
(1952) 09 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No. 95/5 of 1952

Oswald Hugh Pedro

APPELLANT

Vs

State of Hyderabad and Shri. S.A. Quader, Chief Engineer

RESPONDENT

Date of Decision : 04-09-1952

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 311, 311(2)

Citation : (1952) 09 AP CK 0012

Hon'ble Judges : Shripatrao Palnitkar, C.J.; Siadat Ali Khan, J

Bench : Division Bench

Advocate : Natrajan, for the Appellant; B.N. Shastry, Government Advocate, for the Respondent

Judgement

1. This is an application for the issue of a writ of certiorari and mandamus. The applicant is a stenographer in the Public Works Department of the State. He started in, the third grade but was later on promoted to the second grade and the order of his promotion stated that he is "appointed temporarily vice No. 1 (Venkatramiah) on Rs. 150/- per mensem from 16-6-1357 Fasli till permanent arrangements are made." On 13th November 1948, he was, however, reverted to his substantive post in the third grade. The writ applications are directed against this order of reversion. We have heard the arguments of the learned advocates of the parties and record our opinion below.

2. The learned advocate for the Petitioner argued that Article 311(2) of the Constitution of India is applicable to the case; that no member of a civil service of a State can be "dismissed or removed or reduced in rank" under it "until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him"; that the Petitioner was reduced in rank without giving him a reasonable opportunity of showing cause as laid down in the abovementioned provisions; and that, therefore, the order should be set aside. He argued further that the order of reversion is discriminating also inasmuch as the Government favoured a so-called refugee who was not really a refugee and

the order of reinstating refugees was ultra vires the Central Act in this respect. Thus, it was argued that the order is violative of the equality clause of the Constitution of India and is, therefore, void and should be quashed by a writ of certiorari and the Petitioner reinstated by a writ of mandamus.

3. We have given due consideration to the above argument which, in our opinion, is wholly untenable from whatever angle we may look at it. In the first place, the statement in the writ petition that the order of reversion was dated 13th November 1948 makes it clear that it was prior to the promulgation of the Constitution of India. It is admitted that the Constitution of India has no retrospective effect. Hence, the writ application pleading contravention of the provisions of Articles 311 and 14 of the Constitution of India in respect of an order of reversion of a civil servant passed prior to the promulgation of the Constitution is misconceived and wholly untenable and should be thrown out on that very ground. Again assuming without holding that the Constitution is applicable, order like the one under, consideration is so palpably of an administrative nature that no writ of certiorari can lie to quash it. Similarly, as held in ? "Reg v. Bodmin Corporation 1892 (2) Queen's Bench 21, no mandamus can lie to compel an. appointment to an office held at the pleasure, of the Crown.

It has been held by the Supreme Court in ? Province of Bombay Vs. Kusaldas S. Advani and Others, and several other cases that a writ of certiorari only lies when the approach of quasi-judicial bodies is judicial. The fact that there is a determination of questions which affects the right of the parties does not make the decision a quasi-judicial one and thus amenable to certiorari jurisdiction; for, as explained in this case by Das J., administrative bodies also determine questions of facts which affect the right of the parties, but their approach is not necessarily judicial or after recording and sifting of evidence. The feature that will separate a quasi-judicial enquiry from an administrative one is the mode or manner in which the opinion, on the basis of which an act is done by an administrative authority in the exercise of its discretion, is formed. The decision of the authority is quasi-judicial it in reaching that decision the authority is required first to ascertain facts by meat us of evidence and is then free to take such action as it may think fit on the facts so ascertained. In such a case, the authority must consider the representation of the parties and give them an opportunity to adduce and examine the evidence. On the other hand, the decision would be purely administrative if in taking the decision the authority has freedom to base its opinion on whatever material it thinks fit, whether obtained in the ordinary course of its executive functions or derived from the evidence at an enquiry, if there is any.

