

**Anchal Singh Vs. Government**

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**Court :** Jammu and Kashmir

**Decided On :** Jun-17-1950

**Reported in :** AIR1951J& K1

**Judge :** Niamat Ullah, President,; Shiam Krishna Dar and; Iqbal Ahmad, Members

**Acts :** Kashmir Regulation, 1991; ;Public Servants (Inquiries) Act, 1977; ;Kashmir Civil Service (General) Rules

**Appeal No. :** Appeal No. 15 of 1949

**Appellant :** Anchal Singh

**Respondent :** Government

**Advocate for Def. :** R. Jaswant Singh, Asst. Adv. General

**Advocate for Pet/Ap. :** H.N. Dar, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

Shiam Krishna Dar, Member

1. This is an appeal against a judgment & decree of the H. C. dated Sawan 4, 2006, in its appellate jurisdiction, by which it affirmed a judgment & decree, dated 9-9-1947, of the H. C. in its original jurisdiction, whereby the applt's. suit for

declaration of wrongful dismissal from service & for consequential damages was dismissed.

2. By an Order of Council, dated 14-8-1989, the applt. was dismissed from service on three sets of charges for drawing & passing false T. A, bills & carriage bills, two relating to himself & one relating to his camp clerk. At the time when this order of dismissal was made, the applt was a member of the Civil Service of Kashmir holding the post of the Game Warden, But at its inception in the year 1921, the applt.'s service began as a Lieutenant in the Army from where ib was transferred to the civil administration in the year 1932.

3. This order of dismissal was preceded by an enquiry under the Kashmir Civil Service Rules (General) & was followed by an appeal to His Highness, which was dismissed.

4. After taking various othec proceedings by way of review & applns. for re-consideration & mercy, the applt five years after the order of dismissal, instituted a euit out of which this appeal has arisen for a declaration that his dismissal was illegal, void & ineffectual & he was still in the service of the State & entitled to bis pay & during the pendency of the suit he further claimed by amendment of the plaint, consequential damages for the wrongful dismissal.

5. The applt, challenges the order of dismissal on the ground that, it was not preceded by an inquiry under the Public Servants (Inquiries) Act, 1977, & that the enquiry made against him under the Kashmir Civil Service Rules (General) was 'in the nature of a farce' as is did not give him any sufficient or proper opportunity to clear himself against the charges of which he was found guilty. He pleads that Kashmir Civil Service Rules (General) have got the force of law & an order of dismissal in contravention of the Act & the Rules is void & ineffective. He asserts that even if his service was at the pleasure of His Highness, unrestricted by any statute, it was not at the pleasure of His Highness' Govt. which could only dismiss him after following the Rules. And his wrongful dismissal by the Govt. though affirmed in appeal by His Highness is not tantamount to a dismissal by His Highness in the exercise of his pleasure.

6. The suit was tried in the original side of the H. C. & at an early stage the following two pre. liminary questions about the nature of the service of the applt. & about the binding force of the Kashmir Civil Service Rules (General) were referred by Masud Hassan J., for the consideration of the F. B.

'(1) Whether an officer as contemplated in the Kashmir Civil Service Rules (General) is liable to be dismissed from service at the pleasure of the Govt. & has no remedy by way of questioning the legality of his dismissal in a Civil Ct. &

2. Whether the rules framed under Council Order No. 81 C of 1939, dated 24-9-1939, have any binding force upon the Govt. or they are only by way of providing guidance to officers authorised to dismiss servant.'

7. The answer received from the F. B. to the above two questions was as follows :

'(1) The officer as contemplated in the Kashmir Civil Service Rules (General) is not liable to be dismissed from service at the pleasure of the Govt. & he has remedy by way of questioning the legality of his dismissal in a civil Ct.; &

2. The rules framed under Council order No. 81-C of 1989, dated 24-9-1939, have binding force upon the Govt. & they are not merely by way of providing guidance to officers authorised to dismiss servants.

These answers are subject to the condition that before an officer has a cauae of action in a civil Ct. he must exhaust the remedies as prescribed by the Rules & that an order made by His Highness cannot bo questioned in a Ct. of Law.'

8. After the determination of the controversy by the F. B., the case was again heard by Masud Hasan J., who found that no proprar enquiry was made by the Govt. as required by the Kashmir Civil Service Rules (General) & that the applt's. dismissal being in contravention of the Eulaa was wrongful, but as the applt's. dismissal had been affirmed in appeal by His Highness the applt. could not seek a declaration of wrongful dismissal from Ct. & his only remedy was to claim damages which claim, however, was banted by limitation, & these findings in substance ware affirmed in appeal by Wazir C. J. & Kilam J.

