

Mehtab Singh Khanna and others *v.* Union of India and others
(G. R. Majithia, J.)

Singh, Mr. S. M. Malhan, and Mr. R. K. Dua, who despite being junior to the petitioner, are drawing more salary than him. Therefore the impugned action is wholly unwarranted in law and deserves to be set aside.

(6) Though the petitioner has also raised the plea of violation of the principles of natural justice, i.e. he was not heard before the impugned action reducing his pay was taken, yet the same has not been considered necessary to be examined by me, as the very action of the respondents is not sustainable in law. Even otherwise, as the relief sought by the petitioner has been confined only to the protection of his pay and increments, etc. which he had already earned, no further relief can be granted to him.

(7) Consequently, I allow this petition quash the impugned order, dated 20th September, 1983, by which the pay of the petitioner has been reduced, and direct the Registrar of this Court to re-fix the pay of the petitioner in his present pay scale by restoring it to the stage from where it has been reduced by the impugned action. The petitioner shall be entitled to all the increments and other consequential benefits arising out of re-fixation of his revised salary, to which he would have been entitled had the impugned order not been passed. The needful shall be done within a period of three months. However, there shall be no order as to costs.

R.N.R.

Before G. R. Majithia, J.

MEHTAB SINGH KHANNA AND OTHERS,—*Petitioners.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 6720 of 1988.

7th August, 1990.

Constitution of India, 1950—Arts. 226, 227, 310 & 311—Telephone Allotment Rules, 1980—Rl. 2.3(e)—Retired employees of High Court—Does not fall under the definition of rl. 2.3(e)—Such employees are not eligible for registration under NON-OYT-SS

category for new telephone connection—Director General of Posts and Telegraphs to make suitable provision under rules for such employees.

Held, that a bare reading of rl. 2.3 of the Telephone Allotment Rules, 1980 indicates that only the officers specified therein were eligible for submitting applications under NON-OYT-SS Category. The petitioners claim that they fall under Rl. 2.3(e). The officers and staff of the High Court cannot be said to be persons serving under Government of a State in a civil capacity. The officers and members of the staff of the High Court cannot be said to be serving under the Government of India or the Government of a State. Consequently, their case does not fall within the category referred to above. The action of the respondent cannot be said to be illegal.

(Paras 5 & 6)

Held, it appears to be unfortunate that the Director General of Posts and Telegraphs Department did not think it proper to make suitable provisions for the staff of the High Court. They may not be persons serving under the Government of India or the Government of a State, nevertheless, they are persons appointed to public services and posts in connection with the affairs of the State. Officers and staff of the High Court are under the administrative control of the Chief Justice. Under the Constitution, he has the exclusive power of appointment, removal and for making rules for the conditions of service. They are performing important functions and they are important functionaries rendering effective service in the administration of justice. The Director General of Posts and Telegraphs will make suitable provisions under the rules to allow similar benefit as has been allowed to the senior officers of Central or State Governments for registration under NON-OYT-SS Category for new telephone connections to the officers and staff of the High Court.

(Para 6)

Petition under Articles 226 and 227 of the Constitution of India, praying that this Hon'ble Court may be pleased to—

- (i) *Call for the records and after perusal of the same issue a Writ of Certiorari to quash the Impugned Order Annexure P-2 and a writ in the nature of mandamus directing the respondents to treat the Petitioners as retired Government Servants and release the benefit of Telephone connection under Non-OYT-SS Category from the date of their original applications like other retired State Government Employees.*
- (ii) *Exempt the petitioners from filing certified copies of Annexure P-1 to P-7.*

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(iii) Award costs to compensate the mental harassment caused to the petitioners.

Baljinder Singh Advocate, for the Petitioners.

Manjit Singh, Advocate, for H. S. Brar, Advocate, for the Respondents.

JUDGMENT

G. R. Majithia, J.

(1) The petitioners, who are the retired employees of this Court, have challenged the order of respondent No. 3 dated January 12, 1986 whereby an intimation was given to them that their case cannot be considered under Non-OYT-SS category as Punjab and Haryana High Court is an autonomous body.

(2) A reference to relevant facts is necessary to resolve the question of law raised in the petition. The petitioners were the employees of this Court. The department of Telecommunication issued instructions laying down criterion for grant of telephone connections to the retired officers of the Central and State Governments under Non-OYT-SS Category. The petitioners applied for telephone connections on the prescribed forms. Respondent No. 3 intimated them,-- vide letter dated January 12, 1986 that their case could not be considered under Non-OYT-SS Category as Punjab and Haryana High Court is an autonomous body. The petitioners maintained that they were members of the Civil Service of the State as they were holding posts in connection with the affairs of the State and thus were eligible for registration of telephones under Non-OYT-SS Category.

