
(2015) 07 AHC CK 0118

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 37478 of 2015

Mahavir Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-07-2015

Acts Referred:

Constitution of India, 1950 — Article 12, 236, 309, 311, 311(1)
Prevention of Corruption Act, 1988 — Section 19(1)

Citation : (2015) 7 ADJ 90 : (2015) 4 ESC 2316

Hon'ble Judges : Dilip Gupta, J; Vinod Kumar Misra, J

Bench : Division Bench

Advocate : Arun Kumar Singh, for the Appellant; R.N. Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. This petition seeks a direction that the notification dated 17 September 2013 which amends the definition of "Competent Authority" in Regulation 2(1)(g) of the Sarva U.P. Gramin Bank (Officers and Employees) Service Regulations, 2010 (the Regulations) should be declared ultra-vires the provisions of Article 311 of the Constitution. The petitioner is a Scale-II Officer in the Sarva U.P. Gramin Bank (the Bank). The General Manager of the Bank has granted sanction under Section 19(1) of the Prevention of Corruption Act, 1988 for prosecution of the petitioner. According to the petitioner, such sanction was granted by the General Manager in view of the amended definition of "Competent Authority" in Regulation 2(1)(g) of the Regulations, while it is the Chairman alone who, as the Appointing Authority, could have granted sanction. The submission of learned counsel for the petitioner is that sanction could only be granted by the Appointing Authority and not any Authority lower than the Appointing Authority in view of the provisions of Article 311 of the Constitution.

2. Learned counsel for the petitioner has stated that the Appointing Authority of the petitioner under Regulation 2(1)(b) of the Regulations is the Authority

prescribed in Regulation 5(1) of the Regulations and Regulation 5(1) provides that the Chairman shall be the Appointing Authority in respect of an Officer and the General Manager shall be the Appointing Authority in respect of an employee. Learned counsel has also pointed out that initially the Competent Authority defined in Regulation 2(1)(g) was the Chairman in respect of the Officers and the General Manager in respect of the employees but subsequently though the Appointing Authority continues to remain the same, the definition of the Competent Authority by notification dated 17 September 2013 has been changed and is as follows:

"2. In regulation 2 of the Sarva U.P. Gramin Bank (Officers and Employees) Service Regulations, 2010 (hereinafter referred to as the said regulations) in sub-regulation (1), for clause (g), the following clause shall be substituted, namely:

(g) "Competent Authority" means:

(i) the Chairman in respect of Officer Scale-III, IV and V;

(ii) the General Manager in respect of Officer Scale-I and II; and

(iii) an officer not below the rank of Scale-IV in respect of employees relating to Group "B" Office Assistant (Multipurpose) and Group "C" Office Attendant (Multipurpose) as decided by the Board."

3. It is contention of the learned counsel for the petitioner that the power to remove the petitioner has now been conferred on the General Manager who is subordinate to the Appointing Authority of the petitioner who is the Chairman.

4. The first issue that would arise for consideration is whether Article 311 of the Constitution would be applicable to Officers or Employees of a Bank.

5. It is the submission of Sri R.N. Singh, learned counsel for the respondent-Bank that the Officers or Employees of a Bank are not entitled to the protection of Article 311 of the Constitution.

6. In order to examine this issue, it would be appropriate to reproduce Article 311 and Article 312 of the Constitution which are as follows:

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State--(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

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312. All-India Services.--(1) Notwithstanding anything in Chapter VI of Part VI or Part XI, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all-India services (including an all-India judicial service)

common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.

(2) The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.

(3) The all-India judicial service referred to in clause (1) shall not include any post inferior to that of a district judge as defined in Article 236.

(4) The law providing for the creation of the all-India judicial service aforesaid may contain such provisions for the amendment of Chapter VI of Part VI as may be necessary for giving effect to the provisions of that law and no such law shall be deemed to be an amendment of this Constitution for the purposes of Article 368."

