

(2001) 03 AP CK 0079

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 17729 of 1990 and Batch

APSRTC, Musheerabad, Hyd.

APPELLANT

Vs

State Transport Appellate Tribunal, Hyd. and others

RESPONDENT

Date of Decision : 15-03-2001

Acts Referred:

Andhra Pradesh Motor Vehicles Rules, 1989 — Rule 2, 258, 298, 299

Motor Vehicles Act, 1939 — Section 63

Motor Vehicles Act, 1988 — Section 102, 104, 99

Citation : (2002) 2 ACC 337 : (2001) 2 ACC 760 : AIR 2000 AP 252 : (2001) 3 ALD 235 : (2001) 2 ALT 532

Hon'ble Judges : Satya Brata Sinha, C.J;S.R. Nayak, J;B. Subhashan Reddy, J

Bench : Full Bench

Advocate : M/s. C.V. Ramulu, SC for APSRTC, Government Pleader for Transport, T. Venkata Raman, A.V. Sivaiah, SC for APSRTC, Noushad Ali, V. Ravi Kumar, B.S. Siva Prasad, K. Harinath, SC for APSRTC, K.N. Jwala, for the Appellant;

Judgement

This Judgment has been overruled by : A.P.S.R.T.C. Vs. Regional Transport Authority and Another, (2005) 2 ACC 384 : AIR 2005 SC 2663 : (2005) 5 JT 50 : (2005) 4 SCC 391 : (2005) 3 SCR 931

Madhava Reddy, J.—In these two writ petitions, two members of the teaching professions call in question the orders of dismissal passed against them under Proviso (c) to Art. 311(2) of the Constitution of India.

2. The petitioner in Writ Petition No. 1267 of 1980, Shri B. Bhaskar Reddy, was a Grade I Telugu Pandit in the Government Junior College, Malakpet, Hyderabad. He was first appointed on 3-1-1966. He was arrested by the police on 18-5-1974 on a charge of conspiracy and is one of the accused in Sessions Case No. 10 of 1975 of the file of the Second Additional Metropolitan Sessions Judge at Hyderabad in what has now come to be known as "Secunderabad Conspiracy case." He is a writer and a poet in Telugu language and is well-known under the pen-name of "Charabanda Raju". He is a member of the Revolutionary Writers"

Association and he and several other writers who belong to that Association along with some others, in all numbering 42, are accused in the Secunderabad Conspiracy case. Immediately on his arrest, the District Educational Officer, Hyderabad City, by his proceedings dated 6-6-1974 placed him under suspension under Rule 13(2) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963 with effect from 18-5-1974. He was released on bail in the year 1975 but was immediately arrested under the provisions of the Maintenance of Internal Security Act during the Emergency. He was released only after the proclamation of Emergency was withdrawn. The District Educational Officer, by his proceedings dated 19-4-1977, then revoked the order of suspension and gave him posting as Telugu Pandit, Grade I at Boys' High School, Seetaphalmandi with immediate effect. He joined duty and worked for three days when once again he was served with another proceedings of the District Educational Officer dated 22-4-1977 informing him that the earlier order of reinstatement in service and posting him are kept in abeyance until further orders. The petitioner questioned this order before the Andhra Pradesh Administrative Tribunal in R.P. No. 818 of 1977. In response to the notice issued by the Tribunal, the District Educational Officer filed a counter on 27-10-77 stating that the Deputy Inspector General of Police (Intelligence) had, in his D.O. letter dated 20-4-1977, advised him that the trial of Secunderabad Conspiracy case would take about a year for disposal and as such he should not be reinstated. The District Educational Officer further stated that, in view of the advice given by the Deputy Inspector General of Police (Intelligence), he had issued orders revoking the earlier order of reinstatement. That Representation Petition No. 818/77 is pending before the Administrative Tribunal. During the period of imprisonment and suspension, the petitioner was afflicted with brain tumor and he was operated upon. Representations were being made to the Government by his well-wishers and teacher colleagues to reinstate him. The Government instead has visited him with this order of removal from service in exercise of the powers conferred on it under Proviso (c) to Art. 311(2) of the Constitution. It is averred that his writings and the writings of the other members of the Revolutionary Writers' Association reflect the Marxist thought and realism, and that he has been falsely implicated in the Secunderabad Conspiracy case because of the political views which he holds and the ideology he pursues.

