
(1974) 06 KL CK 0002
In the High Court Of Kerala

The Union of India (UOI) and Another	APPELLANT
Vs	
K.S. Subramonian	RESPONDENT

Date of Decision : 26-06-1974

Acts Referred:

Constitution of India, 1950 — Article 124, 146, 148, 218, 229

Citation : (1975) 1 LLJ 86

Hon'ble Judges : V.P. Gopalan Nambiyar, J;K.K. Narendran, J

Bench : Division Bench

Judgement

V.P. Gopalan Nambiyar, J.—We think, the Court below was right and that no interference is called for in this appeal, preferred by the Union of India and the Commanding Officer, Naval Base, Cochin, against the judgment of the Sub-Court, Cochin, decreeing the plaintiff's suit to declare the termination of his service illegal and for reinstatement with arrears of pay, or alternatively for compensation for wrongful termination of service. The Court below declared the termination of service illegal and granted a decree for Rs. 25,000 as compensation with interest at 6% per annum.

2. The plaintiff-respondent was a welder, Grade II. in the Civilian Defence Forces, at the Naval Base, Cochin. His service was terminated by Ext. A1 order of the Government of India, Ministry of Defence, dated 25-10-1968, without assigning any reason whatsoever. The plaintiff at the time of termination of service, was aged only 41, and would be normally entitled to continue in service till sixty years of age. The defence was that the plaintiff's tenure was one under the pleasure of the President, and was, therefore, liable to termination, without assigning any reasons. It was found by the Court below that the termination offended the provisions of the Central Civil Service (Classification, Control and Appeal) Rules 1965, and was, therefore, illegal. It was on this ground that damages were decreed in favour of the plaintiff.

3. There was no controversy that the Rules applied to the plaintiff; nor was it denied that there had been no compliance with the Rules. What was argued was

that the termination being at the pleasure of the President, under Article 310 of the Constitution, the same would override Article 309, or the Rules framed thereunder. It would be convenient to read Articles 309, 310 and 311 of the Constitution.

309. Recruitment and conditions of service of persons serving the Union or a State. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

310. Tenure of office of persons serving the Union or a State.-(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-(i) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of

those charges and where it is proposed, after such inquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the basis of the evidence adduced during such inquiry:

Provided that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry ; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry A.I.R.ferred to in Clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

It will be seen that the Rules regulating the conditions of service of persons appointed to public services under Article 309, are "subject to the provisions of the Constitution", and, therefore, of Article 310. It is well-settled, and it was not disputed, that "conditions of service" include matters regarding termination of service. Article 310 is again "subject to the exceptions expressly provided by the Constitution." These exceptions have been covered by Article 124, 148, 218 and 324. Article 311 has also been held to constitute an exception to Article 310.

4. In support of the proposition that the pleasure of the President cannot be controlled by Rules framed under Article 309 of the Constitution, counsel for the appellant placed reliance on the observations in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, of the judgment stated thus:

...But, Article 309 opens out with a restrictive clause, namely, "Subject to the provisions of this Constitution", and if there is no restrictive clause in Article 310, there cannot be any difficulty in holding that Article 309 is subject to the provisions of Article 310; with the result, that the power of the Legislature to lay down the conditions of service of persons appointed to public services would be subject to "the tenure at pleasure" under Article 310. In that event, any law made by the Legislature could not affect the overriding power of the President or the Governor, as the case may be, in putting an end to the tenure at their pleasure. Would the opening words of the clause in Article 310, namely, "Except as expressly provided by this Constitution", make any difference in the matter of interpretation? It should be noticed that the phraseology of the said clause in Article 310 is different from that in Article 309. If there is a specific provision in some part of the Constitution giving to a Government servant a tenure different from that provided for in Article 310, that Government servant is excluded from

the operation of Article 310. The said words refer, inter alia, to Articles 124, 148, 218 and 324 which provide that the Judges of the Supreme Court, the Auditor General, the Judges of the High Courts and the Chief Election Commissioner shall not be removed from their offices except in the manner laid down in those Articles. If the provisions of the Constitution specifically prescribing different tenures were excluded from Article 310, the purpose of that clause would be exhausted and thereafter the Article would be free from any other restrictive operation. In that event, Articles 309 and 310 should be read together, excluding the opening words in the latter Article, namely, "Except as expressly provided by this Constitution". Learned counsel seeks to confine the operation of the opening words in Article 309 to the provisions of the Constitution which empower other authorities to make rules relating to the conditions of service of certain classes of public servants, namely, Articles 146(2), 148(5) and 229(2). That may be so, but there is no reason why Article 310 should be excluded therefrom. It follows that while Article 310 provides for a tenure at pleasure of the President or the Governor, Article 309 enables the Legislature or the executive, as the case may be, to make any law or rule in regard, inter alia, to conditions of service without impinging upon the overriding power recognised under Article 310.

