Union Of India & Anr vs K.S. Subramanian on 30 July, 1976

Equivalent citations: 1976 AIR 2433, 1977 SCR (1) 87, AIR 1976 SUPREME COURT 2433, 1976 3 SCC 677, 1976 LAB. I. C. 1551, 1976 SERVLJ 539, 1977 (1) SCR 87, 1977 (1) LABLN 213, 1976 SERV L J 53, 1977 (1) LABLJ 5, 1976 UJ (SC) 717, 1976 2 SERVLR 519

Author: M. Hameedullah Beg

Bench: M. Hameedullah Beg, A.N. Ray, Jaswant Singh

PETITIONER:
UNION OF INDIA & ANR.

Vs.

RESPONDENT:
K.S. SUBRAMANIAN

DATE OF JUDGMENT30/07/1976

BENCH:
BEG, M. HAMEEDULLAH
BENCH:
BEG, M. HAMEEDULLAH
RAY, A.N. (CJ)
SINGH, JASWANT

CITATION:
1976 AIR 2433 1977 SCR (1) 87
1976 SCC (3) 677
CITATOR INFO :
F 1982 SC1407 (26)
R 1985 SC1293 (122)
RF 1988 SC 501 (5)
R 1988 SC1531 (46)
F 1989 SC1335 (33)

ACT:

Central Civil Service (Classification, Control and Appeal) Rules, 1965 Scope of--Rules applicable only when disciplinary proceedings are taken.

Constitution of India, 1950, Arts. 309, 310 and 311--scope of 310 vis-a-vis, Arts. 309 and 311.

Practice--Duty of High Court where there is conflict between the views expressed by Divisional benches and larger benches of the Supreme Court.

HEADNOTE:

Respondent was a welder in the Civilian Defence Forces. On his services being terminated, without stating any reason, he filed a suit for damages for illegal termination on the basis that he would have continued in service upto the age of 60 instead of being thrown out at the age of 41. The trial Court gave a decree for damages which was affirmed by the High Court on the ground. that the doctrine of post held during the pleasure of the President, contained in Art. 310, does not authorise the termination without complying with the procedure prescribed by the Central Civil Service's (Classification, Control and Appeal) Rules, 1965, framed under Art. 309.

Allowing the appeal to this Court,

HELD: (1) The Rules deal principally with the procedure for disciplinary proceedings and penalties and appeals and reviews against orders passed under the rules. They are applicable if disciplinary proceedings had been taken against the respondent, but they do not make disciplinary proceedings incumbent or obligatory whenever the services of a person are terminated. In the present case there were no disciplinary proceedings against the respondent. [92 D-E]

(2) The mere termination of the service. by an apparently innocent order, of a Government servant in permanent service, in the sense that he is entitled to remain in service until he reaches the age of retirement, could be deemed, in a given case, to be a punishment. But, in that event, there had to be a finding on the rule or order under which the respondent was entitled to continue in service until he reached the age of 60. There is no reference to any such rule and there was no finding that any punishment was imposed upon him or that his services were terminated as a measure of punishment for any wrong done by him or for incompetence. [94 C; 93 G]

P.L. Dhingra v. Union of India AIR 1958 SC 36 @ 47 referred to.

(3) Even assuming that the respondent was constructively punished, there is no legal obligation to apply the Rules. The legal obligation to apply them to every case of punishment, flows from the provisions of Art. 311 and is confined to holders of posts covered by Art. 311. But the provisions of Art. 311 do not apply to the respondent since they do not apply to the holder of a post connected with defence. [94 E]

L.R. Khurana v. Union of India [1971] 3 SCR 908 followed.

