
(1954) 04 MP CK 0012
In the Madhya Pradesh High Court

Babulalji Saksena (Vijay Sankar) and Others

APPELLANT

Vs

State of Madhya Bharat

RESPONDENT

Date of Decision : 16-04-1954

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 234, 310

Citation : (1955) 1 LLJ 402

Hon'ble Judges : Samvatsar, J;Nevaskar, J

Bench : Division Bench

Judgement

Nevaskar, J.—This and other petitions Nos. 22, 30, 32, 37, 39 and 40 of 1953 involve the same questions. All these aforesaid petitions are submitted by the several petitioners under Article 226 of the Constitution of India for the issue of a writ of mandamus or certiorari and for a decision that the order of the Government of Madhya Bharat, dated 16 December 1952, issued against them directing their removal from the judicial service of the State to be of no effect and that they still continue in the service of the State.

2. I consider it convenient to consider the case of the petitioner Vijay Shankar for the decision of the questions involved in all these petitions, because after these questions are decided with reference to this petition that decision could be applied to other cases, although there may be some variation as regards some facts not material for the present purpose.

3. Petitioner Vijay Shankar set forth in his petition that he had been in the service of Rajgarh State of Central India, prior to the integration of that State into Madhya Bharat, as a judicial officer on the post of a munsif-magistrate; that after the formation of Madhya Bharat and integration of Rajgarh State therein on 30 June 1948, the petitioner continued to function as a munsif-magistrate at Talen in Madhya Bharat till 31 March 1949; that in the process of integration he was posted as a munsif with second-class magisterial powers and was posted at Bhilsa where he took charge on 2 April 1949 and was later transferred to Chanderi in the same capacity where he worked till 31 May 1952; that in the

fourth week of May 1952 the petitioner received an order No. 7849-7988, dated 20 May 1952, from the Registrar, High Court, directing him to hand over the charge of his office to the head clerk in the afternoon of 31 May 1952 and that later on 8 January 1953 he received an order intimating to him his removal from service from 1 June 1952 and providing that he would be entitled to the benefit of leave due to him and other rights as to pension and gratuity but stating no reason for such removal whatsoever, that a Government notification No. 296 (5) J-95-4-/52, dated 16 December 1952, regarding the removal of the petitioner along with other judicial officers in the State was published in the Gazette, dated 19 December 1952, and that the petitioner thereupon made demand of justice against his sudden and unexpected removal from service but failed to get redress.

4. The petitioner mainly based his petition on the grounds that the distinction sought to be drawn by the opponent State between his removal and retirement is without difference and that after integration of Rajgarh State into Madhya Bharat and absorption of the petitioner in the service of the State provisions in the covenant could not apply particularly after the Constitution of India came into force and further that the action of the Government in directing his removal or retirement contravened the provisions of Article 311 of the Constitution as the petitioner was not afforded reasonable opportunity of showing cause against his intended removal.

5. On these grounds he prayed for the issue of writs aforesaid.

6. In the return submitted on behalf of the State it was contended that ordinary remedies are available to the petitioner to have his grievance redressed and recourse to an extraordinary remedy by way of writ of direction under Article 226 of the Constitution was not justified. Estoppel was also put forth as a ground for denial of the remedy sought to be pursued alleging that the petitioner had availed himself of the benefit of retrenchment terms under Clause 1(a)(7) of the Retrenchment Rules, Madhya Bharat.

Covenant entered into between rulers of covenanting States at the time of integration into Madhya Bharat which by its Article 16, Clause (1), guaranteed to the permanent members of the public services of each of the covenanting states either the continuance in service on conditions which would be not less advantageous than those on which they had been serving on 15 April 1948 or the payment of reasonable compensation, was relied upon as entitling the State to adopt either of the two alternative courses while shaping its policy in the task of reorganization of the public services.

7. It was further asserted that it was not obligatory upon the State to exercise its option forthwith on formation of Madhya Bharat but that the State was entitled to take time for completing its process of absorption and for completion of its scheme for reorganization of its services.

8. With regard to the petitioner and others like him it was contended that they were allowed to discharge the functions entrusted to them pending integration of

services only as a stop-gap arrangement. The State, it is urged, later constituted a high-powered committee to screen the personnel for permanent absorption in the different services and that in pursuance of recommendations of the said committee two categories of judicial officers were made, namely, those who were appointed permanently to the judicial services and those who were appointed purely on temporary basis and that it is to this latter category that the petitioner and others like him belonged.