9. The circumstances in which the applt. was dismissed are thus summarised by Masud Hasan J:

'It is thus clear that throughout all this so-called enquiry the pltf. had no notice as to the action that was contemplated to be taken against him .... He had not an adequate opportunity of being personally heard in his defence & in the action that was ultimately taken against him there were included counts of which he was never charged. This cannot be said to be observing either the spirit or the letter of Rule 32 of Kashmir Civil Service Rules (General) which it is claimed was complied with in dismissing the pltf. .... I am of opinion tint the facts of the present case are much stronger in support of the view taken & have no hesitation in recording the finding that the dismissal of the pltf. from service was wrongful & illegal.'

10. These findings of Masud Hasan. J. were affirmed in appeal in their entirety by Kilam J. & though they were challenged before the Board they should be taken as correct & the main controversy before it is confined to the question as to what relief, if any, the applt. is entitled on these findings.

11. At the outset it is necessary to determine the question whether the eervice of the applt. was at the pleasure of His Highness personally or was it at the pleasure of His Highness' Govt. His Highness is undoubtedly the source of all legislative, executive & Governmental authority in the State. In legal theory, ha personifies the State & constitutes its Govt But by Regulation I [1] of 1991, which was in force at the time when the order of dismissal was made, His Highness had constituted a Council which, under the General Clauses Act, 1977, constituted his Govt. & to which, under Section 6 of the Regulation, certain powers of His Highness, had been delegated.

12. The fifteenth clause of the third section of the General Clauses Act states: 'Government' or 'the Government' shall mean 'Council' as defined in Regulation 1 [I] of 1991.' The second section of Regulation 1 [I] of 1991, states 'Council' means the Council of Ministers of Jammu & Kashmir herein-after referred to'. The third section of the Regulation states: All powers, legislative, executive & judicial in relation to the State are vested in His Highness. The fourth section of the Regulation provides that the Govt. of the Stats shall be conducted in the name of

His Highness. The fifth section provides for the constitution of Council of Ministers & the sixth section states as follows :

'Subject always to the provisions of Section 3 & the exercise in his discretion of the powers & authority inherent as aforesaid in His Highness & subject also to such rules of business & allocation of portfolios & such other directions as to consultation with or reports to & confirmation by His Highness on specified matters as His Highness may give from time to time by general or special orders in that behalf, the superintendence, direction & control of the Civil Administration & Govt. of the State shall be vested in the Council.'

These provisions are followed by the seventh section of the Regulation which provides for certain reserved subjects which are excluded from the jurisdiction of Council or of the Legislative Assembly which was brought into existence under the Regulation.

13. Taken together, these sections mean in substance that subject to the overriding powers of His Highness 'the superintendence, direction & control of Civil Administration & Govt. of the State' is vested in the Council except in regard to reserved subjects, with the result that the Governmental authority of His Highness, subject to his supervision, vests in the Council which becomes His Highness' Govt. subject to his supervision for non-reserved subjects.

14. The power to carry on the Civil Administration & Govt. of the State which was conferred on the Council by His Highness, necessarily carried with it the power to make appointments, dismissals in the civil service of the State. After the Regulation came into force, all future appointments, in the civil service of the State should be deemed to be appointments made by the Govt. & under it. And all members of the Civil Service of the State already employed on the date when the Regulation came into force, should also be deemed to be holding their appointments under the Govt. The applicant was a member of the Civil Service at the time when the Regulation I [1] of 1991 came into force & whatever may be the origin of his appointment, by virtue of the Regulation it also came to be under the Govt. by operation of the Regulation.

15. Before the Regulation I [1] of 1991 came into force, the applt's service was at the pleasure of His Highness not by reason of any prerogative of His Highness but because the nature of the applt's, service was such that public policy required that it must be at the pleasure of the employer & in the case of the applt., of His Highness & this was by reason of the implied terms of his service & not by reason of any prerogative of His Highness. This is made clear by Lord Hobhouse in *Shenton v. Smith*, (1895) A.O. 229 ; (64 L.j.p.c. 119).

'Unless in special cases where it is otherwise provided servants of the Crown hold their offices during the pleasure of the Crown; not by virtue of any special prerogative of the Crown, but because such are the terms of their engagement, as is well understood throughout the public service. If any public servant considers that he has been dismissed unjustly, his remedy is not by a law suit, but by an appeal of an official or political kind.'

16. If the nature of applt's. service before the Regulation (1 [1] of 1991), was such that it had to be at the pleasure of His Highness by reason of the implied terms of the, service, it follows that when the applt.'s service came under the Govt. after the Regulation, it had to be at the pleasure of the Govt. by reason of the self-same nature, of the applt.'s service.

