(1955) 08 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ No. 57/5 of 1954-55

Rasheeduddin Ahmed APPELLANT

Vs

Accountant-General, Hyderabad RESPONDENT

Date of Decision : 11-08-1955

Acts Referred:
Constitution of India, 1950 — Article 192, 226, 278, 291, 295

Citation : (1955) 08 AP CK 0018

Hon'ble Judges : Palnitkar, C.J;Bilgrami, J

Bench : Division Bench

Advocate : Ataur Rehman and P.B. Venkatasubramanian, for the Appellant; B. Narahari Sastri, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Bilgrami, J.—This application for issue of a writ under Art. 226 of the Constitution is directed against an order of the Accountant-General of Hyderabad, terminating the applicant''s services. The applicant was a second grade Auditor in the Accountant-General''s Office. He was not considered fit to be absorbed in the Central Service on the grounds of lack of necessary qualifications and knowledge of English, and by the order impugned which was communicated to him on 22-9-1954 his services were terminated.

This order is assailed on the following grounds: (1) that it is contrary to Federal Financial Integration Agreement which was made under Arts. 278,291, 295 and SO of the Constitution; (2) that charges were not framed and opportunity to show cause why his services should not be terminated was not given as required under Art. 311(2) of the Constitution; (3) that the procedure laid down in Civil Services (Classification, Control and Appeal) Rules was not followed; (4) that the order is capricious and arbitrary; inasmuch as persons with the same Qualifications and no better knowledge of English have been retained in service.

In the counter the respondent states that the petitioner''s services were taken over by the Indian Audit Department subject to his being found fit to continue in service. Being a matriculate and possessing sufficient knowledge of English was necessary for absorption in the Central Service. The petitioner possessing neither of these qualifications was not absorbed. The petitioner and some others were however retained in service on purely compassionate grounds and it was decided that if they were found to possess working knowledge of English, recommendation will be made to retain them in service.

The petitioner was tested and not found fit for being retained in any capacity. The Comptroller and Auditor-General directed the respondent to discharge the petitioner and some others. A show cause notice was given to the petitioner in answer to which no representations were made and his services were terminated. This termination of service is by the way of compulsory retirement and neither Art. 311(2) nor the Civil Services (Classification, Control and Appeal) Rules are applicable as this is not a case of removal and dismissal on grounds of misconduct.

2. The first question that has to be determined in this case is whether quashing the order impugned of retrenchment and termination of the applicant''s services passed by the Accountant-General of Hyderabad will be proper in exercise of jurisdiction under Art. 226 of the Constitution considering that this order was passed in accordance with the express directions received from the Comptroller and Auditor-General of India, New Delhi, which cannot be challenged in this Court.

In relation to this matter the contention of the learned counsel of the writ applicant Mr. Ataur Rehman is that the order which he seek to (sic) and get set aside, is the order of the Accountant-General. Hyderabad. The order of the (sic) and Auditor-General of India dated 12-1-1930 (Ex. 2) purporting to reject the appeal of the applicant was passed without jurisdiction and was void, because no appeal was preferred before him any no appeal could he at this intermediate stage when only show cause notice was given and no final decision taken.

His alternate contention is, that even if the appeal is granted to be competent, notwithstanding these circumstances, the appellate order cannot stand in the way of quashing the Accountant-General of Hyderabad''s order, because the appellate authorities have not varied or reversed that order. A mere rejection of appeal, and a refusal to interfere with the order in administrative matters by a higher authority, does not have the effect of merging the order originally passed into the appellate order.

Mr. Rehman relies on - Har Prasad Vs. Union of India (UOI) and Another, and -- Barkatali Vs. Custodian General of Evacuee Property of India,). In the former case, the applicant a Head Travelling Ticket Examiner, was reduced in rank on medical ground by the local authorities, an appeal preferred by him to the General Manager, Bombay failed. It was held that since the order of the local authorities was not varied or reversed, the High Court had jurisdiction to entertain a writ application against it.

In the second case the order impugned was that of the local Custodian of the Evacuee Property. An appeal against it was rejected by the Custodian General on the same grounds as the first mentioned case. It is not necessary in this case to decide either of these points as they were evidently raised under the misapprehension that the order rejecting the appeal referred to above, is the only order which stands in the way of jurisdiction and in ignorance of the fact that the impugned order of the Accountant-General, Hyderabad, was passed on 21-9-1954 and the same was confirmed by the Comptroller and Auditor-General of India, as is evidenced in the copy of letter Ex. 2 dated 12-1-1955.

That letter states that after carefully considering the appeals of 37 persons and the letter of the Accountant-General at Hyderabad dated 21-9-1954, the Comptroller and Auditor-General of India has rejected all the appeals. The letter of the Accountant-General at Hyderabad dated 21-9-1954 referred to by the Comptroller and Auditor-General of India, mentions the fact that all the appellants including the petitioner, were retrenched and the retrenchment memo was issued to each of them.

