

(1979) 11 KAR CK 0008
In the Karnataka High Court
Case No : Writ Petition No. 17757 of 1979

T.S. Varghese

APPELLANT

Vs

Reserve Bank and Others

RESPONDENT

Date of Decision : 20-11-1979

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311 (1)
Reserve Bank of India (Staff) Regulations, 1948 — Regulation 47 (2)

Citation : (1980) 1 KarLJ 300 : (1980) 2 LLJ 57

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Judgement

1. In this writ petition presented under Art. 226 of the Constitution, by an employee of the Reserve Bank of India, the following question of law arises for consideration :

"Whether the employees of the Reserve Bank of India hold civil posts under the Union and consequently governed by the provisions of Art. 311 of the Constitution of India ?"

2. The petitioner is a Staff Officer on the establishment of Reserve Bank of India. A departmental enquiry has been instituted against him by the Manager, Reserve Bank of India, Bangalore. The petitioner has questioned the validity of Regulation 47(2) of the Reserve Bank of India Staff Regulation which confers power on the Manager, Reserve Bank of India, Bangalore, to institute disciplinary proceedings against the petitioner, on the ground that it is violative of clause (1) of Art. 311 of the Constitution of India. The case sought to be made out by the petitioner is on the basis that the petitioner was appointed by the Governor of the Reserve Bank of India and the Manager is an authority lower in rank than the appointing authority and, therefore, Regulation 47(2) contravenes clause (1) of Art. 311 as it vests the power of institution disciplinary proceedings for imposition of major penalty against the petitioner, on such lower authority.

3. In support of the submission that employees of the Reserve Bank of India hold

civil post, Sri G. N. Seshagiri Rao, learned counsel for the petitioner, relied on the decision of the Delhi High Court in J. S. Sachdev v. Reserve Bank of India 1973 S L.C. 702. He pointed out that in the said decision the Delhi High Court has held that the Reserve Bank of India falls within the definition of the word "State", as defined in Art. 12 of the Constitution. He, therefore, submitted that as the Reserve Bank of India falls within the definition of the word "State" the petitioner is an employee of State and therefore he holds a civil post under the State and consequently is governed by clause (1) of Art. 311 of the Constitution of India.

4. I am unable to agree. Art. 21 of the Constitution which is the first article in part III (Fundamental Rights) of the Constitution defines the word "State" as follows :

"12. Definition. - In this Part unless the context otherwise requires, "the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

There can be no doubt that too after the decision of the Supreme Court in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, and the recent decision of the Supreme Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, that the Reserve Bank of India having been constituted under S. 3 of the Reserve Bank of India Act, 1934 for the purpose of taking over the management of the currency from the Central Government, is a statutory Corporation and is also an instrumentality or agency of Central Government and, therefore, falls within the aforesaid decision of the word "State" But, it should be pointed out that, the definition of the word "State" given in Art. 12, as is clear from its opening words, is confined to Part III of the Constitution. The above definition is not helpful to substantiate the contention urged for the petitioner, because Art. 311 applies only to civil posts and services under the Union or of any State. In this behalf, it is necessary to set out the heading of Part XIV, Art. 308 and Art. 311(1) of the Constitution contained in Part XIV of the Constitution,"which read :

PART XIV "SERVICES UNDER THE UNION AND THE STATES Chapter I - Services

308. Interpretation. - In this Part, unless the context otherwise requires, the expression "State" does not include the State of Jammu and Kashmir.

* * * 311. Dismissal, Removal or Reduction in Rank of Persons Employed in Civil Capacities under the Union or a State. - (1) 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."

Article 311 applies to persons appointed to civil services and posts under the

Union or of any State. For purposes of Article 311 the word "Union" means the Central Government and the word "State" means States specified In the First Schedule of the Constitution except the State of Jammu and Kashmir as indicated in Art. 308. The word "State" used in Art. 311 does not include all the local and other authorities which are included within the enlarged definition of the word "State" for purposes of Part III given in Art. 12. Article 311 applies only to persons who are members of civil services or hold civil posts under the Central Government or the State Government.

5. In the case of *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, the Supreme Court has laid down the tests to find out as to whether a particular post is a civil post falling within the scope of Arts. 309, 310, 311 of the Constitution. The supreme Court has laid down the following criteria to find out as to whether a person holds a post under the Union or the State :

(a) A person should have been employed by the union or the State to any particular service or against any post.

(b) There should be relationship of master and servant between the Union or the State and the person holding a particular post.

(c) The Union or the State must have a right to appoint, suspend and dismiss such a person appointed to the post.

(d) The Union or the State Government must have the power to control the manner and method of his doing the work.

