

(1990) 08 SHI CK 0027

In the High Court Of Himachal Pradesh

Case No : C.W.P. No. 320 of 1989 and C.W.P. No. 319 of 1990

Piarchand and Vijay Kumar and Others

APPELLANT

Vs

H.P. Public Service Commission and Others

RESPONDENT

Date of Decision : 08-08-1990

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14(1), 15, 15(1), 28, 4(2)
Constitution of India, 1950 — Article 136, 202, 203(1), 226, 229

Citation : (1990) 2 ILR HP 466

Hon'ble Judges : P.C.B. Menon, C.J.; Davinder Gupta, J

Bench : Division Bench

Advocate : R.K. Bawa and Rajiv Sharma, for the Appellant; D.K. Khanna, for Respondents No. 1 and 2 in CWP No. 320 of 1989 and for Respondent No. 1 in CWP No. 319 of 1990 and C.B. Barowalia, in CWP No. 319 of 1990, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Balakrishna Menon, C.J.—Writ petition No. 319 of 90 relates to the conditions of service of Class 111 employees under the first Respondent, the H.P. Public Service Commission. The Petitioners ten in number have challenged the seniority assigned to Respondents No. 2 to 4 in the cadre of Assistants in the service of the first Respondent. The Petitioners in writ petition No. 320 of 89 challenge the appointment of the third Respondent as Personal Assistant to the Secretary of the first Respondent, HP Public Service Commission. Both these writ -V petitions, therefore, relate to the recruitment and conditions of service of class III employees under the first Respondent.

2. In the affidavit in reply filed by the H.P. Public Service Commission in Writ Petition in 320 of 89, a preliminary objection is raised relating to the maintainability of these petitions before this Court under Article 226 of the Constitution. The disputes raised, according to the first Respondent, are exclusively within the jurisdiction of the State Administrative Tribunal established

u/s 4(2) of the Administrative Tribunals Act, 1985 (for short the Act).

3. The Constitution 42nd amendment Act, 1976 has introduced part XIV-A in the Constitution providing for the establishment of Tribunals for adjudication or trial by tribunals of the disputes referred to there in. Article 323A enables the Parliament by law to provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government. The State Administrative Tribunal is established u/s 4(2) of the Act passed by the Parliament in pursuance to the provisions contained in Article 323-A of the Constitution.

4. Sub-section (1) of Section 15 of the Administrative Tribunals Act, 1985 is extracted below:

(1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court under Article 136 of the Constitution) in relation to:

(a) recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State ;

(b) all service matters concerning a person [not being a person referred to in CI. (c) of this Sub-section or a member, person or civilian referred to in CI. (b) of Sub-section (1) of Section 14 appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation owned or controlled by the State Government;

(c) all service matters pertaining to senile in connection with the affairs of the State concerning a person appointed to any service or post referred to in CI. (b), being a person whose services have been placed by any such local or other authority or corporation or other body as is controlled or owned by the State Government at the disposal of the State Government for such appointment.

5. According to the Petitioners, service under the State Public Service Commission is neither civil service of the State nor does it relate to any civil post under the State. It does not, according to the Petitioners, also pertain to the services in connection with the affairs of the State.

6. We find it difficult to accept these submissions.

7. The State, referred to in Section 15 of the Administrative Tribunals Act, is in contra-distinction with the Union referred to in words Section. 14 of the Act. Article 323A of the Constitution provides for Parliamentary legislation for the

establishment of Administrative Tribunals for adjudication or trial of disputes with respect to the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. The State, referred to in Article 323A and Section 15 of the Administrative Tribunals Act cannot be equated with the Government; the Government being only a limb of the State. It is true that the Public Service Commission is an independent body established under Article 315 of the Constitution. Clause (1) of Article 315 enacts:

Subject to the provisions of this article, there shall be a Public Service Commission for the Union and a Public Service Commission for each State.

8. The functions of the Public Service Commission are enumerated in Article 320 of the Constitution. The Public Service Commission though independent of the Government is also an organ of the State machinery and service under the State Public Service Commission is part of the civil service of the State. The persons in the service of the Public Service Commission are also holding civil posts under State.

