
(1982) 08 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6275 of 1981

Y.N. Reddy

APPELLANT

Vs

Director of Field Publicity

RESPONDENT

Date of Decision : 31-08-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311

Citation : (1983) 2 LLJ 41

Hon'ble Judges : P.A. Chowdhary, J

Bench : Single Bench

Judgement

1. The petitioner joined as a Mechanic in the Office of the Director of Publicity on 1st July 1965 and later on he was appointed as a Field Publicity Assistant on 1st August, 1967. The petitioner has been working in a temporary capacity and is governed by the Central Civil Services (Temporary Service) Rule, 1965. Acting under the sub-rule (1) of Rule 5 of the aforesaid Rules, the Director of Field Publicity, Ministry of Information and Broadcasting, New Delhi, gave the petitioner a notice on 31st July, 1981 informing him that his services would stand terminated with effect from the date of expiry of a period of one month from the date on which the notice was served on him. The petitioner has filed this writ petition challenging that notice.

2. The petitioner's claim regarding the validity of the notice has been denied by the Government in a counter-affidavit filed by the Regional Director, Directorate of Field Publicity, Government of India, New Delhi. In the counter-affidavit, it has been stated that the petitioner continued to be a Field Publicity Assistant at Hyderabad from 18th March, 1974 to 2nd May, 1979; and during that period, the petitioner availed himself of earned leave on several occasions between 14th June, 1976 and 28th November, 1977. What is more, the counter alleges that the petitioner stayed away from duty without any sanction of leave for ten months from 1st April, 1978 to 1st February, 1979. It appears that the petitioner joined duty on 2nd February, 1979 by furnishing a medical certificate and when the

petitioner was transferred to Kakinada Unit on 2nd August, 1979, he never joined at Kakinada although he had drawn Transfer T.A. advance of Rs. 730/- and advance of pay of Rs. 540/-. A memo was issued to the petitioner on 15th September, 1979 to which the petitioner replied on 25th September, 1979 that he fell sick and requested for medical leave from 2nd May, 1979 to 30th September, 1979. An explanation was called for from the petitioner on 9th November, 1979. On 18th September, 1980, the petitioner assured the Department that he would join at Kakinada on 1st October, 1980 but actually he did not join. The counter-affidavit further said :

"In view of all the above stated facts, under sub-rule No. 1 of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, notice of termination of service of the petitioner has been served by the Directorate of Field Publicity, Ministry of Information & Broadcasting vide No. 13013/1/78-Admn. dated 31st July, 1981. The petitioner has acknowledged the said communication."

3. The petitioner's argument challenging the impugned notice is based on violation of Arts. 14 & 16 of the Constitution and also denial of his right to be declared as quasi-permanent. I think the petitioner's claim that he ought to have been declared quasi-permanent would not really be the criterion for the decision of this case relating to the validity of termination of his temporary service. The petitioner's rights as a temporary servant can only be terminated on the footing that he continued to be a temporary civil servant governed by the Central Civil Services (Temporary Service) Rules. Now judging the petitioner's right from the angle, it is clear that the petitioner's services cannot be arbitrarily terminated. In the *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, the Supreme Court held that the termination of service of a temporary Government servant, without any reason, cannot be justified under the Constitution. It, therefore, becomes necessary for the Government to justify the order passed terminating the services of the petitioner even though the petitioner is a temporary Government servant. It is for that purpose the Government's counter has explained the circumstances and events that had induced the Government to terminate the services of the petitioner. Those circumstances and reasons that induced the Government to put an end to the services of the petitioner are non-attendance of the petitioner to his duties.

4. From the facts narrated above, it would appear to be clear that the petitioner has not only been going on leave too frequently but also has been abstaining himself from duty even without leave on more than one occasion. What is more, after the petitioner has been posted to Kakinada the petitioner never joined his post at Kakinada although he had drawn the advance of pay and travelling allowance. There can hardly be any doubt that these are the circumstances which would justify any authority, either public or private, to terminate the services of the petitioner. It should be noted that the petitioner is not only temporary civil servant but also holds a post during the pleasure of the President. But the argument of the learned counsel for the petitioner is that the right to hold the

post, even as a temporary servant, can be denied to him only in accordance with Arts. 14 & 16 and Art. 311 Clause (2) of the Constitution.

