
(1997) 03 AHC CK 0210
In the Allahabad High Court
Case No : C.M.W.P. No. 45931 of 1992

Chhabinath Singh

APPELLANT

Vs

U.P. Public Service Tribunal No. II and Others

RESPONDENT

Date of Decision : 13-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 310, 311, 311(2), 311(3)
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 302
Uttar Pradesh Provincial Armed Constabulary Act, 1948 — Section 7

Citation : (1997) 03 AHC CK 0210

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : M.D. Singh, for the Appellant;

Final Decision : Allowed

Judgement

B.S. Chauhan, J.—The instant writ petition has been filed against the judgment and order of the U.P. Public Services Tribunal dated 9.9.1992, contained in Annexure 7 to the writ petition, by which the Tribunal did not interfere with the order passed by Respondent No. 2 dismissing the services of the Petitioner, vide order dated 10.9.1973, contained in Annexure 1 to the writ petition.

2. The factual gamut of the instant case reveals that the Petitioner was an employee of Pradeshik Armed Constabulary (hereinafter called the P.A.C). There had been a revolt in P.A.C. Centres at various places in Uttar Pradesh on 21/22nd May, 1973 and the Petitioner was put to trial for the offence punishable under Sections 147, 148, 302/149, 324/149, 326/149 read with Sections 379, 120B, 409 and 427 of Indian Penal Code (hereinafter called I.P.C.) as well as u/s 7(c) of the U.P. Pradeshik Armed Constabulary Act, 1948 (hereinafter called the P.A.C. Act). The Petitioner was convicted by the learned Sessions Judge, Varanasi only u/s 7 (c) of the P.A.C. Act, for being grossly insubordinate. However, this Court allowed the Criminal Appeal No. 2823 of 1976, filed by the Petitioner and set aside the judgment and order of the learned Sessions Judge, Varanasi and also

dismissed the State appeal against the Petitioner for other offences in which he had been acquitted by the Sessions Court. The relevant part of the judgment of this Court runs as under:

While considering the prosecution case against Chhabinath Singh in connection with his Criminal Appeal No. 2823 of 1976 we have held that he was indoor patient at P.A.C. Hospital on 17.5.1973 and that at 5.00 or 5.30 a.m. on 22.5.73 he was shifted from P.A.C. Hospital to Lavitt Hospital. On that ground we have set aside the conviction that was recorded against Chhabinath Singh for the offence u/s 7 (c) of P.A.C. Act.

Since it was proved by the evidence on the record that Chhabinath Singh was in the Hospital from 17th May, 1973 till the morning of 22.5.1973 when he was shifted in Lavitt Hospital, it cannot be held that he was a member of unlawful assembly and participated in any manner in the execution of the common object of that unlawful assembly, the Government Appeal in so far as it concern Chhabinath Singh-Respondent must, therefore, fail.

However, the services of the Petitioner had been terminated by the order of the Respondent No. 2, i.e., the Governor of Uttar Pradesh passed on 10.9.1973, in exercise of his powers under Article 311(2)(c) of the Constitution of India, which provides for the dismissal/removal of a person without holding any enquiry where the Governor is satisfied that in the interest of the security of the State it is not expedient to hold such an enquiry. It may also be pertinent to mention here that the Petitioner was not dismissed from service by the Respondent No. 2 in exercise of the powers under Clause (a) of paragraph 2 of Article 311 of the Constitution which provides for dismissal or removal of an employee on the ground of his conduct which has led to his conviction on a criminal charge. After the acquittal from the High Court, the Petitioner made a representation to the Governor for reinstatement with all the emoluments etc. and as he could not get any relief from there and matter remained pending for a long time, the Petitioner preferred Claim Petition No. 146 (T)/11/1980 before Respondent No. 1 -- Tribunal. The Tribunal dismissed the said claim petition vide order dated 21.5.1995 being time barred. The Tribunal held that the services of the Petitioner had been terminated in 1973 under Article 311(2)(c) of the Constitution and the petition was filed in 1980, so it was time barred. Had it been a case under Article 311(2)(c), the petition could have been entertained after being exonerated from criminal charges.

Being aggrieved and dissatisfied the Petitioner preferred Writ Petition No. 23460 of 1991 before this Court and this Court vide its order dated 23.9.1991 contained in Annexure 6 to the writ petition, allowed the said writ petition and set aside the judgment and order of the Tribunal dated 21.5.1991 and remanded the case to the Tribunal to decide it on merit. The judgment and order of this Court dated 23.9.1991 became final as the Respondents did not prefer any appeal against the said judgment.

