
(1961) 02 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petns. No"s. 859 of 1960, connected with 1004, 1005, 1007, 1008, 1078, 1093, 1094, 1095, 1096, 1114, 1140, 1160, 1169, 1170, 1201, 1202, 1203, 1229, 1230, 1261, 1280 to 1283, 1298 to 1300, 1371, 1402, 1407, 1408, and 1425 of 1960

H. Hutche Gowda and Others

APPELLANT

Vs

The State of Mysore and Others

RESPONDENT

Date of Decision : 04-02-1961

Acts Referred:

Constitution of India, 1950 — Article 298, 311
States Reorganisation Act, 1956 — Section 109, 115 (7)

Citation : AIR 1963 Kar 66

Hon'ble Judges : Mir Iqbal Husain, J;A. Narayana Pai, J

Bench : Division Bench

Advocate : P. Rangaswamy, in all the Appeals except W.P. No. 1203 and G.S. Ullal, in W.P. No. 1203, for the Appellant; B. Venkataswamy, Govt. Pleader, for the Respondent

Judgement

A. Narayana Pai, J.—In these several Writ Petitions by the employees of the Mysore Government Road Transport Department impugning the validity of certain orders passed against them by an officer of the Department in disciplinary proceedings instituted against them, certain common points of law arise. Therefore, they have been heard together. The learned counsel on both sides, for the sake of convenient disposal of these cases, addressed us in the first instance on these general points of law and thereafter proceeded to deal with the facts and circumstances peculiar to individual cases. We propose to follow the same method in disposing of these cases.

2. The common points fall under two categories : The first of them deals with the competency of the officer who made the orders and the second with the correctness or validity of the orders in the light of the rules and standing orders governing the procedure in respect of disciplinary action.

3. The particular officer, whose competency is the subject-matter of challenge on behalf of the petitioners, is one Mr. B. K. Srinivasan functioning as the Deputy General Manager of the Mysore Government Road Transport Department. That challenge is also two-fold. The first aspect of it is an alleged ineligibility personal to him; second aspect of the challenge is one based upon the provisions of the first clause of Article 311 of the Constitution. Mr. Srinivasan was, before the reorganisation of the States, an employee of the Bombay State Road Transport Corporation, whereas the petitioners before us were even before the reorganisation the employees of the Mysore Government Road Transport Department. The argument on their behalf is that Mr. Srinivasan continues to retain the status of an employee of a statutory corporation and has not acquired the status of a Civil Servant of the Government or a person employed in connection with the affairs of the State of Mysore. They therefore contend that he has no competency to sit in judgment over the actions of persons who are admittedly servants of the Government. On the infirmity attaching to his orders in the light of Article 311(I) of the Constitution, the argument is that he has in certain cases purported to dismiss or claim the right to dismiss persons who had been appointed by an authority to which Mr. Srinivasan was subordinate.

4. The invalidity of the orders in the light of the Standing Orders again is argued under two heads: The first of them concerns what are described as orders of suspension issued or made by the officer. The argument on behalf of the petitioners is that the said orders of suspension are without authority under the rules, because the rules do not empower the officer to make orders of suspension. The other circumstance which, according to the arguments, invalidates or vitiates the entire disciplinary proceedings is that whereas there had been an invariable practice of associating what is described as the Disciplinary Action Committee with disciplinary action taken by or on behalf of the Mysore Government Road Transport Department, that practice was completely omitted in respect of the proceedings which are the subject-matter of these Writ Petitions.

4a. The examination of the question whether Mr. Srinivasan had or had not become, at the time he made the orders impugned in these petitions, a Civil Servant of the Mysore Government or a person employed in connection with the affairs of the State Government of Mysore, calls for a reference to certain earlier circumstances and legislation consequent upon the reorganisation of the States.

4b. About a decade before the reorganisation of States, the Government of the old State of Mysore had set up a Department called the Mysore Government Road Transport Department for the purpose of providing Road Transport services. That it was a department of the Government is undoubted. It is equally clear that all persons employed in connection with the affairs of that department were the servants of the Government of Mysore. There was also functioning in the City of Bangalore at that time a non-governmental concern called the Bangalore Transport Company running buses within the City of Bangalore. Under the

Bangalore Road Transport Service Act, 1956, (Mysore Act No. 8 of 1956) which came into force on the 27th of September, 1956, the aforesaid Transport Company was nationalised and all its assets and business taken over by the State Government of the erstwhile State of Mysore. This taking-over took effect as from the 1st of October, 1956. u/s 8 of that Act, all persons employed by that Company and still in employment immediately before the date of vesting, i.e., 1-10-1956, became as from the said date the employees of the Government of Mysore; the same section provided for the continuance of the conditions of service applicable to them under the rules or regulation of the Transport Company until they were altered by rules or orders made by the Government.