3. In the counter-affidavit filed on behalf of the respondents, it is denied that the petitioner was falsely implicated in the Secunderabad Conspiracy case. It is asserted that "he and his co-accused have been indulging in systematic propaganda through their writings and speeches inciting people and particularly the students to resort to violence to overthrow the Government by an armed revolution". He also joined hands with Naxalite cadres who were wedded to violence and who were planning murders and dacoities. It is also further asserted that the revolutionary writers have been lending their support to those Naxalite cadres with the slogan "Kalam Madi Katti Midi." The delay in the trial of the

Conspiracy case is stated to be mostly due to the non-co-operation of the accused themselves and not on account of any deliberate action or inaction on the part of the Government. On bail being granted, one or the other accused has been going underground making it impossible to proceed with the trial. The case has to be separated against three of the accused for this reason so that no further time is lost. As regards the order of suspension passed against him and keeping the order of reinstatement in a beyance, it is averred that it was done because of the continued activity of the petitioner in inciting people to violence. The allegation that he was placed under suspension or dismissed from service merely with a view to eliminate political dissent is incorrect and unsubstantiable. It is stated that even after his dismissal from service, he is not prevented from entertaining ideas of political dissent. It is, however, urged that the Governor acted in good faith on being satisfied that his continuance in service is not in the interest of the State, and that any enquiry in this behalf is against the interest of the internal security of the State. As such, the order passed under Proviso (c) to Art. 311(2) of the Constitution cannot be questioned. The satisfaction of the Governor in this behalf is not justiciable. The impugned order is not mala fide and is not intended to victimise the petitioner but one passed in the interest of the security of the State.

4. Shri G. Rajalochan, the petitioner in Writ Petition No. 1278 of 1980, first entered Government service in the year 1955 as an Assistant (Teacher) and was posted to Government High School at Pedda Muppam, Mahaboobnagar Taluka in Warangal District. He was transferred as an Assistant to Hanamkonda in 1957. He was working as an Assistant in the Government Upper Primary School, Waddepally, Hanamkonda teaching English and Telugu subjects. He is a writer and poet in Telugu language writing under the pen-name "Lochan". The District Educational Officer, Warangal, issued a charge memo dated 4-8-1975 accusing him of writing revolutionary poems under the pen-name of "Lochan". According to the District Educational Officer, those writings were "providing important propaganda, and in an attempt to spread Naxalite ideas and is also critical of the present educational system in the country", that he thereby violated sub-rule (1) of Rule 19 of the Andhra Pradesh Civil Services (Conduct) Rules; 1964 and called upon the petitioner to show cause why action should not be taken against him. After he submitted his explanation a second show cause notice was issued to him on 3-2-1976 as to why he should not be reduced in rank. The so-called admissions made by the petitioner were treated as sufficient to hold the charge levelled against him proved and he was reduced to a lower scale of post and his increments were withheld for a period of one year from 1-4-1976 to 1-4-1977. The petitioner states that in view of his financial difficulties and with a view to avoid any further vindictive action by the establishment during the Emergency, he did not choose to question that action. While so, on 20-6-1976 he along with fifty others were arrested and taken into custody; and, after sixteen days, served with an order of detention under the Maintenance of Internal Security Act on 10-7-1976. He was released after the proclamation of Emergency was

withdrawn. Immediately, however, he was served with a detention order on 21-3-1977 and was supplied with a copy of the grounds. In the detention order, he was described as one of the accused in the Secunderabad Conspiracy case which the petitioner avers, is not true. They also found fault with him for having contributed material to the Telugu magazine "Srujana" and for organising celebrations of Lenin Jayanthi and May Day. A few days thereafter he was released. However, on 21-3-1980, he was served with G.O.Ms. No. 215 Education dated 18-3-1980 stating that he was entirely unsuitable for retention in government service, and that the Governor, in exercise of the powers vested in him under proviso (c) to Art. 311(2) of the Constitution, had dispensed with the enquiry.

