
(1957) 07 MAD CK 0003
In the Madras High Court

R. Srinivasan

APPELLANT

Vs

The President, District Board

RESPONDENT

Date of Decision : 29-07-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1958) ILR (Mad) 204 : (1958) 71 LW 433 : (1957) 2 MLJ 406

Hon'ble Judges : Rajagopalan, J

Bench : Division Bench

Judgement

Rajagopalan, J.—Under the scheme formulated by the Government to relieve unemployment among the educated classes, Local Boards

were encouraged to establish schools in villages which would provide employment for teachers. One of the schools so established was at

Kunnangalpalayam in Palladam taluk in Coimbatore District. The sanctioned strength of that school was one teacher. On 13th March, 1955, the

President of the District Board, Coimbatore, appointed the petitioner to that post, and the petitioner took charge of his post on 18th March, 1955.

2. On 15th June, 1955 the Junior Deputy Inspector of Schools, Palladam, inspected the school. He recorded certain irregularities and

recommended the removal of the petitioner from his office. Apparently the District Education Officer was also of the same view. On receipt of the

report and recommendations of the Educational authorities the President of the District Board issued his order dated 2nd August, 1955, the

relevant portion of which ran:

The Deputy Inspector of Schools, Palladam range during visit at Board Elementary School, Kunnangalpalayam, has pointed out serious

irregularities upon the teacher R. Shreenivasan and passed adverse remarks that the teacher is unfit to be a headmaster in a single teacher school.

The remarks of the Deputy Inspector prove that it is highly dangerous to let the teacher continuing in the school. As recommended by the District

Educational Officer, Coimbatore, the teacher R. Sreenivasan is ordered to be removed from service.

3. On receipt of this order the petitioner handed over charge of his office to his successor on 8th August, 1955. The petitioner claimed that he

repeatedly wrote to the President on 8th August, 1955, 23rd August, 1955, 30th August, 1955, 13th September, 1955, 6th October, 1955 and

22nd November, 1955, asking for particulars of the charges against him and for a copy of the report of inspection of the Deputy Inspector, on the

basis of which the petitioner had been removed from service. The respondent admitted receipt only of the letters dated 13th September, 1955 and

22nd November, 1955, which the petitioner had sent by registered post. Some of the other letters were sent by ordinary post, but the petitioner

obtained certificates of posting. At any rate the receipt of the letters dated 13th September, 1955 and 22nd November, 1955 was admitted. On

10th October, 1955, the President ordered the payment of the arrears of salary due to the petitioner. The President, vouchsafed no reply to the

request of the petitioner to inform him of the charges and to furnish him with copies of the relevant records.

4. The petitioner applied under Article 226 of the Constitution for the issue of a writ of certiorari to set aside the order of the President dated 2nd

August, 1955.

5. From what I have set out above it should be clear that the removal of the petitioner from service was ordered as a punishment, imposed on him

on charges of inefficiency and irregularities in the discharge of his work. It should also be clear that at no time before 2nd August, 1955, did the

President communicate to the petitioner any charges formulated by the President on the basis of the Inspection Report. Nor even was a copy of

the Inspection Report furnished to the petitioner. The petitioner was given no opportunity to formulate his defence and to have it considered before

the punishment of removal from service was imposed on him. That even subsequent to 2nd August, 1955, his repeated requests for information

were left unanswered did not improve the position taken by the President.

6. In paragraph 5 of the counter-affidavit filed on behalf of the respondent the salient features of the Inspection Report were summed up:

...he (the Junior Deputy Inspector of Schools) noticed that the petitioner Mr. R. Srinivasan was not properly attending to the school work but was actually chitchatting with some laymen who had come there to while away their time, that the petitioner had made the School a rendezvous of idlers which made no impression on him, that the petitioner at the time of inspection did not have with him the school records, including the attendance register, and that the petitioner when questioned about it, confessed that the Attendance Register was not marked from the 13th, and that the Register would not be available for perusal till the end of the 17th June, 1955. The Junior Deputy "Inspector of Schools, had also occasion to notice that the petitioner has not understood the seriousness of the work that was entrusted to his care, that he was too childish and playful and that he was utterly negligent and indifferent about his work.

