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an independent body by Mehrotra, J., in *Madan Mohan Lal* v. *Om Parkash and another* (1). The Sindri Fertilizers and Chemicals Ltd. Company has been held to be an independent body in *Subodh Ranjan Ghosh* v. *Sindri Fertilizers and Chemicals Ltd. and another* (2). The State Bank of India was also held to be an independent body in *Baleshwar Prasad* v. *Agent State Bank of India* (3). The Calcutta High Court in *Bibhuti Bhushan Ghosh* v. *Damodar Valley Corporation and others* (4), and *Ranjit Ghosh* v. *Damodar Valley Corporation and others* (5), has held Damodar Valley Corporation to be an independent statutory Corporation. It is not necessary to multiply these illustrations.

For these reasons I hold that Madan Lal and Walaiti Lal do not hold office of profit under the Government of India as employees of the Corporation and, therefore, are not disqualified from continuing to hold the office of membership of the Municipal Committee, Pathankot. These petitions, therefore, fail and are dismissed with costs. Counsel's fee Rs. 100 in each case.

K. S. K.

REVISIONAL CIVIL

Before Tek Chand and J. S. Bedi, JJ.

KHEM CHAND,—*Petitioner*

versus

UNION OF INDIA AND OTHERS,—*Respondents*.

Civil Revision No. 224-D of 1959

1960

Nov., 14th

Constitution of India (1950)—Article 309—Rules of employment for government servants—Whether can be made retrospectively—Central Civil Service (Classification, Control and Appeal) Rules, 1957—Rule 12(4)—Whether valid—Suspension of civil servant—Effect of—Suspended civil servant—Whether entitled to wages for the period of suspension as of right.

(1) A.I.R. 1957 All. 384.
(2) A.I.R. 1957 Patna 10.
(3) A.I.R. 1958 Patna 418.
(4) A.I.R. 1953 Cal 581.
(5) A.I.R. 1960 Cal. 549.

Held, that under Article 309, Constitution of India, the legislature is competent to frame rules relating to the recruitment and conditions of service of persons serving the Union or any State. It is one of the implied conditions of employment under the Government that the service shall be governed by the rules as they are made and modified from time to time subject to the condition that such rules do not contravene any provision of the Constitution. There is nothing to prevent the Government from making rules under Article 309 with retrospective effect and thus affect Government servants prejudicially by rules which did not exist at the time of employment. Rule 12(4) of the Central Civil Service (Classification, Control and Appeal) Rules, 1957, is, therefore valid.

Held, that the suspension of a civil servant by virtue of a power vested in the State Government has the effect of suspending the contract of service as a whole and the suspended servant is not entitled to claim wages for the period of suspension as a matter of right.

Case law discussed.

Petition under Section 115, Civil Procedure Code of Act of 1908, for revision of the order of Shri Shiv Charan Dass Bajaj, Sub-Judge, Ist Class, Delhi, dated 14th February, 1959, ordering that the proceedings in the case shall remain stayed until the time the order of suspension is revoked under rule 12(5) of the Central Civil Service (Classification, Control and Appeal) Rules, 1957.

CHAND BEHARI LAL, ADVOCATE, for the Petitioner.

S. N. SHANKAR, ADVOCATE, for the Respondent.

JUDGMENT

Bedi, J.

BEDI, J.—The facts in this case are not disputed which briefly are as under. Khem Chand petitioner was a permanent Sub-Inspector, Co-operative Societies, Delhi. There were complaints against

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him of all sorts as a result of which he was suspended on the 1st of July, 1949, by the Deputy Commissioner, Delhi, and was served with a charge-sheet on the 9th of July, 1949. One Mahipal Singh was appointed an inquiry officer and he was succeeded by J. B. Tandon who submitted his report to the Deputy Commissioner recommending the dismissal of the petitioner and consequently Khem Chand was dismissed on 17th December, 1951, by the Deputy Commissioner, Delhi. The petitioner filed a suit for declaration on 20th of May, 1953, praying that he still continued to be in service because his dismissal was in violation of Article 311 of the Constitution of India. The suit was decreed in his favour on the 31st of May, 1954. The Government felt dissatisfied with the decree and went up in appeal which was dismissed by the Senior Subordinate Judge, Delhi, on 21st December, 1954. A second appeal was taken by the State to the High Court which came up before J. L. Kapur, J., who accepted the same on 1st November, 1955, and setting aside the decree of the Courts below dismissed the plaintiff's suit. The petitioner felt aggrieved against that judgment and went up in appeal to the Supreme Court which was accepted on 13th December, 1957. The suit of the petitioner was accordingly decreed and the Supreme Court gave a declaration that the order of dismissal passed by the Deputy Commissioner on 17th December, 1951, purporting to dismiss Khem Chand from service, was inoperative and that he was a member of the service on the date of the institution of the suit. On 16th April, 1955, the petitioner filed a suit *in forma pauperis* for the recovery of Rs. 14,042 being arrears of his salary from 1st July, 1949, to 15th April, 1955. During the pendency of the suit, rule 12(4) of the Central Civil Service (Classification, Control and Appeal)

