
(1987) 10 AHC CK 0037

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17665 of 1987

Iftikhar Ahmad Siddiqi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-10-1987

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 14, 49A

Constitution of India, 1950 — Article 14, 309, 310, 311, 313

Government of India Act, 1919 — Section 96B

Government of India Act, 1935 — Section 276

Judicial Officers Protection Act, 1850 — Section 1

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 42, 44, 49A

Citation : (1988) 1 AWC 6 : (1989) RD 181

Hon'ble Judges : S.K. Dhaon, J; B.L. Yadav, J

Bench : Division Bench

Advocate : R.R. Yadav, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Dhaon, J.—The petitioner, a Consolidation Officer, challenges an order dated 19th August, 1987, passed by the Consolidation Commissioner, Uttar Pradesh, suspending him from service.

2. The material averments are these. On 25th February, 1985 a charge sheet was given to the petitioner and on the same date he was placed under suspension. On 5th August, 1985, the order of suspension was revoked and the petitioner was given a warning that in future he should be careful with regard to his work and conduct. On 19th August, 1987, the impugned order of suspension had been passed and on the same date a charge sheet containing no less than 15 charges was given to the petitioner. A perusal of the charge sheet dated 19th August, 1987, indicates that barring the second charge, the other charges relate to orders passed by the petitioner in his capacity as the Consolidation Officer in different cases posterior to 5th August, 1985. The different orders on the basis of which the last charge sheet is based are either appealable or revisable. In some

of the cases appeals are pending. Some of the orders passed by the petitioner have been set aside and against the orders setting aside the orders of the petitioner writ petitions have been preferred in this Court and they are pending their decision.

3. The U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the Act) has undergone numerous amendments. The Act received the assent of the President on 4th March, 1954. The different provisions of the Act clearly indicate that proceedings before the Consolidation Officer are judicial proceedings. Section 42 empowers the State Government to appoint such authorities and officers, and for such areas as may be necessary, to give effect to the provisions of the Act. Section 44 provides that the State Government may by notification in the official Gazette and subject to such restrictions or conditions as may be specified in the notification, confer powers of the Consolidation Officer under the Act or the Rules made thereunder, on any officer or authority. Section 49--A may be extracted:

No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act or Rules made thereunder.

4. The expression "other legal proceedings", according to learned Counsel, includes the disciplinary proceedings initiated against the petitioner and the impugned order of suspension. The submission is that Section 49A of the Act prohibits the Consolidation Commissioner from either taking any disciplinary proceeding against the petitioner or from passing an order of suspension pending enquiry. Of course, the submission is based on the premise that the petitioner passed the judicial orders in good faith. The submission is not sound.

5. The Civil Services (Classification, Control and Appeal) Rules, 1930 (hereinafter referred to as the Civil Services Rules) enumerate the penalties which may be imposed upon the members classified in Rule 14. The Rules also empower the appointing authority to suspend pending enquiry a member of the service. It is not in dispute that the petitioner falls in one of the services classified in Rule 14. The Civil Services Rules were framed by the Secretary of State in Council u/s 96-B of the Government of India Act, 1919. They continued in force by virtue of Section 276 of the Government of India Act, 1935. They were taken over by the architects of our Constitution in Article 313. They therefore, continued to be in operation by virtue of Article 313 of the Constitution. Further, they were "law in force" within the meaning of Article 366 and existing laws within the meaning of Article 372 of the Constitution. Rule 49A of the Civil Services Rules was substituted by the Civil Services (Classification, Control and Appeal) (U.P. Ist Amendment) Rules, 1976 and the substituted Rule was published in the U.P. Gazette (Extraordinary) dated 30th August, 1976. The substituted Rules were made by the Governor in exercise of the powers conferred by the proviso to Article 309 of the Constitution. It provides for suspension pending enquiry. Article 309 of the Constitution reads:

309. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State.

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make Rules regulating recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of appropriate Legislature under this Article, and any rules so made shall have effect subject to the provisions of such Act.

