Jagannath Prasad vs State Of U.P. And Ors. on 22 March, 1954

Equivalent citations: AIR1954ALL629, AIR 1954 ALLAHABAD 629

JUDGMENT

Mootham, J.

1. This is a petition under Article 226 of the Constitution which gives rise to a question of some constitutional importance.

2. The petitioner held the substantive rank of Inspector of Police. In 1946 he was appointed to the Anti-Corruption Department and in the following year he was promoted to the officiating rank of Deputy Superintendent of Police.

In January, 1948, an anonymous letter was received by the Inspector-General of Police making charges against the petitioner. After making certain confidential enquiries the Inspector-General formed the opinion that the petitioner's conduct required investigation and he directed the Deputy Inspector-General of Police, Criminal Investigation Department, to take the necessary action. At the same time he placed the petitioner under suspension and reverted him to his substantive rank of Inspector.

3. Under the orders of the Deputy Inspector-General of Police an enquiry was conducted by Sri Sri Krishna, Superintendent of Police, Anti-Corruption Department, whose report was in due course submitted to the Inspector General of Police.

4. In the meantime, on 4-11-1947, the Governor of the United Provinces had made rules known as the Disciplinary Proceedings (Administrative Tribunal) Rules, 1947, "for regulating in certain cases the conduct of disciplinary proceedings and the award of punishment to members of the public services under the Governor's rule-making control."

Under these Rules the Governor purported to confer upon himself power to refer to a Tribunal constituted in accordance with the Rules cases relating to Government servants in respect of matters involving, 'inter alia', "corruption", "failure to discharge duties properly" and "personal immorality" as defined in the Rules.

The Tribunal was required to make such enquiry as was appropriate, and thereafter to forward its findings, together with the views of an assessor co-opted by the members of the Tribunal, to the Governor with its recommendations with regard to punishment.

Rule 10(1) declared that the Governor was not bound to consult the Public Service Commission on the Tribunal's recommendations, and that he "shall pass an order of punishment" in the terms

recommended by the Tribunal subject to the proviso that he could, for sufficient reason, award a lesser punishment than that so recommended.

5. On the receipt of the report of the enquiry concerning the petitioner the Inspector-General of Police forwarded the proceedings to the Government and the Governor then referred the matter to a Tribunal appointed under the above-mentioned Rules (to which it is convenient to refer as the Disciplinary Rules).

The Tribunal framed three charges against the petitioner alleging that he had been guilty of personal immorality, of corruption and of failure to discharge his duties properly. It came to the conclusion that the first and third charges had been proved, and that the petitioner was guilty of corruption in respect of two of the thirty-two items which formed the subject of the second charge. The Tribunal by an order made on the 4-2-1950, recommended that the petitioner be dismissed, from the service and be paid one-fourth his salary during the period of suspension.

6. The petitioner was thereafter called upon to show cause against the action proposed to be taken against him. He submitted a representation to the Governor, but the latter by an order which was communicated to the petitioner on the 5-12-1950, directed that he be dismissed from the police force. The order communicated to the petitioner so far as it is relevant, was in the following terms:

> "The Governor has considered your explanation and is of the opinion that you have not been able to clear your conduct. The Governor has therefore under the provisions of Rule 10(1) of the U. P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947, ordered your dismissal from the State Police force with effect from the date on which this order is communicated to you".

The petitioner contends that his dismissal is illegal and he prays for the issue of a writ in the nature of 'certiorari' quashing the order of the Governor sent to him on 5-12-1950.

7. The argument for the petitioner is a threefold one.

In the first place, it is contended that the petitioner could be dismissed only by an order made by the Inspector-General or by a Deputy Inspector-General of Police; the Governor, it is said, had no power to order his dismissal either under the Disciplinary Rules, or otherwise; secondly, it is argued that the Disciplinary Rules are invalid and, thirdly, it is said that the Tribunal failed to comply with the Disciplinary Rules and the procedure followed by it in the course of its enquiry was contrary to the principles of natural justice.