It was further stated that they held merely provisional appointments in the hope of being absorbed in the later stages of the process of integration of services. After the Constitution, it was contended, His Highness the Raj Pramukh was pleased to make rules in exercise of powers conferred upon him by Article 234 of the Constitution and under power conferred by Rule 8 of the aforesaid rules a second committee for screening was appointed but that the said committee did not select the petitioner and others like him for their permanent absorption and that they were, therefore, offered reasonable compensation in terms of Retrenchment Rule 1(a)(7).

9. Applicability of Article 311 of the Constitution to the case of the petitioner and others like him was denied and it was claimed that the State has the power and duty to reorganize its services and that any action taken to implement such a policy is not open to challenge under that article.

10. It was denied that the action of the Government in retrenching the services of the petitioner and of others like him lacked bona fides or was motivated by any extraneous considerations.

11. It was therefore urged that the petitioner had no legal right to insist upon his permanent absorption in the judicial services of the State and further that as his retirement was not intended as a measure of punishment he was not entitled to take his stand either on Article 311 of the Constitution or under Rule 3 of Madhya Bharat Punishment and Appeals Rules.

12. The questions which arise for consideration are whether any legal right vested in the petitioner is infringed by reason of the action of the Government and whether this Court can and should issue any direction in protection of that right.

13. It was contended by Mr. Rege who appeared for the petitioner that the petitioner was in service of Rajgarh State before integration of that State into Madhya Bharat. Rajgarh State was integrated on 30 June 1948 and as a result of covenant entered into between the rulers of various States terms whereof are set out at p. 252 of the White Paper on Indian States he entered the Madhya Bharat Judicial Service by reason of the provision contained therein under Article 16(1) which is as follows:

XVI. (1) The United State hereby guarantees either the continuance in service of the permanent members of the public services of each of the covenanting States

on conditions which will be not less advantageous than those on which they were serving on 15 April 1948 or the payment of reasonable compensation.

14. The counsel contended that it was open for the Madhya Bharat Government to exercise its option in choosing either of the two courses within a reasonable time, viz., either to retain him in service on terms not less advantageous than those on which he was serving or pay him any reasonable compensation. The latter course of paying compensation was not then chosen, the petitioner continued in judicial service of Madhya Bharat and the Constitution came into force.

When the Constitution came into force the covenant ceased to be effective and thereafter it was not open for the State to look to the covenant to control the rights of their servants but to the provisions of the Constitution and the guarantee contained in Article 311 came into play. The petitioners were removed from service all of a sudden and for such a removal as that of the petitioner without any opportunity being afforded to show cause against the action sought to be taken by the State Article 311 of the Constitution, can properly apply.

The counsel further contended that even if one were to look into the provisions of the Madhya Bharat Judicial Service (Punishment and Appeals) Rules, 1950, one would find that in Part II of the aforesaid rules u/s 6 various penalties are indicated which could be imposed upon a Government servant of this State which include in Clause (h), (i) and (j) the penalties, namely, reduction in rank, removal from service which does not disqualify from further employment and dismissal from service which disqualifies a person from further employment.

15. The present removal, according to the learned Counsel, is the one indicated in Clause (1) and for such a removal the procedure contained in rule 8 of the aforesaid rules ought to have been followed. This procedure requires that the grounds on which the Government seeks to remove its servant ought to be stated in writing and an adequate opportunity ought to be afforded to him for defending himself as against those grounds.

16. Therefore, according to the learned Counsel both under Article 311 of the Constitution as also under the provisions of the rules aforesaid the removal of the petitioner was illegal.

17. In this connexion the distinction sought to be drawn by the State between removal and retrenchment from service is, according to the learned Counsel, without difference.

18. The counsel further contended that although a civil servant in the State holds office during the pleasure of Raj Pramukh this is controlled by Article 311 of the Constitution as will appear from the words in Article 310, viz., "except as otherwise provided in the Constitution." Therefore, the moment Article 311 of the Constitution is not complied with, Raj Pramukh's powers under Article 310 cannot be invoked. The counsel drew a distinction in this regard between the

servants under the Crown in England and those under the Constitution.

19. According to the learned Counsel, sudden and unexpected retirement of the petitioner after he had been in judicial service of the State, temporary though it be, amounted to a removal within the meaning of the term as contemplated in Article 311 and for that purpose it is not necessary that such a removal should have been preceded by a proceeding charging him with some fault.

It was contended by the learned Counsel that it would be strange to hold that if a person is removed for his having committed some fault justifying an action under Punishment Rules he will be protected by Article 311 if no opportunity were given to him for showing cause against his removal but if he is removed for no cause whatsoever he will not be so protected

20. In the alternative, It is urged that though such a removal may not be alleged by the State to be by way of punishment for misconduct, fault, indiscipline or inefficiency this Court should dive deep and hold that the removal or retrenchment, whatever be the name given to the action, amounted to a removal as a measure of punishment.