(4) Terefore, when no disciplinary proceedings are instituted, the Rules will not at all apply, and there is no other rule dealing with the conditions under which the service, such as that of the respondent. may be terminated. Since there was no violation of any rule no question of a

conflict between a rule framed under Art. 309 and the doctrine of pleasure contained in Art. 310, which applies to all Government servants including those in the services connected with defence, arises in the present case. [94 G]

(5) The High Court in dealing with the question considered the view of a Divisional Bench of this Court in two cases, merely quoted the views expressed by larger Benches of this Court, and then observed that these were insufficient for deciding the point before it. The High Court did not act correctly in thus skirting the views expressed by larger Benches of this Court. The proper course for the High Court was to try to find out and follow the opinions expressed by the larger Benches in preference to those expressed by smaller Benches. This practice is followed even by this Court and has crystallized into a rule of law. If, however, the High Court was of opinion that the views expressed by larger Benches of this Court were not applicable to the facts of the present case it should have said so, giving reasons in support. [92 A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 212 of 1975.

(Appeal by Special Leave from the Judgment and Order dated 26-6-1974 of the Kerala High Court in A.S. No. 510/72).

L.N. Sinha, Sol. Genl. of India, Shaymla Pappu and Girish Chandra for the appellant.

A.S. Nambiar for the respondent.

The Judgment of the Court was delivered by BEG, J.--The Union of India and the Commander, Officer- incharge, Naval Base, Cochin, are the appellants before us by grant of special leave against a judgment and decree of a Division Bench of the High Court of Kerala. The Division Bench had affirmed the decision of a learned subordinate Judge awarding Rs. 25,000/- as damages, together with inter- est @ 6% per annum, to the plaintiff-respondent for the illegal termination of the respondent's services. The plaintiff respondent was serving as a Welder, Grade II, in the Civilian Defence Forces at the Naval Base, Cochin, at the time of this allegedly illegal termination of service by an order of 25th October, 1968, of the Govt. of India, Ministry of Defence.

Special leave was granted on condition that the appel- lants Will bear the costs of the respondent in any event. The point of law sought to be canvassed before us is: Does the doctrine that a Central Govt. servant holds his post "at the pleasure of the President", contained in Article 310 of the Constitution, authorise the passing of an order of termination of services, without assigning any reason what- soever, of the holder of a post "connected with defence ?"

> There is no finding anywhere that the services of the plaintiff respondent were terminated as a measure of pun- ishment for any wrong done by him or for incompetence, although, a perusal of the pleadings would show that the appellants denied the assertions of the plaintiff respondent that he was efficient and entitled to promotions as he had qualified for them by passing certain tests. The Subordinate Judge had awarded only Rs. 25,000-. out of a claim of Rs. 75,000/- made on the ground that, but for illegal termination of the service of the plaintiff-respond- ent, the-plaintiff would have continued in service upto the age of 60 years and duty promoted instead of being thrown out of service at the age of 41. The plaintiff respondent alleged that the termination of his service, without giving any reason whatsoever, was contrary to, rules made under Article 309. A glance at paragraph 4 of the plaint shows that the violation of rules relating to conduct of disciplinary proceedings was alleged by the petitioner. In paragraph 5 of the plaint, however, he alleged:
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> "As per the terms of appointment and the rules governing the service of the petitioner,, he is entitled normally to continue in service till the age of 60. If his service had not been terminated as per the impugned order, the petitioner would have been entitled to continue for a further period of 19 years and 8 months".

He proceeded to assert:

> "Due to the illegal termination, the peti- tioner had lost a valuable right vested in him by virtue of his appointment and guaranteed by the Constitution of India and the rules framed thereun- der namely a right to continue in service for the full period of 19 years and 8 months and thus to gain a livelihood for himself and his family".

A perusal of the judgment of the Division Bench shows that the only point really considered by it was whether the pleasure of the President mentioned in Article 310 of the Constitution, can over-ride rules made under Article 309 of the Constitution.

The High Court had explained away a passage cited from State of U.P. & Ors., v. Babu Ram Upadhya(1) by observing that it did not support the argument that rules made under Article 309 of the Constitution did not control the pleasure of the President, under Article.310, which was to be subject to matters otherwise expressly provided in the Constitution. The passage so explained away runs follows :.