8. The argument for the respondents is that the petitioner held his office at the pleasure of the Governor subject only to the provisions of Article 311(2) of the Constitution, and that the order of dismissal was an administrative order with which this Court cannot interfere. In any case, it is contended that the Disciplinary Rules were rules validly made under Section 7 of the Police Act and that there was no substantial deviation by the Tribunal from the procedure prescribed by the Disciplinary Rules.

9. In England the tenure of office of a servant of the Crown is regulated by the rule of the common law that --

> "Unless in special cases where it is otherwise provided, servants of the Crown hold their office during the pleasure of the Crown; not by virtue of any special prerogative of the Crown but because such are the terms of their engagement, as is well understood throughout the public service."

Shenton v. Smith', 1895 A. C. 229 at p. 234 (A). If the terms of service in a particular case arc inconsistent with such an implied condition the Crown's power to dismiss at pleasure is restricted or excluded, as in -- 'Could v. Stuart', 1896 AC 575 (B), where such was held to be the effect of certain provisions of the New South Wales Civil Service Act of 1884, and in -- 'Reilly v. The King', 1934 A. C. 176 at p. 178 CO, where it was held that the terms of an appointment which prescribed its period and provided expressly that is could be terminated "for cause" excluded any implication of a power to dismiss at pleasure.

10. In India the common law rule has been replaced by statutory provision. Section 96B(1), Government of India Act, 1919, provided that --

> "Subject to the provisions of this Act, and of the rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasure."

This section in express terms states that office is held at pleasure; "There is, therefore," the Judicial Committee said in -- 'R. Venkata Rao v. Secy. of State', AIR 1937 P. C. 31 CD), "no need for the implication of this term and no room for its exclusion".

This provision was replaced in the Government of India Act, 1935, by Section 240(1) which reads as follows :

> "240 (1). Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the crown in India, holds office during His Majesty's pleasure".

(See also Sub-section (3) of Section 257 which refers to "the rule of law that, except as otherwise provided by statute, every person employed under the Crown holds office during His Majesty's pleasure".

The corresponding provision in the Constitution is, of course, Article 310(1) which provides that --

> "310(1). Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the

> pleasure of the Governor or, as the case may be, the Rajpramukh of the State."

11. It is thus to be observed that in India the paramount power of the Crown under the 1935 Act and of the President, Governor, or Rajpramukh. as the case may be, under the Constitution, is subject, and subject only, to such exceptions as are expressly provided by the Act or the Constitution itself.

12. The 1935 Act expressly provided that the Crown would not have power to dismiss at pleasure the holders of certain civil posts, for example the Judges of High Courts (S. 220 (2)); and it further expressly provided that the Crown's exercise of its power to dismiss at pleasure was subject to the qualification or restriction to be found in Sub-section (3) of Section 240.

As a condition precedent to the dismissal of a civil servant, the Crown was bound to afford that servant a reasonable opportunity for showing cause against the action proposed to be taken against him: -- 'High Commr. for India v. I. M. Lal', AIR 1948 PC 121 (E). Provision for the same exceptions to the general rule is expressly made in the Constitution in Arts 217 (1) and 311 (2).

13. The argument for the petitioner is that Section 243 of the 1935 Act constitutes a further express provision which excludes the power of the Crown to dismiss him; and that it has conferred upon him a right or privilege which by virtue of Section 6 of the General Clauses Act operates, after the commencement of the Constitution, as a bar to his dismissal by the Governor.

14. Section 243 reads as follows:

> "243. Notwithstanding anything in the foregoing provisions of this Chapter, the conditions of service of the subordinate ranks of the various police forces in India shall be such as may be determined by or under the Acts relating to those forces respectively."

It is convenient also to refer at this stage to Section 7 of the Police Act, for it is the petitioner's contention that the petitioner can be dismissed only by one of the officers named therein.