5. While not denying the particulars as to the period of the petitioner's service as a teacher in the Educational Department, it was asserted in the counter-affidavit that he has been writing "highly inflammable" verse inciting people to resort to violence and also making speeches to the same effect. He is a staunch worker of the Communist Party of India (Marxist Leninish COC (Kondapalli Seeta Ramaiah Group) which is wedded to violence and annihilation of class enemies. He is the convener of the Warangal branch of Revolutionary Writers' Association, and that he is also inciting students to take up arms and to overthrow the Government. He has been spreading violent ideas to overthrow educational institutions which is contrary to Government Servants' Conduct Rules. He is also a staunch worker of the political party wedded to violence. It is further asserted that he is one of the accused in the Secunderabad Conspiracy case and that "it is not correct to say that he is not an accused in the above case." The rest of the contentions raised in the counter to this writ petition are similar to the one in Writ Petition No. 1267 of 1980.

6. In these two writ petitions, Mr. Kannabiram, the learned counsel for the petitioners, contends that the allegations against both the petitioners are that they have been writing poems and delivering speeches, inciting people in general and students in particular to take up arms for overthrowing the Government and that they are arrayed as accused in the Secunderabad Conspiracy case the trial of which is pending before the Sessions Court. If these are the charges against the petitioner, they cannot constitute valid grounds for terminating the services of the petitioners, and that in any event the enquiry into these charges cannot be dispensed with under proviso (c) to Art. 311(2) of the Constitution by the Governor and thereby deprive the petitioners the protection afforded to them by Art. 311(2) of the Constitution. It is also further urged that if the allegations against the petitioner can form the subject-matter of a Sessions case trial which is held in open Court publicly, any enquiry into the charges in respect of those allegations in departmental proceedings, cannot be deemed to be inexpedient in the interest of the security of the State; As such, the Governor could not have dispensed with the enquiry. On the other hand, it is contended by the learned Government Pleader that though the accusation against a public servant may form the subject-matter of a criminal case which is tried in public and not in

camera, still the Government is not precluded from removing or dismissing the public servant from service; and if the circumstance, warrant and the Governor is satisfied, he is not precluded from dispensing with the enquiry in the interests of the security of the State.

7. Before we examine this contention, we may refer to the allegations leveled against the petitioner. So far as Bhaskar Reddy alias Charabanda Raju is concerned the accusation against him is that he is writing poems and delivering speeches, inciting students and public in general to take up arms, resort to violence and overthrow the Government and that he is one of the 42 accused in the Secunderabad Conspiracy case which is pending trial. The petitioner does not deny writing poems or delivering the speeches but asserts that these poems and speeches merely propagate the Communist philosophy and ideology and he is entitled to have his one views in this regard, and that cannot be a ground for removing him from service. So far as dispensing with the enquiry ordained by Art. 311(2) is concerned, it is stated that when the same charges can form the subject-matter of a public trial before a Court of law under the Criminal Procedure Code, an enquiry into the very same allegations in a departmental proceeding cannot be deemed to be not expedient in the interest of the security of State justifying the dispensing with such an enquiry by the Governor in exercise of the powers under proviso (c) to Art. 311(2) of the Constitution.

8. The allegations against Shri Rajalochan are that he is a writer and a poet indulging in delivering speeches and writing poetry, inciting people to violence and to overthrow the Government established by law through armed revolution. This he asserts cannot be a ground for removing him from service. The other allegation that he is an accused in the Secunderabad Conspiracy case is not true.

9. Whether the petitioner is an accused in the Secunderabad Conspiracy case or not is a matter of judicial record. In the Secunderabad Conspiracy case out of about 600 witnesses cited, it is admitted by both sides that nearly 40 witnesses have so far been examined. The charge-sheet does not disclose Sri Rajalochan, the petitioner in Writ Petition No. 1278 of 1980 as one of the accused in that case. So the only charge against him is that, through his speeches and writings, he has been inciting the people in general and students in particular to violent activities and to overthrow the lawfully established Government by armed struggle.