6. The question is: whether the Act is referable to Article 309 ? The proviso to Article 309 clearly says that the Rule framed under its umbrella will be in force until Parliament or the appropriate Legislature makes law in this behalf. To put it differently, the law made either by Parliament or by the Legislature should pertain to the recruitment and conditions of service of person serving under either the Union or a State. Entry 18 List II Schedule VII of the Constitution has a wide connotation and it includes consolidation proceedings relating to several parcels of land and, therefore, the State Legislature has derived legislative competence to enact the Act from that Entry. The preamble to the Act indicates that the purpose of the legislation is consolidation of agricultural holdings in Uttar Pradesh for the development of agriculture. Entry 41 in List II is: "State Public Services ; State Public Service Commission". The corresponding Entry in List I is Entry No. 70 which reads: "Union Public Services; All India Services; Union Public Service Commission".

7. It is now well settled that for determining the source of legislation of a particular statute in a particular legislative list, be it be a controversy between more than one Entry in the same list or a controversy between Entries of the different Lists, the doctrine of a "pith and substance" should be pressed into service. The expression "other legal proceedings" in Section 49-A of the Act, in our opinion, does not even incidentally fall within the ring carved out either in Article 309 of Entry 41 of List II. Therefore, the said expression cannot run through the gauntlet of "recruitment and condition of service". Afortiori Section 49-A of the Act cannot in any manner control or modify the rigor of Rule 49-A of the Civil Service Rules.

8. In *B.S. Vadera Vs. Union of India (UOI) and Others*, it was observed in paragraph 24 as under:

It is also significant to note that the proviso to Article 309, clearly lays down that " any rules so made shall have effect, subject to the provisions of any such Act". The clear and unambiguous expressions, used in the Constitution, must be given their full and unrestricted meaning unless hedged in, by any limitations. The

rules, which have to be "subject to the provisions of the Constitution", shall have effect, " subject to the provisions of any such Act ". That is, if the appropriate Legislature has passed an Act, under Article 309, the rules, framed under the proviso, will have effect, subject to that Act; but, in the absence of any Act, of the appropriate Legislature, on the matter, in our opinion, the rules, made by the President, or by such person as he may direct, are to have full effect, both prospectively and retrospectively. Apart from the limitations, pointed out above, there is none other imposed by the proviso to Article 309, regarding the ambit of the operation of such rules. In other words, the rules, unless they can be impeached on grounds such as breach of Part III, or any other Constitutional provision, must be enforced, if made by the appropriate authority.

9. In *Dr. Ram Lal Chaturvedi Vs. State of Rajasthan and Others*, there was a tussel between Rajasthan Medical Services (Collegiate Branch) Rules and an Ordinance framed under the University of Rajasthan Act. Certain appointments made under the Collegiate Branch Rules were sought to be nullified by reason of non-compliance with the provisions of the Ordinance in regard to the condition of teaching experience. The Syndicate of the Rajasthan University was empowered to make Ordinance to provide for " emoluments and conditions of service of University teacher ". The Supreme Court opined that it was not easy to hold that the particular Ordinance was a provision under an Act, regulating the recruitment and conditions of service of persons appointed to Rajasthan Medical Service, as contemplated by Article 309 of the Constitution. On a consideration of the pith and substance of the University of Rajasthan Act on a comparison of the language used in the Entry No. 11 and Entry No. 41 of List II, the field of legislation of the Act more appropriately fell in Entry 11 which dealt with the subject of "education, including Univerrity". The field of operation of the Ordinance was restricted to the question of affiliation of the colleges concerned with the Rajasthan University. We have already indicated that in the instant case too the field of the operation of the Act is nowhere near the recruitment and conditions of service of persons.

10. In *Union of India and Another Vs. Tulsiram Patel and Others*, the Supreme Court while relying upon *Ram Pal Chaturvedi's* case (supra) held that it is not necessary that the Act of an appropriate Legislature should specifically deal with a particular service. It is sufficient, if it is an Act as contemplated by Article 309 by which provision is made regulating the recruitment and conditions in a service.