The Mysore Government Road Transport Department had its own rules governing the conditions of service of the employees working under that Department. To this Department admittedly apply the provisions of the Industrial Employment Standing Orders Act by virtue of the fact that an Industrial Establishment under that Act includes an Industrial Establishment within the meaning of the Payment of Wages Act, and under the latter Act a motor omnibus service is an Industrial Establishment falling within the terms as defined in that Act. In actual event, although the business of the Bangalore Transport Company had been taken over by the Government and was managed through this Department, it has remained as a separate unit thereof under the name Bangalore Transport Service and the old Mysore Government Road Transport Department continued to be governed by its own Standing Orders. So, we have two sets of Standing Orders, one set of Standing Orders applicable to the employees of the Mysore Government Road Transport Department, (M. G. R. T. D.) and another set applicable to the Bangalore Transport Service (B. T. S.).

5. The erstwhile State of Hyderabad also had its own Road Transport Department which, by virtue of a local amendment of the Motor Vehicles Act, was expressly described as the State Transport Undertaking of the Government for purposes of that Act. When upon the States reorganisation certain of the districts of the erstwhile State of Hyderabad got transferred to the new State of Mysore constituted under the State Reorganisation Act, such of the employees as came to be governed by the relevant provisions of Part X of the State Reorganisation Act got allotted to the new States of Mysore. Those employees came subsequently under the control of the Mysore Government Road Transport Department.

6. In the State of Bombay as it stood before the States Reorganisation Act, there was a corporation called the Bombay State Road Transport Corporation. u/s 47 of the Road Transport Corporations Act of 1950 (Central Act No. 64 of 1950), that body known as the Bombay State Road Transport Corporation as well as the governing Board thereof referred to in the notification of the Bombay Government No. 1780/5 dated the 16th of November, 1949, were declared to have been validly constituted as if all the provisions of the said notification had been included and enacted in the said Section 47 of the Central Act and, as if the

said section had been in force continuously as from the date of the said notification. The Bombay State Road Transport Corporation (B.S. R. T. C.) therefore became a statutory corporations under the said Central Act. The employees of the said Corporation admittedly were not the servants of the State Government of Bombay. Therefore, they could not be described as persons employed in connection with the affairs of the State Government of Bombay. They were not therefore dealt with or governed by any of the provisions" of Part X of the States Reorganisation Act.

Provision was, however, made in respect of certain Corporations under Part IX of the States Reorganisation Act. Section 109 occurring in that Part dealt directly with corporations of the nature of the Bombay State Road Transport Corporation, According to that section, where any body corporate had been constituted under a Central Act, State Act or Provincial Act for an existing State the whole or any part of which is by virtue of the provisions of Part II transferred to any other existing State or to a new State, then, notwithstanding such transfer, the body corporate shall as from 1-11-1956 continue to function and operate in the transferred areas in respect of which it was functioning and operating immediately before that day, subject to such directions as may from time to time be issued by the Central Government, until other provision is made by law in respect of the said body corporate. By virtue of this provision, the functioning by the Bombay State Road Transport Corporation within the Districts of Bombay which got transferred to the new State of Mysore constituted under the States Reorganisation Act, was not interrupted.

The only immediate change effected by the State Reorganisation Act was to subject such functioning of the corporation within those transferred territories to such directions as may from time to time be issued by the Central Government. In other words, the administrative control of the functioning of the Corporation in respect of transferred areas or territories itself became transferred from the Government of erstwhile State of Bombay as it stood before the States Reorganisation Act to the Central Government. This state of affairs was to continue according to Section 109 read above "until other provision is made by law in respect of the corporation". Such other provision was made in respect of it by introducing by way of an amendment in the Road Transport Corporation Act a new section numbered 47-A. Portions of that section relevant for our purpose are extracted below:

"47-A (I). Where on account of the reorganisation of States under the States Reorganisation Act, 1956, the whole or any part of a State in respect of which a Corporation was, immediately before the 1st day of November, 1956, functioning and operating, is transferred on that day to another State and by reason of such transfer, it appears to the State Government necessary or expedient that the Corporation should be reconstituted or reorganised in any manner whatsoever or that it should be dissolved, the State Government may frame a scheme for the reconstitution, reorganisation or dissolution of the Corporation including

proposals regarding the formation of new Corporations, the amalgamation of the Corporation with any other Corporation, body corporate or a commercial undertaking of another State Government, the transfer of the assets, rights and liabilities of the Corporation in whole or in part to any other Corporation, body corporate or a commercial undertaking of another State Government, and the transfer or re-employment of any workmen of the Corporation, and the State Government may forward the scheme to the Central Government for approval"

In the explanation that follows, the appropriate State Government in relation to the Bombay State Road Transport Corporation is expressly defined to mean the Government of the State of Bombay as formed under the States Reorganisation Act of 1956. Under Sub-section (2) of Section 47-A, the Central Government, on receipt of any scheme from the appropriate State Government under the first sub-section, is empowered after consultation with the State Governments concerned to approve the scheme with or without modification. For the purpose of giving effect to the approved scheme, the Central Government is also authorised to make such order, from time to time, in relation thereto as it thinks fit. That Sub-section expressly states that every order so made shall have effect notwithstanding anything contained in the Act, Sub-section (3) of Section 47-A gives a list of particulars which may be dealt with by the Central Government in an order made by it as aforesaid. Among the particulars so listed are --

"(e) The transfer, in whole or in part, of the assets, rights and liabilities of the Corporation including the transfer of any licenses or permits granted to the Corporation, to any other Corporation, body corporate or a commercial undertaking of any other State Government, and the terms and conditions of such transfer;

(f) the transfer or re-employment of any workmen of the Corporation to, or by, any such transferee and subject to the provisions of Section III of the States Reorganisation Act, 1956, the terms and conditions of service applicable to such workmen after such transfer or re-employment."

