
(1967) 04 AHC CK 0023
In the Allahabad High Court
Case No : First Appeal No. 10 of 1964

Kunwar Bahadur	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 27-04-1967

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)

Citation : AIR 1969 All 414 : (1967) 37 AWR 362 : (1969) CriLJ 1011 : (1968) 2 LLJ 16

Hon'ble Judges : V.G. Oak, J;S.N. Dwivedi, J;Gangeshwar Prasad, J

Bench : Full Bench

Advocate : M.P. Singh, for the Appellant; N.D. Pant, for the Respondent

Final Decision : Dismissed

Judgement

Oak, J.—The following question of law has been referred to this Full Bench:

"Would the provisions of Article 311(2) of the Constitution of India apply to the case of the appellant in the circumstances of the present case?"

2. The facts of the case are these. Kunwar Bahadur was employed as a clerk in the Evacuee Property Department. On 17-5-1956 he was convicted by a Special Judge (Anti-Corruption) for taking a bribe. On 21-5-1956 the Deputy Custodian of Evacuee Property, Allahabad passed an order terminating Kunwar Bahadur's services with effect from 17-5-1956. No opportunity to show cause as provided in Article 311(2) of the Constitution of India was given to him before passing the order dated 21-5-1956. Kunwar Bahadur appealed against the order of conviction. The appeal was allowed by this Court on 9-4-1957. Kunwar Bahadur instituted a suit in the Court of the Civil Judge, Allahabad for a declaration that the order of removal of the plaintiff from service is void, and the plaintiff continues in service. He also claimed the recovery of arrears of pay up to the date of the suit. The plaintiff's suit was dismissed by the trial Court, Kunwar Bahadur, plaintiff has appealed to this Court.

3. When the appeal came up for hearing before a Division Bench of this Court, learned counsel for the parties advanced arguments on the question whether the plaintiff was entitled to the protection of Clause (2) of Article 311 of the Constitution. On finding that there is some conflict of opinion on this question, the Division Bench referred the question of law quoted above to a Full Bench.

4. The question for consideration is whether the plaintiff appellant is entitled to the protection of Clause (2) of Article 31 of the Constitution. Clause (2) of Article 311 states:

"No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this Clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) ..

(c) ..

5. According to Mr. N. D. Pant appearing for the defendants-respondents, the present case is covered by Sub-clause (a) of the proviso. Consequently, the plaintiff cannot get the benefit of clause (2) of Article 311. According to Mr. M. P. Singh appearing for the plaintiff-appellant, the present case is not covered by Sub-clause (a) of the proviso. So, the plaintiff is entitled to the benefit of Clause (2) of Article 311.

6. In *M.S.M. Railway Co. v. Ranga Rao*, AIR 1940 Mad 269 it was held that if a railway company had the right to dismiss its servant when he was convicted, he could not be compelled to take him back into its employment when the conviction was set aside at some later date as a result of revision proceedings.

7. Similarly, in *N.W.R. Johnson v. General Manager, B. N. Railway* AIR 1955 N. U. C. 1793 it was held that once a government servant is dismissed upon a ground which is valid at the time of dismissal, it does not follow that he must be taken back if later on that ground disappears. Under rule 1706-R a railway servant is liable to dismissal from service upon conviction by a criminal Court, and the railway company cannot be compelled to take him back into its employment when the conviction is set aside in appeal at some later date.

8. It will be seen that *Ranga Rao's* case AIR 1940 Mad 269 was decided by Madras High Court long before the commencement of the Constitution of India. The decision by Calcutta High Court in *Johnson's* case AIR 1955 NUC 1793 seems to be based largely on the relevant provisions of the Railway Code. So, these two decisions are not of much help for understanding the true scope of Article 311 of the Constitution.

