

(1953) 08 MAD CK 0001
In the Madras High Court
Case No : Writ Petition No. 918 of 1952

P. Venkateswararao

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 14-08-1953

Acts Referred:

Constitution of India, 1950 — Article 226, 309, 310, 311(2)
Provincial and Subordinate Services General Rules (Madras) — Rule 22

Citation : AIR 1954 Mad 1043 : (1955) 1 LLJ 391

Hon'ble Judges : Subba Rao, J

Bench : Single Bench

Advocate : Mohan Kumaramangalam, for Row and Reddy, for the Appellant; The A.G., for the Respondent

Final Decision : Allowed

Judgement

Subba Rao, J.—This is an application tinder Article 226 of the Constitution of India for issuing a Writ of Certiorari to quasnithe order of the

Government removing the petitioner from the office of Sub-Magistrate. In or about the end of 1951 the Madras Public Service Commission invited

applications from the Members of the Bar and others for six appointments of Sub-Magistrates In the Madras Supordinate Magisterial service. The

petitioner along with others applied for the post. On 20-3-1952 the Madras Public Service Commission interviewed the candidates. On 29-3-

1952 the petitioner received a communication from the Madras Public Service Commission informing him that subject to his being found to be

physically fit he had been selected provisionally for appointment as a Subordinate Magistrate. He was also asked to send a medical certificate

showing his physical fitness before 15-4-1952. In the list of the selected candidates he was placed first in rank. On 30-4-1952 the High Court

issued an official memorandum to him informing him that he was selected for appointment as Sub-Magistrate. He was also directed to report

himself to the Collector of Kistna peremptorily on 15-5-1952 to undergo the training prescribed in G. o. No. Ms. 2021, Public (Separation)

Department, dated 28-4-1951,

The petitioner received the communication on 8-5-1952 and he reported himself to the Collector of Kristna and commenced his training on 15-5-

1952. On 39-5-1952 the High Court sent to him another communication whereby the petitioner undergoing training in Kistna was withdrawn from

training and posted as Additional Sub-Magistrate, Nellore. He was directed to join forthwith. The petitioner immediately proceeded to Nellore and

joined duty on 6-6-1952.

2. On 29-6-1952 he received from the High Court an order to the effect that his posting was cancelled. The applicant then addressed a petition to

the High Court asking for elucidation of the previous order. On 20-8-1952 the High Court informed him that the Government in consultation with

the Public Service Commission had ordered the removal of his name from the list of candidates selected for appointment as Sub-Magistrates, He

then sent petitions dated 25-8-1952 to the High Court as well as to the Government to reconsider his petition. He received a communication dated

25-11-1952 from the Government informing him that the Government declined to reconsider the orders already passed. He filed the aforesaid writ

for quashing the order of the Government. Learned-counsel for the petitioner raised before me two points:

1. The Government of Madras have no power to remove him as under the Rules the authority appointing him, namely, the High Court of Judicature

at Madras, alone can remove him from service.

2. The Government of Madras have contravened the provisions of Article 311 of the Constitution of India in removing him from service.

The learned Advocate General raised before me two preliminary points. He contended that under Article 310(1) of the Constitution of India, every

person holding any civil post under a State holds office during the pleasure of the Governor and that when the Governor himself removes such a

person from service the safeguards provided under Article 311 against arbitrary removal would not govern him. In any view he argued that the

Court would not issue an order which in effect would be only declaratory in nature and which could not compel the Government to take back the

petitioner into service. He would further state that the authority which removed the petitioner in this case is the High Court and therefore the High

Court or a Judge representing the High Court cannot issue a writ against the High Court. It is not necessary or open to me to consider the first

question as it is concluded by a decision of a Division Bench of this Court consisting of Rajamannar C. J. and Venkatarama Aiyar J. in -- C.

Sambandam Vs. The General Manager, South Indian Railway, Tiruchirapalli, , which is binding on me. Though in terms the contention now

advanced before me by the Advocate General was not put before them, the learned Judges considered the scope of Arts, 310 and 311 of the

Constitution of India.

After considering the corresponding sections in the Government of India Act, and the law bearing on the subject, the learned Judges observed at

page 58:

Thus the rule that civil posts under the Government are held at pleasure is part of the law of this country and it involves the consequence that there

can be termination of service at will. Article 310 provides that this rule is subject to the exceptions "expressly provided by this Constitution." Such

exceptions are provided in Article 310(2) which provides for compensation being paid when a contract for a period is terminated for no

misconduct of the Civil servant; in Article 311(1) which enacts that a person cannot be dismissed by an authority subordinate to that by which he is

appointed; and in Article 311(2) which prescribes that a particular procedure should be followed before a person is dismissed or removed from

service. Subject to these statutory restrictions the general rule embodied in Article 310(1) that all offices under the Government are held at

pleasure will govern the rights of the parties.

It follows from the aforesaid observations that the legal position embodied in Article 310 of the Constitution of India, namely, that 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, is subject to the

provisions of Article 310(2) and Article 311. It cannot therefore be contended that the Governor can remove a civil servant without complying

with the provisions of Article 311.