Pursuant to the above provisions, the State Government of Bombay constituted under the States Reorganisation Act submitted a scheme to the Central Government. The Central Government, after consultation with the State Governments of Rajasthan, Bombay and Mysore, issued an order called the Bombay State Road Transport Corporation Order, 1956, on the 31st day of December 1956. Under that Order, provision was made in respect of the operation transfer of assets, liabilities and the employees of the Bombay State Road Transport Corporation in or relating to the parts of Bombay State transferred to Rajasthan or in or relating to parts of the State of Bombay transferred to the New State of Mysore. The said Order was to come into force on the first day of January 1957 which is referred to as the appointed day in the said Order. The first provision made under the Order was that as from the appointed day, the Corporation should cease to function and operate in the Karnatak area and Abu area, i.e. areas transferred to the new State of Mysore

and new State of Rajasthan respectively. All permits and licences held by the Corporation relating exclusively to Karnatak area were deemed to have been granted to the Government of Mysore.

Under Section 5 of the Order, all assets of the Corporation including the land, motor vehicles, machinery, stores, articles and goods belonging to the Corporation situated within the Karnatak area were to pass to the Government of Mysore as from the appointed day. The same section contains further provision relating to third-party Insurance Fund, Property Insurance Fund; Depreciation Fund, Contributory Provident Fund, Reserve Fund as well as the cash balances of the Corporation in any Bank, Treasury or Sub-treasury, etc. Likewise, u/s 6, contracts of the Corporation relating exclusively to the Karnatak area were deemed to have been made by the Government of Mysore. u/s 7, detailed provision was made for transfer of certain liabilities to the State Governments of Mysore and Rajasthan. After making certain residuary provisions and provision for financial adjustment by the Central Government in Sections 8 and 9, the Order proceeds to deal with the employees of the Corporation in Section 10. That section reads as follows :

"10(1) Every employee of the Corporation who, immediately before the appointed day, is working in the Karnatak area or Abu area shall, as from the appointed day, be deemed to have been allotted to the Government of Mysore or the Government of Rajasthan, as the case may be."

(2) Nothing in this section shall be deemed to affect the right of the Government of Mysore or the Government of Rajasthan to determine, after the appointed day, the conditions of service of persons allotted to it under Sub-section (I) :

Provided that the conditions of service applicable immediately before appointed day to the case of any such person shall not be varied to his disadvantage except with the previous approval of the Central Government."

7. Thereafter, on the 21st day of January 1957, notification No. T.8552-54/R.T. /190-56-2 was issued by the Government of Mysore in the following terms :

"The Governor of Mysore is pleased to order that every person, deemed to have been allotted to serve in connection with the affairs of the State of Mysore under Clause 10 of the Bombay State Road Transport Corporation Order, 1956, and who immediately before the first day of January 1957, was holding or discharging the duties of any post or office in the Bombay State Road Transport Corporation and was working in any area in the districts of Bijapur, Dharwar, Kanara and Belgaum of the State of Mysore, shall continue to hold the same post or office and shall be deemed as from that day to have been duly appointed to such post or office by the Government of Mysore, or other appropriate authority; provided that nothing in this Order shall be deemed to prevent a competent authority to pass in relation to any such person any order affecting his continuance in such post or office."

8. It will be noticed that Sub-section (2) of Section 10 of the Bombay State Road Transport Corporation Order, 1956, closely follows the language of Sub-section (7) of Section 115 of the States Reorganisation Act, and the language of the Mysore Government's Notification of the 21st January 1957 follows closely the language of Section 116 of the States Reorganisation Act.

9. It is the argument on behalf of the respondents addressed by the learned Government Pleader that the clear effect of the legal provisions made pursuant to Section 109 of the States Reorganisation Act is to convert all employees of the Bombay State Road Transport Corporation working or functioning within the Districts which got transferred to the new State of Mysore, into Civil Servants of the State Government of Mysore. On the contrary, the argument on behalf of the petitioners has been that no such clear inference can be drawn from the provisions summarised above.

According to the petitioners, the indications available both in the States Reorganisation Act and from the choice of words in Section 47-A of the Road Transport Corporations Act, go to show that although provision was made for dealing with the employees of the Bombay State Road Transport Corporation in the manner appropriate to the situation following the reorganisation of States, it was no part of intention of the Parliament to convert them into employees of the Government. The further argument is that even if such was the intention of the Central Government and the Government of Mysore and even if the provisions of Section 47-A of the Road Transport Corporations Act could be so given effect to as to convert the employees of the Corporation into Government Servants, both the Order of the Central Government and the Notification of the Mysore Government have failed to achieve that purpose.