17. Relying upon the distinction which no doubt exists in the laws of the State in regard to the powers of His Highness & the powers of His Highness' Govt. the F. B. of the H. C. has taken the view that as the power of dismissal at pleasure, which His Highness possessed, had not been expressly delegated to the Council, the latter was unable to exercise that pleasure. But this view overlooks the fact the power of the dismissal does not rest upon any prerogative of the Crown which has got to be delegated, on the other hand it rests upon the nature of the service which will remain the same whether it is held under His Highness or under the Govt. And with all respect to the H. C., the Board, therefore, dissents from the view that the service of the applt. at the time of his dismissal was not at the pleasure of the Govt.

18. The service of the applt. being at the pleasure of His Highness or of His Highness' Govt., still the question remains whether his dismissal was void or

legally ineffective & he still continues in service or it was only a wrongful dismissal which could only be redressed by the Govt. or by His Highness & for which the applt. has got no remedy in Ct.

19. It is now settled law that even when the service is at the pleasure of the Crown, either by express terms of the statute or by reason of the implied terms of the service, in either case the exercise of the pleasure of the Crown may be restricted by express terms of the statute. And any dismissal from service in contravention of the express terms of the statute applicable to a case will be void & legally ineffective & notwithstanding the dismissal the servant would still continue in service & may obtain a declaration from Ct. to that effect; See *Gould v. Sturt*, (1896) A. C. 575 : (65 L. J. P. C. 82); *Rangachari v. Secy. of State*, A. I. R. (24) 1937 P. C. 27 : (I. L. R. (1937) Mad. 517); *The High Commr. of India v. I. M. Lall*, A. I. R. (35) 1948 P. C. 121 : (75 I. A. 225).

20. The applt., therefore, maintains that the exercise of the pleasure of His Highness or of his Govt. was restricted by the provisions of Public Servants (Inquiries) Act, 1977, and by Rule 82 of the Kashmir Civil Service Rules (General) which have the force of law or statute in the State and the dismissal of the appellant in contravention of the provisions of these two statutes is void in law and he is entitled to a declaration that he still continues in service on the authority of above cases.

21. The Public Servants (Inquiries Act) 1977, is an optional measure which gives the Govt. power in certain circumstances to institute a public inquiry under that Act in regard to alleged misbehaviour of a public servant. But it is not bound to take any action under that Act if it does not wish or consider it proper to do so. This is made plain by the wording of Section 2 of the Act, & it is not possible to treat the provisions of the Public Servants Inquiries Act as constituting any restrictions upon the power of dismissal which His Highness or which his Govt. may possess independently of the Act.

22. The Kashmir Civil Service Rules (General) prima facie were framed by His Highness' Govt. There is nothing to show that they were made under the provisions of any statute or that they ever received the sanction of His Highness

on the basis of a legislative enactment. It is not, therefore, possible to give these Rules a statutory force. No doubt these rules have been framed by the Govt. with some sort of approval by His Highness & they are for the guidance of the Govt. & are binding upon it & cannot be disregarded, but it is one thing to say that the rules are binding upon the Govt. & cannot be disregarded & it is quite another matter to say that these Rules operate as a condition precedent to the exercise of power of the Govt. or of His Highness to dismiss a servant at pleasure. Such Rules, whether framed under a statute or independently of it, generally provide for many details & can be changed at the wish of the Govt. & they have never been treated on the same footing as the provisions of a statute in restricting the power of Govt. to dismiss at pleasure.

23. The legal effect of such Rules upon service at pleasure of the Crown has often been the subject of judicial consideration. These Rules contain solemn pledges & assurances given to the services in regard to security & efficiency of the service & they are to be followed in letter & spirit. Any serious violation of the rules renders the dismissal wrongful which it is the responsibility of the Govt. to set right when the matter is brought to their notice by the aggrieved servant. But since these Rules do not limit in any way the powers of dismissal of the Govt. it is not open to the Ct. to treat such wrongful dismissal as void & as of no legal effect & to declare that the dismissed servant continues in service. See *Shenton v. Smith*, 1895 A. C. 229; (64 L. J. P. C. 119), *Venkata Rao v. Secy. of State*, A. I. R. (24) 1937 P. C. 31 : (I. L. R. (1937) Mad. 532).

24. The distinction between a void dismissal & a wrongful dismissal is obvious. In the case of a wrongful dismissal in contravention of statute there is no power of dismissal & it is in a way without jurisdiction & consequently void & of no legal effect & the dismissed servant still continues in service. On the other hand in the case of a wrongful dismissal in contravention of the rules, there is no actual limitation on the power of dismissal which continues unaffected & the dismissal is only irregular which the Ct. is powerless to redress by granting any effective declaration of continuance of service.

