

Prem Kumar Vs. the Union of India and ors.

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Court : Delhi

Decided On : Sep-25-1969

Reported in : ILR1969Delhi1214

Judge : V.S. Deshpande, J.

Acts : [Constitution of India](#) - Article 312

Appeal No. : Civil Writ Appeal No. 405 of 1968

Appellant : Prem Kumar

Respondent : The Union of India and ors.

Advocate for Pet/Ap. : R.K. Garg,; D.P. Singh,; S.C. Aggarwal,;

Judgement :

Deshpande, J.

(1) The formation of a Joint Cadre exclusively for the Union Territories in the Indian Administrative Service (hereinafter referred to as 'the IAS') by the Union of India (Respondent No. 1) and the appointment of respondents 2 to 37 to it have been challenged as unconstitutional and illegal in this batch of writ petitions. It is necessary to know, therefore, the Constitutional and legal provisions under which the Cadre was formed and the appointments to it were made.

(2) As decided in 1946 by the Conference of the Premiers' of the Provinces and the Central Home Minister, the Indian Administrative Service (and the Indian Police Service) were constituted as All India Services common to the States and Union. For the creation of other All India Services common to the Union and the States, the consent of the states was similarly required by Article 312(1) in the form of a resolution of the Council of States supported by not less than 2/3rd of the members present and voting in the same way that the consent of the Premiers of the Provinces was necessary for the creation of the Indian Administrative Service before the commencement of the Constitution. Article 312(1) declared that the IAS, though created prior to the Constitution, was to be deemed to be a service common to the Union and the States created by Parliament under Article 312(1). The All India Services Act, 1951 (hereinafter called 'the Act of 1951') being by its preamble and 'Act to regulate the recruitment and conditions of service of persons appointed to the All India Services common to the Union and the States' was, therefore, enacted by Parliament in exercise of the authority given to it by Article 312(1) and not under Chapter I of Part XI of the Constitution read with Item 97 of the Union list of the VII Schedule of the Constitution. Section 3 of the Act of 1951 empowers the Central Government 'after consultation with the Governments of the State concerned' to make rules for the regulation and recruitment and conditions of service of persons appointed to the All India Service. The Indian Administrative Service Cadre Rules, 1954 (hereinafter called 'the Cadre Rules') and the Indian Administrative Service (Recruitment) Rules, 1954 (hereinafter called 'the Recruitment Rules') are made there under. The IAS was divided under these Rules into several Cadres, each Cadre for a Part A or Part B State as they were listed in the I Schedule of the Constitution at its commencement. There could not be any Cadre for such Part C States as were the successors of the preconstitution Chief Commissioners Provinces in as much as these States were governed by the President. Part C States were 'States' only in the territorial sense as a part of the territory of India was comprised in them. But they were not States in the sense of being legal entities as they had no internally sovereign Executive or Legislature created by the Constitution. The Constitution (VII Amendment) Act, 1956 more clearly brought out the distinction between Part A and Part B States on the one hand and Part C States on the other by substituting 'States' simpliciter in place of

Part A and Part B States and 'Union Territories' in place of Part C State. Like the Part C States the Union Territories also did not have a Cadre of the Indian Administrative Service for themselves. The Adaptation of Laws Order, 1956 made by the President under Article 372-A of the Constitution to bring the various statutes into accord with the amended Constitution substituted the existing clause (b) in section 3(58) of the General Clauses Act to indicate that as respects any period after the commencement of the Constitution (VII Amendment) Act, 1956 the word 'States' used in Statutes would include Union Territories. This new definition of State was inserted in Rule 2 of the Cadre Rules and the Recruitment Rules. Acting upon this definition, clause (5) was inserted in 1959 to the Recruitment Rule 4 to enable the Central Government to form a new Cadre for the Union Territories of Delhi and Himachal Pradesh and to make recruitment to the said Joint Cadre directly, that is to say without making recruitment to the Indian Administrative Service under Rule 4 (1) of the Recruitment Rules and then allocating the Officers of the Service to the State Cadres under Rule 5 of the Cadre Rules at its initial constitution by such method as the Central Government may prescribe after consultation with the Union Public Service Commission (but not with the State Government in as much as the Union Territories were not States) on 21-12-1967, sub-rule (5) of Rule 4 of the Recruitment Rules was further amended by the substitution of the Joint Cadre for all the Union Territories and the North East Frontier Agency in place of the Joint Cadre of the Delhi and Himachal Pradesh and the Central Government formulated a scheme (annexure I to the Writ petition) to extend the Delhi-Himachal Pradesh Cadre to include all Union Territories by absorbing into it the existing officers of the Delhi-Himachal Pradesh Cadre and by appointing to it Officers of the Indian Frontier Administrative Service and all other Union Territories at its initial Constitution. This joint cadre for all Union Territories was brought into effect from 1-1-1968 by GSR42 made under Rule 3 (1) of the Cadre Rules and consequential amendments were made in the relevant Indian Administrative Service Rules by Gsr 43 to Bsr 49, all being published in the Gazette of India dated 13-1-1968 at page 41 of the paper-book. Respondents 2 to 37 are the Officers selected from the Indian Frontier Administrative Service for appointment to these new Joint Cadre for Union Territories at its initial constitution.