10. At an earlier stage, in the course of arguments a suggestion was made to the effect that Section 47-A of the Road Transport Corporations Act went beyond the scope indicated by Section 109 of the States Reorganisation Act. But this argument was not persisted in having regard to the undisputed and indisputable meaning of the language of Section 109 of the States Reorganisation Act itself. That Section, when it indicates that a competent law could make other provision in respect of the matter covered by Sub-section (I) of Section 109, does not prescribe any conditions or limitations within which the said law is to operate. The law could therefore make any provision other than the one indicated in Section 109. The legislative competency therefore of Section 47-A of the Road Transport Corporations Act is not in question.

11. The other line of argument pursued was that the Order of the Central Government has gone beyond the scope of Section 47-A of the Road Transport Corporations Act or alternatively, it has not proceeded on the lines suggested by the said section.

12. In elaboration of this argument, the several suggestions made are these : The first sub-section of Section 47-A, according to the first suggestion, merely

provides for reconstitution or reorganisation of an existing Corporation. For reorganisation, it is suggested that no dissolution would be necessary, whereas reconstitution necessarily presupposes a dissolution preceding such a reconstitution. If either of these methods is not appropriate to the given situation, the further suggestion is that the section requires the formation of two or more separate Corporations out of the original one. This is necessarily so, so runs the argument, because the later portion of that sub-section refers to "amalgamation" with another Corporation, body corporate or a commercial undertaking of a State Government, and that word necessarily indicates the existence of a corporation, whether pre-existing or subsequently reconstituted or created before it could be amalgamated with another corporation or body corporate.

It seems to us that these arguments really do not touch the position in the present case. The wide amplitude of the language used in Section 47-A (I) is clearly intended for the purpose of making as exhaustive a provision as could be made so as to meet various exigencies that might arise in the wake of reorganisation of States. All the suggestions mentioned above ignore the later portions of the same sub-section which indicate that one of the provisions which could be made to work out the consequences of the reorganisation of States in respect of a statutory Corporation is to transfer the assets, rights and liabilities of a pre-existing Corporation to any other Corporation, body corporate or a commercial undertaking of another State Government and also to transfer any workmen of that Corporation to or re-employment of any of those workmen by another Corporation, body corporate or a commercial undertaking of another State Government. What the Order of the Central Government referred to above has purported to do and has actually done is to act under the last portion of Sub-section (I) of Section 47-A of the Road Transport Corporations Act.

In the course of the summary of the provisions of that Order, we have indicated that provision has been made in sufficient detail for the transfer of assets, rights and liabilities of the Bombay State Road Transport Corporation to the Government of the new State of Mysore. These provisions, in our opinion, cannot be attacked as either incompetent or ineffective for the reason that the situation did not, in the opinion of the Central Government or any of the concerned State Governments, require either a dissolution of the Bombay State Road Transport Corporation or a formation of a new Corporation or a re-constitution of that Corporation.

13. In the light of these observations, there remains to consider another alternative argument put forward on behalf of the petitioners. That argument is that in the absence of any new Corporation formed in the State of Mysore and in the absence of any attempt to transfer the assets, rights and liabilities of the Bombay State Road Transport Corporation to another specified body corporate in the State of Mysore, the transfer of these items u/s 47-A of the Road Transport Corporations Act, 1950, could only have been to a commercial undertaking of the

State Government of Mysore and not to the Government of Mysore. In support of this argument, two circumstances are strongly relied upon. Nowhere in the Order of the Central Government is any reference made to a commercial undertaking of either the State Government of Mysore or the State Government of Rajasthan. The attempt and the express intent of the Central Government's Order was only to make transfers to the State Governments of Mysore and Rajasthan.

The second circumstance is that in Section 10 dealing with the employees of the Bombay Road Transport Corporation, provision is made for allotting those employees to the Government of Mysore and not allotting them to serve in connection with the affairs of the State Government of Mysore.

14. The language employed in the Order of the Central Government no doubt lends some support to this argument. But that language must be understood in the context of the intentions and objectives of Section 109 of the States Reorganisation Act. As we have already pointed out, the language of Section 10 (2) of the Central Government's Order as well as the language of the notification issued by the State Government of Mysore closely follow the provisions of Sections 115 and 116 of the State. Reorganisation Act. The manner in which the said Act has dealt with the various matters which are supplemental, incidental or consequential upon the reorganisation of States is sufficiently indicative of the general legislative policy underlying that Statute for reorganisation of States.

Further, in an Order expressly made under the provisions of a particular Statute, any deliberate attempt to depart from that statutory provision which is the source of the order should not be lightly read or implied. When the Order purports to transfer assets, rights, liabilities and some of the employees of the Bombay State Road Transport Corporation to the Government of Mysore, it must be read as making that transfer pursuant to Section 47-A of the Road Transport Corporations Act, and so read, we have no doubt in our mind that the transferee under that Order was a commercial undertaking of the State of Mysore.

15. As a matter of fact, that the employees of the Bombay State Road Transport Corporation were added to the Mysore Government Road Transport Department already functioning in the Mysore State, is not disputed although the legal effect of it is a matter of considerable argument. In fact, it is on the basis of this factual position that the further argument is pressed that the Mysore Government Road Transport Department cannot be said to be a commercial undertaking of the State Government of Mysore within the meaning of Section 47-A of the Road Transport Corporations Act. We shall now proceed to examine this aspect.

