

(1957) 12 AHC CK 0005

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 938 of 1956

Ghulam Haqqani Khan

APPELLANT

Vs

State of UP and others

RESPONDENT

Date of Decision : 23-12-1957

Acts Referred:

Constitution of India, 1950 — Article 310, 311

Constitution of India, 1950 — Article 310, 311

Constitution of India, 1950 — Article 310, 311

Citation : (1958) 28 AWR 284

Hon'ble Judges : Jagdish Sahai, J

Bench : Single Bench

Advocate : Sri S.S. Dhawan, for the Appellant; Sri Lakshmi Saran, for the Respondent

Final Decision : Dismissed

Judgement

Jagdish Sahai, J.—The Petitioner has come to this Court on the allegation that he was appointed on 8-4-1953 as a clerk in the temporary leave vacancy in the office of the Board of High School and Intermediate Education, UP Allahabad by the Secretary of the aforesaid Board. By the order of the Secretary of the aforesaid Board dated 5-4-1943 the Petitioner was appointed substantively as a lower division assistant in the office of the Board with effect from 1-4-1943 in the scale of Rs. 30-2 1/2- 50 The Petitioner was promoted to the post in the higher scale of Rs. 65-3-80 with effect from 1-9-1946 by the order of the Secretary of the said Board. Thereafter the Petitioner was again promoted substantively to the post in the scale of Rs. 80-6-110EB-10-140 by an order of the Deputy Secretary of the Board dated 14-9-1948. The Petitioner's case is that on account of his efficient and honest work he was appointed to a temporary post in the higher scale of Rs. 80-6-140-EB-10-200 EB-20 240 with effect from 1-3-1949. In this grade he got two increments one in March 1950 and the other in March 1951 and the Petitioner's case is that these increments were awarded to him because his work and conduct was found satisfactory. On 2-5-1951, an order was passed

transferring the Petitioner from the office of the Board to the office of the District Inspector of Schools, Bahraich, in the substantive lower scale of Rs. 80-6-110-EB-6-140. The Petitioner's complaint is that he was not given any opportunity to show cause against the order of his transfer which amounted to reduction in rank. In the transfer order the following observations were made:

Copy forwarded for information and necessary action to the District Inspector of Schools Banda and Bahraich with the remark that a report on the work and conduct of Shri Lal and Khan, which must be carefully watched by them personally, should please be made to this office after every six months of their taking over charge in their respective offices.

2. The Petitioner protested against the said order of transfer and the observations made against him in the transfer order. The Petitioner was relieved from the office of the Board in pursuance of the order dated 28-6-1951, passed by the Secretary of the Board, on 5-7-1951. On 3-7-1951 the Petitioner submitted his appeal to the Secretary to Government, Education Department, through the Secretary of the Board. Between 6-7-1951 and 10-12-1953 the Petitioner made various applications for leave and other representations to the Director of Education Allahabad, but received no reply. On 14-12-1953 the Petitioner received a communication dated 10-12-1953 from the Deputy Director of Education, v. Region, Lucknow, saying "I have the honour to request you to submit your application for leave in the prescribed form at an early date, so that necessary action for the sanction of leave may be taken." The Petitioner submitted his application for leave on the prescribed form on 20-12-1953, and despite a reminder dated 15-3-1954, the Petitioner received no order or reply. On 16-3-1954 the Petitioner was served with a charge sheet in which the main charge was that though he had been relieved from the office of the Secretary of the Board on 5-7-1951(sic), yet he had not joined his new post at Bahraich and had thereby disregarded the order of the Director of Education. The Petitioner was also suspended by an order dated 16-3-1954, passed by the Director of Education. The Petitioner submitted his explanation to the Director on 1-4-1954, refuting all charges framed against him. He emphasised that his post was not transferable. By an order dated 14-7-1954 the Addl. Director of Education, gave a notice to the Petitioner to show cause why he should not be removed from the service of the Government. The Petitioner submitted his reply to the Addl. Director of Education on 26-7-1954. Thereafter the Petitioner received an order dated 27-9-1954, of the Addl. Director of Education UP informing the Petitioner that he has been dismissed from service. The Petitioner submitted an appeal to the Government on 28-10-1954 against the order of the Addl. Director of Education dated 27-9-1954. The Addl. Director of Education, however, substituted the order of dismissal A of the Petitioner by an order of removal on 2-12-1955, and asked the Petitioner to submit his appeal after such modification as the Petitioner chose to make. The Petitioner thereafter re-submitted his appeal to the Government of UP in its original condition. Thereafter the Petitioner received an order of the State Government dated 4-1-1956, with the

