Mohammad Ghouse Vs. State of Andhra

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SooperKanoon Citation : sooperkanoon.com/427489

Court : Andhra Pradesh

Decided On : Nov-19-1954

Reported in : AIR1955AP65

Judge : Subba Rao, C.J. and ;Satyanarayana Raju, J.

Acts : Andhra Civil Services (Disciplinary Proceedings Tribunal) Rules, 1953 - Rule 4(2); Constitution of India - Articles 227, 232, 234, 235 and 309

Appeal No. : Writ Petn. No. 342 of 1954

Appellant : Mohammad Ghouse

Respondent : State of Andhra

Advocate for Def. : D. Narasaraju, Adv. General

Advocate for Pet/Ap. : M.K. Nambiar, ;Asker All and ;N. Rajeswar Rao, Advs.

Judgement :

Subba Rao, C.J.

(1) This is an application under Art. 226 of the Constitution of India for a Writ of Certiorari to quash the order issued by the Registrar, High Court of Madras, and given effect to by the State of Andhra, placing the petitioner under suspension from the date of the receipt of the order.

(2) The petitioner, Mohammed Ghouse, entered the Madras Judicial Service as a District Munsif in the year 1935 and was promoted to the Office of the Subordinate Judge in September 1949. On the formation of the Andhra State on 1.10.1953. he became a member of the Andhra State Judicial Service. The High Court of Madras took disciplinary proceedings against the petitioner on a charge of bribery. A Judge of the High Court was specially appointed to enquire into the allegations. The learned Judge conducted the enquiry at Vijayawada on 14.9.1953 and 15.9.1953 and continued the enquiry on 17.9.1953 and 18.9.1953 at Rajamundry and subsequently on 20.10.1953 at Madras. After the enquiry, the High Court issued an order placing the petitioner under suspension. The order was duly served on the petitioner on 30.1.1954. The petitioner seeks to get the order quashed on various grounds given in thepetition.

(3) Mr. Nambiar, learned counsel for the petitioner,contended, that the High Court has no power to continue disciplinary proceedings against the petitioner after the Andhra Civil Service (Disciplinary Proceedings Tribunal) Rules (hereinafter referred to as the Andhra Rules) came into force on 1.10.1953, and that, thereafter, the said power was vested only the Tribunal for disciplinary proceedings. The learned Advocate General replied by stating that the said rules were neither intended nor had the effect of removing the pre-existing jurisdiction from the High Court and transferring it to the Tribunal and that, even if that was the effect, it would be ultra vires of the rule-making power of the Government.

(4) The first question, therefore, is whether the Andhra Rules made any departure from those obtaining in Madras. The Madras and the Andhra Rules may be placed in juxtaposition to apprecite the difference between the two sets of rules.

CIVIL SERVICES (DISCIPLINARY ANDHRA CIVIL SERVICES (DISCIPLINARYPROCEEDINGS TRIBUNAL) RULES, 1948 1st PROCEEDINGS TRIBUNAL) RULES, 1953,January 1949 Kurnool, 22nd October 1953.

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exrcise of the powers conferred by S. 241 In exercise of the powers conferred by the Proviso(1) (b) and 2 (b) of the Government of India to Art. 309 of the

Constitution on India the GovernorAct, 1935, and of all other powers hereunto of the Andhra State hereby makes the following enabling. His Excellency The Governor of rules. Madras hereby makes the following Rules:

RULES RULES1(a) These rules may be called the MadrasCivil 1 (a) These rules may be called the Andhra CivilService (Disciplinary Proceedings Tribunal) Service (Disciplinary Proceedings Tribunal) Rules, 1948 Rules 1953.(b) They shall come into force on 1st January (b) The shall be deemed to have come into force no1949. the 1st October 1953.(c) They shall apply to all Government servants (c) They shall apply to all Officers under the rule-under the adminstrative control of the Government. making control of the State Government4. The Government may, subject to the provisions 4. (1) The Government shall, subject to the rule 5, of refer to the Tribunal --provisions ofrule 5, refer the following cases to theTribunal namely ;(a) Cases relating to Government servants on a (a) Cases relating to Government servants on a monthly salary of Rs. 150/- and above, in respect monthly salary of Rs. 150/- and above in respectof matters involving corruption on the part of such of matters involving corruption on the part of suchGovernment servants in the discharge of their Government servants in the discharge of their official duties ; official duties ; and(b) all appeals to the Government from Government (b) All appeals or petitions to the Governmentservants against disciplinary orders passed by against orders passed on charges of corruptionheads of departments and other competent and all disciplinary cases in which Governmentauthorities on charges of corruption; and propose to revise original orders passed to suchchares.(c) any other case of class of cases which the Provided that it shall not be necessary to consultGovernment consider, should be death with by the Tribunal ;the Tribunal. Provided that cases arsing the Judicial department (i) in any case in which the Tribunal has, at any and against Government servants in the subordinate previous stage, given advice in regard to the orederranks of the Police forces of the rank of Sub- to be passed and no fresh question has thereafterInspector and below shall not be referred to the arisen for determination or,Tribunal. (ii) where the Government propose to pass ordersrejecting such appeal or petition.(2) The Government may, subject to the provisionsof rule 5, also refer to the Tribunal any other caseor class of case which they consider, should be dealt with by the Tribunal ;Provided that the following