> "If there is a specific provlsion in some part of the Constitution giving to a Government servant a tenure different from that provided for in Art. 310, that Government servant is excluded from the operation of Art. 310. The said words refer, inter alia,, to Arts. 124, 148, 218 and 324 which provide that the Judges of the Supreme. Court, the Auditor General, the Judges of the High Courts and the Chief Election Commissioner shall not be re- moved from their offices except in the manner laid down in those Articles. If the provisions of the Constitution specifically

> prescribing different tenures were excluded from Art. 310, the purpose of that clause would be exhausted and thereafter the Article would be free from any other restrictive operation. In that event, Art. 309 and 310 should be read together, excluding the opening words in the latter Article, namely, "Except as expressly provided by this Constitution". Learned Counsel seeks to confine the operation of the opening words in Art. 309 to the provisions of the Constitution which empower other authorities to make rules relating to the conditions of service of certain classes of public servants:, namely Arts. 146(2), 148(5) and 229(2). That may:be so, but there is no reason why Art. 310. should (1) A.I.R. 1961 S.C. 751.

8--1003 SCI/76 be excluded therefrom. It follows that while Art. 310 provided for a tenure at pleasure of the President or the Governor, Art. 309 enables the legislature or the executive, as the case may be, to make any law or rule in regard, inter alia, to conditions of service without impinging upon the overriding power recognised under Art. 310".

The Kerala High Court relied on Union of India v. J. N. Sinha & Anr.,(1) to hold that doctrine of office held at the pleasure of the President was subject to rules made under Article 309 of the Constitution, and pointed out that it was held, inter-alia, by a Division Bench of this Court (at p. 42):

> "A Government servant serving under the Union of India holds his office at the pleasure of the President as provided in Article 310 of the Consti- tution. But this "pleasure" doctrine is subject to the rules or law made under Article 309 as well as to the conditions prescribed under Art.311 ".

The High Court also relied on State of Madhya Pradesh & Ors. v. Shardul Singh,(2) where the same Division Bench of this Court had held inter-alia (at p. 111):

> "Article 310(1) of the Constitution declares that every person who is a member of Civil service of a State or holds any civil post in a State holds office during the pleasure of the Governor of a State. But the pleasure doctrine embodied therein is subject to the other provisions in the Constitu- tion. Two other Articles in the Constitution which cut down the width of the power given under Article 310 (1) are Articles 309 and 311. Article 309 provides that subject to the provisions of the Constitution acts of the appropriate Legislature may regulate the, recruitment, and conditions of service of persons appointed, to public. services and posts in connection with the affairs of the Union or of any State. Proviso to that Article says:
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> 'Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the: case of services and posts in connection with the af- fairs of the State to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the

provisions of any such Act ."

The High Court then referred to N. Ramanatha Pillai v. State of Kerala & Anr.,(3) a decision of 5 learned Judges of this Court, in which Ray CJ., speaking for the Constitution Bench of this Court, (1) A.I.R. 1971 S.C. 40. (2) [1970] (1) S.C.C. 108 at 111.

(3) A.I.R. 1973 S.C. 2641 at 2645.

while considering the power of the Govt. to create, continue, and abolish a post said (at p. 2645):

> "Article 309 provides that subject to the. provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruit- ment and conditions of service of persons appoint- ed, to public services and posts in connection with the affairs of the Union or of any State. There- fore, Acts in respect of terms and conditions of service of persons are contemplated. Such Acts of Legislature must however be subject to the provi- sions of the Constitution. This attracts Article 310 (1). The proviso to Art. 309 makes it compe- tent to the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union and for the Governor of a State or such person as he may direct in the case of services and posts in con- nection with the affairs of the State, to make rules regulating the recruitment and the conditions of service of persons appointed,, to such services and posts under the Union and the State. These Rules and the exercise of power conferred on the delegate: must be subject to Article 310. The result is. that Article 309 cannot impair or affect the pleasure of the' President or the Gover- nor therein specified. Article 309 is, there- fore, to be. read subject to Article 310".

The High Court, after citing the passage set out above, said: "We do not understand the above passage as suggesting that Article 310 cannot in any manner be controlled by Rules framed under Article 309".

