
(1962) 04 KL CK 0004
In the High Court Of Kerala
Case No : Writ Appeal No. 68 of 1961

Rebecca

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 02-04-1962

Acts Referred:

Constitution of India, 1950 — Article 311, 313
Government of India Act, 1935 — Section 240

Citation : (1962) KLJ 656

Hon'ble Judges : M.S. Menon, C.J;P. Govindan Nair, J

Bench : Division Bench

Advocate : V.K.K. Menon, M. Ramachandran and C.J. Balakrishnan, for the Appellant; K.K. Mathew), for the Respondent

Judgement

M.S. Menon, C.J.—This is an appeal by the petitioner in O.P. No. 1167 of 1960 against the dismissal of that petition. The petitioner questioned the validity of an order of the Government terminating her services as an Honorary Medical Officer in the General Hospital, Ernakulam. The order reads as follows:

Under rule 5 of the Rules issued in G.O. Ms. 450/58/EHD dated 25-4-1958, governing the appointment and service conditions of Honorary Medical Officers, the services of Dr. Rebecca Chandapillai, Honorary Medical Officer, General Hospital, Ernakulam are terminated forthwith.

and the rule mentioned in the order:

A person appointed to the post of Hon. Medical Officer will hold the post for a period of 5 years at a time. Government may terminate the appointment at any time without any notice and without assigning any reason therefor. The Hon. Medical Personnel once appointed will be eligible for reappointment provided they are found suitable for reappointment by Government.

The petitioner was relieved of her duties with effect from the afternoon of 20-9-1960. Her current term of five years had not expired then and was due to

expire only at the end of May 1963.

2. It is common ground that Article 311 of the Constitution applies to the petitioner and that if the termination of her services amounts to a dismissal or removal as contemplated by that Article, it has to be set aside on the ground that there has been no compliance with its provisions. The sole question for determination, therefore, is whether the termination amounts to a dismissal or removal as contemplated by Article 311 of the Constitution.

3. The history and impact of Article 311 will be clear from the following extract from *Satish Chandra Anand Vs. The Union of India (UOI)*, :

The services in India have long been afforded certain statutory guarantees and safeguards against arbitrary dismissal or reduction in rank. u/s 240, Government of India Act, 1935 the safeguards were limited to those two cases. Under the present constitution, a third was added, namely removal from service. In order to understand the difference between "dismissal" and "removal" from service, it will be necessary to turn to the Rules which governed, and with modifications still govern, the "services" in India because of Art. 313 of the Constitution.

Part 12 of the Civil Services (Classification, Control and Appeal) Rules relating to Conduct and Discipline includes R. 49 which sets out the various penalties to which a member of the services can be subjected for indiscipline and misconduct. They are seven in number and include censure, suspension, reduction in rank, removal from service and dismissal from service. The Act of 1935 selected only two of these possible penalties as serious enough to merit statutory safeguards, namely reduction in rank and dismissal from service. The Constitution has added a third to the list. The distinction which is drawn between the two is explained in R. 49. There is first removal from service "which does not disqualify from future employment" and there is next dismissal from service "which ordinarily disqualifies from future employment". Then follows an explanation: The discharge--

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(c) of a person engaged under contract, in accordance with the terms of his contract, does not amount to removal or dismissal within the meaning of this rule.

The terms are used in the same sense, in Art. 311.

4. The statement that the discharge of a person engaged under contract in accordance with the terms of his contract does not amount to dismissal or removal within the meaning of Article 311 only means that it does not per se or by itself amount to that. This was clarified by the Supreme Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, . And in the light of the clarification it should be taken as settled law that a Government servant under contractual employment is free to prove that the order of termination is in effect an order of dismissal or removal within the meaning of Article 311 and have it set aside if the safeguards provided by that Article have been ignored. The safeguards lie in

the stipulation that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed and that he shall not be dismissed or removed or reduced in rank without being given a reasonable opportunity to show cause against the action proposed to be taken against him.

5. The motive behind the order of termination is, of course, immaterial in determining the question whether it is in effect an order of dismissal or removal within the meaning of Article 311. This aspect of the question was dealt with as follows in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, :

It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule; nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla, C.J. has said in *Shrinivas Ganesh Vs. Union of India*, , wholly irrelevant.

6. The terminology employed in the order is equally inconclusive. As pointed out by the Supreme Court in the case last above-mentioned the expression used may be "terminate" or "discharge"; but in spite of the use of such innocuous expressions the matter may still be at large.

7. The real test to find out whether the termination is by way of dismissal or removal in a case like this is as is clear from the decision to see whether the order produces any detriment to the employee other than the severance of the relationship of master and servant and the consequent loss of employment. In other words, the employee must suffer something more than the mere termination of his services and the normal consequences that flow from such a termination. In *The State of Bombay Vs. Saubhagchand M. Doshi*, the Supreme Court said :

The real criterion for deciding whether an order terminating the services of a servant is one of dismissal or removal is to ascertain whether it involves any loss of benefits previously earned;

and that when such a loss does not occur "there is no reason why the terms of employment and the rules of service should not be given effect to."

8. It is not contended that the termination has involved any loss to the petitioner of a benefit previously earned. The only contention is that the termination, in the background of this case, puts an indelible stigma on the petitioner, a stigma which affects her future career, and that that is sufficient to make the order one of dismissal or removal from service within the meaning of Article 311.

9. Reliance is placed in this connection on the following passage from *Parshotam Lal Dhingra Vs. Union of India (UOI)*, :

As already stated if the servant has got a right to continue in the post, then, unless the contract of employment or the rules provide to the contrary, his

services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and, therefore, a dismissal or removal within Art. 311, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an indelible stigma on the officer affecting his future career.

10. There can be no stigma or evil consequences when an engagement is terminated in consonance with the contract of employment. What the Supreme Court has said is that in other cases--where the employment cannot be terminated except for misconduct, negligence, inefficiency or other good and sufficient cause--the termination will spell a dismissal or removal within the ambit of Article 311, and that such a termination will cast a stigma on the employee and is productive of evil consequences.

11. In the light of what is stated above we must hold that the Government has only exercised its contractual right, that there is no finding of guilt, or punishment, that Article 311 is not attracted, and that this appeal should be dismissed. We do so, though in the circumstances of the case, without any order as to costs.

12. So much for the law and the legal aspects of the case. We cannot part with it, however, without a further observation. The background as revealed by the papers before us proves that the motive or the inducing factor for the order of termination was the allegations made against the petitioner. Those allegations were of a serious character, of indifference to a patient, a patient who died subsequently, and of rudeness to her husband. The allegations were the subject of considerable publicity, and an enquiry.

13. We would have thought that in fairness to the petitioner the Government would have entered a specific finding as to her guilt or innocence and not resorted to rule 5 and the easier mode of termination. The course adopted by the Government, though justifiable in law, has denied the petitioner a chance of vindication. We repeat--in order to allay all apprehensions to the contrary--that the petitioner has not been found guilty, that the termination of her services does not amount to dismissal or removal within the meaning of Article 311, that nothing precludes her re-employment, and that the order of termination casts no reflection on her professional conduct or ability.