(3) Written Statement was filed on behalf of respondent No. 3. It was pleaded that in accordance with the instructions contained in Director General, Posts and Telegraphs, New Delhi, letter No. 2-29/78-PHA dated 14th March, 1980 issued by DGP&T, New Delhi under para 24(1) (i) of P&T Manual Volume-XII, the requests of the petitioners for registration of telephones under NON-OYT-SS category could not be considered. It was further pleaded that the High Court is a statutory body and the petitioners were not the members of the Civil Services of the State and were thus not eligible for registration of telephones under NON-OYT-SS category.

(4) The Director General of Posts and Telegraphs issued guidelines to the Telephone Allotment Rules 1980. The relevant rule 2.3 for registration of telephones under NON-OYT-SS Category reads as under :—

Rule 2, 3 NON-OYT-SS Category.—Non-OYT-SS applications from the following will be registered under this category.

- (a) Foreign Missions and Embassies.
- (b) U.N. Organisations.
- (c) Members of Parliament and State Assemblies (including members of Delhi Metropolitan Council) and Municipal Councillors.
- (d) Distinguished persons (Who are/were holding office) included in the warrant of precedence issued by the Cabinet Secretariat, if not already included in other items under this paragraph.
- (e) Senior officers of Central or State Governments who have left Government services either on normal retirement after superannuation or on voluntary retirement or on resignation and had, on the day of their retirement or resignation, completed 20 years of service or more and who had continuously drawn a basic pay (special pay and officiating pay will also be treated as part of Basic pay) of Rs. 1,600 (Rs. 1,100 for P&T officers) or more for a period of one year prior to leaving Government service. Officers of Overseas Communication Service should be treated at par with P&T officers for allotment of telephones under this category. Also this facility should be extended to such staff of the Ministry of Communications and P&T Audit who had been working in these offices for at least 7 years continuously prior to the date of retirement. This facility will also be available to the spouse of Government servant after his/her death.
- (f) Directors General of Government Research Councils such as the C.S.I.R. I.C.A.R. etc. and Directors of National Laboratories, Vice-Chancellors of the Universities on retirement.
- (g) Retired Government Doctors provided they have not obtained a telephone under the special category,—*vide* para 2.4.

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The non-practising allowance will be treated as part of basic pay and the eligibility will be subject to pay limits as in (e) above.

- (h) Distinguished persons and other applicants sanctioned priority concessions by the P&T Directorate. General Manager may personally recommend cases of distinguished persons for consideration to the P&T Directorate."

(5) A bare reading of this rule indicates that only the officers specified therein were eligible for submitting applications under Non-OYT-SS Category. The petitioners claim that they fall under sub-clause (e) of Rule 2.3. It is submitted that officers and members of the staff attached to a High Court fall within the scope of the phrase "persons appointed to public services and posts in connection with the affairs of the State" and also of the phrase "a person who is a member of a civil service of a State" as used in Articles 310 and 311. Since they are working in connection with the affairs of the State, they should be deemed to be senior officers of the Central or the State Government within the meaning of Clause (e) of Rule 2.3. The submission of the petitioners is not sustainable. The officers and staff of the High Court cannot be said to be persons serving under Government of a State in a civil capacity. This matter came up for consideration in *Pradyat Kumar Bose v. The Hon'ble Chief Justice of Calcutta High Court* (1), in the following circumstances : The appellant before the apex Court was the Registrar and Accountant General of the High Court at Calcutta on its original side. He was appointed to the post by the Chief Justice of the High Court on March 4, 1948 and confirmed therein on November 11, 1948. He was dismissed therefrom with effect from September 1, 1951 by an order of the Chief Justice dated September 3, 1951. The Chief Justice entrusted the enquiry to another Judge of that Court, who after making the enquiry submitted the report exonerating the appellant in respect of some of the charges but found him guilty in respect of the other charges. On the basis of the enquiry report, the Chief Justice found the appellant guilty of misconduct and dishonest conduct and unfit to hold the office of Registrar of the Original Side of the High Court. The order was challenged in the Calcutta High Court through a petition under Article 226 of the Constitution of India. The petition was dismissed but leave to appeal to the apex Court was granted under Article 132 (1) of the Constitution of India. One of the grounds raised before

(1) A.I.R. 1956 S.C. 285.

the apex Court was that the order of dismissal could not be passed in the absence of the previous consultation of the Public Service Commission of the State as provided under Article 320 of the Constitution of India. The apex Court after referring to the provisions of Articles 229, 309, 311 and 320 of the Constitution of India posed the following question :—

“But can it be said that members of the High Court staff are “persons serving ‘under’ the Government of a State in a civil capacity” which is the phrase used in Art. 320 (3) (c)?”

