
(2009) 08 SC CK 0103

In the Supreme Court Of India

Case No : Writ Petition (Civil) No's. 431, 511 and 512 of 2008

Ram Kumar Kashyap and Another

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Constitution of India, 1950 — Article 145, 315, 316, 317, 318

Citation : AIR 2010 SC 1151 : (2010) AIRSCW 752 : (2009) 12 JT 563 : (2009) 10 SCALE 729 : (2009) 9 SCC 378 : (2009) 2 SCC(L&S) 603 : (2009) 12 SCR 601 : (2009) 5 SLR 682 : (2009) 6 Supreme 270

Hon'ble Judges : K. G. Balakrishnan, C.J.;P. Sathasivam, J;J. M. Panchal, J

Bench : Full Bench

Advocate : Shanthi Bhushan, Harish N. Salve, Raju Ramachandran, Hawa Singh Hooda, Genl., Manjit Singh, AAG, R. Chandrachud, Sanjai Kumar Pathak, Adity Kr. Chaudhary, Harikesh Singh, Kamal Mohan Gupta and Sudhir Nandarajog, for the Appellant;

Final Decision : Allowed

Judgement

K.G. Balakrishnan, C.J.—The Chairman and 8 members of the Haryana Public Service Commission were placed under suspension on 09.08.2008 by Governor of the State of Haryana. A Reference was made under Article 317(1) of the Constitution of India by the Hon'ble President of India. In these Writ Petitions the petitioners have sought for a writ of certiorari for quashing the Reference made on 31.07.2008 by the Hon'ble President of India under Article 317(1) of the Constitution of India and also for a direction that the order of suspension dated 09.08.2008 passed by the Governor of State of Haryana be declared as illegal and be quashed. When the matter came up for consideration, learned Senior Counsel appearing for the petitioners submitted that the first prayer for the writ of certiorari to quash the order of Reference under Article 317(1) of the Constitution of India is not pressed. Therefore, the only question that arises for consideration in these Writ Petitions is whether the suspension of 8 Members and the Chairman of Public Service Commission by the Governor of Haryana by order

dated 09.08.2008 is liable to be set aside or not.

2. We heard the learned Senior Counsel for the petitioners and also counsel for the respondents. The main grievance of the petitioners is that they were neither given show cause notice nor an opportunity to be heard before the order of suspension was issued and thereby the principle of natural justice has been violated. Before examining their submissions, it is necessary to consider the language of the constitutional provisions which deal with the removal and suspension of the members of Public Service Commissions. Article 317 of the Constitution reads as follows:

317. Removal and suspension of a member of a Public Service Commission(1) Subject to the provisions of Clause (3), the Chairman or any other member of a Public Service Commission shall only be removed from his office by order of the President on the ground of misbehaviour after the Supreme Court, on reference being made to it by the President, has, on enquiry held in accordance with the procedure prescribed in that behalf under Article 145, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

(2) The President, in the case of the Union Commission or a Joint Commission, and the Governor in the case of a State Commission, may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to the Supreme Court under Clause (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything in Clause (1), the President may by order remove from office the Chairman or any other member of a Public Service Commission if the Chairman or such other members, as the case may be,-- (a) as adjudged an insolvent; or (b) engages during his term of office in any paid employment outside the duties of his office; or (c) is, in the opinion of the President./p> (4) If the Chairman or any other member of a Public Service Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of India or the Government of a State or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of Clause (1), be deemed to be to be guilty of misbehaviour.

(Emphasis supplied)

3. Article 317 makes it amply clear as to how the members of the Public Service Commission are liable to be removed from office and the founding fathers of our Constitution incorporated this procedure in order to give the Chairman and Members security of tenure to safeguard them against motivated or wrong charges of misbehavior. The obvious intent behind the same is to protect them from undue political pressures or personal favoritism and vendetta thereby

enabling the Public Service Commissions to discharge their constitutional obligations in full measure.

4. It has been argued on behalf of the petitioners that the passing of the common order of suspension by the Hon'ble Governor of the State of Haryana would cause adverse civil consequences, they deserved a notice and an opportunity of being heard before such order was passed. The petitioners have cited several judgments of this Court such as those delivered in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, ; *Sayeedur Rehman Vs. The State of Bihar and Others*, ; *S.L. Kapoor Vs. Jagmohan and Others*, ; and *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*, , all of which affirm the principle that an adverse order cannot be passed at the back of the affected party.

5. It is not necessary that principles of 'audi alterem partem' rigorously followed in the domain of service law need to be applied with the same degree of rigour in proceedings involving the removal and suspension of the members of the State Public Service Commission. This exceptional treatment is mandated by Article 317. Furthermore, the issuance of suspension orders is as per the 'procedure established by law' and not in derogation from the same.