After a consideration of decisions of this Court in this manner it -expressed its views as follows:

> "These cases, we think, sufficiently indicate that while it may be open to the PreSident or to the Governor to dismiss a civil servant at pleas- ure, if Rules have been framed under Article 309 of the Constitution to regulate the mode and manner of termination of service, these .have to be com- plied with. This, we think, is reasonable and understandable enough on first principles. If the untrammelled pleasure of the President has been subjected to Rules framed by the President himself in regard to the manner of termination of service, the pleasure must be subject to such Rules".

The Division Benh of the High Court then re- corded its conclusion:

> "We are therefore of the opinion that in the instant case, the Civil Services (Classification, Control and Appeal) Rules, having been framed under Article 309 of the Constitution, the same had to be followed before the respondent's service was terminated. The same not having been admittedly complied with, the finding of the' Court below that the termination is illegal was correct and requires no interference. No arguments were addressed on the quantum of damages awarded".

We do not think that the difficulty before the High Court could be resolved by it by following what it consid- ered to be the view of a Division Bench of this .Court in two cases and by merely quoting the views expressed by larger benches of this Court and then observing that these were insufficient for deciding the point before the High Court. It is true that in each of the cases cited before the High Court, observations of this Court occur in a con- text different from that of the case before us. But, we do not think that the High Court acted correctly in skirting the views expressed by larger benches of this Court in the manner in which it had done this. The proper course for a High Court, in such a case, is to try to find out and follow the opinions expressed by larger benches of this Court in preference to those expressed by smaller benches of the Court That is the practice followed by this Court itself. The practice has now crystallized into a rule of law de- clared by this Court. If, however, the High Court was of opinion that the views expressed by larger benches of this Court were not applicable to the facts of the instant case it should have said so giving reasons supporting its point of view.

we have perused the Central Civil Service (Classifica- tion, Control and Appeal) Rules of 1965, (hereinafter re- ferred to as '1955 Rules') which deal principally with procedure for disciplinary proceedings and penalties and appeals and reviews against orders passed under the rules. There is no rule there dealing with the conditions under which a service such as that of the plaintiff respondent may be terminated. We fail to see any rule made under Article 309 of the Constitution which was violated by the impugned order of termination of service of the plaintiff-respondent. We do not consider ourselves called upon to. decide a ques- tion which has really not arisen in the case. before us. The 1965 Rules are applicable when disciplinary proceed- ings are taken. They do not make disciplinary proceedings under the rules incumbent or obligatory whenever the services of a person covered' by these rules are terminated. The obligation to follow the procedure for punishment laid down in the rules flows from the provisions of Article 311 of the Constitution. And, as the opening words of Arti- cle 310 show, the doctrine of office held at the pleasure of the' President does not apply to cases covered by Article

311. Rule 3 of the above mentioned rules begins. as follows:

> "3. Application.--(l) These rules shall apply to every Government servant including every civilian Government servant in the Defence Serv- ices, but shall not apply to-
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> (a) any railway servant, as defined in rule 102 of volume I of the Indian Railway Establishment Code,
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> (b) any member of the All India Services, (c) any person in casual employment,

(c) any person in casual employment,

(d) any person subject to discharge from service on less than one month's notice.

(e) any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the, previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions;

(2) Notwithstanding anything contained in sub-rule (1), the President may by order exclude any class of Government servants from the operation of all or any of these rules.

(3) Notwithstanding anything contained in sub-rule (1), or the Indian Railway Establishment Code, these rules shall apply to every Government servant temporarily transferred to a Service or post coming within exception (a) or (e) in sub- rule (1), to whom, but for such transfer, these rules would apply.

(4) If any doubt arises-

(a) whether these rules or any of them apply to any person, or

(b) whether any person to whom these rules apply belongs to a particular service the matter shall be referred to the President, who shall decide the same".

