
(1971) 01 AHC CK 0020
In the Allahabad High Court
Case No : Special Appeal No. 864 of 1969

Director of Education and Another	Vs	APPELLANT
Rawat Prakash Pandey		RESPONDENT

Date of Decision : 19-01-1971

Acts Referred:

Constitution of India, 1950 — Article 19(1)

Citation : AIR 1971 All 371

Hon'ble Judges : S.N. Dwivedi, J;H.C.P. Tripathi, J

Bench : Division Bench

Advocate : K.N. Singh, for the Appellant; T.N. Sapru, for the Respondent

Final Decision : Dismissed

Judgement

Dwivedi, J.—The respondent, Rawat Prakash Pandey, was appointed as a temporary Assistant Master in the service of the U. P. Government in 1963. On July 1, 1968 an order terminating his service on one month's notice was served on him. The legitimacy of this order is canvassed before us.

2. The order does not profess to assign reasons for terminating his service. It is perfectly innocuous. But the respondent claims that its innocent appearance cannot pass muster of Article 19(1)(c) of the Constitution. We accept this claim.

3. Admittedly the respondent's character roll is satisfactory. He has not received any adverse entry. But it is admitted before us that he is a member of the Rashtriya Swayam Sewak Sangh. It is, however, asserted that he had not been, indulging during service "in any activity to which objection could be legitimately taken." In paragraph sixteen of the petition it is said: "The action of the Government in terminating the services of the (appellant) is mala fide in that the ground on which the services of the (appellant) have been terminated, viz., the alleged association of the (appellant) with the Rashtriya Swayam Sewak Sangh is no ground for the termination of the (appellant's) services". Paragraph thirteen of the counter-affidavit replies to this paragraph:

"The contents of paragraph 16 are not admitted. The allegation of mala fide on the part of the Government is emphatically denied. It is stated that the termination order is a simple order and it has not been passed without any motive."

4. We gave an opportunity to the Standing Counsel to satisfy us by a supplementary affidavit whether the impugned order was made for reasons other than the appellant's membership or his participation in the activities of the Rashtriya Swayam Sewak Sangh. But the State has not filed any affidavit till today. We are satisfied that the impugned order was passed on account of the appellant's membership or his alleged participation in the activities of the Rashtriya Swayam Sewak Sangh or both.

5. Admittedly he was given no chance to refute his alleged participation in the activities of the Rashtriya shtriva Swayam Sewak Sangh. The Intelligence reports were assumed to be irrefutable gospel truth. But this flaw vitiates the impugned order.

6. Rule 5 (1) of the U. P. Government Servants' Conduct Rules prohibits a Government servant from being a member of or otherwise associating with, any political party or any organisation which takes part in politics. The order is, we understand, made pursuant to this rule. The appellant has challenged the constitutionality of this rule. He says that it violates Article 19(1)(c) of the Constitution.

7. It is not necessary to pronounce on the constitutionality of this rule in the present case, for the appellant gets relief on a narrower ground. The citizen's right of association is not suspended while he is in Government service. Kameshwar Prasad and Others Vs. The State of Bihar and Another, O.K. Ghosh and Another Vs. E.X. Joseph, He can exercise the right in a proper way even during service. But the right is subject to reasonable restrictions. It has been held that restriction on the right will not ordinarily be reasonable if the right is abridged without hearing. State of Madras Vs. V.G. Row, We have already found that the respondent was given no hearing. So the order is unconstitutional as violative of Article 19(1)(c) of the Constitution.

8. The appeal is accordingly dismissed with costs.