7. Article 311 of the Constitution of India cannot come to the aid of the petitioner since it applies to the members of the civil service of the Union or an all-India service or a civil service of a State or who holds a civil post under the Union or a State. Admittedly, the employees of the Bank do not fall under any one of these categories and they cannot seek the protection of Article 311(1) of the Constitution. The employees of the Bank can claim only such rights, which have been conferred under the Regulations. The Regulations provide that the Disciplinary Authority could be the General Manager and in the absence of any such provision as Article 311 of the Constitution of India in the Regulations, it is not open to the petitioner to contend that the General Manager cannot grant sanction since he is an authority lower than the Appointing Authority.

8. In *Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd.*, AIR 1970 SC 1150 : (1970) 20 FLR 227 : (1970) 2 LLJ 499 : (1970) 1 SCC 177 : (1970) 3 SCR 363 , the Supreme Court examined whether the employees of the Hindustan Steel Ltd. would be entitled to the benefit of Article 311(1) of the Constitution and it was held that even though the Hindustan Steel Ltd. was entirely financed by the Government and its management was virtually with the Government of India but the employees did not hold "a civil post under the Union" and, therefore, not entitled to the benefit of Article 311. The relevant observations are:

"Clause (2) of the article, which gives the protection opens with the words "no such person as aforesaid" and these words take one back to clause (1) which describes the person or persons to whom the protection is intended to go. Clause (1) speaks of (i) persons who are members of (a) a Civil Service of the Union, or (b) an All-India Service or (c) a Civil Service of a State, or (ii) hold a civil post under the Union or a State, (a), (b) and (c) refer to the standing services which have been created in the Union and the States and which are permanently maintained in strength. In addition to the standing services there are certain posts which are outside the permanent services. The last category in Article 311(1) therefore speaks-of such posts on the civil side as opposed to the military

side. Incumbents of such posts also receive protection.

In the present case the appellant did not belong to any of the permanent services. He held a post which was not borne on any of the standing services. It was, however, a civil post as opposed to a military post. So far the appellant's case is clear but the clause speaks further that such posts must be under the Union or a State. The question thus is whether the servant employed here can be said to have held the post under the Union or a State? The appellant contends that since Hindustan Steel Limited is entirely financed by the Government and its management is directly the responsibility of the President, the post is virtually under the Government of India.

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We must, therefore, hold that the corporation which is Hindustan Steel Limited in this case is not a department of the Government nor are the servants of it holding posts under the State. It has its independent existence and by law relating to Corporations it is distinct even from its members. In these circumstances, the appellant, who was an employee of Hindustan Steel Limited, does not answer the description of a holder of a "civil post under the Union" as stated in the article. The appellant was not entitled to the protection of Article 311. The High Court was therefore right in not affording him the protection. The appeal fails and is dismissed but in the circumstances of the case we make no order about costs. Appeal dismissed"

9. The aforesaid decision of the Supreme Court in *S.L. Agarwal (supra)* was subsequently followed by the Supreme Court in *Rajasthan State Road Transport Corporation and others v. Gurudas Singh*, (2004) 13 SCC 418 and it was observed:

"7. A bare reading of the aforesaid provision in the Constitution shows that it is applicable only to a member of civil service or the Union or all-India service or civil service of a State or a person holding civil post under the Union or a State.

8. For the purpose of Article 12 the Corporation may be treated as an "authority" for the purpose of being subject to Part III of the Constitution.

9. In *Som Prakash Rekhi Vs. Union of India (UOI) and Another*, AIR 1981 SC 212 : (1981) 1 LLJ 79 : (1981) 1 SCC 449 , this Court categorically observed that Bharat Petroleum Corporation Ltd. was a limb of Government, an agency of the State, a vicarious creature of the statute working on the wheels of the Acquisition Act. It was however that the conclusion does not mean that for the purpose of Article 309 or otherwise, the aforesaid Government company is a State and it was limited to Article 12 and Part III of the Constitution.

