
(2008) 11 MP CK 0041
In the Madhya Pradesh High Court

K.N. Shukla

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-11-2008

Acts Referred:

Constitution of India, 1950 — Article 2, 226, 245, 246, 3

Citation : (2009) ILR (MP) 430 : (2009) 1 MPHT 128 : (2009) 1 MPJR 126

Hon'ble Judges : A.K. Patnaik, C.J.;Ajit Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Patnaik, C.J.

The petitioner has been holding the post of Joint Director, Directorate of Agriculture, Bhopal in the State of Madhya Pradesh since 2-8-1996. Parliament enacted the Madhya Pradesh Re-organisation Act, 2000 (for short "2000 Act") forming some of the erstwhile territories of the existing State of Madhya Pradesh as a separate State of Chhattisgarh on and from the "appointed day". In Section 2 (a) of the 2000, "appointed day" was defined as the date which the Central Government may, by notification in the Official Gazette, appoint. The Central Government appointed 1st of November, 2000 as the appointed day. Sub-section (1) of Section 68 of the 2000 Act provided that every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Madhya Pradesh shall, on or from that day provisionally continue to serve in connection with the affairs of the State of Madhya Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Chhattisgarh. Sub-section (2) of Section 68 of the 2000 Act further provided that as soon as after the appointed day, the Central Government shall, by general or special order, determine the successor State to which a person referred to under Sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect. On 8-8-2002, an

order was issued u/s 68 of the 2000 Act provisionally allocating the petitioner to the State of Chhattisgarh. Section 69 of the 2000 Act provided that nothing in Section 68 shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of the persons serving in connection with the affairs of the Union or the State. Section 70 of the 2000 Act further provided that every person who immediately before the appointed day is holding or discharging duties of any post or office in connection with the affairs of the existing State of Madhya Pradesh in any area which on that day falls within any other successor State shall continue to hold the same post or office in that successor State and shall be deemed on or from that day duly appointed to the post or office by the Government or any other authority in that successor State. The petitioner has filed this petition under Article 226 of the Constitution praying inter alia for declaring the provisions of Sections 68, 69 and 70 of the 2000 Act as ultra vires the Constitution.

Mr. V. Jayaraman, learned Counsel, appearing on behalf of the petitioner, submitted that under Article 246(3) of the Constitution, the Legislature of a State has exclusive power to make laws for the State or any part thereof with respect to any of the matters enumerated in List II of the Seventh Schedule of the Constitution and under Entry 41 of List II of the Seventh Schedule of the Constitution therefore the State Legislature had exclusive power to make law in respect of State Public Services and hence the provisions of Sections 68, 69 and 70 of the 2000 Act are beyond the legislative competence of Parliament.

Articles 3, 4, 245 and 246 of the Constitution are quoted hereinbelow:

3. Formation of new States and alteration of areas, boundaries or names of existing States.-

Parliament may be law-

(a) Form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

(b) Increase the area of any State;

(c) Diminish the area of any State;

(d) Alter the boundaries of any State;

(e) Alter the name of any State:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period

so specified or allowed has expired.

Explanation I: In this article, in Clauses (a) to (e), State includes a Union Territory, but in the Proviso, State does not include a Union Territory.

Explanation II: The power conferred on Parliament by Clause (a) includes the power to form a new State or Union Territory by uniting a part of any State or Union Territory to any other State or Union Territory.

Laws made under Articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters.-

(1) Any law referred to in Article 2 or Article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of Article 368.

Extent of laws made by Parliament and by the Legislatures of States.:

(1) Subject to the provision of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

Subject-matter of laws made by Parliament and by the Legislatures of States.-

(1) Notwithstanding anything in Clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as "the Union List").