That section (which was amended by the Government of India (Adaptation of Indian Laws) Order, 1937, and by the Adaptation of Laws Order, 1950) is now, so far as is relevant for the present purpose, in these terms:

> "7. Subject to the provisions of Article 311 of the Constitution and to such rules as the State government may from time to time make under this Act, the Inspector-General, Deputy Inspector-General, Assistant Inspectors-General and District Superintendents of Police may at any time dismiss, suspend or reduce any police officer of the subordinate ranks whom they think remiss of negligent in the discharge of his duty, or unfit for the same."

15. The plain meaning of Section 243 of the 1935 Act appears to be this, that if with regard to the conditions of service of the subordinate ranks of the police force (as determined by or under the

Police Act) there is a conflict between such conditions and the provisions of Sections 240, 241 or 242, the former will prevail. In other words, it is only to the extent to which the conditions of service of such police officers are inconsistent with the provisions of those sections that the operation of the latter will be excluded.

Now Section 7 of the Police Act provides that (subject to Article 311 and to such rules as the State Government may make) certain specified officers may dismiss a police officer of the subordinate ranks. There is nothing in the Act which touches on the power of the Crown to dismiss a police officer and nothing which is inconsistent therewith; on the other hand Rule 479(a) of the Police Regulations, which is a rule made under Section 7 of the Act, contains an express reservation of the Governor's powers of punishment with reference to all officers. The power vested by Section 7 in the Inspector-General and certain other officers to dismiss subordinate ranks of the police force is not, in our opinion, a delegation to them of the Crown's power of dismissal at all but is a separate statutory power which is neither a substitute for nor restricts the constitutional power of the Crown to dismiss its servants at its pleasure.

This we think is the effect of the case of --North-West Frontier Province v. Suraj Narain Anand', AIR 1949 PC 112 (P), where the Judicial Committee held that the only provisions of Chap. 2 to which the introductory words of Section 243 were referable in relation to conditions of service were Sub-sections (2) and (3) of Section 240, namely provisions corresponding to Article 311 Clauses (2) and (1) of the Constitution.

16. We are of opinion, therefore, that the pro-visions of Section 243 did not affect the power of the Governor to dismiss a police officer of the subordinate ranks at pleasure, subject only to the requirements of Section 240(2). Putting on one side for the moment the question of the effect of Article 320, we are also of opinion that under the Constitution the Governor has the power, subject to the provisions of Article 311(2), to dismiss at pleasure a police officer of the subordinate ranks.

17. It is however contended that although the, petitioner was in fact dismissed by the Governor, the latter did not act in the exercise of his discretion under Article 310 but in accordance with the advice of the Tribunal under Clause 10(1) of the Disciplinary Rules.

To this argument there are we think two answers. In the first place it is not in dispute that the petitioner was afforded a reasonable opportunity of showing cause against the action proposed to be taken against him as is required by Article 311(2), and that he did show cause. The letter communicating the Governor's decision to the petitioner, which we have quoted earlier in this judgment, makes it clear that the Governor was satisfied both as to the correctness of the conclusion reached by the Tribunal and as to the propriety of the sentence. On the facts of this particular case, it cannot, we think, be said that the Governor merely accepted without question the opinion of the Tribunal; he did not make the order of dismissal because he considered he had no alternative, but because he approved of the recommendation made to him by the Tribunal.

In our opinion, the Governor exercised his discretion in ordering the dismissal of the petitioner; we have held that he had the power to issue such an order, and we think it not to be material that he

purported to act under Rule 10(1) of the Disciplinary Rules.

18. In the second place, in our judgment, it, makes no difference whether the Governor in arriving at his decision acted on the advice of the Tribunal or on an independent examination of the facts. Subject to the provisions of the Constitution the petitioner held his office at the Governor's pleasure. The Governor has signified his pleasure; the considerations which induced him to do so are not in our judgment justiciable.

