

(1996) 08 BOM CK 0048
In the Bombay High Court
Case No : Writ Petition No. 3231 of 1994

Ravirao Taley

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 19-08-1996

Acts Referred:

Constitution of India, 1950 — Article 234, 235, 311, 320

Citation : (1996) 74 FLR 2700

Hon'ble Judges : R.G. Deshpande, J; B.N. Deshmukh, J

Bench : Division Bench

Judgement

1. Heard counsel for the parties.
2. The order dated 1st September, 1994 dismissing the petitioner from service as Civil Judge, Senior Division, Jalgaon is challenged in this petition. The only point agitated before us is that the Inquiry Officer had recommended the punishment of withholding of increments for a period of three years with permanent effect on future increments. However, the petitioner was dismissed from service overlooking the punishment proposed by the Inquiry Officer.
3. After the inquiry report, a show cause notice was issued to the petitioner by which, the petitioner was directed to show cause on the basis of the report of the Inquiry Officer as to why instead of minor penalty as suggested by the Inquiry Officer, major penalty of dismissal from service as prescribed by Rule 5(1)(ix) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, should not be imposed upon him.
4. Thereafter the order of dismissal is passed having regard to the finding recorded by the Inquiry Officer and the seriousness of the same are affecting the integrity of a person like that of a Judge.
5. Shri Marlapalle, the learned counsel for the petitioner contended that the order of dismissal is in contravention of the provisions of Article 320 of the Constitution of India, in as much as there was no pre consultation with the State

Public Service Commission. Shri Marlapalle has further contended that the petitioner's services are governed by Article 234 of the Constitution of India as he is in the cadre of Civil Judges and his appointment is made after consultation with the State Public Service Commission and with the High Court. According to him, therefore, before the order of dismissal is passed against the petitioner, the provisions of Article 320 should have been invoked by which the power to consult with State Public Service Commission is enumerated.

Sub-Article (3) of Article 320 provides as under :-

"The Union Public Service Commission or the State Service Commission, as the case may be, shall be consulted -

.....

.....

(c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters".

6. According to Marlapalle, therefore, if the provisions of Article 234 are considered with the provisions of Art. 320 of the Constitution of India, consultation with the State Public Service Commission was a must before the order of dismissal is passed against the petitioner.

7. We are unable to appreciate the submissions made by Shri Marlapalle. The services of the petitioner will have to be construed in the light of provisions of Article 235 of the Constitution which deals with control over Subordinate Courts and provides as under :-

"235 : Control over subordinate Courts :-

The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law".

8. We are, therefore, of the opinion that the services of the petitioner are subject to the control of the High Court as incorporated in the provisions of Article 235 of the Constitution.

9. Shri R.G. Karmarkar, the learned counsel for the respondent no. 2, has invited our attention to the decision of the Supreme Court in the case of Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, wherein the scope of Art. 235 has been considered by the Supreme Court and it is observed that the

provisions of Article 235 is exclusive in nature in respect of the control over the subordinate judiciary which is vested in the High Court under this Article and the scope is comprehensive in extent and effective in operation. It has been further observed that it comprehends wide variety of matters. Among others, it includes :

(a)(i) Disciplinary jurisdiction and a complete control subject only to the power of the Governor in the matter of appointment, dismissal, removal, reduction in rank of District Judges and initial posting and promotion to the cadre of District Judges. In the exercise of this control, the High Court can hold inquiries against a member of the subordinate judiciary, imposed punishment other than dismissal or removal, subject, however, to the conditions of service, and a right of appeal, if any granted thereby and to the giving of an opportunity of showing cause as required by Art. 311(2).

(ii) In Art. 235, the word "control" is accompanied by the word "vest" which shows that the High Court alone is made the sole custodian of the control over the judiciary. The control vested in the High Court being exclusive, and not dual, an inquiry into the conduct of a member of the judiciary can be held by the High Court alone and no other authority.

10. In view of the above ratio laid down by the Supreme Court, there is no scope to construe that there is a role to play to the State Public Service Commission in the matter of orders of dismissal passed against the members of the subordinate judiciary.

11. In view of this, the writ petition is dismissed in limine.