(2) Notwithstanding anything in Clause (3), Parliament, and, subject to Clause (1), the Legislature of any State, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to Clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as "the State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

A reading of Clause (1) of Article 245 of the Constitution makes it clear that the powers of the Legislature of the State to make law for whole or part of the State is subject to the provisions of the Constitution. Clause (3) of Article 246 only enumerates the matters in List II in the Seventh Schedule of the Constitution in respect of which the Legislature of a State has power to make law but such power of the State Legislature is "subject to the provisions of the Constitution". Hence, we have to look into other provisions of the Constitution to find out whether there are any limitation on the power of the State Legislature to make law with regard to Entry 41 in List II of the Seventh Schedule of the Constitution, namely "State Public Service". Article 3 of the Constitution provides that Parliament may by law form a new State by separation of territories from any State and Article 4 of the Constitution further provides that any law referred to in Article 3 shall contain such supplemental, incidental and consequential provisions, as Parliament may deem necessary. Thus, the exclusive power of the State Legislature under Articles 245 and 246 of the Constitution to make law in respect of any matter enumerated in List II of the Seventh Schedule of the Constitution including a law on "State Public Services" in the State is subject to Articles 3 and 4 of the Constitution. In other words, law made by Parliament under Articles 3 and 4 of the Constitution forming a new State by separating any State and providing therein supplemental, incidental and consequential provisions will be within the competence of Parliament even if it encroaches upon a matter within the exclusive legislative competence of State Legislature under Articles 245 and 246 of the Constitution. There is thus no merit in the contention of Mr. Jayaraman that Section 68,69 and 70 of the 2000 Act which affect the State Public Services are beyond the legislative competence of the Parliament.

Mr. Jayaraman next submitted that under Article 310(1) of the Constitution, every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State and therefore by the 2000 Act, Parliament cannot make a provision by which a member of a civil service of a State or holding a civil post in the State ceases to hold office during the pleasure of the Governor of that State. He submitted that as a consequence of the provisions of Section 68 of the 2000 Act, the petitioner who was a member of a civil service in the State of Madhya Pradesh and was holding a civil post under the State of Madhya Pradesh ceases to hold office during the pleasure of Governor of Madhya Pradesh.

This contention of Mr. Jayaraman is also misconceived because Article 310(1) of the Constitution starts with the expression "except as expressly provided by the Constitution". As we have seen, under Article 4 of the Constitution Parliament has powers to make supplemental provisions while forming a new State comprising territories of an erstwhile State in exercise of its powers under Article 3 of the Constitution. In exercise of such powers conferred by the Constitution, Parliament has made the provisions in Sections 68, 69 and 70 of the 2000 Act. The provisions in Sections 68,69 and 70 of the 2000 Act are also not ultra vires Article 310(1) of the Constitution.

Mr. Jayaraman next submitted that Section 69 of the 2000 Act makes it abundantly clear that nothing in Section 68 of the 2000 Act shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of conditions of service of the persons serving in connection with the affairs of the Union or State Legislature. He further submitted that Part XIV of the Constitution is titled "Services under the Union and the States" and contains inter alia Articles 309, which provides that conditions of service of persons serving in connection with the affairs of the State will be regulated by the State Legislature by law and until such law is made, the Governor of the State may make rules regarding the conditions of service of the persons. He submitted that in case the petitioner who was serving in connection with the affairs of the State of Madhya Pradesh is allotted the State of Chhattisgarh, his conditions of service and in particular his chances of promotion will be affected.

Section 69 of the 2000 Act which protects the conditions of service of all persons serving in connection with the affairs of Union or any State is part of the 2000 Act. The petitioner had filed W.P. No. 998/2003 before this Court and by order dated 19-4-2004, a learned Single Judge of this Court has disposed of the writ petition with the direction that the authorities shall consider the case of the petitioner for promotion year-wise in accordance with rules, if permissible within a period of four months. Hence in case the petitioner is entitled for promotion in accordance with the rules, his case will have to be considered for such promotion in accordance with the rules and in the event the petitioner is not granted promotion it is always open for him to move this Court separately challenging the denial of promotion.

We therefore, do not find any merit in the contention of the petitioner that the provisions of Sections 68,69 and 70 of the 2000 Act are ultra vires the Constitution. In case the petitioner has any grievance other than the grievance that Sections 68, 69 and 70 of the 2000 Act are ultra vires the Constitution, it is open for him to file a separate petition before this Court and if any such petition is filed the same shall be considered on its own merit.

Mr. Jayaraman also stated that the petitioner has not been paid salary for about six years after the allocation order was passed. It is open for the petitioner to file a separate petition raising the aforesaid grievance and, if such a petition is filed the same shall be considered on its own merit.

The writ petition is dismissed.