We do not think the above passage, read as a whole, can support the petitioner's contention that the pleasure of the President can never be subject to any limitation, and cannot be controlled by Rules made under Article 309. In *Union of India (UOI) Vs. Col. J.N. Sinha and Another*, the attack made against a compulsory retirement from service under Rule 56(j) of the Fundamental Rules, on the only ground that there had been a violation of the principles of natural justice, failed. The Rules were framed under Article 309 of the Constitution. In explaining the scope of the Rule in relation to the different articles of the Constitution, it was observed:

7. Fundamental Rule 56(j) in terms does not require that any opportunity should be given to the concerned Government servant to show cause against his compulsory retirement. A Government servant serving under the Union of India holds his office at the pleasure of the President as provided in Article 310 of the Constitution. But this "pleasure" doctrine is subject to the rules or law made under Article 309 as well as to the conditions prescribed under Article 311. Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it". It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of principles of natural

justice then the Court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

Lower down, it was also pointed out that Rule 56(j) merely embodies one of the facets of the "pleasure doctrine" embodied in Article 310 of the Constitution. In *M. Ramanatha Pillai Vs. The State of Kerala and Another*, the question related to the abolition of the post of Vigilance Commissioner, and whether the petitioner who had been appointed to the post for a term of five years, could have any grievance on account of its abolition before the expiry of the term. It was held that he could not. In the course of the discussion, it was observed:

17. Article 309 provides that subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. Therefore, Acts, in respect of terms and conditions of service of persons are contemplated. Such Acts of Legislature must, however, be subject to the provisions of the Constitution. This attracts Article 310(1). The proviso to Article 309 makes it competent to the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment and the conditions of service of persons appointed, to such services and posts under the Union and the State. These Rules and the exercise of power conferred on the delegate must be subject to Article 310. The result is that Article 309 cannot impair or affect the pleasure of the President or the Governor therein specified. Article 309 is, therefore, to be read subject to Article 310.

18. Article 310 deals with the tenure of office of persons serving the Union or the State. Article 310 provides that such office is held during the pleasure of the President if the post is under the Union or during the pleasure of the Governor if the post is under the State. The doctrine of pleasure is thus embodied in Article 310(1). Article 310(2) deals with cases of persons appointed under contract. This Article provides that if the President or the Governor deems it necessary to secure the services of a person having special qualifications, he may appoint him under a special contract. Such a contract may provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post. It is noticeable that Article 310(1) begins with a clause except as expressly provided by this Constitution". Therefore, the other provisions in the Constitution which impinge on Article 310 have the effect of making Article 310 to be subject to those Articles. The exceptions thus

contemplated occur in Articles 124, 148, 218 and 324. Another important exception is Article 311. Article 311 is, however, not subject to any other provision of the Constitution.

We do not understand the above passage as Suggesting that Article 310 cannot in any manner be controlled by Rules framed under Article 309. We think there is sufficient authority to the contrary, to indicate that the pleasure of the President has to be exercised in conformity with the Rules framed under Article 309. In *Bholanath J. Thaker Vs. The State of Saurashtra*, . It was observed:

Even though the tenure of the appellant's service with the Ruler of the Wadhwan State was initially during the pleasure of the ruler, the rules put a fetter upon his powers to dispense with the services of the appellant when the Dhara No. 29 of St. 2004 was enacted by him. This obligation of the Ruler passed to the Saurashtra State on the making over the administration of the Wadhwan State to the Raj Pramukh on 15 th March, 1948 and the Saurashtra State also could not dispense with the services or compulsorily retire the appellant before he attained 60 years of age.

In *State of M.P. and Ors. v. Shardul Singh* (1970 1 S.C. cases p. 108 , it was observed that the pleasure doctrine embodied in Article 309 is subject to the other provisions of the Constitution and that the two other articles which cut down the width of the power under Article 310 are Articles 309 and 311. *B.K. Sardari Lal Vs. Union of India (UOI) and Others*, , also envisaged that the scheme of the articles in the Constitution is such that a law can be made prescribing the procedure or the authority by which the pleasure of the President or the Governor as the case may be, was to be exercised. The decision was of course, concerned with the main question whether the pleasure of the President under Article 310 was part of the executive power ; and it was ruled that it was not.

5. These cases, we think, sufficiently indicate that while it may be open to the President or to the Governor to dismiss a civil servant at pleasure, if Rules have been framed under Article 309 of the Constitution to regulate the mode and manner of termination of service, these have to be complied with. This, we think, is reasonable and understandable enough of first principle. If the untrammelled pleasure of the President has been subjected to Rules framed by the President himself in regard to the manner of termination of service, the pleasure must be subject to such Rules. We may draw the analogy from another branch of the law. It has been held by this Court that while the Government as the complete and absolute owner of its own land has got freedom and liberty to assign its land like a private proprietor, if it has chosen voluntarily to subject that freedom to certain Rules formulated for the purpose of regulating the assignment of such lands, it must necessarily be bound by those Rules. vide *Parameswaran Pillai v. State of Kerala* (1961) K.L.J. 1192.

6. We are, therefore, of the opinion that in the instant case, the Civil Services

(Classification, Control and Appeal) Rules, having been framed under Article 309 of the Constitution, the same had to be followed before the respondent's service was terminated. The same not having been admittedly complied with, the finding of the Court below that the termination is illegal was correct and requires no interference. No arguments were addressed on the quantum of damages awarded.

7. We may also observe that Ext. All does not even show that it had been issued by or under the authority of the President. It purports merely to be an order signed by some Deputy Secretary to the Government of India, without even stating that it has been issued by Order of the President. Counsel for the Union of India, stated that this aspect was never pleaded or put in issue and the Union of India had no chance to prove by evidence de hors the document that there had been the appropriate sanction of the President. We do not wish to say more on this aspect.

8. We dismiss this appeal with costs.