

LETTERS PATENT APPEAL.

Before Mehar Singh, C.J., and R. S. Narula, J.

THE STATE OF HARYANA AND ANOTHER,—Appellants.

versus

BALDEV KRISHAN SHARMA AND OTHERS,—Respondents.

Letters Patent Appeal No. 15 of 1969.

March 3, 1970.

Constitution of India (1950)—Article 311(1)—Government servant dismissed by authority higher than the appointing one—Such dismissal—Whether infringes Article 311(1).

Held, that the Constitution makes the tenure of all civil servants of a State subject to the pleasure of the Governor of that State. The only relevant provision to which the pleasure of the Governor of the State is subject in this respect is clause (1) of Article 311 of the Constitution. The protection granted by this clause is to the effect that no person who holds a civil post under the State can be dismissed or removed by an authority subordinate to that by which he was appointed. Thus it is only the removal or dismissal from service by an authority lower than the appointing authority which is hit by clause (1) of Article 311 of the Constitution. An order passed by a higher authority cannot be said to infringe the protection contained in the constitutional provision of Article 311(1) of the Constitution. (Para 2)

Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Bal Raj Tuli, passed on 26th November, 1968, in Civil Writ No. 955 of 1967.

C. B. KAUSHIK, ADVOCATE FOR ADVOCATE-GENERAL (HARYANA), for the appellants.

D. N. AWASTHY, ADVOCATE, for the respondents.

JUDGMENT

R. S. NARULA, J.—Baldev Krishan Sharma, respondent No. 1, an employee of the Irrigation Department of the composite State of Punjab (allocated to Haryana after reorganisation), was suspended from service with effect from November 23, 1962, was charge-sheeted (charges of corruption), and after being furnished with a copy of the report of the departmental inquiry in which he participated, was given a notice to show cause why he should not be dismissed from service. After considering his representation, he was dismissed from

service by the order of the Governor of Haryana, dated May 12, 1967 (Annexure 'A-5'), with immediate effect. The writ petition filed by respondent No. 1 has been allowed by the judgment of a learned Single Judge, dated November 26, 1968, on the solitary ground that the competent punishing authority in the case of the respondent was the Chief Engineer, and that, therefore, the order of the Governor of Haryana, who is an authority higher than the Chief Engineer, is without jurisdiction and is liable to be set aside as it seeks to deprive the contesting respondent of his right of departmental appeal against the Chief Engineer's order to the State Government. The learned Single Judge has, for that proposition, relied on the judgment of Gurdev Singh, J. in *Roshan Lal Gogia v. Financial Commissioner, Haryana, and others* (1).

(2) In this appeal under clause 10 of the letters patent against the judgment of the learned Single Judge, it has been submitted by Mr. C. B. Kaushik, the learned counsel for the State of Haryana, that it is only the removal or dismissal from service by an authority lower than the appointing authority which is hit by clause (1) of Article 311 of the Constitution, and that an order passed by a higher authority cannot be said to infringe the protection contained in that constitutional provision.. Article 310 of the Constitution states, *inter alia*, that every person who holds any civil post under the State holds office during the pleasure of the Governor of the State. This is of course subject to the express provision of the Constitution. The only relevant provision to which the pleasure of the Governor of the State is subject in this respect is clause (1) of Article 311 of the Constitution. The protection granted by the relevant part of that clause is to the effect that no person who holds a civil post under the State can be dismissed or removed by a authority subordinate to that by which he was appointed. It cannot possibly be disputed that the Governor of the State is not an authority subordinate to the Chief Engineer. Shri C. B. Kaushik, who has argued this case with great clarity and ability, cited the Division Bench judgment of the Kerala High Court in *K. C. Chandrasekharan v. State of Kerala*, (2), and the judgments of their Lordships of the Supreme Court in *Jagannath Prasad Sharma v. The State of Uttar Pradesh and others* (3), and in "*The State of Madras v. G. Sundaram*", (4). The ratio

(1) 1968 S.L.R. 650.

(2) A.I.R. 1964 Kerala 87.

(3) A.I.R. 1961 S.C. 1245.

(4) A.I.R. 1965 S.C. 1103.

