
(1967) 10 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2308 of 1966

Ram Phal	Vs	APPELLANT
The State of Punjab and others		RESPONDENT

Date of Decision : 21-10-1967

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1967) 10 P&H CK 0004

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : D.C. Gupta and J.V. Gupta, for the Appellant; Anand Sarup, Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

P.D. Sharma, J.—Ram Phal. Ex-Clerk, Sub-Treasury, Jind, in this writ petition against (1) The State of Punjab; (2) The Secretary to Govt. Punjab, Finance Department; and (3) The Deputy Secretary to Government Punjab (Administration), has challenged the validity of (sic) order passed by respondent No. 3 on 11th August, 1965, annexure "E" dismissing him from service as well as the order recorded by respondent No. 2 dismissing his appeal from the said order dated the 11th August, 1966, annexure "G". A few facts relevant for the disposal thereof may be noticed here. The petitioner was serving as a clerk in the treasury Department of the Punjab Government in permanent service Class III. Respondent No. 3 served him with a charge sheet on 16th January, 1964, which runs as under:

I, Shri Joginder Singh, I.A.S., Deputy Secretary to Government, Punjab, Finance Department, hereby charge you Shri Ram Phal. Sub Treasury Clerk, Jind, as follows -

1. That you took an active part in the rally organised by the. R.S.S.S at Jind on the 3rd February, 1963, and controlled a squad of these workers wearing the

uniform of the said organisation;

2. That you took one month's leave with effect from the 6th May, 1963, stating that you required it in order to get your ailing wife treated in a good hospital near your village in Gurgaon district, but actually you participated in the R.S.S.S. Officers Training Camp which commenced at Nagpur with effect from the 6th May, 1963;

3. That by acting as stated in paras 2 and 3 above, you have not only contravened the provisions of rule 22(1)(i) of the Government Servants Conduct Rules, 1955, but have also committed gross misconduct which renders you unfit for Government service. You are, therefore, called upon to explain within a fortnight of the receipt of this charge-sheet why any one or more of the penalties enumerated in rule 4 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, should not be imposed on you and also whether you would like to be heard in person. If you fail to submit your explanation within the time allowed, it shall be presumed that you have none to offer and ex-parte proceedings shall be taken against you.

The petitioner in due course submitted his explanation as required wherein he admitted that he had taken part in the rally organised by the R.S.S.S. at Jind and controlled a squad of Swayam Sevaks and further that he got one month's leave with effect from 6th May, 1963, which was utilised partly for the treatment of his ailing wife and the rest for participating in the Officer's Training Camp at Nagpur. He, however, vehemently denied having thereby contravened the provisions of Rule 22 (1)(i) of the Government Servants Conduct Rules, 1955. He maintained that the R.S.S.S. was an All India Organisation which infused the spirit of National Unity and discipline and which as a matter of fact was the life of the nation and that the R.S.S.S was not a political party or a political movement and was a lawful social and cultural Organisation (annexure "B").

2. Respondent No. 3 after receiving the petitioners reply served second notice dated 12th November, 1964, on him stating that in view of his admission of having participated in the activities of the R.S.S.S. it was proposed to dismiss him from service in pursuance of rule 4 of the Punjab Civil Service (Punishment and Appeal Rules, 1952 copy annexure C. The petitioner again sent his reply in similar terms as he had done earlier and also drew the attention of respondent No. 3 to certain questions put to the Home Minister, Government of India in the parliament and his reply and also a decision of the Rajasthan High Court in writ petition No. 703 of 1964-Kiaar Lal Aggarwal v. The State of Rajasthan etc C.W. 70 of 1964, decided on 11th November, 1964, wherein it is said to have been held that dismissal of a Government servant who was a member of the R.S.S.S without confronting him with the evidence to show that the said organisation was a political body was against the provisions made in Article 311 of the Constitution of India. Respondent No. 3 without giving the petitioner any personal hearing after receipt of his reply to the second Show Cause Notice found that the R.S.S.S. was a political body and the petitioner's participation in its activities

amounted to contravention of rule 22(i) *ibid* and proceeded to remove him from service. The petitioner's appeal against this order was dismissed by respondent No. 2 vide copy of his order annexure "G". The petitioner alleged that the two orders were illegal, unconstitutional and against the principal of natural justice *inter alia* on the following grounds:

(i) That respondent No. 2 has dismissed the appeal of the petitioner in his absence, without notice to him without hearing him and without giving him any opportunity to be heard by him (respondent No. 2);

(ii) That no enquiry of any sort was made by respondent No. 3, no witness examined nor any other material placed on record in the presence of the petitioner to show that R.S.S. was a political party or a political movement. The finding, if any, of the respondent No. 3 that R.S.S. was in his opinion based on the view of rule 19(2) of the Rules was a political party, participation in which is prohibited by rule 22(1)(i), was not communicated to the petitioner nor the petitioner was apprised of the same even in the second show cause notice. Thus the petitioner had no proper opportunity to show cause against the punishment awarded to him and to show that the finding of the Enquiry Officer (respondent No. 3) was bad and vitiated being based upon no evidence or material on record and upon misinterpretation and wrong understanding of rule 19(2)(iv);

(iii) That rule 19 relied upon by respondent Nos. 2 and 3, deals with a different subject altogether, it does not declare that R.S.S. is a political or socio political party participation in the activities of which may be barred under rule 22(1)(i). Respondent Nos. 2 and 3 have misinterpreted and misapplied this rule in dismissing the petitioner;

(iv) That even if for argument sake the interpretation of rule 19(2)(iv) as understood by respondents Nos. 2 and 3 be deemed as correct, the activities, the participation in which was indicated in the allegation in the charge-sheet, were not even alleged to be political activities of any political party or political movement much less shown or proved to be such in the charge-sheet or in the second show cause notice or even in the orders passed by respondents Nos. 2 and 3;

(v) That R.S.S. is a purely socio, cultural organisation, it never claimed to be a political party and never declared by the Government or any competent authority to be a political party. Its constitution was submitted to the Government of India which was duly accepted.

3. The respondents in their written statement pleaded that the R.S.S. was a political party and political movement for the purposes of Government Servants Conduct Rules, 1955, as stated in rule 19 of the rules.

4. The Learned Counsel for the petitioner conceded that for the purposes of broadcasting by Government servants, rule 19 of the rules has put R.S.S. under the category "political" or "social political" but went on to explain that it

did not mean that for the purposes of rule 22, the petitioner simply by taking part in the social side of this Organisation could be said to have taken part in, subscribe in aid, of, or assist in any political movement in India or abroad relating to Indian affairs. There is some force in what he urged because the Government reserved to themselves the right to give permission to anyone of their servants to give talk on radio on R.S.S.S. This is clear from sub-rule (3) of rule 19 of the rules. The Learned Counsel for the petitioner in support of his argument further relied on Ranganathachar Agnihotri v. State of Mysore (1966) 2 Mys.L.J. 208, in order to show that R.S.S.S. was not "political" or "social political" organisation, where it was pointed out that the mere connection of a person with R.S.S.S. did not disqualify him from entering service in Mysore State. The instant case is on all fours with Kidar Lal Aggarwal's case where in similar circumstances, the Rajasthan Government had dismissed Kidar Lal Aggarwal, one of their employees for being a member of the R.S.S.S. The Rajasthan High Court in Civil Writ referred to above quashed the order on the ground that the Government servant should have been confronted with the material before the disciplinary authority which enabled him to come to the conclusion that R.S.S.S. was a political Organisation of the kind, the membership of which was considered objectionable under the Government Servants Conduct Rules. A duly certified copy of this judgment is on the record. Respondent No. 3 should have specifically mentioned in the charge-sheet that the R.S.S.S. was a political Organisation. He should have also confronted the petitioner with the material which enable him to come to the conclusion that the petitioner's membership of R.S.S.S. amounted to his taking part in, subscribe in aid of, or assist in any way any political movement in India which was punishable under rule 22 of the rules. The omission to do so fully entitled the petitioner to urge that he was not given a reasonable opportunity of being heard in respect of the charges served on him as was necessary under Article 311 of the Constitution of India. The learned Advocate-General has not much to urge in the matter. The two orders indeed suffer from an incurable infirmity and are therefore bad in law.

5. The writ is allowed with costs and the two impugned orders, copies annexures "E" and "G" are set aside. Counsel's fee Rs. 100/-.