3. For can I accept the second preliminary objection taken by Advocate General. It is not really a preliminary objection. In effect he argued that

this Court will not issue a writ of certiorari when in view of the previous decisions of the Judicial Committee the Government cannot be compelled

to take back the dismissed servant. In this case if the contention of the petitioner is sound, the High Court would not be passing any infructuous

order. It would be directing the Government to pass a legal order after complying with the provisions of the Constitution of India. To that extent it

would be performing its duty to see that no authority in this State exercised its powers in derogation of the provisions of the Constitution.

4. It is then said that the order sought to be quashed in this case is that of the High Court and the High Court therefore cannot issue a writ against

itself. It is not necessary to consider that point in this case as the records amply bear out that the order was made by the Government and the High

Court only communicated that order to the petitioner. But the order finally sent to the petitioner clearly shows that the Government in consultation

with the Public Service Commission have ordered the removal of the petitioner's name from the list of candidates selected for appointment as Sub-

Magistrates. Indeed there is no order of the High Court removing the petitioner from service. Nor does the petitioner seek to quash any such

order. There are no merits in any of the preliminary contentions raised by the Advocate General.

5. The next question is whether the petitioner was a member of a civil service of a State and held any civil post under the State and whether he was

removed without his being given reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The

appointment and the terms of his service are governed by the rules made by the Government in respect of members of the Provincial and

Subordinate Services and by the special rules made for the Madras Subordinate Magisterial Service. The rules in respect of the members of the

Provincial and Subordinate Services were made by the Governor of Madras in exercise of the powers conferred by paragraph (b) of Sub-section

(2) of Section 241 read with Sections 255 & 275 of the Government of India Act, 1935. They apply to all the Provincial & Subordinate Services.

On 21-3-1950 in exercise of the power conferred by the proviso to Article 309 of the Constitution of India and in supersession of the existing

special rules for the Madras Subordinate Magisterial Service, the Governor of Madras made special rules for the Madras Subordinate Magisterial

Service. The special rules would apply to the Madras Subordinate Magisterial Service and the general rules would apply to that service in so far as

they are not inconsistent with the special rules.

The relevant provisions of the two sets of rules may now be extracted.

Special rules: Rule 2: Appointing authority and controlling: authority:

(1) The appointing and controlling authority in respect of the posts in the service shall be the High Court of Judicature at Madras.

Rule 9: Probation:

Every person appointed to category 2 shall from the date on which he Joins duty, be on probation for a total period of two years on duty within a

continuous period of three years.

General rules: Rule 2 (1): Appointed to a service:

A person is said to be "appointed to a service when In accordance with these rules or in accordance with the rules applicable at the time, as the

case may be, he discharges for the first time the duties of a post borne on the cadre of such service or commences the probation, Instruction or

training prescribed for members thereof.....

2 (3): Approved probationer;

Approved probationer"" in a service, class or category means a member of that service, class or category who has satisfactorily completed his

probation and awaits appointment as a full member of such service, class or category.

2 (7): Full Member: "

Full member"" of a service means a member of that service who has been appointed substantially to a permanent post borne on the cadre thereof.

2 (9): Member of a service:

Member of a service"" means a person who has been appointed to that service and who has not retired or resigned, been removed or dismissed,

been substantially transferred or reduced to another service, or been discharged otherwise than for want of vacancy. He may be a probationer an

approved probationer or a full member of that service.

2 (11): Probationer:

Probationer"" in a service means a member of that service who has not completed his probation.

2 (13): Recruited direct:

A candidate is said to be ""recruited direct"" to a service, class, category or post when, in case his first appointment thereto has to be made in

consultation with the Commission, on the date of its notification inviting applications for the recruitment, and in any other case, at the time of his first

appointment thereto, he is not in the service of the Crown in India or, if he is in that service, a period of five years has not elapsed since his first

appointment to it.

22. Suspension or termination of probation:

(a) Where the special rules of any service prescribed a period of probation for appointment as a full member of the service, the appointing

authority may at any time before the expiry of such period.....

.... (ii) at its discretion, by order, terminate the probation of a probationer and discharge him from the service, after giving him a reasonable

opportunity of showing cause against the action proposed to be taken in regard to him.

6. It will be seen from the aforesaid provisions that a member of a service may be probationer, an approved probationer or a full member of that

service, and that a member in a particular service can only be discharged before the prescribed period of probation by the authority appointing him

after giving him a reasonable opportunity for showing cause against an action proposed to be taken in regard to him. In this case the appointing

authority under the special rules is the High Court of Judicature at Madras, and it is the High Court of Judicature at Madras that can terminate the

probation or discharge him from the service in compliance with the provisions of R. 22 of the General Rules. As I have pointed out, it is the

Government of Madras that removed him from the service in consultation with the Public Service Commission. The question therefore is whether

the Government has the power to remove the Sub-Magistrate who has become a member of the service. Under Article 310 of the Constitution of

India every member of a civil service of a State or who holds a civil post under a State holds office during the pleasure of the Governor. The

Governor, therefore, can certainly remove the petitioner; but he can only do so after complying with the provisions of Article 311 of the

Constitution.

The relevant provisions of Article 311 read:

(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.

(2) 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 this.

As the express provisions of Article 311(2) of the Constitution of India are not complied with it follows that the removal of the petitioner is

contrary to the provisions of the Constitution, and, therefore, invalid. The order of the Government is therefore quashed. This will not preclude the

Government from taking action against the petitioner in accordance with law. The petition, is allowed with costs.