7. The further averment in paragraph 5 ran:

When all these irregularities and misconduct were brought to the notice of the petitioner, the petitioner filed a statement accepting his guilt.

8. The statement of the petitioner submitted to the Junior Deputy Inspector of Schools on 15th June, 1955 ran:

After completing training at Coimbatore in the Orientation course, I rejoined duty on 1st June. Up to 12th June, 1955, I have marked the

Attendance Register. I have not marked the Attendance Register on the 13th, 14th and 15th. I have kept the Attendance Register as well as the

other school records in my house at Tiruppur itself. Therefore I am not in a position to show to you any of the School Registers. The number of

boys on the rolls is 29. There are classes other than 2nd and 5th. The number of boys who attended today is 9; 4th Class 2; 3rd Class 3; 1st Class

4. I have entered this in a separate sheet. The Census Register, Pay Bill, Attendance Register, Admission Register, are all in my house. I can get

these registers and show them to you only after an interval of 2 days. After making note of the pupils who attended the school on 13th, 14th, 15th,

16th and 17th, I have to prepare the Attendance Register only on the 17th. The school is being run in the Post Office.

9. It is difficult to construe this as an admission of guilt with reference to all the charges listed in the Inspection Report, a summary of which I have set out above.

10. There is thus really no basis for the plea of the learned Counsel for the respondent, that in view of the "" admission of guilt "" by the petitioner on

15th June, 1955, there was no need to formulate any charges against him and there was no need to give him an opportunity to explain these

charges before the President, as the authority competent to impose the punishment of removal from service, exercised his authority and inflicted

that punishment.

11. The President of the District Board has jurisdiction to punish an employee of the petitioner's class for any proved dereliction of duty. That was

however, a jurisdiction he exercised on behalf of the statutory public body, the District Board. The punishment awarded by the President on behalf

of the District Board would really be a punishment imposed by the District Board. The jurisdiction of the President to act on behalf of the District

Board was defined by statutory rules on the subject. Before the validity of the exercise of that jurisdiction can be upheld two conditions at least

have to be satisfied : (1) Under the statutory rules the President was the authority empowered to inflict a punishment on behalf of the District

Board, which was the employer in relation to the petitioner, its employee and (2) that the President exercised that jurisdiction within the limits

prescribed by the statutory rules.

12. Before examining the question, whether the exercise of the jurisdiction the President had, was vitiated by the circumstances to which I have

already adverted, I can dispose of the contentions of the learned Counsel for the petitioner based on Article 311 of the Constitution. The learned

Counsel pointed out that the opportunity for which Article 311(2) provided was never given to the petitioner. If Article 311(2) did apply, there

should be no difficulty in holding that in the case of the petitioner the guarantee of a reasonable opportunity for which Article 311(2) provided was

violated, when the President inflicted the punishment of removal from service on the petitioner. The counsel for the respondent was right in his

contention, that an employee like the petitioner in the service of a local authority like the District Board, which owed its existence to the Madras

Local Boards Act, was not a member of a Civil Service of the Union or a Civil service of a State or a person who held a civil post under the Union

or a State within the meaning of Article 311(1). The protection afforded by Article 311(2) can be invoked only by "such persons" i.e. the persons

referred to in Article 311(1). Article 308 denned the expression "State" for purposes of Article 311 among others in Part XVI of the Constitution.

As it originally stood before the classification of Part A and Part B States was abolished in 1956 by the Constitution Seventh Amendment Act,

Article 308 ran:

In this Part, unless the context otherwise requires, the expression "State" means a State specified in Part A or Part B of the First Schedule.

13. That was in marked contrast with Article 12 of the Constitution, which defined a "State" for purposes of Part III of the Constitution. For the

purposes of Part III the expression State included all local or other authorities within the territory of India or under the control of the Government

of India. Certainly the petitioner was not a member of a Civil Service of the Union. He was not a member of the Civil Service of the State of

Madras either. He was only an employee under a local authority, the District Board of Coimbatore. Article 311(2) cannot therefore apply to the

petitioner.