This retrenchment memo is Ex. 5, so far as it pertains to the petitioner. Thus, it is clear that the impugned retrenchment order was considered by the Delhi authorities while dismissing the appeals of the appellant and others. In our opinion, a writ of certiorari or mandamus or any writ under Art. 226 of the Constitution, cannot be granted in respect of acts done in obedience to a Higher authority.

It does not lie now within the power of the Accountant-General of Hyderabad to annul his order and reinstate the petitioner without the permission and sanction of the Comptroller and Auditor-General of India, on whose direction the applicant''s services were terminated. Quashing the order against which this application is directed, will serve no purpose. The issue of a writ in such a case will be futile. A writ of mandamus is never issued forcing any authority, officer or tribunal to exercise a doubtful jurisdiction nor a writ of Certiorari to quash an order when no object is served thereby.

In this view of the matter it is not necessary to decide whether the Comptroller and Auditor-General of India''s order rejecting the appeal was valid or whether the order of the Accountant-General of Hyderabad will be deemed to have merged in the order of the Central authority as a result of this appeal.

3. As a consequence of the view we have taken the question arises whether we have jurisdiction to issue a Writ against the Comptroller and Auditor-General in New Delhi. We think not. The wording of Art. 226, the nature of the remedy provided therein and the recent judicial pronouncements emphatic and clear, both of the Supreme Court and this High Court and also other High Courts of this country, leave no room for doubt about the matter.

The following words which occur in the Article, "throughout the territories in relation to which it exercises jurisdiction" confine the sphere of the exercise of powers conferred on the High Court by this Article to the territories within its jurisdiction. The words "to any person or authority inciting in appropriate cases. Government" indicate that it is the amenability of the person, or authority whose act or order, or whose omission to exercise jurisdiction is challenged, to the jurisdiction of the High Court is required, and not the arising of the cause of action or consequences of such an act within the territory under its jurisdiction.

In civil cases jurisdiction is attracted by cause of action or by the transaction or resulting injury being within the territorial jurisdiction by virtue of statutory provisions. In Art. 226, however, the insistence is on the presence or location of the person or authority within the territorial jurisdiction. These provisions were dictated by the necessity which arises owing to the peculiar nature of the remedy. A writ is directed against persons, officers or authorities whose act or order gives rise to the injury complained of and against whom redress is sought.

Disobedience makes the party guilty of it, liable to attachment for contempt. The remedy can, therefore, be hardly enforceable and effective if the authority against whom it is issued is not amenable to the jurisdiction of the High Court, being located beyond its territorial limits.

4. The recent decisions of the Supreme Court in which this matter has received judicial consideration are - Election Commission, India Vs. Saka Venkata Subba Rao and, , and - K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., In the former case, a writ of prohibition was issued against the Election Commission directing them not to proceed with the inquiry under Art. 192 of the Constitution.

The Supreme Court in appeal held that the Commission in Delhi not being amenable to the jurisdiction of the High Court in Madras, no writ can be issued and the fact that the right of the petitioner was affected within the territorial jurisdiction and the petitioner resided therein, would make no difference. In the latter decision, the question as it is posed in the present case did not directly arise for decision arise for decision.

It was a converse case in which the question there was whether the Punjab High Court could issue a writ against the I. T. I. Commissioner within his jurisdiction in Delhi though the assessee was a resident of U.P. and originally assessed by the U.P. Commissioner and if a case had to be stated it would be stated in U. P.

Setting out the limits to jurisdiction of the High Courts, their Lordships emphasized the amenability to the jurisdiction of the authority against whom redress is sought at p. 210, Col. (1), para 3 in the following terms:

There are only two limitations placed upon the exercise of these powers by a High Court under Art. 226 of the Constitution; one is that the power is to be exercised "throughout the territories in relation to which it exercises jurisdiction", that is to say, the writs issued by the Court cannot run beyond the territories subject to its jurisdiction.

The other limitation is that the person or authority to whom the High Court is empowered to issue writs "must be within those territories" and this implies that they must be amenable to its jurisdiction either by residence or location within those territories. It is with reference to these two conditions thus mentioned that the jurisdiction of the High Courts to issue writs under Art. 226 of the Constitution is to be determined.

The residence of the person whose rights were affected or arising of the clause of action or the injury resulting from the act or order complained of being within the jurisdiction is not the determining factor but the location of the tribunal according to this view. This High Court in -- ''Shaikh Mahmood v. Custodian-General of the Evacuee Property'', AIR 1954 Hyd 33 (E), held that the remedy by issue of a writ is in the nature of action in personam and cannot be issued against the Custodian-General in Delhi.

The Allahabad High Court in -- Tej Bhan Madan Vs. Govt. of India, has held that the authority whose act and order the applicant seeks to impeach must be within the territorial jurisdiction of the High Court.

5. In the light of what has been set out above, we are constrained to hold that an issue of a writ as prayed for by the applicant will be futile in this case, and we have no jurisdiction to question the validity of the order of the Comptroller and Auditor-General of India in New Delhi, and this petition must therefore fail and is hereby dismissed. Since the application seems to have been made in good faith, and the applicant is a dismissed servant in straitened circumstances, no order is made as to costs.