19. The Governor's power to dismiss at pleasure is subject only to the express provisions of the Constitution. Power is conferred upon the Governor by Article 309 to make rules regulating the conditions of service of civil servants of the State Government, but such power is subject, 'inter alia', to the provisions of Article 310, and no rules can be made which fetter or restrict his power to dismiss at pleasure. We find ourselves in agreement, if we may say so with respect, with the views of Dixit J., on this point in -- 'Mrs. Lilawati v. State of Madhya Bharat', AIR 1952 Madh-B 105 (G). The Disciplinary Rules were made prior to the commencement of the Constitution, and assuming they were validly made they can, in our opinion, have no greater effect or stand on a higher footing than rules made by the Governor under Article 309. These rules (except Rule 10(1)) are in our opinion administrative rules, and the contravention of their provisions will not confer upon the petitioner a cause of action.

In these circumstances, we do not consider it necessary to express an opinion on the allegations made by the petitioner as to the conduct of the enquiry by the Tribunal, but as we pointed out in -- 'Tejpal Singh's case', Civil Misc. No. 7717 of 1951 which was argued at the same time, the fact that we do not do so must not be taken to mean that such provisions as to enquiry as are contained in the Rules should not be scrupulously observed.

20. The question remains whether it was necessary for the Governor to have consulted the State Public Service Commission before dismissing the petitioner.

Article 320, Clause (3) (c) of the Constitution, so far as it is relevant, provides that "The .... State Public Service Commission ....shall be consulted

(c) on all disciplinary matters affecting a person serving under .... the Government of a State in a civil capacity including memorials or petitions relating to such matters;"

> This clause is subject to a proviso that "..... The Governor 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."

Clause (5) of the same Article further provides that all regulations made by a Governor under Clause (3) must be laid for not less than fourteen days before the House or each House of the Legislature of the State, as the case may be, and shall be subject to such modifications as the House or Houses of the Legislature may make during the session in which they are so laid.

21. Rule 10(1) of the Disciplinary Rules provides that the Governor "shall not be bound to consult the Public Service Commission on the Tribunal's recommendations." This provision was made under Section 266(3), Government of India Act, 1935, which is in substantially the same terms as Clause (3) of Article 320. In 'Tejpal Singh's case (H)' it was not in dispute that, prior to the commencement of the Constitution, Rule 10(1) of the Disciplinary Rules was a valid and effective provision in the case of a civil servant who was not a police officer of the subordinate ranks, and we held that the provision continued to be valid and effective after the Constitution came into force.

22. The case of a police officer of the subordinate ranks, such as the petitioner, stands upon a somewhat different footing; for Sub-section (4) of Section 266 of the Government of India Act provides that nothing in that section shall require a Public Service Commission to be consulted in the case of the subordinate ranks of the various police forces in India as respects any of the matters mentioned in paragraphs (a), (b) and (c) of Sub-section (3) of that section. Paragraph (c) of Sub-section (3) is similar in terms of Sub-clause (c) of Article 320(3) of the Constitution. Rule 10(1) was therefore, so far as the case of the petitioner was concerned, redundant and it assumed importance only upon the coming into force of the Constitution, for the latter contains no provision cot-responding to Section 266(4) of the 1935 Act.

We do not think that the fact that the Rule was merely superfluous as regards the case of a particular class of government servants prior to the commencement of the Constitution makes it a Rule which is invalid as regards that class after the Constitution came into force. The position prior to the Constitution was that consultation with the Public Service Commission was made unnecessary by Section 266(4) and by the Rule. The Constitution repealed the section but it did not in our opinion affect the validity of the rule; and it was not, therefore, in our view necessary for the Governor to consult the Stats Public Service Commission prior to the dismissal of the petitioner,

23. We hold therefore that this position fails. It is accordingly dismissed with costs, which we assess at two hundred and fifty rupees.