16. We may state at the outset that while disposing of a batch of writ petitions relating to the nationalisation of Road Transport Services in the State, we had occasion to examine the question whether the Mysore Government Road Transport Department was or was not a State Transport undertaking of the State Government within the meaning of Section 68-A of the Motor Vehicles Act. After examining the arguments pressed before us on that question, we came to the

conclusion that Mysore Government Road Transport Department was undoubtedly a State transport undertaking of the State Government within the meaning of Section 68-A. While doing so, we did proceed upon the basis that that Department which was intended to provide road Transport services on behalf of the Government was carrying on a commercial undertaking of the Government. We did not, however, prevent the learned counsel in these cases from arguing before us that the question was still open on the view pressed by the learned counsel for the petitioners in these cases that a finding for the express purpose of one of the Statutes need not necessarily conclude the question when it is examined in the context of another Statute.

On this basis, the principal argument against holding that the Mysore Government Road Transport Department is a commercial undertaking of the State Government is that on the strength of certain declarations of the Government as well as what is described as the constitutional basis underlying the provisions of Article 298 of the Constitution extending the sphere of executive authority of the Government to the carrying on of trade or business, there could not possibly be any profit motive attaching to the functioning of the Road Transport Department. Relying upon our decision in those cases that the Mysore Government Road Transport Department is an undertaking u/s 68-A of the Motor Vehicles Act, it is strongly argued that the background of a scheme of nationalisation of road transport services which are intended to be put through and operated by the State Undertaking is that set out in Section 68-C of the said Act which provision, according to the argument, clearly indicates that the Government carry on that undertaking only in the interest of the public or for the benefit of the public which may be clearly taken to rule out or abolish the idea of profit. This argument is for the purpose of stating that there could never be any trade or business unless there be a profit-motive.

It is true that when individuals or associations of individuals carry on any business or trade, they do so for the purpose of earning livelihood; such earnings in trade or commerce are possible only when there is profit resulting on the operations carried on for the purpose of said business or trade. That motive underlies all human activity, not merely in the shape of commerce, business or trade. Even learned professions and manual labour "are also carried on for the purpose of earning livelihood. But the nature of the activity cannot be said to depend upon the motive with which it is undertaken. The fact that individuals or associations of individuals work with a profit motive and that a Government need not do so, does not in our opinion effect any change in the essential feature of the activity. If an activity carried on by an individual is essentially commercial, the same activity carried on by a State does not cease to bear that description.

In fact, if Article 298 of the Constitution permits a State to carry on a business or trade and if the Constitution has found sufficient justification to impose a restriction on fundamental rights of citizens for the purpose of enabling the State Government to carry on trade as a monopoly, there can hardly be any doubt that

the underlying object is to prevent possible exploitation of one individual by another or of one class by another, by entrusting certain types of trade or business to the care of the State itself, so that it can control or completely abolish the idea of profit-making an element that might result in exploitation. Viewed in this light, we do not consider it an essential feature of the commercial activity carried on by the State that it shall be necessarily inspired by a motive to make profit.

17. For these reasons, we are not persuaded by further arguments to depart from the opinion already expressed by us in W. P. 72 of 1960 to the effect that the Mysore Government Road Transport Department is a commercial undertaking of the Government.

18. The learned counsel for the petitioners argue that although the intention might have been to convert the employees of the Bombay State Road Transport Corporation into Civil Servants of the State Government of Mysore, the actual steps taken by either the Central Government or by the Mysore Government have not achieved that purpose. The only argument in support of this contention is that Section 10 (I) of the Order of the Central Government merely allots the employees to the State Government of Mysore but does not state that allotment or allocation is for the purpose of making them persons employed in connection with the affairs of the State Government of Mysore. Whatever else this allotment was intended to do or not, there could be no doubt whatever that what was sought to be allotted was neither property nor chattel. Allotting certain persons to a State Government can in the context of the States Reorganisation Act, have no meaning other than the allotment for the purpose of service. The Government did not purchase these men nor were they made a present of to it as slaves. The allotment therefore of persons to the State Government of Mysore is clearly for the purpose of service under that Government.

19. That the allotment of persons to the Government of Mysore was for the purpose of service under that Government is further made clear by the language used in the notification dated 21-1-1957 already fully extracted by us. That notification describes these persons as having been allotted to serve in connection with the affairs of the State of Mysore and further provides that those persons shall be deemed to have been appointed to the post or office held by them on the relevant date by the Government of Mysore or other appropriate authority. By force of law, therefore, all the employees of the Bombay State Road Transport Corporation allotted to the State Government of Mysore u/s 10 (I) of the Order of the Central Government must be taken to have the same status as the one which they would have if they had in fact been appointed to the posts or offices held by them by the State Government of Mysore or an appropriate authority under that Government exercising that power.

20. We hold therefore that all the employees of the Bombay State Road Transport Corporation so dealt with as aforesaid became Civil Servants of the State of Mysore. It follows, therefore, that Mr. Srinivasan whose status is a

relevant factor in disciplinary proceedings which are the subject-matter of these petitions, became a Civil Servant of the Government of Mysore and had that status at the time he passed several orders impugned in these writ petitions. The validity of his orders therefore cannot be called in question on the basis of personal status of this officer if they are otherwise valid.