cases shall not be referred to the Tribunal namely ;(i) cases arising in the Judicial Department ; (ii) cases arising against the Government servants inthe subordinate ranks of the Police forces of the rank of Sub Inspector and below, unless the cases areagainst them together with Officers of higher ranks.

(5) It will be seen from the above said rules that R. 4 of the Madras Rules is divided into two sub-rr. 4 (1) and 4 (2) in the Andhra Rules. Clause (c) of R. 4 of the former is, with some modifications, enacted as sub-rule (2) in the latter. In the Andhra Rules two new provisos the added to Rule 4 (1) (a) and (b). The proviso to Rule 4 (c) of the Madras Rules is added as a proviso, with some verbal changes, to Rule 4 (2) of the Andhra Rules.

Relying upon the changes made, it was contended by the learned counsel for the petitioner that, while under R. 4 of the Madras Rules read with its proviso the jurisdiction of the Tribunal to decide cases arising in the Judicial Department is excluding, under R. 4 (1) of the Andhra Rules by reason of the deletion of that proviso from R. 4 (1) that jurisdiction is conferred on the Tribunal. He would further contend that the proviso to R. 4 (2) of the Andhra Rules having been designedly excluded from R. 4 (1) and added to Rule 4 (2), it cannot be construed as a proviso to R. 4 (1) whereas the Advocate General would say that the Andhra Rules did not make any conscious departure from the Madras Rules and that the ambiguity, if any, that crept into the new Rules would disappear if the entire scheme of the rules and the wording used is looked at from the correct perspective.

After carefully going through the two sets of rules, we should think that, in attempting to draft the rules artistically, some unintended and unexpected confusion was introduced. But we are satisfied that no conscious departure from the Madras Rules was intended. The two provisos added to R. 4 (1) of the Andhra Rules would be inappropriate to cl. (2), for provisos enabling Government not to refer to the Tribunal cases covered by R. 4 (1) in the circumstances mentioned in the provisos would be unnecessary under cl. (2), for under the said clause, it is in the discretion of the Government to refer 'any other case or class of cases' to the

Tribunal, So cl. (c) of R. 4 of the Madras Rules was enacted as cl. (2). But, in so doing, the proviso to cl. (c) of the Madras Rules should have been added also as a further proviso to R. 4 (1) of the Andhra Rules. Instead, the framers added the said proviso only after R. 4 (2). As the said proviso was intended to govern the entire rule instead of repeating it under the two sub-rules separately, it was added as a proviso after sub-r. (2). If it is construed only as a proviso to cl. (2), it would lead to the anomaly of an enquiry of a Sub-Inspector getting a salary of Rs. 150/- being conducted by a Tribunal and one getting less by his superior Officer.

It is obvious that no such distinction was intended between Sub-Inspector getting different scales of salary. Further, such a construction would come into conflict with the provisions of Arts. 227 and 235 of the Constitution of Inidia, whereunder the control and superinitendence of all Courts is vested in the High Courts. Though ordinarily a proviso shall be read as a proviso to the rule to which it is added, having regard to the emphastic words 'shall not be referred to the Tribunal' used in the proviso and also having due regard to the history and the object of the rules and the necessity to avoid anolalies and conflict with the provisioins of the Constitution, we are prepared to read the proviso distinctively and hold that the said proviso is a proviso for both the sub-rules or Rs. 4 of the Andhra Rules.

(6) If the said proviso should be read the only as a proviso to sub-r. (2) with the result that the High Court has no power to make an equiry in the exercise of its disciplinary jurisdiction over Subordinate Courts, the question arises whether such a rule would conflict with the provisions of the Constitution.

