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Dr. M. Krishnamoorthy Vs. the State of Madras and anr.

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Court : Chennai

Decided On : Jan-19-1951

Reported in : AIR1951Mad882; (1951)1MLJ709

Judge : Rajamannar, C.J. and ;Panchapakesa Ayyar, J.

Acts : [Constitution of India](#) - Articles 226, 227 and 311; City Service (Classification of Appeals) Rules

Appeal No. : Civ. Misc. Petn. No. 11900 of 1950

Appellant : Dr. M. Krishnamoorthy

Respondent : The State of Madras and anr.

Advocate for Pet/Ap. : G.T. Ramanujachari, Adv.

Disposition : Application dismissed

Judgement :

Rajamannar C.J.

1. The petnr. was employed, as an Asst. District Health Officer in the Public Health Department of the Madras State & he acted as the Municipal Health Officer at Srivilliputtur from November 1947 till about the middle of May 1948. On complaints against him from the residents of the locality sent to the Director of Public Health and other authorities; there was first an enquiry by the District Health Officer and

subsequently by an officer of the Crime Investigation Dept. The Govt. finally retd. the matter to the Disciplinary Proceedings Tribunal for an enquiry. The Tribunal called upon the petnr. to show cause against certain charges which included a charge of corruption. The petnr. filed a written statement meeting the charges. The Tribunal proceeded with the enquiry, recorded evidence & submitted its report dated 31-10-1949 to the Govt. The Tribunal recommended that the petnr. may be removed from service. Govt., apparently did not agree that this was a sufficient penalty as, in their opinion, the charges were proved beyond doubt & therefore by order dated 3-3-1950 dismissed the petnr. from service with effect from 10-3-1950. Against this order of dismissal, the petnr. preferred an appeal to His Excellency the Governor under the Civil services (Classification & Appeal) Rules. This appeal was rejected on 7-7-1950. The petnr. now seeks for a writ under Article 226 of the Constitution to quash the orders of Govt. dated 3-3-1950 & 7-7-1950.

2. The learned counsel for the petnr. attempted to bring the case under Article 227 of the Constitution under which this Ct. is given superintendence over all Cts. & tribunals throughout the territories in relation to which it exercises jurisdiction. We have no hesitation whatever in holding that neither the Govt. nor the Disciplinary Proceedings Tribunal would fall within Article 227.

3. The question is whether any interference under Article 226 will be justified in this case. Under Article 310(1) of the Constitution, except as expressly provided by the Constitution, every person who is a member of a civil service of the Union & every person who is a member of a civil service of a State holds office during the pleasure of the President or the Governor respectively. Article 311 lays down two requirements to be fulfilled before a person who is a member of a civil service of a State is dismissed or removed. They are (1) that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed & (2) that he shall not be dismissed or removed or reduced in rank until he has been given a reasonable opportunity to show cause against the action proposed to be taken in regard to him. The proviso exempts the observance of the second requirement in certain circumstances, e.g., where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. Admittedly both these requirements have been fulfilled in the case of the petnr. He

was not dismissed by an authority subordinate to that by which he was appointed. Before he was dismissed, he was given a reasonable opportunity of showing cause against his dismissal. He was given notice of the charges against him & he was given the opportunity of meeting them. In these circumstances, we fail to see anything which calls for our interference.

4. It is however contended by learned counsel for the petnr. that there is another implied requirement that civil servants in the position of the petnr. can be dismissed or removed only for misconduct & at one stage of the argument he even went to the length of contending that in the case of a charge like corruption, the petnr. must have been convicted by a Criminal Ct. for that offence, or, in any event, that this Ct. must be satisfied in the exercise of criminal appellate jurisdiction so to say, that there was evidence on which a conviction could be supported. We see nothing of this sort laid down in Article 311 or in any other article of the Constitution. It is nowhere stated on what ground a Civil Servant might be dismissed or removed. One can conceive of a dismissal or removal being justified on grounds of inefficiency, insubordination or general reputation of corrupt conduct. The Constitution itself does not give any clue. Learned counsel wanted to argue from Proviso (d) to Clause (2) of Article 311 that the ground on which a dismissal could be justified must be akin to a criminal charge. On the other hand all that that proviso enacts is that even the reasonable opportunity of showing cause need not be given to a person who has been actually convicted on a criminal charge.

5. Learned counsel for the petnr. sought to attack the finding of the Disciplinary Proceedings Tribunal on the ground that there were 'regularities in the reception of evidence & the conclusions of the Tribunal were based on evidence on which no criminal Ct. would have convicted the petnr. Assuming that this complaint is well founded, we do not think that we have jurisdiction to set aside the dismissal of the petnr. The prescribed proper authority of Govt. had ample power to dismiss the petnr. if that authority was satisfied that there was reasonable cause for such dismissal. All that had to be done was to afford a reasonable opportunity to him to show cause against the action proposed to be taken in regard to him.

6. Learned counsel for the petnr. also contended that the appeal was not properly disposed of because it was disposed of not by the Governor personally but by the Secretary to the Govt. Public Health Dept. Here again we should mention that the petnr. is not entitled under any statute or any statutory rule to a right of appeal. The Governor to whom an appeal is preferred is not a Tribunal subject to the Superintendence of this Ct. The fact that rules are made to safeguard the rights of civil servants in matters of disciplinary action does not mean that this Ct. has jurisdiction to quash orders of Govt. dismissing a civil servant because one or other of the rules has been contravened. So far as there is no contravention of Article 311 of the Constitution which corresponds to the provisions of Section 240, Govt. of India Act, 1935, this Ct. would have no jurisdiction to quash an order of dismissal by the Govt.

6. The decision in 'Lord Leconfield v. Thornely', 1926 AC 10, was read on & much time occupied with reading passages from the speeches of the noble Lords in that case. That case has no bearing whatever on the questions which arise in this case, because it was found by the House of Lords in that case that the office of a Clerk of the Peace of the Country was an office held during good behaviour; that is to say, that it was a freehold office & that the Local Govt. Act of 1888 did not change the tenure into a tenure of pleasure. Obviously, different considerations would prevail in the case of a freehold office which would not apply to the case of a tenure at pleasure as is the case of a civil servant of the State in the position of the petnr.

7. The appln. is dismissed.

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