11. We have already read Section 49-A of the Act. There the important words are " no suit, prosecution or other legal proceedings shall lie against any person. " The initiation of disciplinary proceedings and the passing of an order of suspension is neither a suit nor a prosecution. The words " or other " preceding the expression " legal proceedings " clearly demonstrate that the Legislature is contemplating some proceedings akin to those set into motion by means of a suit or prosecution. One such legal proceeding can be arbitration proceedings. The term " legal proceedings " is not defined in the Act. It has a wide import

However, in the context and setting of suit or prosecution and the subsequent word " shall lie " the term means any proceedings authorised by law for redressal of a legal grievance or for vindication of a legal right. The object and purpose of Section 49-A is to indemnify any person for any act done or intended to be done by him in good faith under the Act or the Rules. When the appointing authority initiates disciplinary proceedings or passes an order of suspension pending enquiry, it is not doing so at anybody's instance. On the contrary, the law assumes that the appointing authority shall act on his own volition after applying his own independent mind. At that stage, the appointing authority is not enquiring into any complaint or grievance. Its object is not to give relief to any aggrieved person. Its purpose is solely to maintain disciplinary control over a civil servant.

12. The Judicial Officers Protection Act, 1850, too does not advance the case of the petitioner. Section 1 of the said Act says that no person acting judicially shall be liable to be sued in any civil court for any act done or ordered to be done in the discharge of his judicial duty whether or not.... Surely, no suit has been instituted against the petitioner by the appointing authority in initiating disciplinary proceedings.

13. In Anowar Hussain Vs. Ajoy Kumar Mukherjee and Others, it is observed that this particular Statute is clearly intended to grant protection to judicial officers against suits in respect of acts done or ordered to be done in the discharge of their duties as such officers. It is, therefore, apparent that this Act does not give protection to officers concerned from disciplinary control.

14. Rule 49-A of Civil Service Rules is impeached on the ground that it is hit by Article 14 of the Constitution as it confers unregulated and unguided discretionary power in the authority concerned in the matter of the suspension of an officer. This submission is not acceptable for more than one reason. First, sufficient guideline is discernible in a plain reading of Articles 309, 310 and 311 of the Constitution. Efficiency and integrity of the Administrative Service is in the public interest. It is to be remembered that neither of the aforesaid three Articles of the Constitution provide the contents of the Rules which may be framed either by the President or by the Governor, as the case may be, or by Parliament or the Legislature of a State, as the case may be, with regard to the recruitment and conditions of service. The Civil Service Rules framed under the proviso to Article 309 or an Act of an appropriate Legislature has to pass through the touch-stone of Part III of the Constitution as indicated by the opening words of Article 309 " subject to the provisions of this Constitution ". Different penalties which may be imposed upon a civil servant are catalogued in the Civil Service Rules. The authority passing an order of suspension has to act objectively. It has to apply its mind to the material available before it against a particular officer, keeping in view the various penalties which may be imposed upon the officer.

15. Secondly, the power of suspension is exercised pending disciplinary proceedings. It is only a temporary phase. The life of the order of suspension is

normally a short one It Is co-terminus with the outcome of the disciplinary proceedings. It is expected that the disciplinary proceedings are disposed of expeditiously. An exercise of power of suspension can always be challenged by means of a writ petition on well known grounds. There is, therefore, sufficient safeguard of the rights of a delinquent civil servant. Malafide exercise of power or abuse of power will not lead to the striking down of this source of power. We have therefore no hesitation in repelling the contention that Rule 49-A infringes Article 14 of the Constitution and is, therefore, void.

16. The impugned order was passed on 19th August, 1987. The petitioner had been given a fortnight's time to give his reply. We presume that the petitioner must have submitted his reply by now. If that be so, the disciplinary proceedings as against the petitioner shall be disposed of expeditiously.

17. This petition has no merit. It is dismissed summarily.

18. The learned Counsel for the petitioner has made an oral prayer for a certificate to appeal to the Supreme Court. In our opinion, the controversy raised is neither of general importance nor does it require a decision of the Supreme Court. The prayer for certificate is, therefor, refused.