10. It may be stated at the outset that when there are allegations of misconduct against a public servant, the Constitution envisages an enquiry into the allegations leveled against him and an opportunity being afforded to him to answer the charges and adduce evidence in defence and also an opportunity to show cause why the punishment, if any, proposed should not be imposed upon him. Even Art. 311, in particular, affords constitutional protection in this behalf where a public servant is sought to be visited with the punishment of reduction in rank, removal or dismissal from service by way of disciplinary action. Most of the Service Rules framed with regard to the various State and subordinate services

incorporate Rules to that effect. The normal Rule is that every public servant shall be given an opportunity to defend himself in a departmental enquiry into the charges levelled against him. However, exception is made to this under proviso (c) to Art. 311(2) of the Constitution. Article 311 reads thus :

(1) "No person who is a member of civil service of the union or an all India service or a civil service of a State or holds a civil post under the union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonably opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry.

Provided that this clause shall not apply -

(a) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2) the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

11. If the enquiry in regard to the allegations against public servants is to be dispensed with and yet the punishment of reduction in rank, removal from service or dismissal from service is to be imposed, that can be done only when the conditions specified in one of the three provisos to Art. 311 are satisfied. In the instant case, the action is taken under proviso (c). Under this proviso the condition precedent for the exercise of the power by the Governor to dispense with the enquiry contemplated by clause (2) of Art. 311 is his satisfaction as to the holding of an enquiry not being expedient in the interest of the security of the State. In this context it must be borne in mind that the satisfaction of the Governor is not with respect to the allegations levelled against the public servant that those allegations merit his dismissal or removal from service. Whatever may be the nature of the charges against the Government servant, the satisfaction of Governor should be with regard to the holding of an enquiry contemplated by clause (2) of Art. 311 being not expedient; and that too for this reason that it is

not in the interest of the security of the State. The Governor cannot dispense with the enquiry with the enquiry merely because he is satisfied that the charges levelled against the public servant merit dismissal. Nor can he dispense with the enquiry merely because it is otherwise inexpedient. Under proviso (c) to Art. 311(2) of the Constitution, he can dispense with the enquiry if the conduct of an enquiry into charges is not expedient only in the interest of the security of the State and not on any other ground.

12. If that be the position, when the enquiry into the charges levelled against the public servant could form the subject-matter of a public trial in Session Case No. 10 of 1975, the enquiry into those allegations in a departmental proceeding could never be against the interest of the internal security. The departmental proceedings are not open to public. Only the petitioner and the enquiring officer would be present. Whatever material is placed in support of the charges would be known to the departmental authorities and the delinquent officer. But when that very material and perhaps some more is placed before the Court at a public trial, it is beyond one's comprehension as to how it can ever be said that it is not expedient to hold a departmental enquiry and holding of such an inquiry is against the interest of the security of the State.

13. So far as Rajalochan is concerned, he is not even an accused in the Secunderabad Conspiracy case. This factor could not have probably weighed with the Governor in coming to the conclusion whether it is not expedient to hold such an enquiry.

14. Even the other allegation which is common to both the petitioners, viz., that they are indulging in inflammatory speeches and writing poems and inciting people to take up arms against the established Government is also one of the allegations in the conspiracy case. All those writings would naturally come up before the Court. Further, none of their writings except two of the books or poems written by Charabanda Raju have been proscribed. None of their other writings are proscribed. The political ideology which they are supposed to be advocating is either Marxist Leninist or of the Naxalites. Be that as it may, so far as Sri Bhaskar Reddy alias Charabanda Raju is concerned, these writings and speeches form the subject-matter of the enquiry in Sessions Case No. 10 of 1975. So far as Sri Rajalochan, the petitioner in W.P. No. 1278 of 1980 is concerned, though he is not an accused in the said case, the contents of his speeches, writings and poems are similar to that of the other petitioner which form the subject-matter of the enquiry on which the charge of the conspiracy is based. None of his writings are proscribed. Further, the petitioners do not disown their writings. In fact, they claim that as citizens of India, they have a fundamental right to propagate the political ideology which appeals to them. How far this aspect can form the subject-matter of a charge in a disciplinary proceeding, we are not directly concerned in these writ petitions for no such charge is framed. It was, argued by the learned Government Pleader that, under the Andhra Pradesh Civil Services (Conduct) Rules, 1964, any public servant who

intends to write or publish any book which is not purely of a literary, artistic or scientific character, should obtain the permission of the Government and contravention of that Rule constitutes an act of misconduct. Reliance was placed in this behalf on Rules 13, 16, 17 and 19 which read as follows :

(13) "No Government employee shall, without the previous permission of Government, publish any book, which is not purely of a literary, artistic or scientific character. While applying for permission to publish a book he shall submit to Government a manuscript thereof.