10. Judged in the light of the decisions of the two Constitution Bench decisions referred to above, the inevitable conclusion is that the respondent was not entitled to protection under Article 311 of the Constitution. Article 311 occurs in Part XIV of the Constitution which deals with "Services under the Union and the

State" and more specifically in Chapter I of that part which deals with "Services". The heading of the article reads "Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or State". The text of the article refers to members of civil services of the Union or an all-India service or a civil service or a civil post under the Union or a State. A Constitution Bench of this Court in *S.L. Agarwal (Dr.) v. G.M. Hindustan Steel Ltd.* considered as to who are the persons entitled to the protection of Article 311. In *State of Assam v. Kanak Chandra Dutta*, also applicable tests were indicated by a Constitution Bench."

10. The aforesaid decision of the Supreme Court in *S.L. Agarwal (supra)* was also followed subsequently in *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*, AIR 2005 SC 4217 : (2005) 107 FLR 407 : (2005) 8 JT 425 : (2005) 7 SCC 764 : (2005) SCC(L&S) 1020 : (2005) 3 SCR 314 Supp : (2006) 1 SLJ 267 and it was observed:

"12. As far as the status of the appellant is concerned, it must be stated that Mr. Rao, Senior Advocate fairly conceded at the hearing of the appeal and the writ petition that the appellant is not governed by Article 311 of the Constitution since he cannot be said to be "civil servant". In this connection, it will be profitable to refer to a decision of the Constitution Bench of this Court in *Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd.*, AIR 1970 SC 1150 : (1970) 20 FLR 227 : (1970) 2 LLJ 499 : (1970) 1 SCC 177 : (1970) 3 SCR 363 . In that case, A was appointed as Assistant Surgeon by the Board of Directors of the Corporation for one year. After completion of the probation period, he was employed on contract basis and his services were terminated in accordance with the terms of the contract. He filed a writ petition in the High Court contending that his services were wrongly terminated which was violative of Article 311 of the Constitution. The Corporation contended that Article 311 was not applicable to him as he was employed by the Corporation and he neither belonged to Civil Service of the Union nor held a civil post under the Union.

13. Upholding the objection and considering the ambit and scope of Article 311, this Court held that an employee of a Corporation cannot be said to have held a "civil post" and, therefore, not entitled to protection of Article 311. According to the Court, the Corporation could not be said to be a "department of the Government" and employees of such Corporation were not employees under the Union. The Corporation has an independent existence and the appellant was not entitled to invoke Article 311. *Dr. S.L. Agarwal Vs. The General Manager, Hindustan Steel Ltd.*, AIR 1970 SC 1150 : (1970) 20 FLR 227 : (1970) 2 LLJ 499 : (1970) 1 SCC 177 : (1970) 3 SCR 363 has been followed by this Court in several cases. [See *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation*, AIR 1975 SC 1331 : (1975) 30 FLR 283 : (1975) LabIC 881 : (1975) 1 LLJ 399 : (1975) 1 SCC 421 : (1975) 3 SCR 619 ; *Som Prakash Rekhi*