Otherwise, according to the learned Counsel, there was no earthly reason why some of the persons similarly situated should have been assimilated and the rest not and why in spite of the fact the petitioners were asked to retire and new persons were admitted in service.

21. Learned Advocate-General in reply traced the history of assimilation of the members of the judicial service of Madhya Bharat as permanent judicial officers.

He stated that at the time of formation of Madhya Bharat there was a large body of judicial officers of different standards and calibre in 22 integrating States and in the scheme of reorganization it was not expected that all would be assimilated at once. It was on the other hand expected that some would be assimilated and some would be left out and it was just and proper that such as are left out should be treated with justice and fair play.

Article XCI (sic) of the covenant entered into between the rulers of various integrating States therefore provided for two alternative courses, viz., their being employed in the new State on terms not less advantageous than those on which they were serving or their being given reasonable compensation. After the formation of the new State, the new Government was bound to take some time in the process of assimilation which could only be carried out on the basis of a certain administrative policy. This necessarily involved the process of screening.

21A. Initial spade work for formulation of rules for retrenchment was done by a committee which was known as Mohan Rao Committee and on the recommendations of that committee principles to govern the selection of Government servants for retirement were set down and published on 12 July 1949. Later, a committee consisting of two High Court Judges and a member of the Public Service Commission was appointed for a screening of the personnel in

the judicial service and on the basis of recommendations of this committee first the step in the process of assimilation was taken.

In this first screening, the petitioners were not assimilated as permanent servants and they continued in temporary employment hoping to be assimilated later. This took place in 1949. Thereafter in 1951, Rules of Judicial Service were made by the Raj Pramukh In pursuance of the authority conferred upon him under Article 234 of the Constitution. Rule 8 of these rules enabled the remaining officers who were not permanently assimilated without being required to appear for the competitive examination to be held by the Public Service Commission on their being recommended by a committee appointed under the said rules. The petitioners like others stood equal chance and some of the remaining members in the temporary employment in the judicial service were further assimilated.

The petitioners would not come in this second screening and as the State, as a measure of administrative policy, did not decide to continue this process of assimilation, the petitioners and others were honourably retired from service without any idea of blemish attaching to their character as Judicial officers. There was no idea either apparent or below the surface to attribute any fault to the petitioner and others like him when they were asked to discontinue. It was merely done in accordance with the rules framed and as a measure of administrative policy.

Therefore, the learned Advocate-General continued, it would be improper to attribute any act of suppression of real state of fact or want of bona fides to the Government in the act which resulted in the discontinuance of petitioners and others in like position, from service. This was, in no sense, according to learned Counsel, removal tantamount to punishment within the meaning of the term as used in Articles 311 of the Constitution.

It was further contended that whatever may be the view held earlier after the decision of their lordships of Supreme Court in the case *Satish Chandra Anand Vs. The Union of India (UOI)*, , it is now settled that the word "removal" in Article 311 of the Constitution is not any removal but a removal as a measure of punishment.

22. After the aforesaid Supreme Court case the same view was followed by this Court in two cases, viz., *Prem Biharilal Saxena v. State of Madhya Bharat* AIR 1954 MP. 49 and *Munshirhm v. State of Madhya Bharat* AIR 1954 MP. 54 decided by Dixit and Chaturvedi, JJ. The decisions in *Kewal Mal Singhi Vs. Heta Ram and Others*, and *Jayanti Prasad v. State of Uttar Pradesh* AIR 1961 All. 793 were also relied upon.

23. It was on these grounds urged that there was no occasion to Invoke powers of this Court under Article 226 of the Constitution.

24. On consideration of these respective submissions of the counsel of both sides it is clear that the petitioners cannot claim it as a matter of legal right to become

a member of permanent judicial service. They were no more than in temporary employment. They can only come to this Court if they can successfully show that their discontinuance from service amounted to their removal within the meaning of the term as used in Article 311 of the Constitution.

It is further clear that the meaning of the word "removal" as used in Article 311 of the Constitution has been made clear by their lordships of the Supreme Court in *Satish Chandra Anand Vs. The Union of India (UOI)*, their lordships say:

Part 12 of the Civil Services (Classification, Control and Appeal) Rules relating to conduct and discipline includes Rule 49 which sets out the various penalties to which a member of the services can be subjected for indiscipline and misconduct. They are seven in number and include censure, suspension, reduction in rank, removal from service and dismissal from service. The Act of 1935 selected only two of these possible penalties as serious enough to merit statutory safeguards, namely, reduction in rank and dismissal from service. The Constitution has added a third to the list. The distinction which is drawn between the two is explained in Rule 49. There is first removal from service which does not disqualify from future employment and there is next dismissal from service "which ordinarily disqualifies from future employment."

