

(1996) 05 AHC CK 0046
In the Allahabad High Court
Case No : C.M.W.P. No. 24112 of 1998

Kailash Nath Gupta

APPELLANT

Vs

Enquiry Officer, Allahabad Bank and Others

RESPONDENT

Date of Decision : 01-05-1996

Acts Referred:

Constitution of India, 1950 — Article 311, 311(1)

Citation : (1996) 74 FLR 2354 : (1997) 2 LLJ 453

Hon'ble Judges : Om Prakash, J; J.S. Sidhu, J

Bench : Division Bench

Advocate : G.C. Bhattacharya, for the Appellant; S.C. and R.V. Kakkar, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Kailash Nath Gupta Vs. Enquiry Officer, (R.K. Rai), Allahabad Bank and Others, AIR 2003 SC 1377 : (2003) 97 FLR 556 : (2003) 3 JT 322 : (2003) 2 LLJ 367 : (2003) 3 SCALE 428 : (2003) 9 SCC 480 : (2003) SCC(L&S) 1137 : (2003) AIRSCW 1813 : (2003) 3 Supreme 318

Om Prakash, J.—By this petition, the petitioner seeks quashing of the impugned orders passed by the Disciplinary Authority (Respondent No. 2) and the Appellate Authority (Respondent No. 4) annexures 3 and 5 to the writ petition respectively.

2. Admittedly, the petitioner was an Officer ; Grade III in the Allahabad Bank at the time the disciplinary proceedings were initiated against him. The Disciplinary Authority having found the petitioner guilty of charges, ordered his removal. The petitioner filed an appeal against that order, which was dismissed.

3. Aggrieved the petitioner has come up to this Court under Article 226 of the Constitution.

4. Sri G.C. Bhattacharya learned counsel for the petitioner made the following submissions before us :

(1) That the petitioner was appointed by the Board of Directors as per the appointment letter dated October 30, 1973 - annexure to the amendment application and if that is so, he cannot be removed from service by the Assistant General Manager (Respondent No. 3) who is much junior to the appointing authority. In short, the submission is that the order of dismissal passed by an authority junior to the appointing authority is void being violative of Article 311 of the Constitution of India;

(2) that none of the charges levelled against the petitioner amounts to misconduct;

(3) that the punishment of removal awarded by the Disciplinary Authority, is wholly disproportionate to the charges levelled against him; and

(4) that the findings of the Disciplinary Authority as well as of the Appellate Authority are perverse.

5. The first question for consideration is whether Article 311 of the Constitution is applicable to the petitioner. In the case of *State Bank of India v. S. Vijaya Kumar*, (199 I LLJ 122) (SC), the Court enunciated that the protection guaranteed by Article 311 of the Constitution applies to members of the Civil Service of the Union or an AH India Service or a Civil Service of a State or who holds a Civil Post under the Union or a State. The Court further held that the employees of the State Bank do not fall under any one of these categories and they cannot seek any protection under Article 311(1) of the Constitution. The Court held in para 24 at page 86 with perspectivity that the employees of the State Bank can only claim such rights which have been conferred under Regulation 55(2) (a) of the General Regulations.

6. From the above rule laid down by the Supreme Court, it is manifest that the employees of Banks are not entitled to any protection guaranteed by Article 311 of the Constitution but they can only claim such rights which have been conferred upon them under the relevant Regulations.

7. The petitioner is governed by the Allahabad Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 (briefly, the Regulations) . Regulation 5 of the Regulations which is relevant for the purpose of the case of the petitioner runs as under :

"5. Authority to institute disciplinary proceedings and impose penalties:

(1) The Managing Director or any other authority empowered by him; by general or special order may institute or direct the Disciplinary Authority to institute disciplinary proceedings against an officer employee of the Bank.

(2) The Disciplinary Authority may himself institute disciplinary proceedings.

(3) The Disciplinary Authority or any authority higher than it, may impose any of the penalties specified in Regulation 4 on any officer employee".

Definition of Regulation 3(g) defines the term "Disciplinary Authority" meaning the authority specified in the Schedule which is competent to impose on an officer or employee any of the penalties specified in Regulation 4. From perusal of the Schedule appended to the "Discipline and Appeal Regulations", it appears that for Officers Grade HI and above the Disciplinary Authority was earlier General Manager who was later substituted by a Deputy General Manager/ Assistant General Manager and the Appellate Authority, that is, the Managing Director was substituted by D.G.M./G.M. Reviewing Authority was also amended. This amendment was made by a Circular dated June 29, 1983. Against the petitioner, the disciplinary proceedings have been drawn up by the Assistant General Manager who was competent in view of the amendment, made in the Schedule to the "Discipline and Appeal Regulations". The petitioner being an employee of the Allahabad Bank is governed by the Regulations which clearly show that the Deputy General Manager/Assistant General Manager is a Disciplinary Authority in view of the amended Schedule. No exception can, therefore, be taken as to the competency of the Assistant General Manager, who acted as a Disciplinary Authority in the case of the petitioner.