21. There has been very little or no dispute before us as to the application of the provisions of the first clause of Article 311 of the Constitution to the facts of these cases.

22. It is not disputed, nor could it have been disputed, by the learned Government Pleader that the Deputy General Manager is an officer or authority subordinate to the General Manager of the Road Transport Department. If, therefore, a person had been employed or appointed by the General Manager, the Deputy General Manager could have no authority to impose on him any punishment in the nature of dismissal or removal. It could also not be disputed that this power of dismissal is not capable of being delegated to any others. As observed by their Lordships of the Privy Council in AIR 1937 27 (Privy Council) to hold that this power of dismissal could be delegated or rules may be made for the exercise of that power by an authority other than the one expressly required to do so under Article 311(I) would really amount to totally destroying the protection sought to be given by the said Article.

At the same time, this power of dismissal is only an administrative power and not a judicial power. The importance of this distinction lies in the fact that although the power itself cannot be delegated, an enquiry leading to a decision whether or not to dismiss need not necessarily be conducted by the authority invested with the power of dismissal. On this aspect of the case, we can do no better than extract the following passage from the decision reported in Pradyat Kumar Bose Vs. The Hon^{ble} The Chief Justice of Calcutta High Court, :

"The first objection that has been urged is that even if the Chief Justice had the power to dismiss, he was not, in exercise of that power, competent to delegate to another Judge the enquiry into the charges but should have made the enquiry himself. This contention proceeds on a misapprehension of the nature of the power. As pointed out in *Barnard v. National Dock Labour Board* (1953) 2 QB 18, at p. 40, it is true that "no judicial tribunal can delegate its functions unless it is enabled to do so expressly or by necessary implication". But the exercise of the power to appoint or dismiss an officer is the exercise not of a judicial power but of an administrative power. It is nonetheless so, by reason of the fact that an opportunity to show cause and an enquiry simulating judicial standards have to precede the exercise thereof. It is well-recognized that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. What cannot be delegated except where the law specifically so provides -- is the ultimate responsibility for the exercise of such power."

The effect of these opinions of the highest tribunals of the land is that although an enquiry could be held by the Deputy General Manager in these cases, if the decision in respect of punishment to be imposed is one that the delinquent should be dismissed or removed from service, that decision can be given effect to only by the General Manager in the case of an employee appointed by the General Manager. That action of dismissing the delinquent can be taken in such cases only by the General Manager. According to Clause 2 of Article 311, no person protected by that Article can be dismissed or removed until he has been given a reasonable opportunity of showing cause against the action proposed to be taken against him, and if the action proposed to be taken is dismissal, that action is to be taken by the General Manager only and the notice to show cause as to why that action should not be taken should also be given by the General Manager.

23. Before leaving this topic, it is necessary to refer to the disciplinary powers exercised or exercisable by the Deputy General Manager under the relevant Standing Orders. Till about the end of 1958, paragraph 3 of Standing Order XII of the Mysore Government Road Transport Department provided that the quantum of punishment shall be decided by the General Manager. But by an amendment to the Standing Orders certified by the Certifying authority under the Industrial Employment Standing Orders Act, 1946, which came into effect on the 23rd of January 1959, the following paragraph was substituted for the paragraph mentioned above :

"The quantum of punishment shall be decided by the Deputy General Manager, Bangalore Division, according to the circumstances of each case and an appeal against this order shall lie to the General Manager."

The first paragraph of the same Standing Order was also recast by the same amendment to read as follows :

"No order of fine, suspension, discharge or dismissal shall be executed unless ordered by the Deputy General Manager Bangalore Division. The Deputy General Manager may order such enquiry as he thinks fit before passing orders provided that in cases where punishment of dismissal is involved, the Deputy General Manager shall hold an independent enquiry and pass orders."

24. It is pursuant to the power so conferred upon him that the Deputy General Manager of Bangalore Division of the Mysore Government Road Transport Department has been exercising the disciplinary powers over the employees.

25. Thus, subject to the provisions of Article 311(I) the effect whereof we have summarised, it has to be held that the Deputy General Manager, Bangalore Division is competent to take disciplinary action against the employees of the Mysore Government Road Transport Department.

26. The next general question that has been argued is the existence, if any, of power to suspend them. Because we are concerned only with the persons who

have been serving either under the Mysore Government Road Transport Department or the Bangalore Transport Service, it is sufficient to refer to the relevant provisions of the Standing Orders relating to these two units of the Departments. The Standing Orders of the Mysore Government Road Transport Department, while providing for suspension as one of the punishments which could be imposed for misconduct, do not contain any specific provision for suspending delinquents during the pendency of an enquiry. The Standing Orders of the Bangalore Transport Service provide for suspension pending enquiry for a period not exceeding four days for the following misdemeanours : (1) Theft, (2) Drunkenness, (3) Misappropriation and (4) Assault This is found stated in paragraph I of Standing Order IX. The heading of that Order is "punishment for misconduct and acts or omissions which constitute misconduct."