14. In Mangal Sain Vs. The State of Punjab and Another, , the learned Judges held that an employee under a Municipality, even though he was

appointed by the Government, did not hold a civil post under the State within the meaning of Article 311.(1). Similarly in Bibhuti Bhusan Ghosh

Vs. Damodar Valley Corporation and Others, , and Nagendra Kumar Roy, Assistant Executive Engineer Vs. Commrs. for the Port of Calcutta

and Others, , the learned Judges of the Calcutta High Court held that an employee under a statutory authority did not come within the scope of

Article 311. A similar view was taken by the Patna High Court in Chaturbhuj Sahai Vs. Chairman, Board of Directors, Bihar State Co-operative

Bank Ltd., , and In Re: Rangnath Misra, . The last was a case with reference to a District Board.

15. The petitioner, as I said, was in the service of the District Board, a public statutory authority constituted under the Madras Local Boards Act.

Statutory rules were framed under the Local Boards Act by the Government to

regulate the appointment and punishment of officers and servants

of Local Boards. Rule 5 of these Rules prescribed the procedure to be followed before an order of dismissal, removal or reduction among other

things could be passed against an employee of the District Board. The provisions are really analogous to those in Rule 17 (b) of the Classification

(Control and Appeal) Rules applicable to civil servants who hold posts under the Madras Government. Rule 5 provided that charges should be

framed and communicated in writing to the person charged, together with a statement of the allegations on which each charge was based. The

employee charged was given an opportunity to enter upon his defence. The rule provided for an enquiry before the findings were recorded. Rule

5-A provided:

An opportunity to make any representation against the imposition of any of the penalties mentioned in Rule 5, shall be given to the person

concerned after the President, District Board, arrives at a provisional conclusion in regard to the penalty to be imposed.

16. That provided for the opportunity for which Article 311(2) provided in the case of civil servants in the employ of a State. Rule 9 provided for

an appeal against an order of the President imposing any of the punishments specified in Rule 5.

17. As I read Rule 5, the penalty, of dismissal or removal could not be imposed even in the case of a teacher in a Local Board Elementary School

without satisfying the requirements of Rule 5.

18. The learned Counsel for the respondent urged that Rules 5 and 5-A would not apply to employees of the District Board whose services were

only temporary. That the petitioner's appointment was only on a temporary basis was not in dispute. Apart from there being no express or implied

exclusion of temporary employees from the scope of Rules 5 and 5-A, there are specific indications contra in the rules themselves that Rules 5 and

5-A among others would also apply to employees who hold their posts only temporarily. Explanation 1 to Rule 5 provides:

The discharge or reversion to a lower post--

* * * * *

2. of a person appointed otherwise than under contract, to hold a temporary appointment, on the expiration of the period of the appointment does

not amount to removal or dismissal or to reduction within the meaning of this rule.

19. Apart from the fact that it was not an instance of discharge or reversion, it was not the case of the respondent, that the petitioner's services were terminated on the expiration of the period of his appointment. Rule 16 is even more specific. It runs:

These rules shall apply to all posts, excluding those which are paid for from contingencies or the maximum pay of which does not exceed twenty-

four rupees under a local board, whether permanent, temporary or officiating and to all persons holding such posts.

20. The contention of the learned Counsel for the respondent, that the petitioner is not entitled to rely upon Rules 5 and 5-A must be negatived.

21. That the provisions of Rules 5 and 5-A were violated" when the President punished the petitioner with removal from service cannot admit of

any doubt. I have held that Rules 5 and 5-A did apply to the petitioner. Even if these rules. did not apply, the "position would be that principles of

natural justice were violated by the President, who gave the petitioner no opportunity to defend himself against the charges, on the basis of which

the President ordered the removal of the petitioner from the service of the District Board.

22. As I said, the District Board was a public statutory authority. It was on behalf of the District Board that the President ordered the removal of

the petitioner from the service of the District Board. That removal from service constituted a punishment in the circumstances of this case. As

pointed out by Romer, L.J., in *Barnard v. National Dock Labour Board* L.R (1953) 2 Q.B. 18 .

