950, he was appointed to officiate. as Assistant Superintendent of Jails in the said State. In February, 1951, the Hyderabad Public Service Commission invited applications for four posts of Assistant Superintendents, Central Jails in the Hyderabad Division. The advertisement by which applications were invited for the aforesaid posts stated inter alia that the candidates must not be less than 21 years or more than 25 years of age on February 24, 1951; it also stated that a concession in age would be allowed to temporary Government servants, retired officers of the Hyderabad Army or State ex-service men and surplus staff in any department of the Hyderabad State to the extent of the period of service already put in. The advertisement further required candidates to enclose with their applications Matriculation certificates in proof of age, and in the case of Government servants the advertisement directed that a reference to the service book or Civil List should be given. On February 19, 195.1, the respondent sent an application in which he stated that his date of birth was February 25, 1926. This was also the date of his birth as recorded in the service book. On the basis of that application the Public Service Commission, by their letter dated April 2, 1951, permitted the respondent to sit for a competitive examination which was to be held on May 1, 1951; but by the same letter the respondent was requested to submit his Matriculation and Degree Certificates. On April 19, 1951, the respondent sent his Matriculation Certificate to the Public Service Commission. That certificate showed, however, that the date of the respondent's birth was December 25, 1924. While sending the certificate to the Public Service Commission the respondent gave an explanation that the certificate contained a wrong date of his birth, presumably because the person who got him admitted to school had made a mistake which mistake continued in the school records and eventually crept into the Matriculation Certificate. The Public Service Commission then wrote to the Registrar of the Bombay University, and on hearing from the latter made a report to the State Government by means of a letter dated June 15, 1951. In that letter the Public Service Commission stated :

> "Mr. Chablani deliberately gave an incorrect date of birth to the Government and has now attempted to deceive the Commission. He produced his Matriculation Certificate only after being pressed to do so. If Mr. Chablani is in permanent Government Service, the Commission consider that prima facie Mr. Chablani is not a person who, after this attempt at deception, should be retained in service, and that he should be ordered to show cause why he should not be dismissed (a) for giving Government a false age, (b) for attempting to deceive the Public Service Commission in the same way, and (c) for falsely stating in his application to the Commission that all entries therein were correct."

On the basis of the aforesaid letter of the Public Service Commission the State Government asked the "respondent on August 22, 1951, to show cause why he should not be dismissed from service for making false declarations with regard to his date of birth to Government and also in his application for the post of Assistant Superintendent of Jails addressed to the Public Service Commission. On August 30, 1951, the respondent submitted his explanation in which he maintained that the correct date of his birth was February 25, 1926, and the date shown in the Matriculation Certificate was wrong. In support of this explanation the respondent filed (a) a photostat copy of his original horoscope, (b) an affidavit of the family priest, (c) an affidavit of a living elder member of the family, (d) an affidavit of a class-mate, (e) an affidavit of a former school Principal and (f) a medical certificate from the Civil Surgeon of Nanded. The respondent heard nothing further from the State Government after the submission of his explanation; but on September 30, 1951, the State Government passed an order saying that the respondent was dismissed from Government service with effect from September 30, 1951. The respondent then made an appeal to the Chief Minister and on October 4, 1951, an order was passed staying the operation of the order of dismissal. On December 20, 1951, the stay order was withdrawn and the order of dismissal ipassed was confirmed with immediate effect. On December, 18, 1951, that is two days earlier, the respondent had sent another representation through the Inspector General of Prisons with which he enclosed a birth registration certificate from the Hyderabad (Sind) Municipality; this certificate, the respondent said, supported his explanation that he had given the correct date of his birth in his application to the Public Service Commission and that the age shown in the Matriculation Certificate was wrong. On receipt of this representation the State Government again stayed the order of dismissal until further orders. On April 12, 1952, the State Government wrote to the Public Service Commission for a re-consideration of the case of the respondent on the fresh materials supplied by the respondent and further stated that in the opinion of the State Government there was no ulterior motive or bad faith on the part of the respondent inasmuch as he was neither over age for the post nor was he precluded from promotion on the ground of age, even if December 25, 1924, was taken to be the correct date of his birth; it was further stated that he was entitled to the concession offered to temporary Government servants and accordingly his application to the Public Service Commission was in order. The Public Service Commission did not, however, accept the views of the State Government and in their letter dated April 25, 1952, made the following observations :

> "2. The Commission consider that Mr. Chablani was guilty of a deliberate attempt to deceive the Commission by giving a wrong date of birth and verifying it as correct. Although under the rules he should have supported his statement by his

> Matriculation Certificate, he did not do so and only produced Certificate under pressure. This clearly shows that he sought to deceive the Commission.
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> 3. A second attempt at deception was his statement that the Bombay University transferred, by mistake, his elder brother's age to him. This statement was not supported by the authorities of the Bombay University.
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> 4. The Commission are of the opinion that Mr. Chablani's ulterior motive was a reduction in age by two years, which would give him two more years in Government Service.
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> 5. The Commission are of opinion that Mr. Chablani's statement amounts to misconduct and that only severe punishment can meet the case. Horoscopes, so far as the Commission knows, are not accepted as proof of age by any Government or Commission, nor do the H. C. S. R. admit their acceptance. While an obvious clerical error may be corrected, the Commission cannot agree that the age entered in a Matriculation Certificate should be disproved by a horoscope."

In their letter the Public Service Commission made no reference to the fresh materials, except the horoscope, which the respondent had submitted sh proof of his age. On June 6, 1952, the State Government passed another and final order of dismissal stating therein that the respondent was dismissed from service on the ground of a false declaration of age to the Public Service Commission.