In pursuance of the order of this Court dated 23.9.91 the Tribunal heard the case on merit and dismissed the same vide impugned order dated 9.9.1992 mainly on two grounds:

(i) The Petitioner was not entitled for any opportunity of waring as per the law laid down by the Supreme Court in Union of India and Another Vs. Tulsiram Patel and Others,

(ii) The order passed by the Governor in exercise of his powers under Article 311(2)(c) is final and not justiciable in court of law and thus, as the order was not amenable to Judicial review, the Tribunal was not in a position to examine whether there was sufficient material before the Governor for his subjective satisfaction to pass an order under Article 311(2)(c) of the Constitution. The conclusion reached by the Tribunal reads as under:

As discussed above the power of his Excellency, the Governor on satisfaction under Clause (c) of proviso to Article 311(2) of the Constitution of India is subjective and is not subject to Judicial review and. therefore, this Tribunal is not in a position and is not empowered to go into the details whether there was sufficient material or not before His Excellency, the Governor, to come to the conclusion so as to pass the order under Clause (c) of Article 311(2) of the Constitution of India.

3. Being aggrieved and dissatisfied the Petitioner preferred the instant writ petition. The parties had exchanged the affidavits. Heard Sri M. D. Singh Shekhar, learned Counsel for the Petitioner and Shri Kripa Shanker Singh, learned standing counsel for the Respondents.

4. The learned standing counsel has raised the preliminary objection that this petition was not maintainable before the Tribunal as the Petitioner was seeking the relief against the termination order passed in 1973 and the claim petition was filed in 1980. This objection is not sustainable in law at this stage as this Court had earlier considered this issue and decided it while disposing of the earlier vide order dated 23.9.1991 as stated above and as the Respondents did not prefer any appeal against the said order, now the resspondents cannot be permitted to raise the issue of limitation. Thus, the only issues left to be decided by this Court are whether the order of the Respondent No. 2 is amenable to Judicial review and if the answer to the first issue is in affirmative, whether there was sufficient material before the Governor to pass the impugned order of dismissal under Article 311(2)(c) of the Constitution of India.

Amenable to judicial review

5. This issue has earlier been considered by the Apex Court in a large number of cases and in Jaswant Singh Vs. State of Punjab and others, . the Apex Court has observed as under:

The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction

of the concerned authority is questioned in a Court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the out come of the whim or caprice of the concerned officer.

Similar view has been taken by the Apex Court in Chief Security Officer and Others Vs. Singasan Rabi Das, .

6. In State of Bihar and Ors. v. Subhash Singh JT 1997 (2) 463. the Apex Court has observed as under:

In our democracy governed by the rule of law, the judiciary has expressly been entrusted with the power of judicial review as sentinel in *qui vive*. Basically Judicial review of administrative actions as also of legislation is exercised against the action of the State. Since the State or public authorities act in exercise of their executive or legislative power, they are amenable to the judicial review. The State, therefore, is subject to *etat de droit*, i.e. the State is submitted to the law which implies that all actions of the State or its authorities and officials must be carried out subject to the Constitution and within the limits set by the law, i.e., constitutionalism. In other words, the State is to obey the law. The more the administrative action in our welfare State expands widely touching the individuals, the more is the scope of Judicial review of State action. Judicial review of administrative action is, therefore, an essential part of rule of law. The Judicial control on administrative action, thus, affords the courts to determine not only the constitutionality of the law but also the procedural part of judicial review.

The doctrine of "full faith and credit" applied to the acts done by the officers and presumptive evidence of regularity of official acts done or performed, is opposite in faithful discharge of duties to elongate public purpose and to be in accordance with the procedure prescribed....

The hierarchical responsibility for the decision is their in-built discipline. But the head of the Department/designated officer is ultimately responsible and accountable to the Court for the result of the action done or decision taken. Despite this, if there is any special circumstance absolving him of the accountability or if someone else is responsible for the action, he needs to bring them to the notice of the court so that appropriate procedure is adopted and action taken. The controlling officer holds each of them responsible at the pain of disciplinary action. The object thereby is to ensure compliance of the rule of law....