Provided that an employee who publishes a book with or without the previous permission of Government shall not canvass for its sale in a manner and it shall also be open to Government to insist on the sale of the copyright in any such book."

(1) "No Government employee shall, except with the previous sanction of Government or any authority empowered by them in this behalf or in the course of discharge of his official duties, participate in a radio broadcast or contribute any article or write any letter in his own name or anonymously, pseudonymously or in the name of any other person to a newspaper or periodical :

Provided that no such sanction is necessary if such broadcast, article or letter is of a purely literary, artistic or scientific character, or if such broadcast relates to a talk arranged under the general or special order of Government; and the Government employee may accept the remuneration prescribed for such broadcasts, articles or letters.

(2) For the purpose of sub-rule (1), a Secretary to Government or a Head of Department may exercise the power of Government in respect of Government employees under his control and may refer any case to Government for orders if he considers such a course desirable".

17. (1) "No Government employee shall, by any public utterance, written or otherwise, criticise any policy or action of Government or any other State Government or the Central Government; nor shall he participate in any such criticism.

Provided that nothing in this rule shall be deemed to prohibit any Government employee from participating in discussions, at any private meeting solely of Government employees or of any association of Government employees, of matters which affect the interest of such employees individually or generally;

(2) No Government employee shall, in any writing published by him, or in any communication made by him to the press, or in any public utterance delivered by him make any statement of fact or opinion which is likely to embarrass -

(i) the relations between the Central Government or the Government of any State and the people of India or any section thereof;

(ii) the relations between the Central Government and the Government of any

Foreign State.

(3) A Government employee who intends to publish any document or to make any communication to the press or to deliver any public utterance containing statements in respect of which any doubt as to the application of the restrictions imposed by sub-rule (2) may arise, shall submit to Government the draft of such document, communication or utterance and shall, thereafter, act in accordance with such orders as may be passed by Government.

19. (1) "No Government employee shall be a member of, or be otherwise associated with, any political party or any organisation which takes part in politics; not shall he participate in, subscribe in aid of, or assist in any other manner, any political movement or activity.

(2) It shall be the duty of every Government employee to endeavour to prevent any member of his family from taking part, in subscribing in aid of, or assisting in any manner, any movement or activity which is, or tends directly or indirectly to be, subversive of the Central Government or of a State Government being prejudicial to national security; and where a Government employee is unable to prevent a member of his family from taking part, in or subscribing in aid of, or assisting in any other manner, any such movement or activity, he shall make a report to that effect to Government.

(3) Nothing in sub-rule (2) shall apply in respect of any member of the family of a Government employee standing for an election to Parliament or any House of a State Legislature or local authority or body or canvassing for other candidates in any such election.

(4) If any question arises as to whether any movement or activity falls within the scope of this rule, the decision of Government thereon shall be final.

(5) No Government employee shall canvass or otherwise interfere or use his influence, in connection with, or take part in, an election to Parliament or any House of a State Legislature or any local authority or body;

Provided that -

(i) A Government employee qualified to vote at such election may cast vote but, where he does so, he shall give no indication of the manner in which he proposes to vote or has voted;

(ii) A Government employee shall not be deemed to have contravened the provisions of the rule by reason only that he has assisted in the conduct of an election in this due performance of duty imposed on him by or under any law for time being in force.

(6) The display by a Government employee on his person, vehicle, residence or any of his property, of any election symbol shall amount to using his influence in connection with an election within the meaning of sub-rule (5).

(7) The provisions of sub-rules (5) and (6) shall not apply to a Government employee required or permitted by or under any law or order of Government to be a candidate at an election to a local authority or body."