Vs. Union of India (UOI) and Another, AIR 1981 SC 212 : (1981) 1 LLJ 79 : (1981) 1 SCC 449 ; A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., AIR 1984 SC 1361 : (1984) 49 FLR 119 : (1984) 2 LLJ 186 : (1984) 1 SCALE 798 : (1984) 3 SCC 316 : (1984) 3 SCR 646 : (1984) 2 SLJ 82 : (1984) 16 UJ 733 ; Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, AIR 1988 SC 469 : (1987) 4 JT 621 : (1988) 1 LLJ 341 : (1987) 2 SCALE 1278 : (1988) 1 SCC 236 : (1988) 2 SCR 260 ; Pyare Lal Sharma Vs. Managing Director and Others, AIR 1989 SC 1854 : (1990) 67 CompCas 195 : (1989) 3 ComplJ 70 : (1989) 25 ECR 6 : (1989) 59 FLR 220 : (1989) 3 JT 133 : (1989) LabIC 1941 : (1990) 1 LLJ 32 : (1989) 2 SCALE 59 : (1989) 3 SCC 448 : (1989) 3 SCR 428 : (1989) 3 SLJ 1 : (1989) 2 UJ 526 ; State of Bank of India Vs. S. Vijaya Kumar, AIR 1991 SC 79 : (1991) 61 FLR 605 : (1990) 3 JT 308 : (1991) 2 LLJ 122 : (1990) 2 SCALE 110 : (1990) 4 SCC 481 : (1990) 3 SCR 398 : (1990) 2 UJ 467 ; Satinder Singh Arora v. State Bank of Patiala, (1992) Supp 2 SCC 224].

14. In view of the above pronouncements of this Court, there is no doubt that the respondent-Corporation is right in submitting that the appellant cannot invoke Article 311 by describing him as holding "civil post" under the Union or a State. Article 311 of the Constitution, therefore, has no application to the facts of the case."

11. In G.B. Pant Agricultural and Technology University Vs. Kesno Ram, AIR 1995 SC 718 : (1994) 2 SCALE 1063 : (1994) 4 SCC 437 : (1994) 3 SCR 917 : (1995) 1 SLJ 216 : (1994) 2 UJ 331 , the Supreme Court held that since the University is not governed by Article 311(2), the finding of the High Court that the order of termination is violative of Article 311(2) was illegal.

12. The issue as to whether the employees of the Bank can take the benefit of Article 311 of the Constitution to contend that they cannot be dismissed or removed by an authority subordinate to that by which they were appointed was also examined by the Supreme Court in State of Bank of India Vs. S. Vijaya Kumar, AIR 1991 SC 79 : (1991) 61 FLR 605 : (1990) 3 JT 308 : (1991) 2 LLJ 122 : (1990) 2 SCALE 110 : (1990) 4 SCC 481 : (1990) 3 SCR 398 : (1990) 2 UJ 467 . It was held that as they do not fall under any of the categories enumerated in Article 311(1) of the Constitution and so they cannot take the benefit of Article 311(1) of the Constitution. The relevant observations are as follows:

"10. The question which calls for consideration in all these cases is whether the order of dismissal could be passed by the Chief General Manager who was lower in rank to the Executive Committee who was the appointing authority in these cases.

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.....A perusal of the relevant Regulations and Rules mentioned above clearly go to show that the Chief General Manager had become the appointing authority of the employees in question under Regulation 55(2)(a) with effect

from July 1, 1974. Admittedly the orders of dismissal have been passed long after these amendments when the Chief General Manager had already become their appointing authority under the Regulations and the Rules. The right that an officer or employee of the State Bank of India cannot be dismissed from service by an authority lower than the appointing authority is a creation of statutory rules and regulations. So far as the right or protection guaranteed under Article 311 of the Constitution is concerned, it applies to members of the Civil Service of the Union or an All India service or a Civil Service of a State or who holds a Civil Post under the Union or a State. Admittedly 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 employees of the State Bank can only claim such rights which have been conferred under Regulation 55(2)(a) of the General Regulations. The only right conferred under the said provision is that the officers or employees of the State Bank cannot be dismissed by an authority lower than the appointing authority. With the risk of repetition it may be stated that on the date when the order of dismissal has been passed, Chief General Manager had already become the appointing authority and as such the order of dismissal has not been passed by an authority lower than the appointing authority."