endorsement dated 25-1-1956, of the Addl. Director of Education, informing him that the Governor has ordered that the Petitioner be removed from the service of the State and also that the appeal of the Petitioner be rejected. In this petition the prayer is for the issue of a writ in the nature of certiorari quashing the orders of transfer, suspension and removal passed by the Addl. Director of Education, as also by the Governor of UP removing the Petitioner from the State Service and rejecting his appeal dated 28-10-1954. Another prayer made is for the issue of a writ in the nature of mandamus direct the Respondent No. 1 to reinstate the Petitioner to the post of clerk in the office of the Board in the scale of Rs 80-6-110-EB-6-140 10-200-EB-20-240.

3. I have heard Mr. S. S. Dhawan for the Petitioner and Mr Lakshmi Saran for the Respondents. In view of the fact that the removal order has been passed by the Addl. Director of Education as also by the Governor the reliefs in respect of the transfer order and suspension order cannot be granted, the same having become infructuous. The transfer order was passed as far back as 2-5-1951 and the order of suspension was passed as back as 16-3-1954. The writ petition was filed in this Court on 26-4-1956. So far as these orders are concerned there are clear lapses on the part of the Petitioner. On that ground also I am not inclined to consider the Petitioner's prayer with regard to these two reliefs. The only question, therefore, that remains is to consider whether the Petitioner has been wrongly removed from service. The grounds on which the petition is based so far as the removal orders are concerned are that the Petitioner could not be dismissed or removed from service for his failure to carry out the order of transfer which was illegal and void, that the order of removal passed by the Addl. Director of Education was illegal inasmuch as it was based on considerations which he could not have taken into account as also because of violation of Article 311 of the Constitution, that the order passed by the Governor is illegal because it is based on the ground that the Petitioner had refused to obey the order of transfer and on the face of it that order was without jurisdiction and void, and that the Director of Education and the Addl. Director of Education by their attitude had led the Petitioner to believe that his action in not joining the new post at Bahraich was not being treated as disobedience of any order and the Respondents are estopped from alleging that the Petitioner had disobeyed any order. In my opinion there is no substance in any of these grounds. I will first take the order of removal passed against the Petitioner by the Governor. Article 310 (1) of the Constitution runs as follows:

310 (1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an All India service or holds any post connected with defence or any civil post under the Union holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor, or, as the case may be, the Rajpramukh of the State.

4. It is therefore obvious that the tenure of service of the Petitioner was at the pleasure of the Governor. It was held by a Division Bench of this Court in the case of Jagannath Prasad Vs. State of U.P. and Others, that the Governor's power to dismiss at pleasure is subject to only the express provisions of the Constitution. It was again held by a Division Bench of this Court in the case of Raj Kishore v. State of UP 1954 AWR (HC) 708 that in the matter of termination of service of a government servant the provisions to be considered are Arts. 310 and 311 of the Constitution. The combined effect of these two provisions is that except as laid down in Cls. (1) and of Article 311 and except as laid down in Cl. (2) of Article 310, there is no restraint on the power of the State to terminate the services of a Govt. servant at pleasure. In the present case the order of the Governor is challenged not on any of the grounds contained in Arts. 310 or 311 of the Constitution. It is challenged on the ground that the Governor passed the order on considerations which were not relevant. In other words the contention of the Learned Counsel for the Petitioner is that the Governor could not have removed the Petitioner on the ground that he disobeyed the transfer order because the transfer order itself was illegal and void. In my opinion the order of the Governor cannot be assailed on this ground. So long as it is not complained that there has been an infringement of Arts. 310 or 311 of the Constitution, this Court would not be justified in setting aside the order of the Governor whose pleasure with regard to the termination of the services of a Govt. servant serving in a State is final. Apart from it I do not think there is any force in the contention that the order of transfer was invalid. Even assuming that it was invalid the Petitioner was bound to have obeyed it. He could have filed an appeal or representation but he could not have refused to carry it out. The Governor's order therefore seems eminently just also. I, therefore, overrule this contention of the Petitioner. It is not how necessary for me to investigate whether the order passed by the Addl. Director of Education UP was a legal order or not because even if that order is set aside (which I am not inclined to do in the present case) the order of the Governor will stand. However, even on merits I do not see any force in that submission also of the Learned Counsel for the Petitioner. I have already held that the Petitioner was bound to carry out the order of transfer and if any order is passed removing the Petitioner on the ground that he refused to carry out the order of transfer the order of removal would be perfectly justified.

5. I find that there is no substance in this petition and dismiss it with costs.