

Court had only looked up the complaint and issued summons. There is no compliance with the provisions of section 20-A.

(16) For the foregoing reasons, I allow this petition and quash the orders, dated 21st December, 1981 summoning the petitioner, and the proceedings pending against him before the Additional Chief Judicial Magistrate, Hoshiarpur in *State v. Parminder Singh and (2) Sardari Lal & Co., EG 864 Gobind Garh, Jullundur*, initiated on the complaint, dated 19th November, 1981.

N. K. S.

Before S. S. Sodhi, J.

MONOHAR LAL GUPTA,—*Petitioner.*

versus

STATE OF PUNJAB and another,—*Respondents.*

Civil Writ Petition No. 5777 of 1975.

November 23, 1982

Constitution of India 1950—Article 311—Punjab Civil Services (Premature Retirement) Rules, 1975—Rule 3—Government employee placed under suspension—Only subsistence allowance paid during such period—Such employee compulsorily retired while still under suspension—Retirement under such circumstances—Whether amounts to punishment—Provisions of Article 311—Whether attracted.

Held, that the question whether the order of compulsory retirement passed against a government servant tantamounts to dismissal or removal from service so as to attract the provisions of Article 311 of the Constitution of India 1950, depends upon the nature and incidents of the action resulting in such order, which the court is clearly competent to examine. It is well settled that in dealing with the matter it is the substance of the order and not its mere form which is the deciding factor. It follows that if removal from service is, in fact, punishment inflicted upon a delinquent employee, it cannot escape or avoid the provisions of Article 311 by seeking to camouflage it under the cloak of an order of compulsory retirement under the relevant service rules. Where an order of compulsory retirement is passed during the subsistence of the order of suspension whereby the government servant was deprived of the full pay and allowances which he would otherwise have been entitled to,

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there can be no escape from the conclusion that the said order was penal in nature and attracts the provisions of Article 311 of the Constitution. (Paras 7 and 10).

Petition under Articles 226/227 of the Constitution of India praying that :

- (i) *a writ in the nature of certiorari quashing the order of respondent No. 1, dated 16th of September, 1975 retiring the petitioner from the service under the Punjab Civil Services (Pre-mature retirement) Rules, 1975 be issued.*
- (ii) *any other writ, order or direction as this Hon'ble Court may deem fit and proper, under the circumstances of the case, be issued.*
- (iii) *the record of the case be ordered to be sent for,*
- (iv) *the cost of the petition be awarded to the petitioner.*

It is further prayed that :

- (a) *the condition of attaching original/certified copies of the annexures be dispensed with.*
- (b) *that during the pendency of the writ petition the operation of the impugned order be stayed.*

Kuldip Singh Bar-at-law with S. S. Nijjar, Advocate, for the Petitioner.

T. S. Doabia, Advocate, for A.G. Punjab.

S. S. Sodhi, J. (Oral).

(1) The matter which arises for determination in this Writ Petition is whether the provisions of Article 311 of the Constitution are attracted to an order passed during the period of suspension of a government servant retiring him from service under the Punjab Civil Services (Premature Retirement) Rules, 1975 (hereinafter referred to as 'the Retirement Rules').

(2) The facts relevant to this petition are that on May 30, 1974 when the petitioner Shri Manohar Lal Gupta was posted as District Industries Officer, Bhatinda, the Senior Superintendent of Police, accompanied by Deputy Commissioner, Bhatinda and other officials raided his house. During this raid a sum of Rs. 21,300 was recovered from his house. A case was registered against the petitioner under section 5(2) of the Prevention of Corruption Act on account of this recovery and he was also arrested, though later released on

bail. The case registered against the petitioner is said to be still pending against him.

(3) On June 6, 1974, the petitioner was placed under suspension by the order (Annexure P-2) with effect from May 31, 1974. This was later followed by the impugned order (Annexure P-4) of September 16, 1975, retiring the petitioner from service under the Retirement Rules.

(4) It was the contention of Mr. Kuldip Singh, appearing for the petitioner that the order of retirement passed against the petitioner was a colourable exercise of power inasmuch as the impugned order had in fact been passed as a measure of punishment casting a stigma on the petitioner and also visiting him with penal consequences though couched in terms as an order of compulsory retirement under the relevant rules. Great stress was laid upon the fact that the impugned order had been passed during the period of suspension of the petitioner on account of his arrest in the case pending against him under section 5(2) of the Prevention of Corruption Act.