The constitutional Courts exercise their power of Judicial review with constraint to ensure that the authorities on whom the power is entrusted under the rule of law or confided, is discharged truly, objectively, expeditiously for the purpose for which substantive acts/results are intended.

7. However, it may not squarely be applicable in the instant case as herein the

powers had been exercised by the Governor, i.e., Head of the State and not by any statutory authority. Thus, an issue may be raised whether the same principle which is applicable in the case of a statutory authority would be applicable also in a case of Constitutional Authority. However, in *A.K. Kaul and another Vs. Union of India and another*, , the Apex Court has also considered this aspect and putting reliance upon its earlier judgments, particularly in *Samsher Singh Vs. State of Punjab and Another*, ; *S.P. Gupta v. Union of India* 1981 Suppl SCC 87 and *S.R. Bommai and others Vs. Union of India and others etc. etc.*, , came to the conclusion that an order passed under Clause (c) of the second proviso to Article 311(2) is subject to judicial review and its validity can be examined by the Court on the ground that the satisfaction of the President or the Governor is vitiated by mala fides or is based on wholly extraneous or irrelevant grounds.

8. In *Jaswant Singh* (supra), the Apex Court has observed as under:

The scope of Articles 310 and 311 of the Constitution was examined by this Court in *Union of India and Another Vs. Tulsiram Patel and Others*, , wherein by majority of this Court held that once the requirement of the relevant clause of the second proviso are satisfied, the services of a civil servant can be terminated without following the audi alteram partem rule. It was held that since the requirement of Article 311(2) was expressly excluded by the second proviso, there was no question of introducing the same by the back door. On this line of reasoning, majority held that *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, , was not correctly decided. It, therefore, took the view that it is not necessary to offer a hearing to the civil servant even on the limited question of punishment. Insofar as Clause (b) is concerned this Court pointed out that two conditions must be satisfied to sustain any action taken thereunder. These are (i) there must exist a situation which renders holding of any inquiry "not reasonably practicable", and (ii) the disciplinary authority must record in writing its reasons in support of its satisfaction. Of course the question of practicability would depend on the existing fact situation and other surrounding circumstances, that is to say, that the question of reasonable practicability must be Judged in the light of the circumstances prevailing at the date of the passing of the order. Although Clause (3) of that Article makes the decision of the disciplinary authority in this behalf final such finality can certainly be tested in a Court of law and interfered with if the action is found to be arbitrary or mala fide or motivated by extraneous considerations or merely a ruse to dispense with the inquiry. Also see *Satyavir Singh and Others Vs. Union of India (UOI) and Others*, ; *Shivaji Atmaji Sawant Vs. State of Maharashtra and Others*, and *Ikramuddin Ahmed Borah Vs. Superintendent of Police, Darrang and Others*,

The learned Counsel for the Respondents could only point out Clause (iv)(a) of sub-para 29 (A) of the counter which reads as under;

The order dated 7.4.81 was passed as the Petitioner's activities were objectionable. He was instigating his fellow police of officials to cause indiscipline,

show insubordination and exhibit disloyalty, spreading discontentment and hatred, etc. and his retention in service was adjudged harmful....

It was incumbent on the Respondents to disclose to the Court the material In existence at the date of the passing of the impugned order in support of the subjective satisfaction recorded by Respondent No. 3 in the impugned order. Clause (b) of the second proviso to Article 311(2) can be Invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation of Tulsi Ram's case:

A disciplinary authority is not expected to dispense with a disciplinary authority lightly, arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the Government servant is weak and must fail.

9. Similarly, the Apex Court in Union Territory, Chandigarh and Others Vs. Mohinder Singh, , examined the scope of para 3 of Article 311 of the Constitution of India and observed as under

Clause (3) of Article 311, it may be noticed, declares that where a question arises whether it is reasonably practicable to hold an Inquiry as contemplated by Clause (2), the decision of the authority empowered to dismiss such person shall be final on that question. The Tribunal has not referred to Clause (3) at all in its order. We are not suggesting that because of Clause (3), the court or the Tribunal should completely shut its eyes. Nor are we suggesting that in every case the court should blindly accept the recital in terms of the said proviso contained in the order of dismissal. Be that as it may, without going into the question of extent and scope of Judicial review in such a matter, we may look to the facts of this case.