Even if the parties were governed by these rules, because the plaintiff held a civil post in one of the Defence; Departments, yet there must be some violation of one of these rules, which were no doubt framed under Article 309 read with clause 5 of Article 148 of the Constitution, before any question of a conflict between a rule framed under Article 309 and the provisions of Article 310 could possibly arise. We fail to see such a conflict here. These rules merely lay down procedure for matters cov- ered by Article 31 l of the Constitution. There is no doubt that proceedings under Article 311 of the Constitution constitute an exception to the doctrine of pleasure con- tained in Article 310 of the Constitution. But, in the case before us, no question of any disciplinary proceedings has been discussed because it did not arise at all. There is no finding that any punishment was imposed upon the plaintiff-respondent. It may be that mere termination of service, when the plaintiff.respondent was holding a perma- nent post and entitled to continue in service until 60 years of age, may constitute punishment per seven when the termination of service is not meant as a punishment. But, in that event,, there had to be a finding on the rule or order under which the plaintiff was entitled to continue in serv- ice. until he reached the age of 60 years. The High Court had cited no rule made under. Article 309 to show that there was any such provision.

In P.L. Dhingra v. Union of India(1) Das, CJ., speaking for the majority of a Bench of five judges of this Court, said (at p. 47):

"It has already been said that where a person is appointed substantively to a permanent post in Government service.

(1) A.I.R. 1958 S.C. 36 at 47.

he normally acquires a right to hold the post until under the rules, he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule,. he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or. other disqualifications and appropriate proceedings are taken under the service rules read with Art. 311 (2). Termination of service of such a servant so appointed must per se be a punishment, for it operates as a forfeiture of the servant's rights and brings about a premature end of his employ- ment".

The propositions laid down in Dhingra's case (supra) by this, Court mean that, unless a legally justifiable ground is made out for the termination of the service of a Govern- ment servant. in permanent service, in the sense that he is entitled to remain in service until he' reaches the age of retirement, he could be deemed in a given case to be pun- ished by an apparently innocent order of termination of service. If, however, the respondent belonged to a class of government servants the tenure or conditions of whose serv- ice was subject to the over-riding and unqualified sway of the power to terminate his services at will, by reason of Article 310(1) of the Constitution, we doubt whether he could claim to be a "permanent" servant, who could continue, as of right, in service until he reaches the age of super- annuation. At any rate, he could not be a "permanent" Government servant of the same class as one protected by Article 311.

Even if we were to hold that the plaintiff-respondent was constructively punished, the provisions of Article 311, unfortunately, do not apply to such a Government servant as the respondent was. Whereas the power contained in Article 310 governs all Government servants, including those in the services connected with defence, the benefits of Article 311, which impose limitations on the exercise of this power in cases of punishment, do not extend to those who hold posts "connected with defence". Constitution Bench of this Court has held, after a review of relevant authorities, this to be the position of the. holder of a post such as that of the plaintiff-respondent in L. R: Khurana v. Union of India. (1) As the plaintiff-respondent was not entitled to the protection of Article 311, the only effect of the 1965 Rules upon his case is that they could be applied if disci- plinary proceedings had been taken against him as the holder of a post "connected with defence". In other eases of such servants,. where no such disciplinary proceedings are instituted (and none were started against the plaintiff-respondent), the 1965 Rules, governing procedure for. punishments to be imposed, will not apply at all. There is no legal obligation to apply those rules here. The legal obligation to apply them to every case of punish- ment, flowing from Article 311, is confined to holders of posts covered by Article 311. On this question, we are bound by the decision of a bench of five learned Judges of this Court in Khurana's case (supra).

(1) [1971] 3 S.C.R. 908.

We were asked to import the obligation to apply the procedure prescribed by Article 311 to a case such as the one before us by invoking the aids of Articles 14 and 16. Apart from the fact that these .Articles could not be in- voked against a discrimination made by Constitutional provi- sions, no such case was set up earlier. We cannot permit it at this stage.

The only ground on which the respondent had assailed the order of termination of his service was non-compliance of 1965 Rules, which meant' that he claimed the protection of Article 311 of the Constitution. But for the reasons given above, this protection is not available to him. Therefore, this appeal must succeed.

Consequently, we allow this appeal, set aside the judgment and decree of the High Court and ,dismiss the plaintiff's suit. But: in the circumstances of the case, the appellant will, in keeping with the undertaking given at the time of grant of special leave, bear the costs of both sides throughout.

Appeal allowed.

V.P.S.