(emphasis supplied)

13. The aforesaid decision in *S. Vijaya Kumar* (supra) was followed by the Supreme Court in *Satinder Singh Arora v. State Bank of Patiala and others*, (1992) Supp. 2 SCC 224 and it was held:

"6. The second contention raised by the petitioner seems to be covered by the decision of this Court in *State of Bank of India Vs. S. Vijaya Kumar*, AIR 1991 SC 79 : (1991) 61 FLR 605 : (1990) 3 JT 308 : (1991) 2 LLJ 122 : (1990) 2 SCALE 110 : (1990) 4 SCC 481 : (1990) 3 SCR 398 : (1990) 2 UJ 467The position is the same in our case also and, there-fore, the petitioner's contention in this behalf must be rejected as devoid of merit.

7. It was then contended by Mr. Garg that the Bank employees were entitled to claim protection under Article 311(1) of the Constitution which permitted termination of employment by an authority which is not subordinate to that "by which he was appointed". A similar contention was raised in *S. Vijaya Kumar* case (supra) also. This Court after pointing to the difference in the language of the competing provisions observed that while Article 311(1) uses the words "by which he was appointed" Regulation 55(2)(a) uses the expression appointing authority which makes a substantial difference and permits the appointing authority for such category of employee at the date of the passing of the order to pass an order of punishment.

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14. It is, therefore, clear from the aforesaid decisions of the Supreme Court that the employees of the Bank cannot take the protection of Article 311(1) of the

Constitution.

15. The next issue that arises for consideration is whether the General Manager could have granted sanction to the prosecution of the petitioner though the appointing authority of the petitioner is the Chairman.

16. This issue has also been decided against the petitioner by the Supreme Court in *S. Vijaya Kumar (supra)*. It has been held that an employee of a Bank can claim such rights which has been conferred upon them under the Regulations. Under the Regulations sanction can be granted by the competent authority and when sanction was actually granted, the General Manager was the competent authority.

17. This is also what was observed by the Supreme Court in *Pyare Lal Sharma Vs. Managing Director and Others*, AIR 1989 SC 1854 : (1990) 67 CompCas 195 : (1989) 3 CompLJ 70 : (1989) 25 ECR 6 : (1989) 59 FLR 220 : (1989) 3 JT 133 : (1989) LabIC 1941 : (1990) 1 LLJ 32 : (1989) 2 SCALE 59 : (1989) 3 SCC 448 : (1989) 3 SCR 428 : (1989) 3 SLJ 1 : (1989) 2 UJ 526 . Pyare Lal Sharma was employed as a Chemical Engineer in the Jammu & Kashmir Industries Ltd. which was a company wholly owned and managed by the State of Jammu & Kashmir. The Managing Director terminated his services. It was observed that the employees of the company were not entitled to the protection of Article 311(1) of the Constitution and there was no protection in the Articles of Association or the Regulations of the Company giving the same protection to employees of the Company as was given to civil servants under Article 311(1) of the Constitution. Thus, though Pyare Lal Sharma had been appointed by the Board of Directors but this power was subsequently delegated to the Managing Director and as such from that date of delegation, the Managing Director became the appointing authority and was legally competent to terminate his services. The relevant observations are:

"19. We may now take up the third point. Sharma was appointed as Chemical Engineer by the Board of Directors. The powers of the Board of Directors to appoint officers of Sharma's category were delegated to the Managing Director on September 12, 1974 and as such from that date the Managing Director became the appointing authority. Needless to say that employees of the company are not civil servants and as such they can neither claim the protection of Article 311(1) of the Constitution of India nor the extension of that guarantee on parity. There is no provision in the Articles of Association or the regulations of the company giving same protection to the employees of the company as is given to the civil servants under Article 311(1) of the Constitution of India. An employee of the company cannot, therefore, claim that he cannot be dismissed or removed by an authority subordinate to that by which he was appointed. Since on the date of termination of Sharma's services the Managing Director had the powers of appointing authority, he was legally competent to terminate Sharma's services."

18. There is, therefore, no merit in any of the contentions advanced by learned counsel for the petitioner. The writ petition is, accordingly, dismissed.