(e) The salary or wages of the persons concerned must be paid out of the consolidated fund of the Union or the State. In the present case, the case of the petitioner does not answer any one of the above tests. He is appointed by the Reserve Bank of India which is an independent statutory corporation. His conditions of service, his method of working and everything pertaining to his service is controlled by the Reserve Bank of India. The salary of the petitioner is paid out of the funds of the Reserve Bank of India and not out of the consolidated fund of the Union. Therefore, in my opinion the petitioner does not hold a civil post under the Union Government.

6. In this behalf I may also refer to the decision of the Supreme Court in *S. L. Agarwal v. General Manager Hindustan Steel Ltd.* AIR 1970 S.C. 1510, in which the Supreme Court observed as follows :

"7. Clause (2) of the article, which gives the protection, opens with the words "no such person as aforesaid" and these words take one back to clause (1) which describes the person or persons to whom the protection is intended to go. Clause (1) speaks of (i) persons who are members of (a) a civil service of the Union, or (b) an All India service or (c) a civil service of a State, or (ii) hold a civil post under the Union or a State. (a), (b) and (c) refer to the standing services which have been created in the Union and the States and which are permanently maintained in strength. In addition to the standing services there are certain

posts which are outside the permanent services. The last category in Art. 311(1), therefore, speaks of such posts on the civil side as opposed to the military side. Incumbents of such posts also receive protection.

* * * We must, therefore, hold that the Corporation which is Hindustan Steel Limited in this case is not a department of the Government nor are the servants of it holding posts under the State. It has its independent existence and by law relating to Corporations it is distinct even from its members. In these circumstances, the appellant, who was an employee of Hindustan Steel Limited, does not answer the description of a holder of "a civil post under the Union" as stated in the article. The appellant was not entitled to the protection of Art. 311. The High Court was therefore, right in not affording him the protection. The appeal fails and is dismissed but in the circumstances of the case we make no order about costs."

Though the Supreme Court was dealing with the case of a company, the above decision clearly indicates that employees of all corporate bodies cannot claim to be civil servants of Union or State and cannot claim to be governed by Art. 311 of the Constitution.

7. The learned counsel for the petitioner, however, vehemently contended that as the Reserve Bank of India answered the description of the word "state" as defined in Article 12 of the Constitution, the fundamental right guaranteed under Article 16 of the Constitution, viz., equality of opportunity in matters relating to employment under the State fully applies to the services under the Reserve Bank of India and that right also includes Art. 311 of the Constitution. He submitted that the decision of the Supreme Court in *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, , supports his contention. In the said case, the respondent, who was a Government servant of this State, complained before this Court that the termination of his services was in contravention of Art. 16 of the Constitution. This Court upheld his contention and quashed the order of termination. In appeal before the Supreme Court against that judgment, the State contended that the respondent therein being a temporary Government servant, the State had absolute right to terminate his services. Repelling this contention, the Supreme Court pointed out that the concept of absolute right of master against his servant is not applicable to the case of Government servants as the relationship between the Government and its servants is controlled by the provisions of Arts. 14, 15, 16 and 311 of the Constitution. I am unable to see how the said decision supports the contention of the petitioner. Statutory corporations which answer the description of "State" as defined in Art. 12 of the Constitution are bound to obey the fundamental rights undoubtedly and consequently their employees are entitled to the protection ingrained in Arts. 14 and 16 of the Constitution or in any other Article contained in Part III. But that has nothing to do with the application of Art. 311 as it applies only to persons holding civil posts under the Union or the State Government and the employees of statutory corporations are not servants of Union Government or of any State

Govt., though they may be instrumentalities or agencies of Union or State Govt., as the case might be.

8. In the light of the above discussion, I hold that the petitioner, who is an employee of the Reserve Bank of India does not hold a civil post under the Union Government as claimed by him. Therefore, provisions of Art. 311(1) has no application and consequently, the contention urged by the petitioner that Regulation 47(2) of the Reserve Bank of India State Regulation is violative of Art. 311(1) of the Constitution has to be rejected.

9. The second contention urged for the petitioner is that as the Rules regulating the leave travel concession of the employees of the Reserve Bank of India for the violation of which the disciplinary proceedings are said to have been instituted against the petitioner is said to have been replaced by new set of Rules and, therefore, the petitioner could not be charged for misconduct in respect of violation of the provisions of the Leave Travel Concession Rules which have been repealed. The question as to whether the petitioner is guilty of the charge of misconduct alleged against him or not is a subject-matter to be decided in disciplinary proceedings having regard to all the facts and circumstances of the case and relates to the merits of the case and not to the jurisdiction of the Manager to hold the enquiry and therefore cannot constitute a ground for interference by this Court at this stage. Therefore, I do not express any opinion on the said question.

10. For the reasons aforesaid, I reject this writ petition.