The first of the paragraphs to which we have referred above, provides that the employee shall be liable for punishment for misconduct with fine, suspension, dismissal, withholding of increment or bonus or both after proper enquiry and proceeds to state that

"provided that an employee may be placed under suspension pending enquiry for a period not exceeding four days for the following misdemeanours -- I. Theft, 2. Drunkenness 3. Misappropriation and 4. Assault."

The second paragraph deals with loss or damage sustained by the Company on account of wilful misconduct of employees; the third paragraph gives a list of acts and omissions which are to be treated as misconduct in the case of all employees the fourth paragraph gives a list of specific acts or omissions which constitute misconduct in the case of drivers, conductors, inspectors and checkers; the fifth and the sixth paragraphs as well as the seventh paragraph deal with punishments or order imposing punishment and the eight and last paragraph state that uninterrupted good conduct for a period of two years on duty cancels all previous punishment. On the question of interpretation, two sides of the argument are these: On behalf of the petitioners it is argued that suspension limited to a maximum period of four days pending enquiry applies to all classes of misconduct and misdemeanours mentioned in Standing Order No. IX.

On behalf of the respondents, the argument has been that this limitation of four days refers only to the four misdemeanours described in the first paragraph and the omission to provide for suspension in the case of other acts of misconduct or misdemeanours should not be read as negating that powers; the argument of the learned Government Pleader is that the fact that the first paragraph of Standing Order No. IX has expressly limited suspension in the case of four misdemeanours, proceeds upon the recognition of the existence of that power to suspend in all cases provided therein, the limitation thereof being only in respect of four cases mentioned in the first paragraph. It seems to us that both the lines of argument try to read too much into the language of the Standing Orders. From the summary given by us, reference to suspension pending enquiry is

contained only in the first paragraph.

Limitation thereof is not merely in respect of a maximum period of four days but also in respect of misdemeanours mentioned therein. It is also not possible to accept the argument that because this paragraph mentions a limitation in respect of the period, it should be assumed that a right to suspend a delinquent pending enquiry exists without any limitation in respect of all other misconduct or misdemeanours. The position in regard to the existence or otherwise of a power to suspend during the pendency of an enquiry into misconduct has been clarified by the Supreme Court in the case reported in *The Management of Hotel Imperial, New Delhi and Others Vs. Hotel Workers' Union*, in the following terms:

"The first question therefore that falls for consideration is the extent of the power of the employer to suspend an employee under the ordinary law of master and servant. It is now well settled that the power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the so called period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the suspension has the effect of temporarily suspending the relation of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay. These principles of the ordinary law of master and servant are well settled and have not been disputed before us by either party. Reference in this connection may be made to *Hanley v. Pease and Partners Ltd.* 1915 1 KB 698, *Wall work v. Fielding* 1922 2 KB 66, *Secretary of State Vs. Surendra Nath Goswami*, and *Rura Ram Vs. Divisional Supdt., N.W. Rly., Lahore*, ."

27. Their Lordships in the above case make a clear distinction between what amounts to actual suspending of the terms of the contract between master and servant and what amounts to a mere order of the employer forbidding the employee from working. Suspension in the real and substantial sense of the term can exist only in the former case. Where there is power to suspend provided in the contract of service itself, the employer is empowered to suspend or keep in abeyance the contract of service itself for a stated period. When a contract is so suspended, the relationship of master and servant is also suspended with the result that both are absolved from their respective duties, i.e., the servant is not bound to render service and the master is not bound to pay. Where, however, no such power exists, there can never be a suspension of the contract of service. An order forbidding an employee from rendering service is an order which could lawfully be made by the employer by virtue of the subsistence of the contract of

service, which order by the same contract the employee is bound to obey; but because the contract is not suspended, the making of such an order by the master does not absolve him from paying full wages to the employee provided in the contract.

28. Except therefore in cases where the misdemeanours concerned are the four mentioned in the first paragraph of Part IX of the Bangalore Transport Service Standing Orders wherein suspension pending enquiry could be ordered to the extent of four days, there is in our opinion no power to suspend provided under the Standing Orders of either the Mysore Government Road Transport Department or the Bangalore Transport Service. In those cases although the employee would be bound by the order of the employer forbidding him to render service and also bound to obey the order made by him to attend every day the office or premises of the Department, the employee is entitled to receive his full remuneration for that period. There is some reference in these cases to payment of what is described as subsistence allowance to the extent of 50 per cent of the salary.

We are unable to understand how and under what provision of law or Standing Orders or rules the Department can substitute for its liability to pay full remuneration this payment of what is described as subsistence allowance. No provision of law or Standing Order has been brought to our notice in this behalf. It cannot be taken as a payment in substitution of remuneration completely absolving the employer from the duty of paying full remuneration lawfully due to the employee.