9. Counsel for the Petitioners have placed considerable reliance on the decision of the Supreme Court in Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, wherein it was held that the members of the High Court staff and of subordinate judiciary do not fall within the purview of the expression "civil services of the State". It is accordingly contended that the Public Service Commission being an independent body the services under it will not fall within the civil services of the State. In Dikshitulu's case one of the questions considered was whether the Administrative Tribunal constituted in the State of Andhra Pradesh as per Presidential order issued under Article 371-D of the Constitution had exclusive jurisdiction in regard to service matters relating to the High Court Staff and the staff of the Subordinate judiciary. In that case Sarkaria J. on behalf of a Constitution bench observed at page 205:

The phrase "Civil service of the State" remains more or less an amorphous expression as it has not been defined anywhere in the Constitution. Contrasted with it, the expressions "judicial service of the State" and "District Judge have been specifically defined in Article 236, and v. thus given a distinctive, definite meaning by the Constitution-makers. Construed loosely, in its widest general sense, this elastic phrase can be stretched to include the "officers and servants of the High Court" as well as members of the Subordinate Judiciary. Understood in its strict narrow sense, in harmony with the basic constitutional scheme embodied in Chapters v. and VI, Part VI, and centralised in Articles 229 and 235, thereof, the phrase will not take in High Court staff and the Subordinate Judiciary.

10. After considering the principles of interpretation of statutes and the relevant provisions of Chapters v. and VI of Part VI of the Constitution, the Supreme Court held at page 207;

Let us now apply another test which in the circumstances of the case will be

decisive. In that connection, we have to see what consequences will flow if we give this general, undefined and flexible phrase, "Civil services of the State" in Article 371-D(3), the wider construction so as to include in it the High Court staff and the members of the subordinate judiciary. The inevitable result of such an extensive construction will be that the control vested in the Chief Justice over the staff of the High Court, and in the High Court over the Subordinate Judiciary will become shorn of its substance, efficacy and exclusiveness; and after being processed through the conduit of the Administrative Tribunal, will pass on into the hands of the Executive Government, which, under Article 371-D(5), is the supreme authority, having full power to confirm, not to confirm modify or annul the orders of the Tribunal. Such a construction will lead to internecine conflict and contradiction, rob Articles 229 and 235 of their content, make a mockery of the Directive Principle in Article 50 and the fundamental concept of the independence of the judiciary, which the Founding Fathers have with such anxious concern built into the basic scheme of the Constitution. Parliament, we are sure, could never have intended such a strange result. In our quest for the true intention of Parliament, therefore, we must eschew this wide literal interpretation which will defeat or render otiose the scheme of Chapters IV and V, Part VI particularised in Articles 229 and 235, and instead, choose the alternative interpretation according to which members of the High Court staff and the subordinate judiciary will not fall within the purview of the phrase "civil services of the State". Such a restricted construction will ensure smooth working of the Constitution and harmony amongst its various provisions.

It was in the context of the constitutional provisions contained in Chapters IV and v. of Part VI with particular reference to Articles 229 and 235 of the Constitution, the Supreme Court held that the members of the staff of the High Court and the subordinate judiciary do not fall within the purview of the expression "Civil services of the State" in Clause (3) of Article 371-D of the Constitution. The Supreme Court has also considered the scope of Article 371-D in its historical perspective and the reasons for enactment of such a special provision in the Constitution applicable to the State of Andhra Pradesh with particular reference to the objects and reasons of the Constitution 32nd Amendment Act. It was for those peculiar reasons applicable to the State of Andhra Pradesh that a special provision was made under Article 371-D of the Constitution for equitable opportunities and facilities for the people belonging to different parts of the State in the matter of public employment and for the establishment of an Administrative Tribunal for the adjudication of service disputes.

11. The ratio of the decision in Dikshitulu's case cannot be extended to services under the State Public Service Commission.