10. In Chandigarh Administration, Union Territory, Chandigarh and others Vs. Ajay Manchanda, etc., , the Apex Court placed reliance on its earlier judgments and held that no doubt Article 311(3) declares that when a question arises whether it is reasonably practicable to hold the enquiry, the decision of the competent authority shall be final on that question. That does not mean that scope of judicial review is excluded altogether. If the requisite satisfaction was formed on mala fide or it was founded on extraneous grounds, the subjective satisfaction of the competent authority is not beyond the judicial scrutiny of the Courts under Article 32 or 226 of the Constitution of India as the case may be. The Court further observed as under:

A reading of Clauses (b) and (c) of the second proviso would establish that, if at all, the power under Clause (b) is more circumscribed than that power under Clause (c).

Thus, as the instant case falls under clause "(c), one falls to understand how it can be excluded from judicial review."

Subjective satisfaction

11. In the instant case, the termination order of the Petitioner has been passed on the ground that he was holding the office of the unauthorised union of P.A.C. There is no material, whatsoever, placed before the Court and no reason has been given in the counter-affidavit as how the holding of enquiry regarding the activities of the Petitioner in the unionism of the P.A.C. could have caused danger to the security of the State.

12. In the counter-affidavit filed before this Court, the Respondents have admitted that the Petitioner had been admitted in P.A.C. Hospital, Ram Nagar on 17.5.1973 and was transferred from there by the authorities themselves at 5.30 p.m. on 22.5.1973 to the Levitt Hospital, Ram Nagar to protect the lives of the patients admitted in the hospital as there had been intense firing between the P.A.C. Jawans and the Army. In fact this has been the sole reason for acquittal of the Petitioner in the criminal cases. The only allegations levelled in the counter-affidavit has been that the Petitioner was the office-bearer of the unauthorised union. One fails to understand why the enquiry could not be held on such a charge as there are no allegations at all that if enquiry was held there could have been serious repercussions or threats to the lives of the would be deponents in that enquiry. The incident occurred In May, 1973. The impugned order of termination was passed on 10.9.1973. By that time, the situation had calmed down and, thus, there appears to be no Justification for passing the order by the Governor under Clause (c) of para (2) of Article 311. The Court has to take notice of the fact-situation prevailing on the date the impugned order was passed.

13. In an identical case in Claim Petition No. 96/1/78/2 Mahatam Singh v. State of U.P., decided on 30.4.1979, the same Tribunal had held that "the order of termination was not passed In some emergency.... Whereas the alleged rebellion took place in May, 1973. Thus, in any view of the matter, the impugned order was totally arbitrary and mala fide and cannot be said to have been passed in accordance with law as provided by Article 311(2)(c) of the Constitution of India. The order is, therefore, liable to be set aside", and a declaration was made that the Petitioner will be deemed to have continued in service and was entitled to all his pay and allowances according to rules. The said judgment and order of the Tribunal was challenged by the State of U.P. and others before this Court in Writ Petition No. 5386 of 1979, which has been dismissed by a detailed judgment of this Court dated 6.9.1988. There is no Justification in making discriminatory orders to two identical cases.

14. It is settled law that "an order made without any evidence to support it is in truth...made without jurisdiction and is, therefore, invalid at Law", vide *Folke Stone Corporation v. Brokman* 1914 AC 338 at 367. In the instant case, the Respondents failed to give any reason whatsoever, which had warranted them to pass an order under Article 311(2)(c) of the Constitution of India. Thus, the Court reaches the unescapable conclusion that the impugned order had been passed merely on the whims of the Respondent No. 2 and the same suffers from

arbitrariness and hence invalid.

15. Thus, in view of the above, the writ petition succeeds and is allowed. The judgment and order of the Tribunal dated 9.9.1992, contained in Annexure 2 to the writ petition and the order dated 10.9.1973 dismissing the Petitioner from service, contained in Annexure 1 to the writ petition are hereby quashed. The Petitioner shall be entitled to be treated in service. But in the facts and circumstances of the case and particularly as the Petitioner did not approach the Tribunal within limitation though he succeeds only on technical ground so far as limitation is concerned, and it has not been averred by the Petitioner that during the intervening period he has not been in any other gainful employment, the Petitioner shall make a representation before the competent authority for the other consequential relief, i.e., back wages, etc. and if he does so, the competent authority is directed to decide the claim of the Petitioner for the same strictly in accordance with law within a period of four months and if his claim is accepted, the Petitioner shall be paid the arrears, etc. within a period of three months thereafter.

However, parties are directed to bear their own costs.