(3) The petitioners have challenged the creation of the new Joint Cadre for all Union Territories and appointment of respondents 2 to 37 to it on several ground, but the learned counsel for the petitioners Shri R.K. Garg, mainly stressed only the following contentions:

(1) The formation of the new Joint Cadre exclusively for the Union Territories and the appointment of respondents 2 to 37 to it was bad for the following reasons:

(A) as being contrary to Article 312 of the Constitution and the Act of 1951 as it was not 'common to the Union and the States', a Union Territory not being a 'state';

(B) as the Union Territories were not States Sub-Rule (5) of Rule 4 of the Recruitment Rules could not have been made after consultation with the Governments of the States concerned as required by section 3 of the Act of 1951 and was, therefore, ultra vires;

(C) recruitment of respondents 2 to 37 to the Joint Union Territories Cadre was contrary to section 3 of the Act of 1951 and Rule 5 of the Cadre Rules requiring the appointment to be made first to the IAS after which Officers are allocated to various cadres.

(2) The petitioners having been recruited to the Indian Administrative Service and later allocated to the Delhi Himachal Pradesh Cadre had the necessary locus standi to challenge the formation of the Union Territories Cadre and the appointment of respondents 2 to 37 to it. The writ petitions were defended by the union of India, but not by respondents 2 to 37. The above objections were answered by the learned counsel for respondent No. 1, Dr. L. M. Singhvi, as follows:

(1)(a) Under Article 312 only the Service as a whole, but not each Cadre of it was to be common to the Union and the States. Alternatively, the Union Territories Cadre is common to the Union and the States either because the conditions of recruitment and service of the Officers appointed to the Union Territories Cadre are the same as those governing other members of the Service allocated to other State Cadre; or because the Union Territories are States;

(B)The requirement of section 3 of the Act of 1951 for consultation with the State Government is directory and no mandatory;

(C)Sub-rule (5) of Rule 4 of the Recruitment Rules authorises the Central Government to recruit persons directly to the Union Territories Cadre at its initial constitution while the subsequent recruitment is to be made to the Service after which Officers may be allocated to this Cadre.

(2)The petitioners have no locus standi to challenge the formation of Union Territories Cadre which is only an extension of the Delhi Himachal Pradesh Cadre, in which the petitioners have served for a long time after being allocated to it. The petitioners cannot challenge the appointments of respondents 2 to 37 as the petitioners are in no way affected by these appointments.

(1)(a) The first question is whether the Union Territories Cadre was an 'All India Service' common to the Union and the 'States' within the meaning of Article 312(1) of the Constitution. A 'Service' has two elements. It is a body of persons, and it performs certain functions. Both these elements of the Service have to be 'common to the Union and the States'. The body of Officers forming the Service must have a mobility. For, most of the time they serve a 'State'. But for some time they also serve the Union. The Officers of the Union Territories Cadre, would serve either in the Union Territories or in the Central Secretariat. If both times they are in the Central Government, then they do not have mobility of moving from a State to the Central Government, and vice versa. Further the Officers of the Union Territories Cadre will not be actually working and discharging functions by rotation under the State and the Central Government, but will be working all the time under the Central Government. The Union Territories Cadre, therefore, is not a Service which can be said to be common to the Union and the States either in respect of its personnel or in respect of work done by it.

(4) Dr. Singhvi urged, however, that it is the Service as a whole, which alone has to 'be common to the States and the Union, each Cadre of such Service need not be so common. The answer to this argument is that the Service consists only of Cadres. Without Cadres it would have no existence. If the requirement of commonness were to be dispensed with in respect of each Cadre of the Service,

then a common Service would cease to exist as recognised in the observation of the Supreme Court in *Debeshchandra Dass v. Union of India* (1) in paragraph (10) of the judgment that the Cadres of the Indian Administrative Service are to be found in the States only. There is no Cadre in the Government of India. Rule 6 of the Cadres Rules provides for the deputation of Officers of State Cadres for service under the Central Government or in the State Government. If a Cadre is not to be common to the Union and the States, then the Union would not get any officers from the deputation reserves from the State Cadres and the superior posts under it would remain unmanned. The States would have with them a surplus of officers as the strength of the Cadre of each State including a number of deputation reserves officers, who are surplus to the needs of the States, but are appointed to man the Central Government posts. Mobility of the officers of one Cadre to another State Cadre is only provided for by Rule 6 for some exceptional cases. But, as a rule members of one State Cadre are not deputed to another State Cadre.