8. Sri Bhattacharya relying on a decision of a Division Bench of this Court in Civil Misc. Writ Petition No. 21008 of 1987 Kallu Prasad Dinkar Vs. Regional Manager, Allahabad Bank and Others, urged that the protection guaranteed by Article 311 of the Constitution is available to the petitioner. It is submitted that like the petitioner, Sri Kallu Prasad Dinkar was also an employee of the Allahabad Bank and when a Division Bench of this Court held vide judgment dated December 15, 1988 that the protection guaranteed by Article 311(1) of the Constitution was available to the latter, the same is equally available to the former. No doubt, the Division Bench in the case of Kallu Prasad Dinkar (supra) was of the view that protection guaranteed by Article 311 is available to Bank employees. But the question is whether the case of Kallu Prasad Dinkar is a binding precedent on the question whether the Bank employees can claim protection guaranteed by Article 311. As already pointed out in the case of S. Vijaya Kumar (Supra), the Supreme Court clearly held that the Bank employees would be governed by their respective Regulations and they would not be entitled to any protection guaranteed by Article 311(1), we are therefore of the view that the view taken by the Division Bench in the case of Kallu Prasad Dinkar (supra) runs counter to the decision of the Supreme Court and therefore that cannot be a binding precedent on the proposition urged before us by the counsel for the petitioner. The case of S. Vijaya Kumar (supra) was also followed by a Division Bench of this Court in the case of Shri Ram Vs. Bank of Baroda and Others, , in which the Bench clearly held in para 6 at page 1396 as follows:

"The concept relating to dismissal of a member of Civil Services of the Union or State as envisaged under Article 311(1) of the Constitution laying down that a member of such services shall not be dismissed by any authority subordinate to that by which he was appointed, is not applicable to the petitioner who is an employee of a Bank and whose service conditions are governed by the relevant

Regulations of the Bank."

9. Sri Bhattacharya to buttress his argument that protection guaranteed by Article 311(1) is available to the Bank employees vehemently relied on the observations made by his Lordship Chinnappa Reddy, J. in para 22 at page 845 in the case of the Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, . The employer (the petitioner) dismissed the respondent in that case from service without observing the principles of natural justice. This has been found by the High Court who quashed the order of dismissal. The employer then appealed claiming that a declaration to enforce a contract of personal service cannot be granted by the Court and that the only remedy of the employee is to file a suit for damages for wrongful dismissal. The respondent in that case pleaded that the employer is a statutory Corporation whose employees have a statutory status, and that the employer is bound by the Regulations made under the Statute as also to observe the principles of natural justice. Breach of the Regulations or failure to observe the principles of natural justice, claimed the respondent, would entitle him to invoke the jurisdiction of the High Court under Article 226 of the Constitution.

10. The question before the High Court and the Supreme Court was whether an employee of a statutory Corporation can invoke Article 226 of the Constitution and in that context his Lordship Chinnappa Reddy, J. observed in para 3 as follows atp229:

"I find it very hard indeed to discover any distinction on principle, between a person directly under the employment of the Government and a person under employment of an agency or instrumentality of the Government or a Corporation, set up under a Statute or incorporated but wholly owned by the Government. It is self evident and trite to say that the function of the State has long since ceased to be confined to the preservation of the public peace, the exaction of taxes and the defence of its frontiers. It is now the function of the State to secure "social, economic and political justice", to preserve "liberty of thought, expression, belief, faith and worship", and to ensure "equality of status and of opportunity". That is the proclamation of the people in the preamble to the Constitution. The desire to attain these objectives has necessarily resulted in intense Governmental activity in manifold ways. Legislative and executive activity have reached very far and have touched very many aspects of a citizen's life. The Government, directly or through the Corporations, set up by it or owned by it, now owns and manages a large number of industries and institutions There is no good reason why, if Government is bound to observe the equality clauses of the Constitution in the matter of employment and in its dealings with the employees, the Corporations set up or owned by the Government should not be equally bound and why, instead, such Corporations could become citadels of patronage and arbitrary action. In a country like ours which teems with population, where the State, its agencies, its instrumentalities and its Corporations are the biggest employers and where millions seek employment and

security, to confine the applicability of the equality clauses of the Constitution, in relation to matters of employment, strictly to direct employment under the Government is perhaps to mock at the Constitution and the people. Some element of public employment is all that is necessary to take the employee beyond the reach of the rule which denies him access to a Court to enforce a contract of employment and denies him the protection of Articles 14 and 16 of the Constitution."