Then follows an explanation:

The discharge:

* * * (c) of a person engaged under a contract, in accordance with the terms of his contract, does not amount to removal or dismissal within the meaning of this rule.

These terms are used in the same sense in Article 311. It follows that the article has no application.

Thus, according to the view of their lordships, the words "dismissal, removal and reduction in rank" in this article are used in the same sense in which they are used in Rule 49 contained in Part 12 of Civil Services (Classification Control and Appeal) Rules and therefore the word "removal" means such removal as would amount to a punishment. In *Madhya Bharat*, there are in force Civil Services (Punishment and Appeal) Rules which in Rule 6 make provisions similar to Rule 49 of the rules aforesaid and unless it could be said that the action of the Government in directing discontinuance of services of the petitioners amounted to an action of removal within the meaning of this Rule 6 the petitioners cannot succeed.

25. There is nothing on record for us to hold that the removal from service of the petitioners was as a measure of punishment. In fact it is the case of the petitioner that he was removed from service by an order which stated no reason and provided that he would be entitled to the benefit of leave due to him, and other rights as to pension and gratuity.

Mr. Rege wants us to look below the surface and to hold that this must have been as a measure of punishment but there are no materials to hold that way. It may be that when the State considered the question of assimilation, others whom it assimilated might, according to the committee appointed for screening, have been considered more suitable for their assimilation but that does not mean that the State condemned others for some fault and wanted to remove them as a measure of punishment. Such assumptions cannot be made especially in a petition under Article 226.

26. When Mr. Rege argued that it would be strange if persons committing fault were given opportunity for showing cause against a penal action proposed to be taken against them, and persons committing no fault should go defenceless, the argument failed to appreciate the real meaning behind the provision in Article 311.

It was more in recognition of the principle that no man should be condemned unheard rather than for affording protection to services and particularly for this that we find that when a punishment which would be considered to be drastic is to be imposed an opportunity of hearing is given. Punishments of reduction in rank, removal and dismissal are considered punishments which can be taken to be as serious as conviction for a criminal charge and it is for this that the protection contemplated under Article 311 is given.

27. In this case, having regard to the entire history regarding the process of assimilation of members belonging to the integrating States into the Judicial Service of Madhya Bharat it can safely be inferred that the act of the Government is in the nature of an act in pursuance of an administrative policy and the said act is regularly and lawfully performed.

28. In this connexion I may usefully refer to decisions *Kewal Mal Singhi Vs. Heta Ram and Others*, and *Jayanti Prasad Vs. The State of Uttar Pradesh*, . In the first of these cases *Wanchoo, J.*, remarked at p. 19;

We feel that the word "removal" as used in Articles 311(2) applies to a removal which is due to some fault of the civil servant concerned. It seems to us that there would be no point in giving reasonable opportunity of showing cause to a public servant, if the removal is unconnected altogether with his conduct.

29. From the foregoing discussion it is clear that the petitioners have no legal right which is infringed by the action of the Government and it cannot be said that their discontinuance from service or retirement amounted to a removal within the meaning of Article 311.

In this view of the matter it is unnecessary to consider other points raised on either side. The facts of the other petitioners only varied as regards the particular State in which they served prior to integration and the dates of their serving at particular places in Madhya Bharat but the vital question involved in all of them is identical with what has been discussed above and no separate treatment for

them is considered necessary.

In the case of Sri Shankarlal Ojha, petitioner in civil miscellaneous petition No. 40 of 1953 and some other petitioners a ground based on Articles 14 and 16 of the Constitution is taken. This ground is based on the allegation that they were discriminated against in the process of assimilation, and equality of law and equal protection of laws and equality of opportunity in matters relating to employment to a judicial office under the State was denied to them. These allegations are too vague to be taken notice of and no rule of law had been relied upon which was employed to bring about that result nor did they allege any definite facts indicating discrimination in the application of any rule so made. It is beyond doubt, as held in the Rajasthan case referred to above Kewal Mal Singhi Vs. Heta Ram and Others, that a reasonable classification is permissible and what is prohibited under Article 14 is arbitrary selection or discrimination within the class.

Nor can it be said that this petitioner and those taking their stand under Article 16 were not afforded equal opportunity of entering the judicial service under the then existing rules. Those belonging to the class, to which the petitioner belonged, stood equal chance of entering the service under the existing rules. Under these circumstances neither Article 14 nor Article 16 can be invoked.

30. For these reasons the application of the petitioner Vijay Shankar and those of other petitioners are hereby dismissed. Under the circumstances of this case and particularly as the cases were new of their kind I make no order as to costs.

Samvatsar, J.

I agree.