6. It will be useful to refer to a judgment of this Court in Special Reference No. 1 of 1983, (1990) 4 SCC 262, wherein it was held that the position of a Chairman or a Member of a Public Service Commission cannot be equated with that of a public servant and hence the case law pertaining to the suspension and removal of public employees has no relevance in the context of the proceedings under Article 317.

7. The relevant observations were made at Para 9:

9. The case of a government servant is, subject to the special provisions, governed by the law of master and servant, but the position in the case of a member of the commission is different. The latter holds a constitutional post and is governed by the special provisions dealing with different aspects of his office as envisaged by the Articles 315 to 323 of Chapter II of Part XIV of the constitution. In our view the decisions dealing with service cases relied upon behalf of the respondent have no application to the present matter and the reference will have to be answered on the merits of the case with reference to the complaint and the respondents' defence

8. Furthermore this Court in Reference No. 1 of 2003, (2005) 6 SCC 789, has held that no hearing or opportunity of showing cause against the proposed reference under Article 317(1) is necessary before making the actual reference. The relevant observations are as follows (Para. 2):

2. We have heard the learned Additional Solicitor General for the Union of India, as also the learned Counsel for the respondent on the preliminary objections. We are of the opinion that no hearing or opportunity of showing cause against the

proposed reference under Article 317(1) is necessary before making the reference. The first objection is overruled.

9. In *Sayalee Sanjeev Joshi, In Re* (2007) 11 SCC 547, which concerned the removal of a member of the Maharashtra Public Service Commission under Article 317 on grounds of misbehaviour, this Court had observed (Para. 1):

1. ...Since a request was made to the President of India to act in terms of Article 317(1) of the Constitution, the placing of the respondent under suspension under Article 317(2) of the Constitution was proper.

10. It is clear from the perusal of the above cases that the petitioners were not entitled to an opportunity to show cause or to be heard before the point of time that the orders of suspension were passed by the Hon'ble Governor of Haryana under Article 317(2) after the President had referred the matter to the Supreme Court. The rationale behind empowering the Governor of a State to issue such an order for suspension even before the reference is actually decided by the Supreme Court is to maintain the public trust and confidence in the impartial and honest working of the said Public Service Commission. It is a prerogative given to the State Executive, but the members so suspended are given the opportunity to present their cases when the actual reference is decided upon by the Supreme Court. It is open to the members so suspended to present their point of view at that stage. After all, it is only after the merits of the case have been examined that the Supreme Court arrives at an answer to the reference and communicates the same decision to the President for further action.

11. The Public Service Commission is an institution of the utmost importance created by the Constitution of India under Article 315. For the efficient functioning of a democracy it is imperative that the Public Service Commissions are manned by people of the highest skill and irreproachable integrity, so that the selections to various public posts can be immunized from all sorts of extraneous factors like political pressure or personal favoritism and are made solely on considerations of merit.

12. In Special Reference No. 1 of 1997, *In Re: Dr. Ram Ashray Yadav, Chairman, Bihar Public Service Commission*, , this Court discussed the role of the members of the Public Service Commissions and made the following observations with regard to their duties and qualifications (Para. 4):

4. Keeping in line with the high expectations of their office and need to observe absolute integrity and impartiality in the exercise of their powers and duties, the Chairman and members of the Public Service Commission are required to be selected on the basis of their merit, ability and suitability and they in turn are expected to be models themselves in their functioning. The character and conduct of the Chairman and members of the Commission, like Caesar's wife, must therefore be above board. They occupy a unique place and position and utmost objectivity in the performance of their duties and integrity and detachment are essential requirements expected from the Chairman and

members of the Public Service Commissions.

13. At Para 31 of the same opinion, this Court further stated:

31. The credibility of the institution of Public Service Commission is founded upon faith of the common man on its proper functioning. The faith would be eroded and confidence destroyed if it appears that the Chairman or the Members of the Commission act subjectively and not objectively or that their actions are suspect. Society expects honesty, integrity and complete objectivity from the Chairman and Members of the Commission. The Commission must act fairly, without any pressure or influence from any quarter, unbiased and impartially, so that the society does not lose confidence in the Commission. The high constitutional trustees, like the Chairman and Members of the Public Service Commission must for ever remain vigilant and conscious of these necessary adjuncts.

14. It is very clear that since the Public Service Commissions are a constitutional creation, the principles of service law that are ordinarily applicable in instances of dismissals of government employees cannot be extended to the proceedings for the removal and suspension of the members of the said Commissions. Hence, we are of the opinion that the en bloc suspension of the 8 Members and Chairman of the Haryana Public Service Commission by the Hon'ble Governor of Haryana by an order dated 09.08.2008 under Article 317(2) of the Constitution and the impugned notification dated 09.08.2008 are valid and not liable to be quashed.

15. The Writ Petitions are dismissed.