9. In *U. P. State v. Mohammad Nooh* AIR 1958 SC 86 their Lordships of the Supreme Court observed on page 95:

"...under the Indian Law and procedure an original decree is not suspended by the presentation of an appeal nor is its operation interrupted where the decree on appeal is merely one of dismissal. There is nothing in the Indian Law to warrant the suggestion that the decree or order of the Court or tribunal of the first instance becomes final only on the termination of all proceedings by way of appeal or revision. The filing of the appeal or revision may put the decree or order in jeopardy but until it is reversed or modified it remains effective."

10. In *Dilbagh Rai Jarry Vs. The Divisional Superintendent, Northern Rly. and Others*, it has been held by Grover, J. that if a person is acquitted by a Court of law, then it cannot be said that there is any conviction in the sense in which it is used under proviso (a) to Article 311(2) of the Constitution.

11. In *R.S. Das Vs. Divisional Superintendent, Allahabad*, it was held by Tandon, J. that a proceeding will not be said to have led to a government servant's conviction if it has not resulted ultimately in conviction or as a consequence of appeal has ended in an acquittal.

12. In *Union of India (UOI) Vs. R. Akbar Sheriff*, it was held that immunity of a civil servant from dismissal etc. without compliance with the provisions of Article 311(2) is taken away under proviso (a) to Article 311(2) in a case where the dismissal or removal from service or reduction in rank is based upon the ground of conduct which resulted in his conviction on a criminal charge. Once the conviction is set aside or quashed, the dismissal order must fall to the ground. An acquittal of a person of a criminal charge by a higher Court setting aside the conviction passed by a subordinate or an inferior Court is tantamount to the person not having been convicted at all.

13. In *Dhanji Ram Sharma Vs. Union of India and Another*, it was held that the word "conviction" used in proviso (a) to Article 311(2) can have only one meaning that the person convicted must have been convicted finally.

14. In *Tarini Kumar Vs. Chief Commercial Superintendent Eastern Railway and Another*, it was held that when a conviction is set aside by the appellate Court, the position at law would be as if the government servant was never convicted at law and the dismissal not having been made in conformity with Article 311(2), became a nullity from the date of acquittal on appeal.

15. *The Divisional Superintendent, Northern Railway, Allahabad Vs. Ram Saran Das*, All is a decision by a Division Bench of this Court. N. U. Beg. J. (as he then was) observed on page 337:

"...there can be no manner of doubt that the words "led to his conviction on a criminal charge" can only mean a criminal charge which was finally resulted in the conviction of the person proceeded against."

16. There is thus overwhelming authority in support of Mr. M. P. Singh's contention that if conviction is set aside in appeal, Government cannot claim the benefit of Sub-clause (a) of the proviso to Article 311(2).

17. Mr. N. D. Pant urged that all that has to be established for purposes of Sub-clause (a) of the proviso is that the order of dismissal followed an order of conviction recorded by a criminal Court. The language of Sub-clause (a) lends some support to this contention. But in interpreting a constitutional provision, literal construction is not always helpful. One must understand the principle underlying the constitutional provision.

18. Article 311 appears in Part XIV of the Constitution. Part XIV deals with Services under the Union and the States. Framers of the Constitution were anxious that Government employees should have a feeling of security of service. Government servants have, therefore, been given an assurance in Article 311(2) that no drastic action will be taken against them without giving them a reasonable opportunity of showing cause against the proposed punishment. To this rule, there are three exceptions. The three exceptions have been enumerated in Sub-clauses (a), (b) and (c) of the proviso. In the present case we are concerned with the exception recognised by Sub-clause (a) of the proviso. All that a civil servant can reasonably claim is a reasonable opportunity of proving his innocence. Opportunity for establishing innocence given to an accused in a criminal trial is at least as liberal as that given to a civil servant in a departmental enquiry. If the civil servant has been convicted by a criminal Court, there is at much point in holding a departmental enquiry. That is the principle underlying Sub-clause (a) of the proviso to Article 311(2). But, Sub-clause (a) implies that the civil servant's conviction stands. If the conviction is ultimately set aside in appeal or in revision, it cannot be said that the civil servant's misconduct has been established before the criminal Court. In such a case the civil servant can properly claim a departmental enquiry under Article 311(2).