The question, therefore, arises whether dismissal, removal or reduction in rank adumbrated in Article 311 of the Constitution of India is a quasi-judicial act or a purely administrative act. If it is a quasi-judicial act, it will be amenable to certiorari jurisdiction and, on the other hand, if it is an administrative act, it will not be controlled by a writ of certiorari. We are of the opinion that the dismissal,

etc., is purely an administrative act for the reason that, there is nothing in the language of Article 311 to suggest that in issuing such, an order the authority is obliged to act judicially. A reference to Article 310 will show that a civil servant holds office at the pleasure of the administrative authority whether it be President, Governor or the Rajpramukh, as the case may be. They may put an end to his employment any time for any reason stated or unstated if in their opinion the continued employment of the civil servant is detrimental to the interests of the State. No doubt, Article 311(2) prescribes a notice; but sub-article (3) Article 311 dispenses with the notice, if for some reason to be recorded, it is not reasonably practicable to give to that person the notice or an opportunity to show cause. This very fact makes it Clear that the act is an administrative act.

It should be noted further that Articles 310 310 and 311 the Constitution of India reproduce substantially the provisions of Section 240 of the Government of India Act, 1935. Sub-Section 8 Section 240 embodied the same provisions which were contained in Article 311(2). In ? AIR 1945 47 (Federal Court) the Federal Court explained that Section 240(3) only prescribes that after an administrative authority has decided upon punishment, the punishment may not be (sic) before an opportunity is given of show (sic) cause why such punishment should not be opposed. This view of the majority of the federal Court was approved by the Privy Council -- AIR 1948 121 (Privy Council) , where their Lord(sic)ships of the Privy Council observed that:

No action is proposed within the meaning of the Sub-section until a definite conclusion has been come to on the charges and the actual punishment to follow is provisionally determined on. Prior to that stage, the charges are unproved and the suggested punishments are merely hypothetical. It is on that stage being reached that the statute gives the civil servant the opportunity for which Sub-section (3) makes provision.

These decisions of the Federal Court and the Privy Council make it abundantly clear that the reasonable opportunity of showing cause prescribed whether in Article 240, Sub-section (3) of the Government of India Act, 1935 or in the corresponding provisions in -Article 311 (2) of the Constitution does not imply that a civil servant can be dismissed, removed or reduced only if certain facts are found against him by a process analogous to judicial process.

It does not make the charges against a civil servant and the material in support of it, a matter of issue between the civil servant affected and the competent authority.

It is thus quite evidently an administrative act and as already stated, no writ of certiorari lies to quash an administrative act. We are fortified in our view by the learned judgment of Dixit J. in ? "Lilawati v. State of Madhya Bharat AIR 1952 MP 105 where on similar facts a similar opinion has been arrived at.

4. We may also refer to Kewal Mal Singhi Vs. Heta Ram and Others, in which it

has been held that a notice under Article 311 (2) is required only when the civil servant is to be dismissed, removed or reduced in rank due to some fault or failure on his part and not when the action is taken against him in public interest or in the interests of State Service. Here, in the case under consideration, the learned Government advocate has admitted handsomely that the work of the Petitioner is satisfactory and the reduction in his rank is not due to any fault or failure on his part, but in the ordinary official routine. In our opinion, this fact takes away the very ground from under the feet of the Petitioner.

5. Thus, whether we consider the matter under the articles of the Constitution or otherwise, the same conclusion is reached that the Petitioner has no "locus standi". We have already explained that as the reversion took place in November 1948, argument from the Constitution of India is wholly untenable, as the Constitution has no retrospective effect. The matter may, therefore, be determined under rules and orders that were applicable in pre-Constitution days. We have considered that similar provisions existed in the Government of India Act, 1935 and though it is a fact that this Act was not applicable to the Hyderabad State, there is no doubt whatsoever, that in this State also rules based on similar provisions were in force and whether they be the rules for hearing appeals of the members of the judicial, service or Public Works. Department employees, or any other civil servant, they leave no doubt that the decision under which the employees were dismissed, removed or reduced in rank was an administrative act. It is thus evident that the terminating of an officiating or temporary vacancy was fully within the competency of the executive authority and was an administrative act. We are not justified in probing into the reasons of such an act. The petition, therefore, stands dismissed. We have already explained that in "such cases the petition for a writ of mandamus also does not lie. In the circumstances we do not make any order as to costs.