
(1958) 10 KL CK 0022
In the High Court Of Kerala
Case No : O.P. No. 504 of 1957

Gopalan Achari

APPELLANT

Vs

Chief Secretary to Govt., Trivandrum

RESPONDENT

Date of Decision : 24-10-1958

Acts Referred:

Constitution of India, 1950 — Article 226, 310, 311
Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 — Rule 9

Citation : AIR 1959 Ker 201 : (1959) 1 LLJ 144

Hon'ble Judges : Koshi, C.J;M.S. Menon, J

Bench : Division Bench

Advocate : V. Sankara Menon and A. Venkitasubramania Iyer, for the Appellant;
Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

1. The Petitioner was a Tahsildar in the service of the State. Four charges were framed against him. The last of the four charges was:

"That he has a very bad reputation as Tahsildar as he was receiving petty amounts from persons who approached him for any service."

2. The Enquiry Commissioner found him guilty of charge No. 4. He said:

"On a consideration of the evidence on record, I find the officer (counter-petitioner) not guilty of charges 1 to 3 and guilty of charge 4.

I would recommend that his promotion may be with-held for a period of six months and that his case for promotion need be considered by Government only after receipt of a special report about the work and reputation of this officer from the Board of Revenue after the period of six months."

3. Ext. P1 is the report of the Enquiry Commissioner. After considering the report the Government ordered as follows:

"The Government accepted the finding of the Enquiry Commissioner that Sri

Gopalan Achari is guilty of charge No. 4 but were not inclined to accept his recommendation as to punishment. They considered, that the proper punishment in this case should be compulsory retirement from service. The Public Service Commission agreed with this view. Sri Gopalan Achari was accordingly asked to show cause why he should not be retired compulsorily (Ext. P2). Sri Achari has sent his reply to the show cause notice, which has been duly considered by the Government. The reply does not contain any new fact worthy of consideration or justifying mitigation of the punishment. In the result, Government order that Sri K. Gopalan Achari, Tahsildar, be retired from service."

The order of the Government is Ext. P3 dated 21-5-1957.

The petitioner appealed against the order of compulsory retirement by a petition dated 22-7-1957. The petition was rejected by the Government (Ext. P4) dated 17-10-1957.

4. Part XIV of the Constitution consisting of Articles 308 - 323 deals with services under the Union and the States. Clause (1) of Article 310-provides:

"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 of the State."

Clause (1) of Article 311 reads as follows:

"No person who is a member of a 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";

and clause (2) of that article, omitting the proviso thereto:

"No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him."

5. As pointed out by the Supreme Court in *Parshotam Lal Dhingra Vs. Union of India* (UOI),

"The exceptions contemplated by the opening words of Article 310(1) quite clearly refer, inter alia, to Articles 124, 148, 218 and 324 which respectively provide expressly that the Supreme Court Judges, the Auditor General, the High Court Judges and the Chief Election Commissioner shall not be removed from his office except by an order of the President passed after an address by each House of Parliament, supported by the requisite majority therein specified, has been presented to him in the same session for such removal on the ground of proved misbehaviour or incapacity. There are clearly exceptions to the rule embodied in

Article 310(1) that public servants hold their office during the pleasure of the President or the Governor, as the case may be. Subject to these exceptions our Constitution, by Article 310(1), has adopted the English Common Law rule that public servants hold office during the pleasure of the President or Governor, as the case may be and has, by Article 311, imposed two qualifications on the exercise of such pleasure. Though the two qualifications are set out in a separate Article, they quite clearly restrict the operation of the rule embodied in Article 310(1). In other words the provisions of Article 311 operate as proviso to Article 310(1)."

The office with which we are concerned in this case is one which the petitioner held during the pleasure of the Governor and the only question that can possibly arise for consideration in such a case is whether there has been any violation of Article 311. It is common ground that the order passed against the petitioner amounts to a removal from service within the meaning of Article 311 and so the further questions can only be:

(1) Was the order passed by an authority subordinate to that by which the petitioner was appointed? And

(2) Was the order passed without giving the petitioner a reasonable opportunity of showing cause against the action proposed to be taken?

The papers produced before us clearly indicate that the answer to both the questions should be in the negative, and it is not contended that any other answer is possible.

6. This is not a case of "no evidence", and the sufficiency of the evidence in a given case is certainly not a matter for this court to evaluate. This is also not a case where "mala fides" is alleged or arises for consideration. It follows that even if we assume that this court has jurisdiction to interfere under Article 226 of the Constitution in cases where the conclusion reached is supported by no evidence at all, or is actuated by mala fides, that jurisdiction is not attracted by the facts and circumstances of this case.

7. There is also no contention either in the reply of the petitioner dated 9-5-1956 to the "show CAUSO" notice or in the affidavit filed before us that charge No. 4 is vague and as a result the petitioner has been prejudiced in the conduct of the enquiry.

8. Counsel for the petitioner drew our attention to the Kerala Civil Services (Classification, Control and Appeal) Rules, 1957, made by the Governor of Kerala in exercise of the powers conferred on him by the proviso to Article 309 of the "Constitution of India and in supersession of the previous rules on the subject. Even though these rules were not in force at the time of Exts. P. 1 and P 2 it was agreed that we may proceed on the assumption that these rules applied to the case as they had come into force prior to Exts. P3 and P4. As held in Jagdish Dajiba Vs. The Accountant-General of Bombay and Others,

"the laws or rules made by virtue of the powers under Article 309 must be in conformity with the provisions of the Constitution."

9. Part III of the Rules consisting of Rules 9 to 19 is headed:

"Discipline -- Penalties."

One of the penalties specified in Rule 9, Penalty No. (vii), is:

"compulsory retirement."

The opening words of Rule No. 9 is as follows:

"The following penalties may, for good and sufficient reason and as hereinafter provided be imposed upon members of the services specified in rule 6."

10. According to counsel for the petitioner the words "for good and sufficient reason" empower this court to enquire into the "goodness" or "sufficiency" of the reason. The use of the words "for good and sufficient reason" in the Rules framed under Article 309 of the Constitution cannot possibly alter the character of the post held by the petitioner from one held at pleasure to one from which removal is possible only for "cause" and the "goodness" and "sufficiency" of the reason for inflicting any of the nine punishments specified in Rule 9 must remain a matter solely within the judgment of the officer or authority charged with the duty of making the decision.

11. It follows that this petition has to be dismissed and we do so. In the circumstances of the case, however, there will be no order as to cost.