3. The respondent then unsuccessfully appealed to the Rajpramukh and on June 5, 1953, he filed a writ petition in the High Court of Judicature at Hyderabad praying that the order of dismissal dated June 6, 1952, and the previous proceedings leading up to the said order be quashed by a writ of certiorari and a writ of mandamus be issued directing the State Government to re-instate the respondent in the post which he held at the time of his dismissal. This writ petition was heard by the High Court and by a judgment dated September 28, 1954, the High Court held that the order of dismissal passed against the respondent was made in violation of the constitutional guarantee contained in Article 311(2) and was on that ground void/and ineffective. The High Court allowed the application and further directed that the 'present respondent be forthwith re-instated in service.

4. The respondent then moved the High Court for a certificate under Article 132(1) of the Constitution and by its order dated February 18, 1955 the High Court granted a certificate in the terms stated in the order. The terms stated were these:

> "On behalf of the State two points are urged in support of this application for leave :o proceed to the Supreme Court.
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> (i) That in the facts of the case our view regarding the contravention of Article 311 was wrong; and,

> (ii) That the operative part of our order was unauthorised inasmuch as in a mandamus matter, Article 226 of the Constitution only permits this Court to pass a declaratory order and 3all upon the respondent to act according to law.

In our opinion the first point is no longer open to the applicant in view of the pronouncements of the Supreme Court in The State of Bihar v. Abdul Majid, and Joseph John v. The State of Travancore Cochin, (S) . In respect of the second point, however, there is, in our judgment, sufficient room for argument regarding the scope of Article 226 of the Constitution and in this, a question of interpretation of the Constitution is involved.

We allow the application and grant leave under Article 132 of the Constitution."

On that certificate the appellant has preferred the present appeal.

5. On behalf of he apellant it is sought to be urged that the High Court wrongly held that there was a contravention of Article 311(2) of the Constitution in this case. Mr. N. C. Chatterji appearing on behalf of the respondent has raised a preliminary objection that in view of the terms of the certificate stated in the order of the High Court dated February 18, 1955, it is not ofpen to the appellant to press the appeal on the ground that Article 311 was wrongly interpreted by the High Court, without first obtaining leave of this Court under Clause (3) of Article 132 to urge that ground, and the appeal must be confined to the ground on which the certificate was granted, namely, if under Article 226 of the Constitution it is open to the High Court to issue a writ of mandamus against the State Government directing reinstatement of the respondent in the post which he held before dismissal.

6. We are of the view that in the facts and circumstances of this case no substantial question of law as to the interpretation of Article 311 really arises. It is clear that the High Court in granting a certificate under Article 132(1) held, rightly or wrongly, that the case involved a substantial question of law as to the interpretation of Article 226 and not Article 311 of the Constitution. The effect of that certificate was to enable the appellant to appeal to this Court on the ground that the question of the interpretation of Article 226 had been wrongly decided by the High Court, and if the appellant wished to appeal on any other ground, he could have moved this Court for necessary leave as required by Clause (3) of Article 132. That clause is in these terms:

> "(3) Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided and, with the leave of the Supreme Court, on any other ground."

It is true that Clause (1) of Article 132 states, inter alia, that an appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution, and normally leave of this Court is asked for under Clause (3) to urge a point relating to the merits of the case, that is, a point other than a constitutional point. In this case both the points relating to Arts. 311 and 226 are

constitutional points; but the High Court proceeded on the footing that in the present case there was really no substantial question of law as to the interpretation of Article 311, that interpretation having been settled by decisions of this Court, and the only substantial question of law related to the power of the High Court to direct re-instatement. Indeed, Mr. Chatterji has submitted that on the decision of the Federal Court in Krishnaswami Pillai v. Governor General-in-Council AIR 1947 FC 37 (C), the question whether in a particular case a reasonable opportunity of showing cause against the action proposed to be taken has been given or not must always be a question of fact. We do not think that it is necessary to go as far as Mr. Chatterji wishes us to go; nor is it necessary to decide in this case if Clause (3) of Article 132 stands in the way of the appellant. It is conceivable that in a particular case the question of reasonable opportunity of showing cause, against the action proposed to be taken may be so inextricably mixed up with the nature and content of the constitutional guarantee under Article 311(2) as to be a substantial question of law regarding the interpretation of that Article. The case before us, however, stands on a different footing. Admittedly, the respondent was not asked to show any cause apart from what was stated in the first letter of Government dated August 22, 1951; after the respondent had submitted his explanation and given documentary evidence in proof of his correct age, received no communication from Government except his order of dismissal: at one stage, at least, Government was inclined to reconsider his case and the Public Service Commission, though they expressed disagreement with the views of Government, do not appear to have considered the entire evidence which the respondent gave in proof of his age. In these circumstances, it is clear to us that there is no substantial question of law regarding the interpretation of Article 311, and on the facts the High Court found that the respondent had no reasonable opportunity of showing cause against the action proposed to be taken in regard to him. We find no good or compelling reasons for expressing dissent from that view.

7. This brings us to the second ground. That ground again has become academic. It is admitted that the respondent was re-instated pursuant to the order of the High Court. On behalf of the appellant it has been submitted that the respondent was merely officiating as Assistant Superintendent of Jails and the order directing his re-instatement in that post would prejudicially affect the right of the State Government to revert the respondent to his substantive post. It was, however, stated on behalf of the respondent that he had already been reverted to his substantive post. It is, therefore, unnecessary to make any pronouncement in this case on the question which is now merely academic, as to what power the High Court has of directing restoration to office on a prayer for a writ of mandamus against Government under Article 226 of the Constitution; nor do we think that any useful purpose will be served by examining the various decisions and authorities to which Mr. Chatterji has invited our attention on this question, which must be left to be decided on a more appropriate occasion.

8. In the result and for the reasons given, above, this appeal is dismissed but without any costs.