19. Mr. N. D. Pant urged that if the interpretation suggested, by Mr. M. P. Singh is accepted, there would be inordinate delay in the disposal of departmental proceedings. In every case Government will have to wait for the result of an appeal or revision. Now, it is always open to Government to pass an order of dismissal or removal from service immediately after a criminal Court records conviction. In that case the administration runs the risk of the conviction being later set aside in appeal or revision. It is for the administration to decide whether in a particular case it should pass an order of dismissal or removal immediately after conviction by the trial Court, or wait for the result of a possible appeal or revision. Such considerations of expediency can have little bearing on the interpretation of Article 311 of the Constitution.

20. The impugned order dated 21-5-1956 ran thus;

"Having been convicted by the District & Sessions Judge, Allahabad acting as a Special Judge, the services of Sri Kunwar Bahadur. . . are terminated with effect

from the date of conviction i.e. 17-5-1956."

Mr. N. D. Pant conceded that, although the order purports to be an order terminating the plaintiff's services, the order is in substance an order removing Kunwar Bahadur from service. Article 311 is, therefore, attracted. The only question is whether the respondents can get the benefit of Sub-clause (a) of the proviso or not. As explained above, although the plaintiff was initially convicted by the trial Court on 17-5-1956, that conviction was ultimately set aside in appeal on 9-4-1957. The respondents are not, therefore, entitled to the benefit of Sub-clause (a) of the proviso.

21. My answer to the question of law referred to the Full Bench is this. In the circumstances of the present case, the respondents are not entitled to the benefit of Sub-clause (a) of the proviso to Article 311(2), and the plaintiff-appellant is entitled to the protection of Clause (2) of Article 311 of the Constitution.

Dwivedi, J. :

22. The question referred to us involves the interpretation of Clause (a) of the proviso to Article 311(2) of the Constitution. It is a substantial reproduction of Clause (a) of the proviso to section 240(3) of the Government of India Act, 1935. Clause (a) of the proviso to Section 240(3) was based on the Report of the Joint Committee on Indian Constitutional Reform. The Committee had recommended that no civil servant should be liable to dismissal or reduction in rank without being given formal notice of any charge made against him and an opportunity of defending himself "unless he has been convicted in a criminal court"

23. This is the short history of the genesis of Clause (a) of the proviso to Article 311(2). The true import of Clause (a) should be discovered from its language, context and scheme.

24. The key-words in Clause (a) are "on the ground of "conduct" which has "led to his conviction" on a criminal charge". Firstly, the conduct for which the servant is being dismissed, removed or reduced in rank should be the basis of his conviction. Secondly, the conduct should result in his conviction. One of the meanings of the verb "to lead to" is "to have as a result". Report of the Joint Committee on Indian Constitutional Reform, Vol. I, page 340; Shorter Oxford Dictionary (1955) page 1119. If this meaning is attributed to the words "led to" in Clause (a), then the conduct should result in his conviction. If that is so, as I think, then where the conviction is set aside by a court in appeal or revision, it is difficult to say that the conduct has "resulted in" or "led to" his conviction,

25. Let us now examine the context with scheme of Clause (a). It is associated with clauses (b) and (c) of the proviso. Clause (b) dispenses with the hearing requirement of Article 311(2) when it is impracticable, for instance, when the employee is absconding. Clause (c) dispenses with hearing when it is inexpedient in the interest of the security of the State. These are judicially recognized areas

where the audi alteram partem rule does not operate: S. A. de Smith: Judicial Review of Administrative Action (1959 Edn) pages 119 and 121. In the context of clauses (b) and (c) Clause (a) appears to exclude the said rule because after conviction in a court of law it is considered to be inessential. It is supposed that this area exclusion inheres in the principle of natural justice which assures the essence of justice or "rational justice". The reason for the exclusion of hearing is that the misconduct of the employee has already been proved in a regular trial in the court of law. But this reason disappears where the conviction is upset in appeal or revision. The finding of guilt is then gone, and the misconduct remains unproven. The reason disappearing, the exclusion of hearing becomes unjust and unfair.