15. If the allegation is merely that the petitioners have contravened a particular rule, an enquiry into that fact in which what all has to be established is that the public servant has published a book without obtaining permission cannot, by an stretch of imagination, be said to be against the interest of the security of the State. What all we need consider in these writ petitions is whether any person could reasonably hold that an enquiry into these facts is inexpedient in the interest of the security of the State especially when those very allegations form the subject-matter of a sessions trial.

16. We are unable to hold that any one could reasonably be satisfied that a departmental enquiry is against the interest of the security of the State when the same could be enquired into at a public trial.

17. It was, however, argued that it is not open to that Court to sit in judgment over the satisfaction reached by the Governor as regards whether it is expedient or not in the interest of the security of the State to hold an enquiry. It is urged that if the Court were to sit in judgment over this matter, it would have to go into question whether there was any material before the Governor and if that material was sufficient to come to the conclusion he reached in this behalf, the scrutiny of that material by the Court would itself be against the interest of the security of the State. Once the Governor passes an order under Proviso (c) to Art. 311(2) of the Constitution, the Court is precluded from going behind that order and considering its validity. Reliance for this contention was placed on a Division Bench decision of the Bombay High Court in Jagdish Dajiba Vs. The Accountant-General of Bombay and Others, That Division Bench of the Bombay High Court at Nagpur upheld this contention by observing thus :

"It is not necessary to spend many words for rejecting such contention. Article 311 provides that no person in the service mentioned therein shall be dismissed until he has been given a reasonable opportunity of showing cause unless "the President is satisfied that in the interest of the security of the State it is not expedient to give to that person, such an opportunity." It is obvious that what the above provision of the Constitution requires is satisfaction of the President about the expediency of not giving an opportunity to the employee concerned in the interest of the security of the State. To make such matter a justicable issue would mean that the Court should be also satisfied about such expediency and then only the order of the President passed under the powers given by the Constitution should be upheld by the Court. This would amount to substituting satisfaction of the Court in place of satisfaction of the President. It is possible that what may satisfy the President may not satisfy the Court. What may be found expedient by the President may not be so found by the Court. If Courts, were to demand proof of such satisfaction and the evidence of material on which the satisfaction was reached, the Courts would be virtually depriving the

President of the powers and confidence which the Constitution in its wisdom has reposed in the President."

18. Reliance was also placed in this behalf on a Division Bench decision of this Court in Mohammad Azam v. State of Hyderabad, AIR 1958 AP. 619, in which Jaganmohan Reddy, J., (as he then was) speaking for the Bench declared :

"Where the action proposed to be taken against a member of the services specified in clause (1) of Art. 311 is under proviso (c) of Clause 2 of Art. 311, the satisfaction that it is not expedient in the interests of the security of the State to give that person an opportunity to show cause, is the satisfaction of the Rajpramukh. The state of person's mind cannot be determined by the objective test and as long as the President, Governor or the Rajpramukh acted in good faith, their satisfaction cannot be enquired into in a Court of Law".

19. We must at once point out that these two judgments were rendered before Art. 311(2) was amended by the Constitution (Fifteenth Amendment) Act, 1963 which came into on 6th October, 1963. Further these judgments were rendered at a time when the law as laid down by the Supreme Court in B.K. Sardari Lal Vs. Union of India (UOI) and Others, held the field and which declared that the President has to be satisfied personally in exercise of the executive power of function, and that the functions of the President cannot be declared to anyone else. That view no longer holds the field. In Samsheer Singh Vs. State of Punjab and Another, at p. 476 the Supreme Court laid down as follows :

"The President as well as the Governor is the constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Minister, save in spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise by the President or the Governor of any power of function, the satisfaction required by the Constitution is not the personal satisfaction of the President or Governor but the satisfaction of the President or Governor in the constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercised all his powers and functions. The decision of any Minister or officer under rules of business made under any of these two Arts. 77(3) and 166(3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of Minister or Officer under rules of business is the decision of the President or the Governor."

