

(1987) 05 SC CK 0028
In the Supreme Court Of India
Case No : Civil Appeal No. 384 of 1977

Union of India (UOI)	Vs	APPELLANT
M.A. Chowdhary		RESPONDENT

Date of Decision : 07-05-1987

Acts Referred:

Constitution of India, 1950 — Article 16, 311, 311(1), 311(2)

Citation : AIR 1987 SC 1526 : (1987) 1 SCALE 1254 : (1987) 4 SCC 112 :
(1987) 3 SCR 424 : (1988) 1 SLJ 43 : (1987) 2 UJ 322

Hon'ble Judges : M. M. Dutt, J; E. S. Venkataramiah, J

Bench : Division Bench

Advocate : A.K. Ganguli, R.P. Srivastava, P. Parmeswaran and A. Subhashini, for the Appellant; Rani Chhabra, for the Respondent

Final Decision : Dismissed

Judgement

1. The Respondent-M.A. Chowdhary was appointed as a Staff Artist in All India Radio, Bombay under an agreement executed by him with the Director General of AH India Radio. The agreement was for three years. On the expiry of three years, the respondent was re-employed and his contract was renewed on yearly basis up to 30th November, 1964. Thereafter he was re-employed on a five years' contract.

2. On November 2, 1967 the Government of India passed an order stating that Staff Artists should be allowed to remain in service up to the age of 55 years. Accordingly, a clause was added to the agreement executed by the respondent, stipulating that the respondent shall remain in service up to December 31, 1985 on which date he was to attain the age of 55 years. Clause 4(v) of the agreement, however, provided that the respondent's service will be liable to be terminated on 6 months' notice on either side.

3. In due course, the respondent was transferred to All India Radio, Varanasi. The Assistant Station Director of All India Radio, Varanasi issued a notice dated

5th October, 1970 intimating the respondent that his services would stand terminated on the expiry of 6 months from 5th October, 1970 in accordance with Clause 4(v) of the agreement.

4. The respondent challenged the validity of the aforesaid termination notice by Writ Petition filed in the High Court of Allahabad. The learned Single Judge held that having regard to the service conditions, it must be held that the respondent was holding a 'civil post', and as such was entitled to the protection of Articles 311(2) and 16 of the Constitution, and that inasmuch as persons junior to him had been retained in service, the Appointing Authority in terminating his services had violated Article 16 of the Constitution. On these grounds, the notice of termination of the respondent's service was held bad and quashed.

5. In appeal, the Division Bench held that in view of Clauses (1) to (4) of the Agreement it is apparent that the Government in consideration of a monthly salary, controls the nature and manner of work assigned to the staff artists, that the Government had complete control over the respondent's work and manner and method of doing the work, which was supervised by the higher authorities, that the relationship between the respondent and the appellant was clearly of a master and servant, and the respondent was, therefore, holding a 'civil post' within the meaning of Article 311(1) of the Constitution. The authority to terminate the respondent's service on 6 months' notice emanated from the contract but nonetheless it has the effect of violating Article 311(1) of the Constitution. It must comply with Article 311(2), otherwise the termination would be a removal from service within the meaning of Article 311(2) and in violation of its provisions. The Division Bench held that the notice of termination was void and rightly quashed by the learned Single Judge and dismissed the appeal of the Union of India.

ORDER

6. Shri A.K. Ganguli, learned Counsel for the Union of India submits that Article 311 of the Constitution is applicable to the Staff Artists of the All India Radio. We are of the view that the statement made on behalf of the Government represents the true legal position because the Staff Artists are holding civil posts under the Government. In view of the above statement, this appeal filed against the judgment of the High Court of Allahabad in Special Appeal No. 258 of 1974 which has also taken the view that Article 311 is applicable to those Staff Artists has to be dismissed. This appeal is accordingly dismissed. No costs.