The decision whether or not to impose penalties (amounting in serious cases to dismissal) for alleged offences if those offences are proved, is a

judicial decision, or at all events, a quasi-judicial decision, and cannot from any reasonable point of view be regarded as merely administrative.

23. The rules vested a jurisdiction in the President of the District Board to perform that judicial or quasi-judicial act, to impose a punishment on an

employee of the District Board. The punishment imposed by the President could be viewed in law only as a punishment imposed by the statutory

authority, the District Board, only if the President acted within the limits of his jurisdiction, that is, acted in conformity with the requirements of the

statutory rules that clothed him with the jurisdiction and regulated the exercise of that jurisdiction. Only the acts of the President done suo motu

could be attributed to the District Board itself. If the President acted in excess of his authority, it would not be an act of the District Board whose

powers the President exercised.

24. In *Larson v. Domestic and Foreign Commerce Corporation* 93 L.Ed. 1628. Vinson, C.J., observed at pages 1635-1636:

If the officer purports to act as an individual and not as an official, a suit directed against that action is not a suit against the sovereign.... On a

similar theory, where the officer's powers are limited by statute, his actions beyond those limitations are considered individual and not sovereign

actions. The officer is not doing the business which the sovereign has empowered him to do or he is doing it in a way which the sovereign has

forbidden. His actions are ultra vires his authority and therefore may be made the object of specific relief.

25. It was a similar principle that the Privy Council enunciated when their Lordships referred to the impugned order as one "purported" to have

been made in *Lall's case* (1948) 2 M.L.J. 55 : L.R. 75 IndAp 225 : (1948) F.C.R. 44 .

26. If I may put it in other words, the question that arises for consideration in; this case is, whether the power delegated to the President was

exercised within the limits of the delegation. If it was not, any purported order of the President would not be an order of the District Board.

27. The principles laid down in *Barnard v. National Dock Labour Board* L.R (1953) 2 Q.B. 18 ., were approved of by the House of Lords in

Vine v. National Dock Labour Board (1956) 3 All E.R. 939. Lord Morton observed at page 946 that the purported dismissal of the plaintiff in

that case was a nullity. Viscount Kilmuir, L.C., pointed out the difference between d purported act of a statutory authority which was really a nullity

and an order of dismissal by the employer where the relationship was only that of master and servant. At page 944 the Lord Chancellor observed:

This is an entirely different situation from the ordinary master and servant case. There, if the master wrongfully dismisses the servant, either

summarily or, by giving insufficient notice, the employment is effectively terminated, albeit in breach of contract. Here, the removal of the plaintiff's

name from the register being, in law, a nullity, he continued to have the right to be treated as a registered dock worker....

28. Tested by these principles it should be clear that when the President by his order, dated 2nd August, 1955, purported to remove the petitioner

from the service of the District Board in contravention of Rules 5 and 5-A, which set the limits to his jurisdiction to punish an employee of the

District Board, that order was a nullity, To adapt the words of Denning, L.J., in *Barnard v. National Dock Labour Board* L.R. (1953) 2 Q.B. 18,

the penalty was imposed by a official who had no jurisdiction to impose it and who had not waited for the proper time to hear the explanation of

the petitioner.

29. The next, question is, can the order of the President of the District Board be set aside by the issue of a writ of certiorari. To quote again

Denning, L.J., in *Barnard v. National Dock Labour Board* L.R. (1953) 2 Q.B. 18:

It is a case of a man acting as a tribunal when he has no right to do so. These Courts have always had jurisdiction to deal with such a case.

30. As I said it was a judicial or quasi-judicial act that the President purported to perform when he imposed the punishment of removal from

service on the petitioner. In doing that, he acted in excess of the jurisdiction, defined among other things by Rules 5 and 5-A. He was exercising

the powers of a public statutory authority, the District Board. The purported order of removal from service was a nullity. A writ of certiorari should

issue.

31. The rule is made absolute and the petition is allowed with costs. Counsel's fee Rs. 100.