20. In that judgment, a distinction was made between the powers exercisable by the President or Governor in his discretion under Arts. 239(2) and 200 and where he merely acts on the advice of the Council of Ministers, and where he is to act on his satisfaction, the satisfaction is not the personal satisfaction of the President or the Governor but in the Constitutional sense, in the Cabinet system

of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercise all his powers and functions. The action of the Governor in such a case is an administrative action which is subject to judicial review. Since the administrative action is still based on the satisfaction of the Governor, it would not be open to the Court exercising judicial control by way of review to go into the question as to how far the material placed before the Governor was sufficient to form the opinion. But it would certainly be open to the Court to find out if there was any material at all and whether that material was relevant and whether the Governor, in reaching the conclusion he did, acted bona fide. A limited power of review is vested in the Court to find out whether the satisfaction of the Governor is not his personal satisfaction but a satisfaction based on the advice of his Council of Ministers. The function discharged by the Governor vis-a-vis the public servants in the context of Art. 311(2) is certainly not the personal satisfaction of Governor. The tenure of civil servants is no longer terminable at the pleasure of the Governor or the President. It has constitutional protection of Art. 311. The pleasure of the President or the Governor is subject to constitutional limitations. When, in such a context, the Governor has to arrive at a conclusion as to whether it is expedient or not in the interest of the security of the State to make an enquiry it cannot be his personal satisfaction but a satisfaction arrived at with reference to the public servant who is charged with misconduct and whose removal from service without holding any enquiry is deemed inexpedient in the interest of the security of State. In *Samsher Singh's case* (supra) overruling the decision in *Sardharilal's case*, (supra), Ray, C.J., held at p. 484 (para 88) :

"The appointment as well as removal of the members of the Subordinate Judicial Service is an executive action of the Governor to be exercised on the aid and advice of the Council of Ministers in accordance with the provisions of the Constitution. Appointments and removals of persons are made by the President and the Governor as the constitutional head of the executive on the aid and advice of the Council of Ministers. That is why any action by any servant of the Union or the State in regard to appointment or dismissal is brought against the Union or the State and not against the President or the Governor."

21. If that be the position and the order removing the petitioner is an administrative act of the Governor, no doubt on his being satisfied that it is not expedient in the interest of the security of the State to hold an enquiry, it is open to this Court to find out whether there was any material at all before the Governor to pass such an order.

22. Bhaskar Reddy alias Charabanda Raju, the petitioner in Writ Petition No. 1267 of 1980, has asserted in his affidavit that his writings, poems and speeches and the fact that he is an accused in the Secunderabad Conspiracy case alone constitute the basis for his dismissal from service. In the counter-affidavit, it is not stated that there any other material, They have only elaborated that through his writings and speeches, he has been inciting people and particularly the

students to resort to violence to overthrow the Government by armed revolution, and that he has also joined hands with Naxalite cadres.

23. At the hearing, the learned Government Pleader said that there was other material. When he was asked to state what that material was, he merely stated that the petitioner participated in certain secret meetings where he incited the members to violence. He offered to place the records before the Court, but requested that record may not be disclosed to the petitioners. He further categorically stated that the record did not disclose that he was himself engaged in any violent activities. The subversive activities imputed to the petitioner only refer to his inciting the people and the students through his speeches, writings and poems. We do not wish to express any opinion with respect to the other material which is not brought on record either by way of a counter-affidavit or way of documents. If there is any other material with the respondents and the respondents do not choose to bring it on record to support the order, merely disclosing that material to the Court would not serve any purpose. The Court would not be justified in looking into that material and come to a conclusion of its own without disclosing the said material to the petitioner. That would be violative of the well-known principles of natural justice. In *Mrinal Kanti Das Burman v. State of West Bengal*, (1977) 1 Lab. I.C. 628, a Full Bench of the Calcutta High Court took a similar view when it observed : at page 633 :

"An order under Art. 311(2) proviso (c) should be considered as an exercise of administrative power by the executive and the exercise of such power is subject to judicial review in the same manner as other discretionary orders are scrutinized by Courts Since the Governor can dispense with the requirements of Art. 311(2) only on being satisfied that it would not be expedient in the interest of the security of State to hold such enquiry, the Court has power to see whether there has been compliance with the conditions for exercise of such executive powers. Naturally the Court does not examine the sufficiency of the grounds on which the executive discretion has been exercised. In the first place, the Courts may enquire whether in fact there has been a decision by the President or the Governor or their delegated authority, if any, in terms of Art. 311(2) proviso (c). Secondly, the exercise of discretionary powers must satisfy certain implied conditions - (a) good faith of executive authority; (b) consideration of relevant matter; lastly, (c) executive authority must act fairly."