(5) The makers of the Constitution who used the words 'common to the Unions and the States' in Article 312 were aware of the preexisting IAS and also its predecessor the Indian Civil Service. In both of them the commonness consisted in the fact that Officers of State Cadres used to go on deputation to the Central Government. They may, thus, be presumed to have the same commonness in mind in using the above words while enacting Article 312. Further Article 312(2) shows that Article 312(1) essentially continued the same system of commonness as obtained in the preexisting IAS. This is why the Indian Administrative Service was deemed to have been created under Article 312(1). This accords with the established rule of construction of statutes that 'legislature does not intend to make substantial alteration in the law beyond what it explicitly declares either in express terms or by clear implication' (Maxwell on interpretation of Statutes, 10th Edition p.81). This statement of law was approved by the Privy Council in *Murugian v. Jainudeen*, (2) after referring to similar observations of Lord Goddard in *National Assistance Board v. Wilkinson*, (3) and by the Supreme Court in *M. K. Ranganathan v. Government of Madras*.

(6) It is true that the conditions of service of the Officers of the Union Territories Cadre would be same as those of the Officers of the State Cadres of the IAS. But the initial recruitment to the Union Territories Cadre was under Rule 4 (5) of the Recruitment Rules by a method different from the usual methods of recruitment to the Indian Administrative Service under Rule 4(1) of Recruitment Rules. Further appointments were made directly to the Union Territories Cadre while under Recruitment and Cadre Rules appointments are always made to the Indian Administrative Service first and Officers of the Service are later allocated to different State Cadres. The mere similarity of conditions of service cannot make the Union Territories Cadre 'common to the Union and the States', when, in fact, such a Cadre can never serve in any State at all.

(7) The next question, therefore, is whether the Union Territories are 'State' for the purpose of Article 312(1). Article 312 is a part of Chapter XIV of the Constitution, which is significantly entitled 'Services under the Union and the States'. Part XIV does not create an All India Service. The reason seems to be that the consent of the States for the creation of All India Services given in 1946 related only to the Indian Administrative Service and the Indian Police Service. Therefore, Article 312(1) states that more all India Services could be created only after specific consent of the States for them is obtained by way of a resolution of the Council of States. The All India Services referred to in Article 312 are, thus, obviously different from the Services of the Union and those of the States dealt with in Article 309. The difference is that while Services of the Union and the States are unitary services serving the Governments of the Union and the States exclusively, an All India Service as its name shows is a truly Federal service common to both the Union and the States. The key to the meaning of the word 'State' used in Part XIV including Articles 309 and 312(1) is provided by the interpretation clause in Article 308. Before the Constitution (VII Amendment) Act, 1956 Article 308 was as follows:

'IN this part. unless the context otherwise requires the expression 'State' means a State specified in Part A or Part B of the I Schedule'.

THIS definition, thus, made it clear that the word 'State' in Part XIV was not to include part C States. Union Territories are the successors of the Part C States. It follows, therefore, that they are also expressly excluded from the definition of 'State' in Part XIV. There is nothing particular in the context of Article 313 which would require the word 'State' therein to include a Union Territory.

(8) The Federal scheme in the Government of India Act, 1935 and the Constitution is clear. The internal sovereignty is divided only between two units, viz. the Union and the States. The Chief Commissioner's provinces followed by the Part C States which in turn were followed by the Union Territories were not federal units. They did not share in the internal sovereignty, as they did not have internally sovereign Executives and Legislatures. Just as prior to the Constitution (VII Amendment) Act, 1956, a Part C State was always distinguished from Part A and Part B States which had internally sovereign Executives and Legislatures. Union Territories have been distinguished from States throughout the Constitution beginning with Article 1(3) thereof. Under Part IV of the Government of India Act, 1935 and Part VIII including Article 239 of the Constitution, the Chief Commissioner's Provinces were administered by the Governor General and the Part C States and the Union Territories were administered by the President.

(9) How is it then that the Central Government was advised to amend the definition of the word 'State' in the Recruitment and Cadre Rules to include Union Territories and actually formed the Delhi Himachal Pradesh cadre and then the Union Territories Cadre acting on the said amended definition? The answer lies in the definition of the word 'State' in section 3(58)(b) of the General Clauses Act as adapted by the Adaptation of Laws Order, 1956, which runs as follows:

"State' as respects any period after the commencement of the Constitution (Seventh Amendment) Act, 1956 shall mean a State specified in the First Schedule to the Constitution and shall include a Union Territory.'

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RELIANCE on this definition has led to a widespread confusion of thought and must, therefore, be clarified at once. Article 367(1) of the Constitution applies to

the interpretation of the Constitution the provision of the General Clauses Act as adapted under Article 372(2) of the Constitution. In view of Article 372(2)(a) such an adaptation had to be made within three years from the commencement of the Constitution. The definition of a 'State' in section 3(58) of the General Clauses Act as adapted by the Adaptation of laws Order, 1950 issued under Article 372(2) of the Constitution was as follows:

'STATE' shall mean a Part A State, a Part B State or a Part C State'.

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