29. The last general point argued is one relating to what is described as Disciplinary Action Committee. That there was such a committee functioning till about 1958-59 is not denied. But, whereas the petitioners' learned counsel contend that that Committee was an essential feature of the procedure for taking disciplinary action, the learned Government Pleader contends that that Committee was no more than a consultative Committee whose opinions were not binding upon the officer of the Department taking disciplinary action. Some reference has been made to the fact that letters or communications or papers relating to disciplinary action taken continue to add the words "DAC" in the notation of the letters. This, it has been suggested by the learned counsel for the petitioners, is clearly a reference to the old Disciplinary Action Committee and can even be described as an attempt to suggest that before imposing punishment the officer has had the benefit of having the opinion of the Disciplinary Action Committee. We are unable to read so much into "DAC"; something more than the alphabets "DAC" is necessary to make out a case of the existence of a certain state of affairs. The actual state of affairs as admitted by the respondents is that in none of the disciplinary enquiries which are the subject-matter of these petitions, a Committee was either constituted or consulted.

30. Whatever be the status or powers of this Committee, one thing that is clear is that no provision of the constitution of such committee or the same being

associated with disciplinary enquiries is found in any of the Standing Orders. The Standing Orders do not know the existence of this Committee. Such Committees were constituted or appointed not under or by virtue of any of the Standing Orders but by virtue of certain administrative orders or instructions issued by the State Government to the Department concerned.

31. The position therefore is that if the State Government issues such instructions or makes such orders which are required to be observed by one of its Departments, they could be enforced and their disobedience can be questioned only by the State Government which made those orders and issued them. They do not confer any right upon the employees which they could enforce. So long as they are not part of the Standing Orders which bind both the parties, they are not capable of enforcement by either of the parties against the other. If the employees cannot compel the employer to consult that Committee, the employer cannot impose upon the delinquent-employee the necessity of associating the Committee with disciplinary enquiries or acting upon its opinion.

32. The learned counsel for the petitioners has argued that the constitution of the Committee and the requirement that it should be always associated with disciplinary enquiries was a matter decided upon by the Government after mature consideration in the interest of justice. That justice, according to the learned counsel, is ensured by associating with disciplinary proceedings a Committee at least one of whose members was an outsider. We do not think that it is either necessary or proper for us to investigate into considerations of policy or expediency which might have led: the executive Government to constitute a Committee of this nature. We can deal only with rights which are subject to our adjudication and which we could enforce by our orders. If the Government considers the association of such a Committee essential for the purpose of ensuring justice or for promoting good relationship between the officers of the Government, and the other employees, it is, as we have already stated, for the State Government to question or punish, officers who fail to observe or obey their instructions.

33. We may now summarise our conclusions on the general arguments bearing upon these various cases and state them in the following propositions:

1. Mr. B. K. Srinivasan who has been, appointed and functioning as Deputy General Manager, Bangalore Division of the Mysore Government Road Transport Department since 11-4-1960, is a Civil Servant employed in connection with the affairs of the State of Mysore;
2. As Deputy General Manager he can, by virtue of the amendment to the Standing Orders which came into effect in, January 1959, exercise powers of a Disciplinary authority;
3. In view of Article 311(I) of the Constitution, he cannot: remove or dismiss any employee appointed by the General Manager or other authority to whom he is subordinate in rank;

4. There is not in any of the Standing Orders applicable to the Mysore Government Road Transport Department any provision empowering a disciplinary authority to suspend any delinquent, in the sense that the contract of service is to be deemed to be in suspension or in abeyance;

5. Under the Standing Orders applicable to the Bangalore Transport Service employees, there is power to make such orders of suspension to a maximum extent of four days in the case of four misdemeanours, viz., theft, drunkenness, misappropriation and assault. There is no power to make any such orders of suspension in other cases;

6. Though there is no power of such suspension, any orders made by the disciplinary authority forbidding the delinquent from rendering service or requiring him to be present in the office though not working, are lawful orders which cannot be disobeyed by the employee;

7. Except in cases where the right to suspend during enquiry can be exercised as aforesaid, any such order as mentioned in the last paragraph does not absolve the Mysore Government Road Transport Department from paying full salary or remuneration to the employee to whom orders aforesaid have been made;

and

8. The Disciplinary Action Committee is a Committee unknown to the Standing Orders. The validity of disciplinary action taken does not depend upon the Committee being associated with the enquiry or consulted in the matter of punishments; nor do we consider the commission to associate such a Committee with the enquiry or to consult it is an informative circumstance affecting the validity of any action taken, if it is otherwise valid.

34. We now proceed to deal with individual petitions. Before doing so, it will be convenient to make: certain general observations.

35. In the light of our conclusions stated above, the prayers for the issue of a Writ in the nature of quo-warrant to Mr. Srinivasan for alleged usurpation of a public office and the issue of directions for the production of what is described as the constitution of the Disciplinary Action Committee, do not survive. The issue of any Writs in the nature of Mandamus for payment of specified sums of money by way of salary, etc., are both unnecessary and uncalled for, for two reasons. If this. Court declares the liability of the Government to pay sums of the type concerned in these cases and holds that the withholding of payment pursuant to such liability is either unauthorised or illegal, the Government will undoubtedly take early steps to discharge that liability and will not, unlike a private party, insist upon their employees taking proceedings in the nature of suits or otherwise for the recovery of those moneys. Secondly, the exact sums of money that become payable will have to be calculated subject to such deductions, if any, as the Government may legitimately make in accordance with the appropriate provisions of Jaw. (The rest of the judgment is not material for the purpose of

this report -- Ed.)