12. In Pradyat Kumar Bose Vs. The Hon^{ble} The Chief Justice of Calcutta High Court, it was held that the members of the High Court staff are not "persons serving under the Government of a State in a civil capacity" within the meaning

of Article 320(3)(c) of the Constitution. In Pradyat Kumar's case the question arose relating to the validity of an order passed by the Chief Justice of the High Court of Calcutta dismissing the Registrar, on the original side, of the High Court from service. The Supreme Court held:

A scrutiny of the provisions in Chapter I of Part XIV of the Constitution relating to the services shows that the various Articles in this Chapter designate the services to which the articles relate by a variety of terminology. under Article 309 the appropriate Legislature is vested with the power to regulate recruitment and conditions of service" of persons appointed to public services and posts in connection with the affairs of the Union or of any State".

Under Article 310 "every person who is a member of a civil service of the Union or holds any civil post under a State" holds offices during the pleasure of the President or, as the case may be, of the Governor or of the Rajpramukh of the State.

Under Article 311 the two constitutional safeguards, viz. (1) of not being liable to 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 and (2) of not being liable to be dismissed or removed by an authority subordinate to that by which he was appointed, are available to "a person who is a member of a civil service of the Union or of a civil service of a State, or holds a civil post under the Union or a State".

Under Article 320(3)(c) however, the requirement of consultation with the appropriate Public Service Commission on disciplinary matters is available to "a person serving "under" the Government of India or the Government of a State in a civil capacity". A close scrutiny of the terminology so used shows a marked departure in the language of Article 320(3)(c) from that in Arts. 310 and 311.

Officers and members of the staff attached to a High Court clearly fall within the scope of the phrase "persons appointed to public services and posts in connection with the affairs of the State" and also of the phrase "a person who is a member of a civil service of a State" as used in Articles 310 and 311. The salaries of these persons are paid out of the State funds as appears from Article 229(3) which provides that the administrative expenses of a High Court including all salaries, allowances and pension"s payable to or in respect of officers and servants of the High Court, are chargeable upon the Consolidated Fund of a State.

The item relating to such administrative expenses has to form part of the annual financial statement to be presented to the State Legislative Assembly under Article 202 and estimates thereof can form the subject matter of the discussion in the Legislature under Article 203(1). They must, therefore, be taken "to hold posts in connection with the affairs of the State and to be members of the civil service of the State.

13. In State of Gujarat and Others Vs. Raman Lal Keshav Lal and Others, , a

Constitution Bench of the Supreme Court held that the Panchayat service constituted under the Gujarat Panchayat Act is a civil service of the State.

14. The same view is expressed in a later decision of the Constitution Bench in *State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others*, . This was a decision after the earlier decision in *Mathuradas's* case was set aside on an application for review and the cases re-posted for hearing before another Constitution Bench. The later decision of the Constitution Bench expressly approves the decision of Bhagwati J. (as he then was) in *G.L. Shukla and Another Vs. The State of Gujarat and Others*, , where the learned Judge observed:

The Panchayat Service contemplated under the Act is as much a civil service of the State as the State Service.

15. In *U.P. Public Service Commission at Allahabad Vs. Suresh Chandra Tewari and Another*, it was held that a provision for an appeal to the Government in the U.P. Public Service Commission (Conditions of Service) Regulation, 1937, against the order of the Commission in disciplinary proceedings against its staff does not affect the independence of the Commission. The Supreme Court observed at page 1956:

On the facts and in the circumstances of the case we feel the contention of the Commission that an order passed by it in a disciplinary proceeding cannot be subject to an appeal, is untenable by virtue of Regulation 20 of the Uttar Pradesh Public Service Commission (Conditions of Service) Regulations, 1937 and Regulation 28 of the Uttar Pradesh Public Service Commission Staff Regulations, 1942.

For the aforesaid reasons, we are clearly of the view that service under the Public Service Commission is a "civil-service of the State and the members of its staff are holding civil posts under the State".

16. The questions arising in these writ petitions relate to the Recruitment and Conditions of Service of the staff of the H.P. Public Service Commission which falls exclusively within the jurisdiction of the State Administrative Tribunal and the jurisdiction of this Court is totally excluded u/s 28 of the Administrative Tribunals Act.

17. We, therefore, dismiss these writ petitions as not maintainable without prejudice to the rights of the Petitioners to have recourse to the remedies available to them u/s 15 of the Administrative Tribunals Act.