The relevant provisions of the Constitution may now be read:

'Article 227:

Every High Court shall have superintendence over all courts and tribunals throuhgout the territories in relation to which it exercise jurisdiction. Artcile 233:

Appointments of persons to be, and the posting and promotion of District Judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such States. (2) A person not

already in the service of the Union or of the State shall only be eligible to be appointed a District Judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

Artcile 234:

Appointments of persons other than District Judge to the Judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultatioin with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State. Article 235:

The control over District Courts and Courts subordinate thereto including the posting & promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post interior to the post of District Judge shall be vested in the High Court but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of the service prescribed under such law. Article 309:

Subject to the provisions of this Constitution, Act, of the appropriate Legislature may rerlate of the recruitment, and conditions of service of persons appointed to public service 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 connectioin with the affairs of the Union and for the Governor or Rajpramukh of State or such person as he may direct in the case of service and posts in connectioin 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 to made shall have effect subject to the provisions of any such Act.'

(7) The substance of the above articles may be stated thus: The High Court has the power to control and superintendence over all Courts with in the State. The

Governor has the power to appointment, post of promote District Judges in consultation with the High Court and in the case of direct recruitment on its recommendation. He has similar power of appointment in the case of persons other than District Judges of consultation with the High Court and the state Public Service Commission. The posting and promotion of Judges other than District Judges is vested in the High Court.

In the exercise of its power of control, the High Court shall exercise its power of acordance with the conditions of service prescribed under law. The Legislature may make rules regulating the recruitment and conditins of service of persons appointed to any public office. Till then, the Governor is empowered to make rules regulating the recruitment and conditions of service of persons appointed.

(8) A combined reading of the provisions would, therefore, indicate that the general control and superintendence of courts conferred on a High Court is restricted in specified directions.

It was, therefore, contended relying on Art. 235 of the Constitution, that the said power of control of the High Court over subordinate court s is subject to the condition of service prescribed by the Governor of the Legislature as the case may be.

The question, therefore, is what is the meaning to be words 'conditions of service' in Art. 235. Should they be given a wide connotation which would exhaust the content of the power of control, or, should it be given a limited meaning so as to reconcile it with the power of control?

The Judicial Committee in -- 'North West Frontier Province v. Suraj Narain', AIR 1949 PC 112 (A) expressed the view that the words 'condtitions of service' would take in circumstances under which an employer is entitled to terminate the services of an employee. A rule providing that a Government servant can only be removed after a disciplinary enquiry by a Tribunal may in a general sense be also a condition of service. So too, a rule that a judicial officer shall be under the supervision or control of a person other than a High Court. It will be equally a condition of service if a rule is framed that a judicial Officer other than a District

Judge is not liable to be posed, transferred or promoted except by the Government. Indeed every condition regulating the appointment, salary, pension, promition, removal, discipline and amenities of a servant would be a condition of service.

If such a wide construction is accepted, the Article itself would become nugatory and, therefore, it should be given a limited meaning. It is, therefore, necessary to give a limited meaning, which would reconcile both parts of the Article. The clue is found in the word 'deal' in Art. 239. That word is more appropriate to the procedure prescribed than to the power conferred to exercised. The power is exercised in the manner prescribed by the conditioins of service. The proceedure cannot obviously affect the power of control but it can only regulate the manner of its exercise. So construed, a reasonable reconcillation can be effected between the two parts of the Article.

To illustrate, the High Court has control and superintendence over subordinate courts. This power necessarily implies that the High Court can take disciplinary action against Subordinate Judges in appropriate cases. The control will certainly be ineffective if the authority exercising the control cannot take disciplinary action against a person under its control. To put it in other words, a superior authority cannot control the actions of a subordinate if he cannot take disciplinary action against him.

If the argument of the petitioner is accepted, it will mean that the High Court has control over a Subordinate Judge, but if he misbehaves, it is the Tribunal that makes an enquiry and it is the Government that removes him. This construction would in effect take away the subordinate officer from the control of the High Court. On the other hand, if it is held that in exercising control, the High Court shall follow in procedure prescribed under Art. 309, as a condition of service, it will reconcile both parts of the Article. The conditions of service may prescribe that no person can be removed or otherwise punished without due enquiry or in disregard of the principles of natural Justice. If there is such a condition the High Court in exercise of control under Art. 245 should deal with the subordinate concerned in accordance with the condition.

We would, therefore, hold that 'conditions, of service' in Art. 235 can only mean the condition regulating the exercise of the power of control. A condition of service, therefore, providing in effect and substance that the High Court shall not have power tl take disciplinary action either in exercise of its power of superintendence under Art. 227 or under the power of control under Art. 235, is constitutionally invalid.

(9) In the result, the application fails and is dismissed with costs (Rs.200/-) (Rupess two hundred only). Petition dismissed.

(10) Application dismissed.