

Supreme Court of India

Union Of India (Uoi) And Ors. vs Prabhat Chandra Mallick on 30 November, 1994

Equivalent citations: (1995) IILLJ 32 SC, 1994 (5) SCALE 29, 1995 Supp (1) SCC 214, 1995 (1) UJ 197 SC

Bench: B J Reddy, S C Sen

JUDGMENT ,B.P.Jeevan Reddy J.

1. Leave granted. Heard counsel for both the parties.

2. Pursuant to the disciplinary enquiry held against the respondent, he was dismissed from service by an order dated January 12, 1982 by the Welfare Commissioner (Special Grade) Coal Mines Welfare Organisation, Dhanbad (5th respondent in the Original Application and hereinafter referred to as such for the sake of convenience) The respondent challenged the said order by way of an Original Application before the Central Administrative Tribunal, Patna. The main ground urged by him was that the order of dismissal passed by the 5th respondent was invalid inasmuch as he was subordinate to the 'Coal Mines Welfare Commissioner of Coal Mines Welfare Organisation, Dhanbad', who appointed him. The Tribunal upheld the said contention, negating the plea put forward by the appellants, who were respondents in the Original Application, that the 5th respondent was vested with all the powers of the 3rd respondent. The correctness of the said order is questioned herein.

3. The order dismissing the respondent is issued by the "Welfare Commissioner (Special Grade) Coal Mines Welfare Commissioner, Head of the Department, Coal Mines Labour Welfare Organisation (appointing authority)". The case of the appellants is that the 5th respondent having been declared Head of the Department under Supplementary Rule 2(10), he exercises all the powers of the 3rd respondent, and, hence, he was competent to pass the order dismissing the respondent. In support of the said contention, the learned Counsel for the appellants has placed before us a copy of the order dated 7.2.1980 whereunder the President has declared the 5th respondent as Head of the Department of the Organisation. Order reads as follows:

No. A.38011/1/80-Adm.I New Delhi, the 7th Feb. 1980 To, The Coal Mines Welfare Commissioner, Dhanbad.

Subject :- Delegation of power to Welfare Commissioner, (Special Grade) Coal Mines Welfare Organisation, Dhanbad. Sir, I am directed to say that the President is pleased to declare the Welfare Commissioner (Special Grade), Coal Mines Welfare Organisation, Dhanbad as Head of Department of that Organisation under Supplementary Rules 2(10) and for the purposes of Delegation of Financial Power Rules, 1959 with immediate effect and till such time as incumbent is appointed to the post of Coal Mines Welfare Commissioner, Dhanbad.

2. Pending appointment of an incumbent of the post of Coal Mines Welfare Commissioner, Dhanbad, Welfare Commissioner (Special-Grade) is also declared as his own controlling officer as well as Controlling Officer in respect of all the Group 'A' officers of the Coal Mines Welfare Organisation for the purposes of Travelling Allowance under S.R. 191.

3.This issue in exercise of the delegated power in consultation with the Integrated Finance vide their U.O. No. 275/Fin./80 dated 7.2.80.

Yours faithfully, Sd/-

(A.S. Deshpande) Under Secretary to the Govt. of India.

4. The above order expressly declares the 5th respondent as the Head of the Department of the Organisation under Supplementary Rule 2(10). It also declares him the Head of the Department for the purposes of delegation of Financial Powers Rules, 1958. The said arrangement was made till such time as an incumbent was appointed to the post of Coal Mines Welfare Commission, Dhanbad.

5. Supplementary Rule 2(10) reads as follows:

Head of department means any authority which the President may by order to be the head of a department for the purposes of these rules.

6. The Government of India has declared that the authority declared to be the Head of Department under the Supplementary Rules shall also be considered to be the Head of Department for the purposes of Fundamental Rules. (Vide I.M.F.U.O. No. 5050-E-IV/46 dated the 18th September, 1946 to the Auditor-General of India)

7. The order dated 7.2.1980 read with Supplementary Rule 2(10) and the Government of India's decision aforementioned clearly discloses that the 5th respondent was declared by the President of India to be the Head of the Department of the said Organisation in which the respondent was serving. In effect, he was the 'Coal Mines Welfare Commissioner of Coal Mines Welfare Organisation', for the purposes of Fundamental Rules and Supplementary Rules. He was therefore competent to dismiss the respondent being his appointing authority.

8. The Tribunal has held that the aforesaid order issued by the President merely declares the 5th respondent as Head of the Department but that it does not appoint him as such. It says further that by reason of the said notification the 5th respondent did no doubt acquire the powers of the appointing authority but even on he cannot be treated as the appointing authority, since he was not appointed as such. We are unable to see the distinction made by the Tribunal which in our opinion is a distinction without a difference. The order dated 7.2.1980 makes it clear that the post of the Coal Mines Welfare Commissioner was vacant and therefore the 5th respondent was declared to be the Head of the Department under Supplementary Rule 2(10) so that the work of the organisation should not suffer. The idea, as explained hereinabove, evidently was that the work of the Organisation should not suffer for lack of regular appointment of the Head of the Organisation. To say that notwithstanding the said declaration and notwithstanding the fact that he exercises the power of the said office, the fifth respondent does not yet hold that office, amounts, in our opinion, to indulging in sophistry.

9. The Tribunal has referred to a subsequent notification dated 10.5.1983 appointing one Shri D. Panda as the Coal Mines Welfare Commissioner in the said Organisation. That was the order appointing a regular incumbent as contemplated by order dated February 7, 1980 but that does not mean that until the said appointment (i.e., from February 1982 to May 1983), the Organisation was without a Head.

10. The learned Counsel for the respondent relied upon the decision of this Court in Krishna Kumar v. The Divisional Assistant Electrical Engineer, Central Railway and Ors. . The said decision is of no help to the respondent inasmuch as it merely says that whether or not an authority is subordinate in rank to another for the purposes of Article 311(1) of the Constitution of India, has to be determined with reference to the state of affairs existing on the date of appointment. The respondent was appointed by the Coal Mines Welfare Commissioner and he is dismissed by the very same officer.

11. For the above reasons, the appeal is allowed and the order of the Tribunal is set aside. There shall be no order as to costs.