26. During arguments a question was put to Sri Pant: Can the superior departmental authority set aside the punishment based on conviction if it is upset in appeal or revision? His reply was in the affirmative. I fail to understand why the punishment should stand if the conviction is set aside in appeal or revision while no departmental proceeding against the punishment is pending.

27. Sri Pant strenuously pressed upon us that our view will delay the employee's day of judgment until the appeal or revision against his conviction has been decided. I am not quite certain that it is the inevitable result of our view. But that aside, the argument is the familiar old argument of administrative convenience. It was laid to rest about two decades ago by Lord Atkin with this eloquent epitaph: Convenience and justice are often not on speaking terms. General Medical Council v. Spackman 1943 A. C. 627. So no more be said of it.

28. Having regard to the language, context and scheme of Clause (a) and to its serious impact on the employees' right to livelihood I concur with the opinion of Sri Justice Oak.

Gangeshwar Prasad, J.

29. I have had the advantage of reading the judgments of Mr. Justice Oak and Mr. Justice Dwivedi and I am in respectful agreement with them. I, however, wish to add a few words in regard to the main argument advanced on behalf of the Union of India by Sri N. D. Pant.

30. It was contended that the applicability of Article 311(2) of the Constitution to the case of the appellant has to be determined with reference to the state of things existing at the time of his dismissal, and since the appellant was at that time a person who stood convicted on a criminal charge he could be dismissed on the ground of the conduct for which he had been convicted, without being given an opportunity of showing cause against the action proposed to be taken in regard to him. This contention appears to ignore an essential feature of a conviction which is liable to be set aside.

31. So long as a conviction remains liable to be set aside it cannot be said to be determinate in its nature and its legal consequences, whether the conviction is

already in question before a superior court or not. The state of things created thereby is liable to change and, naturally, an order of dismissal which seeks to justify its non-compliance with the requirement of Article 311(2) on the basis of such a conviction stands upon an insecure foundation. The order cannot have a higher validity than the conviction from which it derives its precarious justification and it must remain subject to the ultimate shape which is given to the state of things by the order of the superior court before which the conviction is challenged. If the conviction is set aside the state of things is made to undergo a change not merely from the date of the setting aside of the conviction but from the date of the conviction itself. Indeed, a finding of guilt recorded against a person cannot be said to have been effectively set aside if the reversal and the setting aside were to operate only from the date when the order to that effect is made and the person concerned were to be, even thereafter, regarded as having remained guilty and convicted till then. Such an order, whenever it may come to be made, has the effect of wiping out the finding of guilt and the conviction altogether. Whether a person was entitled to the safeguard provided by Article 311(2) and whether he has had the benefit of that safeguard are justiciable matters and it should, therefore, follow that when a court is called upon to decide these matters it has to see whether, in the light of the final outcome of the criminal proceeding in respect of the conduct for which the said person was dismissed, it can be said that the proceeding had led to his conviction. If it is found that the conviction was subsequently set aside, it must, in my opinion, be held that at no point of time was the person concerned a person whose conduct, on the ground on which he was dismissed from service, had led to his conviction.

32. Article 311(2) of the Constitution would, therefore, apply to the case of the appellant.

BY THE COURT

33. Our answer to the question of law referred to the Full Bench is as follows:

34. In the circumstances of the present case, the respondents are not entitled to the benefit of Sub-clause (a) of the proviso to Article 311(2), and the plaintiff-appellant is entitled to the protection of Clause (2) of Article 311 of the Constitution.