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of the judgment in all the above-mentioned three cases no doubt supports the case of the appellant State. In the basic Supreme Court judgment on this point in *Jagannath Prasad Sharma's case* (3) (supra), it was expressly laid down that the plea that the Governor had no power to dismiss Jagannath Prasad Sharma from service, and that such a power could only be exercised by the Inspector-General of police and the officers named in the relevant regulation, was without substance as the Constitution made the tenure of all civil servants of a province subject to the pleasure of the Governor of that province. Following the dictum of their Lordships in *Jagannath Prasad Sharma's case*, (3) it was held in the *State of Madras v. G. Sundaram* (4) (supra), that even if compulsory retirement could be equated to dismissal from service, the Governor had the power to dismiss G. Sundaram though the rules authorised an authority subordinate to the State Governor to dismiss him. In *K. C. Chandrasekharan's case*, (2) (supra), it was laid down by the Kerala High Court that there was neither any impropriety nor any illegality in the Government itself receiving the inquiry report, and imposing penalty on its scrutiny. The plea that the Government servant was deprived of the right of appeal to the Government from the order of the appointing authority because of the report having been submitted to the latter and the penalty having been imposed by it, was held to be without any force.

(3) Mr. D. N. Awasthy, the learned counsel for the contesting respondent, submitted that if a power is bestowed on a Government functionary by certain departmental rules, it is to be exercised according to those rules or not exercised at all. Reliance was placed for this proposition on the judgment of the Supreme Court in *Gujarat Electricity Board v. Girdharilal Motilal and another*, (5). All that was held in that case was that the provisions of section 6(1) of the Electricity Act, 1910, are mandatory and they must be strictly complied with. Section 6(1) of that Act confers power on the State Electricity Board to take away the property of the licensee. Such a power, it was held by the Supreme Court, must be exercised strictly in accordance with law, and it must be exercised in the manner provided in the statute and in no other way. The abovesaid provision states that the prescribed notice must specifically call upon the licensee to sell the undertaking. It was held that the

(5) A.I.R. 1969 S.C. 267.

mandate of the law was clear and it must be obeyed. No such consideration arises in the present case. The mandate of Article 311(1) is clear and it has admittedly not been violated in the case of the first respondent. The relevant service rule, to which reference is hereinafter made, does not state that the penalty of dismissal shall not be inflicted on an employee of the Irrigation Department by an authority higher than that named in the rule. No question of violation of any rule, therefore, arises, on the facts of this case. There is no doubt that the manner of exercise of the pleasure of the Governor under Article 310 of the Constitution is controlled by Article 311 and by the rules framed under Article 309 of the Constitution. A Government servant may indeed have a justifiable grievance if his services are terminated in violation of a rule framed under Article 309, particularly if prejudice and injustice is caused to the employee concerned by such violation. In order to argue that the two judgments of the Supreme Court and the Division Bench judgment of the Kerala High Court have no application to this case, Mr. Awasthy pointed out that in *Jagannath Prasad Sharma's case*, (3), it was specifically noticed by the Supreme Court that regulation 479 clause (a) of the Uttar Pradesh Police Regulations, gave full power to the Governor to punish all the police officers, independent of the authority conferred by the relevant police regulation on the lower departmental authority to dismiss him, that similarly it was noticed by the Supreme Court in *G. Sundaram's case*, (4) that the relevant rule authorised the named competent authority "or any higher authority" to impose the relevant punishment, and that even in *K. C. Chandrasekharan's case*, (2) decided by the Kerala High Court, the relevant rule was in the same terms. The contesting respondent as a clerk in the Irrigation Department was governed by the Punjab Public Works Department (Irrigation Branch) Head Office, Clerical (State Service Class III) Rules, 1965 (published in the Punjab Government Gazette, Part III, dated August 13, 1965 at pages 895 to 904). Rule 14 of the 1965 Rules which deals with discipline, penalties and appeals is in the following terms :—

"(1) In matter relating to discipline, penalties and appeals, members of the Service shall be governed by the Punjab Civil Services (Punishment and Appeal) Rules, 1952, as amended from time to time :

Provided that the nature of penalties which may be imposed, the authority empowered to impose such penalties and

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the appellate authority subject to the provisions of any law or rules made under the Constitution of India shall be as specified in Appendix 'B' to these rules.

- (2) The authority competent to pass an order under clauses (c) and (d) of sub-rule (1) of rule 10 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, and the appellate authority shall be as specified in Appendix 'C' to these rules."

