
(1964) 09 RAJ CK 0007
In the Rajasthan High Court
Case No : Civil Writ Petition No. 192 of 1963

Harish Chandra	Vs	APPELLANT
The Deputy Director of Education, Bikaner Range		RESPONDENT

Date of Decision : 29-09-1964

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : AIR 1965 Raj 108

Hon'ble Judges : D.S. Dave, C.J.; Kan Singh, J

Bench : Division Bench

Advocate : Gumanmal Lodha, for the Appellant; B.C. Chatterji, Deputy Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dave, C.J.—This is a writ application under Article 226 of the Constitution of India challenging the validity of the order of the Deputy Director of Education, Bikaner, dated 14-9-1962, terminating the petitioner's services, on the ground that it is hit by Article 311 of the Constitution of India.

2. It is not disputed on behalf of the respondent that the petitioner, who is a citizen of India, was appointed as an Assistant Teacher at the Madho Middle School, Bikaner, by the Inspector of Schools, Sikar on 14-11-1958. On 28-11-1958, the Deputy Director of Education, Bikaner, transferred him to Government Basic S. T. C. Training School, Churu, as a Lower Division Clerk in the grade of Rs. 60--130. On 23-4-1960, he was suspended under Rule 13 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, by the Inspector of Schools, Churu, since he was prosecuted in a criminal case for offences under Sections 457 and 300 of the Indian Penal Code.

On 21-8-1962, he was reinstated by the Deputy Director of Education, Bikaner, on the ground that he was honourably acquitted by Magistrate First Class, Churu, on 31-3-1962. It was also ordered by him that the petitioner would be permitted

to draw his pay and allowances admissible according to Rule 54(2) of Rajasthan Services Rules and his salary would be charged from the post where he was suspended, that is, from the office of the Inspector of Schools, Churu, for the period with effect from 8-4-1960, and for the intervening period he would be treated on duty for all purposes. Strangely enough the same officer (Deputy Director of Education, Bikaner), passed another order on 14-9-1964 to the following effect:

"On further scrutiny, it has been found that the services of Shri Harish Chandra Gupta, temporary L. D. C., Government Basic S. T. C., Training School, Sirjanganh, were terminated on account of his misbehaviour and bad work. The order of re-instatement passed by this office, vide No. EDD/BK/EB/3/62/6/9293, dated 21-8-1962 is hereby cancelled."

3. It is contended by learned counsel for the petitioner that the last order, dated 14-9-1962 was passed in violation of Article 311 of the Constitution of India, because the petitioner was punished by termination of his services on account of the alleged misbehaviour and bad work on his part without giving him reasonable opportunity of showing cause against the action which the Deputy Director of Education proposed to take against him. It has been argued that no charge-sheet or statement of allegations was given to the petitioner according to the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1938, and he was not given any opportunity to give his explanation, nor was he given any opportunity of being heard by the disciplinary authority.

4. No reply has been filed on behalf of the respondent in this Court. The previous order dated 1-2-1961, to which there was a reference in Ex. 6, has also not been produced before us. In the case of Parshotam Lal Dhingra Vs. Union of India (UOI), it was observed by their Lordships of the Supreme Court that:

"just as Article 310 in terms makes no distinction between permanent and temporary members of the services or between persons holding permanent or temporary posts in the matter of their tenure being dependant upon the pleasure of the President or the Governor, so does Article 311, in our view makes no distinction between the two classes, both of which are, therefore, within its protection and the decisions holding the contrary view cannot be supported as correct."

5. It is crystal clear from the said observation that Article 311 of the Constitution as much protects a temporary civil servant as a permanent one. The impugned order of the Deputy Director of Education, dated 14-9-1962, shows that the petitioner's services were terminated on account of alleged "misbehaviour and bad work" on his part. Under the circumstances, it was incumbent upon the authorities concerned to give him a reasonable opportunity of clearing away the charges against him and since the provisions of Article 311 of the Constitution were not followed, the said order cannot be maintained.

It is high time that the authorities removing or dismissing or reducing in rank a

member of civil service of State should know that the provisions of Article 311 of the Constitution of India must be followed in spirit and letter before such an action is taken. It should be appreciated that the failure on their part to follow the provisions of this Article, on the one hand, causes untold hardships on a civil servant and, on the other hand, it involves the State in financial implications. When the Deputy Director had himself reinstated the petitioner on the ground that he was honourably acquitted by a Court of law. he should not have changed that order and terminated the services of the petitioner in less than one month's period of time without an inquiry according to law. Learned Deputy Government Advocate has very candidly conceded that he does not find himself in a position to defend the impugned order.

6. The writ application is, therefore, allowed and the impugned order of the Deputy Director of Education, Bikaner, dated 14-9-1962 is hereby quashed. The petitioner will get Rs. 50/- as costs in this Court.