and it was held thus :—

“The officers and staff of the High Court cannot be said to fall within the scope of the above phrase because in respect of them the administrative control is clearly vested in the Chief Justice, who under the Constitution, has the power of appointment and removal and of making rules for the conditions of services. Articles 53, 77, 154 and 166 of the Constitution show that while the executive power of the Union or the State is vested, respectively, in the President or the Governor and that executive action is to be taken in their respective names, such action is the action of the Government of India or the Government of a State. But the administrative action of the Chief Justice is outside the scope of these Articles. It appears therefore that in using the phrase “Government of India and Government of a State” in Art. 320 (3) (c), the Constitution had in view the above mentioned demarcation. A close comparison of the terminology used in the corresponding provisions of the Government of India Act of 1935 also seems to confirm this demarcation.

Section 290 (1) of the said Act refers to “every person who is a member of a civil service ‘of the Crown’ in India or holds any civil post ‘under the Crown’ in India” while Section 266(3)(c) relates to “a person serving His Majesty in a civil capacity in India”. A perusal of the main paragraph of sub-section (3) of Section 266 clearly shows that it has reference to three categories of services (1) Secretary of States services (2) Federal services ‘under the Governor-General, and (3) Provincial Services ‘under’ the Governor.

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In the context of this section, the comprehensive phrase "serving 'His Majesty'" seems to have been used as comprising only the above three services and should be exclusive of the staff of the High Court. The fact that different phrases have been used in the relevant sections of the Government of India Act and the Constitution, relating to the constitutional safeguards in this behalf appears to be meant to emphasise the differentiation of the services of the High Court from other services, and to place the matter beyond any doubt as regards the non-applicability thereto of this constitutional protection.

It may be noticed that while the constitutional safeguards under Art. 311 are available to every person in the civil service, the safeguard in Art. 320(3)(c) is one capable of being taken away by regulations to be made by the President or Governor. The Constitution itself appears, therefore, to have classed this safeguard on a different footing. This may well have been intended not to apply to the High Courts. Therefore, both on the ground that Art. 320(3)(c) would be contrary to the implication of Art. 229 and on the ground that the language thereof is not applicable to the High Court staff, we are of the opinion that for the dismissal of the appellant by the Chief Justice, prior consultation with the Public Service Commission was not necessary.

We accordingly hold that the appellant was not entitled to the protection under Art. 320 (3)(c). It follows that none of the three contentions raised on behalf of the appellant i.e., (1) as to the power of the Chief Justice to dismiss him, (2) as to his competence to delegate the enquiry to Das Gupta, J. and (3) as to his obligation to consult the State Public Service Commission, have been substantiated. This application must accordingly fail on the merits."

(6) The officers and members of the staff of the High Court cannot be said to be serving under the Government of India or the Government of a State. Consequently, their case does not fall within the Category referred to above. The action of the respondent cannot be said to be illegal. However, it appears to be unfortunate that the Director General of Posts and Telegraphs Department did not think it proper to make suitable provisions for the staff of the High Court.

They may not be persons serving under the Government of India or the Government of a State, nevertheless, they are persons appointed to public services and posts in connection with the affairs of the State. Officers and staff of the High Court are under the administrative control of the Chief Justice. Under the Constitution, he has the exclusive power of appointment, removal and for making rules for the conditions of service. They are performing important functions and they are important functionaries rendering effective service in the administration of justice. The Director General of Posts and Telegraphs will make suitable provisions under the rules to allow similar benefit as has been allowed to the senior officers of Central or State Governments for registration under NON OYT SS Category for new telephone connections to the officers and staff of the High Courts. The Director General will take decision in this regard within three months from the date of receipt of copy of the judgment. Subject to the above observations, the writ petition is disposed of with no order as to costs.

P.C.G.

Before S. S. Sodhi, J.

SHAM LAL,—Petitioner.

versus

PEPSU ROAD TRANSPORT CORPORATION AND ANOTHER,
—Respondents.

Civil Writ Petition No. 2470 of 1987

3rd September, 1990

Industrial Disputes Act, 1947—Ss. 2(oo) (bb) & 25-F—Retrenchment prior to insertion of S. 2(oo) (bb)—Cl. (bb) operate prospectively—Compliance of S. 25-F is necessary.

Held, that the amendment in Industrial Disputes Act, 1947 which brought in clause (bb) in S. 2(oo) was prospective in nature and would consequently apply to only such termination as takes place after this provision was brought on to the statute book. Such thus being the established position in law, there can be no escape from the conclusion that the termination of the services of the petitioners amounted to retrenchment. They thereby came within the purview of the provisions of S. 25-F of the Act. (Para 5)