With the aforesaid observations his Lordship Chinnappa Reddy, J. concurred with his Lordship Sarkaria, J. in the case of U.P. Warehousing Corporation (supra). The contention of the employer, that is, the Corporation was that the respondent had no statutory status and had therefore no locus standi to maintain the writ petition and that the only remedy of the respondent was to file a suit for damages for his alleged wrongful dismissal. It is in that connection that the Court held that the respondent being an employee of the statutory Corporation was entitled to invoke Article 226 of the Constitution and file a writ petition. No rule was laid down in that case that the Bank employees are entitled to the protection guaranteed by Article 311(1) and, therefore, the instant petitioner before us cannot take any advantage from the case of U.P. Warehousing Corporation (Supra).

11. In A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., , the observations made by his Lordship Chinnappa Reddy, J. in para 22 in the case of U.P. Warehousing Corporation (supra), have been extensively reproduced and relying on those observations the Supreme Court in the case of A.L. Kalra (supra) pointed out at the end of para 20 that the distinctions ought to be drawn between protection of Part XIV of the Constitution and Part III has no significance.

12. Relying on the dictum of the Supreme Court in U.P. Warehousing Corporation (supra) and A.L. Kalra (supra) Sri Bhattacharya submits that Article 311 is applicable to the Bank employees. The submission of Sri Bhattacharya is that in view of these cases an employee of a Corporation - the instrumentality of State - may invoke Article 226 to enable the Court to resort to judicial review of an impugned order. He submits that judicial review, inter-alia, means the scrutiny of the principles of natural justice. He then contends that Article 311(2) guaranteeing opportunity of hearing is nothing but a facet of natural justice. Then Sri Bhattacharya submits that application of the principles of natural justice means the applicability of Article 311. This argument has to be rejected straightaway as Article 311 does not guarantee only an opportunity of being heard, but it also guarantees protection saying that a member of Civil Services of the Union or of a State shall not be dismissed or removed by an authority subordinate to the appointing authority. Simply because an employee of a Corporation which is an instrumentality of State is entitled to invoke Article 226, it cannot be said that he becomes entitled to the protection guaranteed by Article 311(1). We are afraid that on proper reading of the aforesaid authorities, the

contention of Shri Bhattacharya cannot be accepted, because none of the authorities lay down the rule canvassed by him before us.

13. Then Sri Bhattacharya submits that none of the charges levelled against the petitioner amounts to misconduct and, therefore, he could not have been removed from service by the Disciplinary Authority. Upon perusal of the charges levelled under the charge-sheet against the petitioner, it appears that several irregularities committed by the petitioner in course of discharge of his duties, have been pointed out. The irregularities pointed out in the charges are not such as to not make out any case against the petitioner for punishment. The petitioner can surely be punished if the irregularities pointed out against the petitioner are proved, which, in fact, have been found to have been proved by the Disciplinary Authority. In this case surely the petitioner will be exposed to penalty.

14. Thirdly, Sri Bhattacharya submits that punishment awarded to the petitioner by the Disciplinary Authority is wholly disproportionate to the charges levelled against him. The question for consideration is whether in judicial review which is open under Article 226, this Court can go into the question whether the punishment awarded to the delinquent is disproportionate.

15. In *State Bank of India and Others Vs. Samarendra Kishore Endow and Another*, , the Court enunciated that the imposition of appropriate punishment is within the discretion and judgment of the Disciplinary Authority. It may be open to the Appellate Authority to interfere with it but not to the High Court or to the Administrative Tribunal for the reason that the jurisdiction of the Tribunal is similar to the powers of the High Court under Article 226 of the Constitution. The power under Article 226 is one of judicial review. It is not an appeal from a decision but a review of the manner in which the decision was made. The power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the authority after according a fair treatment, reaches on a matter which it is authorised by law to decide for itself, a conclusion which is correct in the eyes of the Court. Following this authority, we refrain from going into the question whether the punishment awarded by the Disciplinary Authority to the petitioner is disproportionate to the gravity of the charges levelled against him.

16. No perversity in the findings of the Disciplinary Authority has been pointed out to us which may warrant setting aside his order.

In the result, the petition fails and is dismissed.