24. The Full Bench of the Calcutta High Court refused to look into the record sought to be placed before the Court by the State in support of the contention that there was other relevant material which they requested should not be disclosed to the petitioners. This is a salutary principle which ought to be observed by every Court. We accordingly refuse to look into those files unless the respondents are prepared to make it a part of the record and disclose it to the other side so that they may have an opportunity to submit what they wish in relation to that material. As the matter stands, we do not find anything against the petitioner which is not directly or indirectly the subject-matter of the enquiry

in Sessions Case No. 10 of 1975, and that, in our view, as already held above, cannot be deemed sufficient to dispense with the enquiry under the proviso (c) to Art. 311(2) of the Constitution. No other material was placed before the Governor which was relevant for the exercise of that powers.

25. In the case of Rajalochan, if what is stated in the counter-affidavit was also placed before the Governor, i.e., that Rajalochan was an accused in the Secunderabad Conspiracy case, which was certainly not true and that would have influenced the Governor in reaching the satisfaction he did in making the order under proviso (c) to Art. 311(2) of the Constitution, it cannot be predicted as to whether the Governor would have exercised that power if he had known that allegation was not true.

26. In *State of West Bengal v. Narendra Narayan*, (1977) 1 Lab. I.C. 856, a Division Bench of the Calcutta High Court held in paragraph (5) at page 862 :

"The scope of judicial review in respect of administrative or executive order of this nature is well-settled. The Court must examine whether the opinion or satisfaction question was formed bona fide. Secondly, the Court must examine whether there were any materials relevant or germane to the question at issue. The Court, however, is not concerned with the sufficiency of the materials or with the question whether on the materials available the Court would have formed the same decision or the same opinion. It has been emphasized that there must be factual basis for the decision taken or the satisfaction arrived at. By this requirement it is not obligatory to examine the truth or otherwise of the materials upon which the executive or the administrative authority acts. But what is required to be scrutinised is to see that there are in fact some materials relevant to the question upon which the authority concerned has acted."

27. The order of the Governor, so far as Rajalochan is concerned is thus vitiated by taking into consideration material which is wholly baseless. The order which deals with dispensing of the enquiry and dismissing the petitioner from service is, therefore, vitiated and cannot be sustained. It was also urged that writings, poems and speeches by themselves cannot be treated as sufficient for removing a public servant from service. It was contended that by merely becoming a public servant, a citizen does not lose his fundamental right to have his own views and propagate the same through publication of books, poems and speeches and no public servant can be victimised or removed from service on that ground. Reliance for this contention was placed on a decision of the Punjab High Court in *Hardit Singh v. State of Punjab*, (1977) 2 S.L.R. 749, the judgment of our learned brother, Jeevan Reddy, J., in *Kalluri Vasayya v. Superintendent of Post Offices, Khammam*, Writ Petition No. 4037 of 1978, decided on 1-2-1980 (Reported in (1980) 1 A.L.T. 399) and also on the decision of Chinnappa Reddy, J., (as he then was) in *A. Rama Rao v. The Post Master General, Andhra Circle, Hyderabad*, (1975) 1 A.W.R. 159. However, having regard to the conclusion reached by us with regard to the exercise of the power under proviso (c) to Art. 311(2) of the Constitution and also having regard to the fact that no specific charges were

framed and no charges were held proved, we deem it unnecessary to consider this question.

28. In view of the foregoing discussion, the impugned orders in both the writ petitions are quashed. If the respondents think that the petitioners are guilty of any misconduct or of any other charges warranting disciplinary action, nothing in this judgment will preclude them from taking appropriate action in accordance with law.

29. These two writ petitions are accordingly allowed with costs. Advocate's fee Rs. 200 (Rupees two hundred only) in each.