The authority empowered to impose all the penalties including that of dismissal named against "clerks" in Appendix 'B' to the 1965 Rules is named as the Chief Engineer, and the appellate authority named in column 4 is the "Government". Sub-rule (1) of rule 14 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, applies to the respondent's service subject to what is stated in the proviso thereto. Rule 14 of the 1952 Rules (published in Appendix 24 to the Punjab Civil Services Rules, Volume I, Part II at page 174) reads as follows :—

"The Government or the Head of Department may call for and examine the records of any case in which a subordinate authority passed any order under rule 10 or has inflicted any of the penalties specified in rule 4 or in which no order has been passed or penalty inflicted, and after making further investigation, if any, may confirm, remit, reduce or subject to the provisions of sub-rule (1) of rule 11, increase the penalty or subject to the provisions of rules 7, 8 and 9 inflict any of the penalties specified in rule 4."

Rule 14 of the 1952 Rules quoted above clearly authorises the Government, i.e., the Governor to call for or examine the record of any case relating to disciplinary proceedings in which no order has been passed and no penalty inflicted and to inflict any of the penalties specified in rule 4 of those rules including that of dismissal. Rule 14 of the 1952 Rules, for all practical purposes, corresponds to the general power vested in the State Government by regulation 479(a) of the police regulations referred to in *Jagannath Prasad Sharma's case*, (3) (supra). We are, therefore, unable to see any distinction between the cases decided by the Supreme Court to which reference has already

been made and the present case in so far as the validity of an order of dismissal passed by the State Government instead of the same being passed by a lower named disciplinary authority, is concerned.

(4) Mr. Awasthy then referred to the judgment of the Supreme Court in the *State of Punjab and another v. Hari Kishan Sharma*, (6), wherein it was laid down that the State Government is not justified in assuming jurisdiction which has been conferred on the licensing authority by section 5 of the Punjab Cinemas (Regulation) Act. It was held that if the State Government requires all applications for cinema licences to be forwarded to it for disposal, it really converts itself into the original authority, though under sub-section (3) of section 5 of the Punjab Cinemas (Regulation) Act, an appeal can be preferred to the State Government by a person aggrieved by the rejection of his application for a licence by the licensing authority. Obviously different considerations apply to the case of grant of a cinematograph licence as compared with the case of inflicting a penalty on a Government servant. Rules provide that where the State Government is the punishing authority, no appeal lies against the order of the State Government though a memorial lies to the Governor. Right of appeal is indeed a statutory right and does not exist unless it is specifically conferred by law. In a case where punishment is inflicted by the State Government, no law provides for a right of appeal. No one is permitted to make a grievance of being deprived of something which never existed. After carefully considering the matter, we are of the opinion that the pleasure of the Governor under Article 310 of the Constitution is subject only to the exception contained in Article 311, and to the rules framed under Article 309. Article 311 has admittedly not been controverted. The rules framed under Article 309 specifically permit the State Government to pass an original order inflicting any of the penalties. No statutory rule has, therefore, been violated.

(5) The only other argument advanced by Mr. Awasthy is that principles of natural justice have been violated in inflicting the punishment of dismissal from service on the first respondent, inasmuch as no oral hearing was allowed to him by the Governor despite

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his having specifically asked for it in his representation submitted in reply to the show-cause notice. The show-cause notice was given to the respondent after the Governor of Haryana was provisionally satisfied that the punishment of dismissal was to be inflicted on the respondent. He was asked to submit his representation in writing. There is no complaint about the opportunity to submit the representation having been inadequate. He did in fact submit a detailed representation. There is no grievance on the side of respondent No. 1 that representation was not duly considered. His only claim is that the Governor was bound to give him a personal hearing before deciding his case. We are unable to find any law in support of this proposition. Respondent No. 1 was afforded adequate opportunity of showing cause against the proposed punishment, and it was after due consideration of the same that the highest State authority passed the impugned order. We are unable to find our way to interfere with the same.

(6) No other point was argued in this case by the learned counsel for the contesting respondent. In view of the authoritative pronouncements of the Supreme Court in the case of *Jagannath Prasad Sharma* (3), and *G. Sundaram* (4), and the observations of the Division Bench of the Kerala High Court in *K. C. Chandrasekharan's case*, (2), with which we are in respectful agreement, we allow this appeal, set aside the judgment of the learned Single Judge, and dismiss the writ petition of the first respondent with costs. Counsel's fee Rs. 100.

MEHAR SINGH, C.J.—I agree.

N. K. S.

LETTERS PATENT APPEAL

Before D. K. Mahajan and S. S. Sandhawalia, JJ.

COL. KEHAR SINGH,—Appellant.

versus

CHIEF SETTLEMENT COMMISSIONER, PUNJAB AND OTHERS,—
Respondents.

Letters Patent Appeal No. 142 of 1968.

March 5, 1970.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954—Sections 10 and 19—Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rule 102—Lands possessed by displaced persons on