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Rules, 1957, was promulgated on 28th February, 1957. This rule provides—

> "When a penalty of dismissal, removal and compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of law and the disciplinary authority on a consideration of the circumstances of the case decides to hold a further enquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders."

Taking advantage of this rule, the State again on 9th September, 1958, suspended the petitioner with retrospective effect, i.e., from 17th December, 1951. The Government in the trial Court moved an application that the suit was not maintainable as the plaintiff could not claim his salary on account of his being suspended with retrospective effect since the date of dismissal, i.e., 17th December, 1951. On 9th August, the petitioner replied pleading that the second order of suspension was illegal because he could not be placed under suspension with retrospective effect and also that it violated the provisions of Article 19(1)(f) of the Constitution. As a result of that, the trial Court stayed the proceedings in the suit *sine die* and directed the parties to get the point decided by the High Court, *vide*, its order

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dated 14th February, 1959. A revision was filed against that order which came up before Grover, J., on 18th May, 1960. Before him, the learned counsel for the petitioner contended that rule 12(4) was *ultra vires* of Article 309 inasmuch as it was given restrospective effect. It was also urged that the conditions of service of the petitioner could not be altered in this manner unilaterally and that the conditions of service by which he was originally governed did not contain any such provision. It was further submitted that the effect of enacting such a rule was to deprive the petitioner of the right to receive the salary to which he could be entitled by virtue of the declaration which had been finally granted by the Supreme Court in his favour. Reliance was placed on *Om Parkash Gupta* v. *State of Uttar Pradesh* (1). The learned Single Judge was of the view that the points raised before him required careful consideration and any decision on the validity of rule 12(4) was likely to have a far-reaching effect on several other cases which may be pending or which may be instituted later on by Government servants who were originally dismissed but whose dismissal was declared to be bad by competent Courts. He, therefore, thought it proper to have this case placed before a larger Bench to get a more authoritative pronouncement on the point involved, *vide*, his reference on the 18th May, 1960. As a result of the above, this case has come up before us.

The main points which are agitated in this case are (1) whether, after the suit for declaration was finally decreed by the Supreme Court, the petitioner is not entitled to recover his dues, i.e., salary and other allowances minus the subsistence allowance which he was getting during the period

(1) A.I.R. 1955 S.C. 600.

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of suspension, (2) whether the Legislature was competent to frame rule 12(4) of the Central Civil Service (Classification, Control and Appeal) Rules, 1957, with retrospective effect, and (3) whether this rule infringes the provisions of the Articles of the Constitution. I will deal with these points seriatim.

The parties argued this petition at considerable length. The contention of the petitioner's counsel was that the order of suspension of the petitioner lapses with or merges into the order of dismissal subsequently set aside by the Supreme Court. Under the circumstances, the petitioner should be deemed to be in service since 17th December, 1951, and was consequently entitled to all his dues from that date. In this connection he places his reliance on *U. P. Government* v. *S. Tabarakh Hussain* (1), and mainly on *Om Parkash Gupta* v. *State of Uttar Pradesh* (2).

The learned counsel for the State, on the other hand, submitted that the argument advanced by the petitioner's counsel on this point is not fully covered by the decision of the Supreme Court in *Om Parkash Gupta* v. *State of Uttar Pradesh* (2). He submitted that the appeal of Khem Chand was accepted by the Supreme Court only on a technical ground because he was not given an opportunity to show cause against the action proposed to be taken against him, which violated the provisions of Article 311(2) and that the Supreme Court has not held in his case that his suspension was bad. If the Supreme Court had expressed their opinion on the point of suspension in favour of the petitioner then his contention might have prevailed

(1) A.I.R. 1956 Allahabad 151.
(2) A.I.R. 1955 S.C. 600.