(5) The proposition canvassed by the counsel for the petitioner was that if the services of a government servant are terminated during the period of his suspension without any enquiry being held against him such termination would amount to punishment attracting there to the provisions of Article 311 of the Constitution

(6) Before proceeding further, it may be mentioned here that allegations of *mala fide* had been made in the petition against Shri R. R. Bhardwaj, the Deputy Commissioner of Bhatinda at the relevant time. These allegations were not pressed at the hearing in view of their denial by Shri Bhardwaj in the return filed by him.

(7) The question whether the order of compulsory retirement passed against a government servant tantamounts to dismissal or removal from services so as to attract the provisions of Article 311 of the Constitution, depends upon the nature and incidents of the action resulting in such order, which the Court is clearly competent to examine. It is well settled that in dealing with the matter as has been raised in the present case, it is the substance of the order and not its mere form which is the deciding factor. It follows that if removal from service is, in fact, punishment inflicted upon a delinquent employee, it cannot escape or avoid the provisions of Article 311 of the Constitution by seeking to camouflage, it under

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the cloak of an order of compulsory retirement under the relevant service rules.

(8) Turning to the present case it will be seen that the order of suspension (Annexure P-2) directed that the petitioner would be allowed only a subsistence allowance, as admissible to him under rules, during the period of suspension. It was while this order was in force that the impugned order retiring the petitioner from service was passed. The petitioner was thereby deprived of his full pay and allowances during the period of suspension. Mr. Kuldip Singh, thus rightly adverted to this aspect of the case, in support of his argument that the impugned order was penal in nature and amounted to a punishment. To sustain the contention raised reference was made to the observations in *V. P. Gidroniya v. Madhya Pradesh and others*, (1), where in dealing with the case of the termination of the services of a temporary employee under suspension, it was stated "where the appointing authority elects to dismiss or remove a temporary servant after holding a departmental enquiry and in accordance with Article 311(2) of the Constitution, then, while the departmental enquiry is pending neither the temporary Government servant nor the appointing authority can put an end to the services of the Government servant by passing an order in terms of the contract of employment or the relevant rule. The departmental enquiry has to be stopped first before the services of a temporary servant can be terminated in the exercise of the powers under the terms of the contract of employment or the relevant rule."

(9) Reference was next made to *Union of India v. Gian Singh Kadian* (2), where following *V. P. Gidroniya's case* (supra), it was held that the principles laid down therein applied with great force to a case where although there is an order of suspension no departmental enquiry is even commenced against the government servant concerned.

(10) Mr. T. S. Doabia, appearing for the Advocate General, Punjab on the other hand sought to rely upon the observations in

(1) AIR 1967 M.P. 231.

(2) 1970 SLR 563.

Nawal Kishore Dubey v. State of Rajasthan, (3) which are quoted hereunder:—

“Normally, it is desirable not to retire a Government servant compulsorily even under Rule 244(2) if he is under suspension on a charge of misconduct and an enquiry is pending against him, but, if such an order is passed and is not tainted with malice, it cannot be said that it would be illegal having been hit by the provisions of Rule 56(b). Rule 56(b) lays down that a Government servant under suspension on a charge of misconduct should not be permitted to retire on reaching the date of compulsory retirement. This would mean that if a certain Government servant reaches the date of compulsory retirement, which can only be the date on which he attains the age of superannuation, he should not be permitted to retire, if he is under an order of suspension and a departmental inquiry is proceeding against him.”

The matters discussed in the observations above are neither apt nor applicable to the facts of the present case and are thus of no avail to the respondent-State. Having regard, therefore, to the circumstances of the present case and the principles of law governing the matter as discussed above, there is no escape from the conclusion that the impugned order (Annexure P-4) was penal in nature particularly in the context of it having been passed during the subsistence of the order of suspension whereby the petitioner was deprived of the full pay and allowances which he would otherwise have been entitled to. The order thus attracts the provisions of Article 311 of the Constitution and is rendered illegal thereby. The impugned order (Annexure P-4) is accordingly hereby quashed with the further direction that the petitioner shall be entitled to such consequential benefits as may be available to him under the law. This writ petition is thus accepted with costs. Counsel's fee Rs. 300.

N.K.S.

Before I. S. Tiwana, J.
 MANJIT SINGH,—Appellant.
 versus
 MRS. SAVITA KIRAN,—Respondent.
 F.A.O. No. 212-M of 1980.
 December 1, 1982.

Hindu Marriage Act (XXV of 1955)—Section 25—Wife entering into an agreement with her husband foregoing her right to maintenance—Such agreement—Whether could be said to be invalid on the ground that it offends public policy.

(3) AIR 1967 Rajasthan 82.