

## **Shital Prasad And Ors. vs Deputy Accountant General (S.R.) ... on 22 November, 1954**

**Equivalent citations: AIR1955ALL623, AIR 1955 ALLAHABAD 623**

ORDER

M.L. Chaturvedi, J.

1. These are two connected petitions filed under Article 226 of the Constitution. The petitioners are employed as class IV employees in the office of the Accountant General, Uttar Pradesh, Allahabad. They formed a Union known as the "Fourth Class Employees Union" and they selected as their office bearers some persons who were not employed in the office of the Accountant-General. The Deputy Accountant General took exception to the formation of this Union and on 16-9-1952 he issued notices to some of the employees in class IV including the petitioners. The notices run as follows:

"It has been explained to you that you cannot be a member of a Trade Union. You are hereby directed to resign from such a union and inform the undersigned of your having done it within a couple of days."

The petitioners did not inform the Deputy Accountant General that they had resigned from the Union, and on 19-9-1952 he issued further notices calling upon the petitioners to answer the charges mentioned in the document on or before 29-9-1952. They were also asked to show cause why severe disciplinary action should not be taken against them. The charge against the petitioners is:

"Under Rule 23, Government Servants Conduct Rules, 'no Government Servant shall take part in, subscribe in aid of assist in any way, any political movement in India or relating to Indian affairs.' The expression 'Political movement includes any movement or activities tending directly, or indirectly, to excite disaffection against or to embarrass, the Government as by law established. A movement sponsored by 'Outsiders' to organise Government Servants into a Union for any purpose is a movement tending directly or indirectly to excite disaffection against or embarrass Government. You have joined one such, which has been called a Union of Class IV Government Servants, of which the President and the Secretary are outsiders. You have, therefore, infringed an important Government Servants' Conduct Rule."

The petition No. 472 of 1952 was filed on 24-9-1952 and petition No. 703 of 1952 was filed on 22-12-1952.

2. In the affidavit filed along with, petition No. 472 of 1952 it has been stated that on account of need for mutual help and social, economic and cultural uplift to 4th Class Employees' a Union was

resolved to be formed. Paragraph 5 gives the aims and objects of this Union and the prayer that is contained in the petition is that a writ of mandamus be issued against the respondents directing them to withdraw the charge sheet and the notices issued against the petitioners and other members of the Union, and to further direct the respondents not to interfere with the petitioners' right to form, organise and join their Union.

It is also prayed that the charge sheet framed against the petitioners be quashed. 'In the counter affidavit filed on behalf of the respondents 1 and 2 it has been stated in para. 3 that there was no objection by the respondents to the petitioners' formation of a Union and the objection was only to the effect that the Union was sponsored by outsiders and persons not in the employment of the Government in the Accountant General's office.

It is admitted that warning was given to the petitioners that they would be infringing the Government Servants Conduct Rules if they did anything in contravention of Rule 23, and they were further told that a movement sponsored by outsiders with outsiders at its office bearers was considered a movement tending or likely to embarrass the Government and the working of the department. A large number of employees assured the respondents that they were not connected with the Union. It is stated in para 12 that no office bearer of the Union was terrorised, but a charge-sheet was issued on the ground that a number of class IV Government Servants had been guilty of infringing the Government Servants Conduct Rules and they were required to furnish an explanation to the charges mentioned in the document.

There is no assertion anywhere that this Union has been guilty of conducting any movement or activity tending directly or indirectly to excite disaffection against, or to embarrass the Government as by law established, or to promote feelings of hatred or enmity between different classes of His Majesty's subjects, or to disturb the peace.

The position taken up by the respondents as shown by the charge-sheet is that the very act of joining a union or a movement sponsored by outsiders is a movement tending directly or indirectly to excite disaffection against or to embarrass the Government. The charge framed against the petitioners was that they had impugned Rule 23(i), Government Servants Conduct Rules and the relevant portion of that Rule is quoted in the notice which I have mentioned above.

3. The Rule really is to the effect that a Government servant shall not take part in, subscribe to or assist in any way any political movement in India or a movement which relates to Indian affairs. An explanation is added saying that the expression "political movement" includes any movement or activities tending directly or indirectly to excite disaffection against, or to embarrass the Government as by law established, or to promote feeling of hatred or enmity between different classes of His Majesty's subjects, or to disturb the peace.

The Rule nowhere says that no Union of Government Servants as such should have outsiders as its office bearers and the mere fact that the Union has some outsiders as its office bearers cannot possibly be said to infringe Rule 23 mentioned above. The infringement of the Rule can only come in if the Union resorts to the activities which are prohibited in the Rule read with the explanation.

There is no allegation in the counter affidavit anywhere that this Union indulged in any such activity. The charge, on the other hand, says that a movement sponsored by outsiders to organise Government Servants into a Union for any purpose is a movement tending directly or indirectly to excite disaffection against or to embarrass the Government. This assertion is not justified by anything contained in the Rule or the explanation to the Rule.

If this were the intention, the Rule could have easily contained a prohibition against the Government servants joining Unions of which the office bearers were outsiders. In my opinion, the charge framed does not make out any case against the petitioners of having infringed Rule 23, Government Servants Conduct Rules.

The mere formation of a Union with outsider as some of its office bearers cannot be said to be an activity tending to excite disaffection against the Government or to embarrass it or to produce feelings of enmity or disturbances of public peace. Even if these outsiders belong to a particular political party, it does not necessarily follow that the Union will indulge in some such subversive activities or that the Union or its members will assist any political party.

If the employees or the Union do indulge in some such activity a charge may be framed showing actually what that activity is, and the respondents can then proceed against the employees in the manner provided by the Rules. The charge as it has been framed does not make out a case against the petitioners of any infringement of Rule 23. The only fact it asserts is that the petitioners have joined the Union sponsored by outsiders, but that by itself, in my' opinion, cannot be said to be infringement of the Rule and I am, therefore, constrained to quash these charges.

The learned counsel for the petitioner referred to a case reported in -- 'Ramakrishnaiah v. President District Board Nellore', AIR 1952 Mad 253 (A), but the point that arose in that case does not arise in the instant case. Nor is it necessary to consider the point that Rule 23(1), Government Servant Conduct Rules is inconsistent with the provisions of Article 19(1)(c) of the Constitution.

4. I consequently allow these petitions and quash the charges framed against the petitioners. But in view of all the circumstances of the case, I direct the parties to bear their own costs.