25. The question as to whether the dismissal of the applt. was made by His Highness personally or by his Govt. is not of any moment if the service of the applt. was in fact at the pleasure of His Highness or his Govt. It is immaterial who terminated the service or how it was terminated because if the service is at pleasure no matter how it is terminated. The applt. cannot get a declaration that he still continues in service against the wishes of His Highness or his Govt.

26. Nor is it possible to accept the contention that in exercising his pleasure in regard to the dismissal of the applt., His Highness was required to follow any particular form or procedure & that the order of the dismissal of the appeal by His Highness in a case of wrongful dismissal by the Council of a servant cannot be taken in fact or in law as an exercise of the pleasure of His Highness. No doubt there is high authority for the view that a statutory authority which can exercise the power of dismissal cannot delegate this power to any other subordinate, authority : See Rangachari v. Secy. of State, A. I. R. (24) 1987 P. C. 27 : (I. L. R. (1937) Mad. 517). And the dismissal of an appeal by the statutory authority which has power to dismiss at pleasure is not tantamount to the exercise of pleasure by the statutory authority itself ; See Suraj Narain Anand v. N. W. F. P., A. I. R. (29) 1942 F. C. 8:(I. L. R. (1941) Kar. F. C. 165). But these principles are not applicable to His Highness who is the repository of all judicial, executive & legislative authority & who can lay down such procedure as he likes for the expression of his pleasure. In deciding appeal against the orders of his Council in cases of wrongful dismissal, His Highness exercises a plenary & complete jurisdiction in exercise of all his powers & his order in these circumstances must be taken to be in the exercise of all his powers.

27. At the hearing before the Board, the original order in Council by which applt. was dismissed, was produced & on the face of it, it bore the confirmation of His Highness. The applt. takes exception to its admissibility & to its legal effect. In the view, which the Board had expressed above, it is not necessary to enter into the question as to whether the Order in Council by which the applt. was dismissed was in fact confirmed by His Highness before the matter reached him in appeal or its effect upon the controversy.

28. The applt.'s claim, therefore, for a declaration of wrongful dismissal & of his still continuance in service cannot be entertained.

29. The claim for arrears of pay or for compensation or damages for wrongful dismissal is equally untenable. Public service, like the applt.'s carries with it certain implied terms, these are that it will be at the pleasure of the Crown & it will give no right to pay pension, compensation or damages apart from a special contract or a statute on the subject. This is well brought out by Lord Tankerton in the Commr. of India v. I. M. Lall, A. I B, (85) 1948 P C. 121 : (75 I. A. 225) & in Halsbury Laws of England (Hailshan Edn.) Vols. VI & IX at p. 608, Para. 782 & p. 692, para 1177 respectively.

30. The H. C. relying upon the Secy. of State v. I. M. Lall, A.I.R. (32) 1945 P.C. 47: (1945 F.C.R. 103), had assumed that a claim for damages would lie but found it to be barred by limitation, The authority relied upon by the H. C. has since been reversed by the P. C. & is no longer available in support of that view & the claim for damages must fail both on the ground that it is not maintainable & is also barred by limitation.

31. This case has some unsatisfactory features about it. After eighteen years of continuous service in the Army & in the civil service of the State, the applc. was dismissed without adequate & proper investigation into the truth or otherwise of the charges against him. For eleven years now he has been seeking redress of this wrong; at first before the Govt. & latterly in the Cts.; where under a mistaken advice & wrong procedure he has paid large sums of money in court-fees. It is not within the province of this Board to direct after enquiry with strict observance of the rules, the restoration of his service or to retire him on pension or even to refund the unnecessary c..f. which he has paid but it is open to the Govt. to grant him snch redress in these matters as the nature of case may require & it etill has an opportunity to do so.

32. The rights of the parties as they emerge out of the controversy have now been settled. The members of the civil service of the State, & the applt. was one of them, hold their service at the pleasure of the Govt., the Kashmir Civil Service Rules do not possess statutory force & even a substantial disregard of their

provisions does not furnish a cause of action which can be redressed in Cts. But these rules contain a solemn pledge & assurance for the protection, security & efficiency of the services & it is the responsibility of the Govt to see that these pledges are strictly honoured in letter & in spirit. And the Board trusts that it would be the pleasure of the Govt. to grant necessary redress in all cases where a wrong has been done by non-observance of these Rules.

33. The Board will, therefore, humbly advise His Highness that this appeal be dismissed but in the circumstances of this case there will be no order of costs either in favour of the applt. or in favour of the resp.

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