5. We have already seen that there is no violation in this case of Arts. 14 & 16 of the Constitution because the action of the authorities in terminating the services of the petitioner is based on solid and substantial grounds and is neither capricious nor arbitrary. But the petitioner says that the order of termination is made by way of punishment and therefore it should have been preceded by an enquiry contemplated by Art. 311(2) of the Constitution. The petitioner has cited several cases in support of this contention. The chief among them is the judgment of this Court reported in *Yellaiah Swamy v. Director of Industries and Commerce, Andhra Pradesh* 1971 (2) SLR 730 (A.P.), *State of U.P. and Others Vs. Sughar Singh*, and *R. K. Bhatt v. Union of India* [1970(II) L.L.J. 587] These cases clearly lay down that a public servant cannot be removed from service as a measure of punishment unless a proper and regular enquiry as contemplated by Art. 311(2) is held. Particularly in *State of Uttar Pradesh v. Sughar Singh* (supra), Mathew, J., rules that a public servant can only be removed for administrative reasons. The recent judgment of the Supreme Court reported in the *Manager, Government Branch Press v. D. B. Belliappa* (supra) clearly extends the area of protection available even to a temporary Government servant in the matter of service conditions which include removal etc. A perusal of these cases would show that they in substance greatly curtailed the area of pleasure doctrine contained in Art. 310 of the Constitution. The above mentioned Belliappa's case which dealt with the rights of a temporary civil servant would deny on the basis of Arts. 14 & 16 of the Constitution any unrestricted right of the Government in matters of appointment as well as removal. In other words, the judgment in Belliappa's case acts almost as a due process restraint on the power of the Government in service matters. Now this limitation which Belliappa's case imposed on the Governmental power to hire and fire a public servant would constitute a serious inroad into the pleasure doctrine recognised by Art. 310 of the Constitution. Accordingly the protection which a civil servant will now have in the matter of his removal should be considered to have shifted from Art. 311(2) of the Constitution. Art. 311(2) should now be confined only to affording a technical protection to a Government servant by assuring a procedural protection in the three categories of punitive action. Belliappa's case, while enlarging the area of protection to a Government servant in the matter of public employment, releases the exercise of Governmental power from the narrow and somewhat artificial limitations of Art. 311 of the Constitution. It enlarges the protection of the Government servant in the matter of public employment. From this point of view, it appears to me that the old and somewhat metaphysical discussion whether the order of removal is founded on the misconduct or is motivated by the misconduct would lose its importance. What would now, after Belliappa's case, be important is only to consider whether the order of removal is really arbitrary. In other words, if a Government servant, whether temporary or permanent, is removed or dismissed or reduced in rank or otherwise punished

without the support of sufficient justification, the Governmental act would be struck down on the ground of its being arbitrary under Arts. 14 & 16 of the Constitution. But if the action is wholly supportable under Arts. 14 & 16 of the Constitution as not being arbitrary and as having been taken in the public interest, such an action would only be struck down as and when it offends literally the conditions imposed by Art. 311(2) of the Constitution. To put it in other words, a Government servant who has been dismissed, removed or reduced in rank in accordance with the service rules the constitutional validity of which is sanctioned under Arts. 14 & 16 would not be entitled to complain of infraction of Art. 311 of the Constitution. Equally a Government servant who has been dismissed or removed or reduced in rank from a post to which he has no substantive right but in conformity with the requirements of Arts. 14 & 16 of the Constitution cannot receive any support from Art. 311(2) of the Constitution. Art. 311(2) would only apply in the narrowest field where a Government servant is dismissed, removed or reduced in rank without the benefit of the constitutionally sanctioned procedure.

6. Applying the above, the decision of the Supreme Court reported in *State of Uttar Pradesh v. Sughar Singh* (supra) must be considered only as laying down a proposition that a Government servant cannot be arbitrarily removed or reduced in rank. The old theory that a misconduct formed the motive or foundation can no longer be held to be valid. The question which Justice Krishna Iyer asked in *Samsher Singh Vs. State of Punjab and Another*, "when does a motive trespass into foundation ?" would clearly highlight the difficulties inherent in the application of that doctrine. After *Belliappa's* case, we should confine only to those orders which are made expressly in violation of that Article. The surrounding circumstances and the antecedent causes would not be relevant under the Article. Otherwise, I find no solution possible to the dilemma suggested by Mathew, J., in the decision in *State of Uttar Pradesh v. Sughar Singh* (supra).

7. It is not without significance that in *Union of India (UOI) and Others Vs. P.S. Bhatt*, , where a producer of regular programmes of All India Radio was reverted on the basis of loose talk and use of filthy language against the Station Director and other Officers of All India Radio at Vijayawada while in Office, the Supreme Court had upheld the order of reversion. Similarly, in *Oil and Natural Gas Commission and Others Vs. Dr. Md. S. Iskender Ali*, , where the probationer's history showed that he was not suitable to be retained in service the Supreme Court upheld his termination without going into the surrounding and antecedent circumstances, although enquiry was started and given up in that case.

8. Applying the above to the facts of this case, it would appear to me that the argument of the learned counsel for the petitioner based upon the principle underlined in *N. Yellaiah Swamy v. Director of Industries, Andhra Pradesh* (supra) cannot be applied because the order under which he was removed does not by itself cast a stigma on the petitioner. Only Arts. 14 & 16 should be applied and

that requires an examination of the facts. An examination of the facts and circumstances would reveal that the termination of the services of the petitioner is wholly justified. The Department has ample evidence that he is not suitable for discharging the duties of the post given to him. Even in those circumstances, it would have been better to the Department to have given notice to the petitioner and held a summary enquiry. But in view of the fact that these facts are admitted by the petitioner himself and are never denied, I do not propose to take the default of the Department into account in this case.