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but not otherwise. Relying on *Punjab State* v. *Subedar Wazir Chand Chopra* (1), he contended that the suspension of a civil servant by virtue of a power vested in the State Government has the effect of suspending the contract of service as a whole and the servant is not entitled to claim wages for the period of suspension as a matter of right. This authority was based on *Wallwork* v. *Fielding* (2), and *Secretary of State* v. *Surendra Nath* (3). To elucidate his point further, he contended that the contract of service between the State and the petitioner was suspended on 17th December, 1951, and the petitioner could only recover his dues by way of damages if he could show that his suspension was bad. He maintained that a similar argument was raised in *Om Parkash Gupta* v. *State of Uttar Pradesh* (4), quoted by the petitioner himself, and their Lordships of the Supreme Court, finding force in the argument, allowed the parties to amend their pleadings, and for the same reason the appellant's counsel in that case gave up his claim for the period of suspension. In this connection the following observations of their Lordships on the point at issue will be helpful:—

> "If the decision of this Court in *State of Bihar* v. *Abdul Majid* (5), had been available to the Courts below, they would have held that the appellant was entitled to recover arrears of salary when he had been illegally dismissed and they would have had further to decide whether the order of suspension was valid and during the period it was

(1) A.I.R. 1955 Punj. 40.
(2) (1922) 2 K.B. 66.
(3) A.I.R. 1938 Cal. 759.
(4) A.I.R. 1955 S.C. 600.
(5) A.I.R. 1954 S.C. 245.

in force the appellant could recover arrears of salary.

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"On the additional written statement filed by the respondent in this Court, the submissions of the Advocate for the appellant and the Attorney-General would require examination and it might have been necessary to consider whether the case should not be remanded to the Court of trial. It is unnecessary, however, to record a decision on these submissions having regard to the attitude adopted by the Advocate for the appellant. He objected to the case being remanded as such a course would involve the appellant in heavy expenditure and harassment.

"The appellant preferred to give up his claim for arrears of salary less subsistence allowance paid to him from the date of the order of suspension until the date of the order of dismissal."

There is no doubt that the argument of the counsel for the State finds support from the Supreme Court judgment mentioned above which was quoted by the petitioner himself. It, therefore, cannot be said that the petitioner was, as a matter or right, entitled to get his dues, which he has claimed after the order of his suspension, unless it is held that the order of suspension was bad.

The next point urged by the petitioner's counsel was that the Legislature was not competent to frame rule 12(4) of the Central Civil Service (Classification, Control and Appeal) Rules, 1957, without any notice to the petitioner and at any rate it was not competent to give retrospective effect to the same and further that the said rule

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violated the provisions of Article 19(1)(f) of the Constitution. The aforesaid rules were framed in 1957 and were published in the Government Gazette but the petitioner did not object to the framing of the rules in any way. When such rules are published, knowledge of their publication is presumed. However, it is clear from Article 309 that the Legislature is competent to frame rules relating to recruitment and conditions of service of persons serving the Union or any State. In *Anil Nath* v. *Collector of Excise* (1), P.B. Mukharji, J., of the Calcutta High Court, held that it was one of the implied conditions of employment under the Government that the service shall be governed by the rules as they are made and modified from time to time, subject of course, to the condition that such rules must not contravene any provision of the Constitution. Hence nothing prevents Government from making rules under Article 309, with retrospective effect and thus affect Government servants prejudicially by rules which did not exist at the time of the employment. The same view was taken by the Allahabad High Court in *Pirthinath* v. *State of U. P.* (2), wherein it was held that it was competent for the Government to give retrospective effect to a rule by express words but that in the absence of express words, the Court should not interpret a rule as retrospective so as to take away vested rights. The view of the Assam High Court is, however, different.

The next question which after that arises is whether rule 12(4) infringes the provisions of Article 19(1)(f) of the Constitution of India. Article 19(1)(f) lays down that all citizens shall have the right to acquire, hold and dispose of property.

(1) A.I.R. 1958 Cal. 407.
(2 A.I.R. 1959 Allahabad 169.

This clause guarantees the right of private property, viz., that a man is free to acquire any property by any lawful means and to hold it as his own and to dispose of it at his will, subject, however, to reasonable restrictions. The question, therefore, is whether in the circumstances of the present case the petitioner held or acquired any property by any lawful means. As stated above, if the petitioner could be deemed to be still in service he could be said to have acquired the property by lawful means. But as the petitioner has already been dismissed, it cannot be said that in the present case the provisions of Article 19(1)(f) of the Constitution have been infringed. It is true that the case of the petitioner is rather hard but the courts cannot act upon sentiments in preference to the statutory provisions relating to a case.

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For the reasons given above, we see no force in this revision and dismiss it. Taking, however, into consideration all the facts and circumstances of the case, the parties are left to bear their own costs.

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TEK CHAND, J.—I agree.

K. S. K.

FULL BENCH

SUKHJIT STARCH AND CHEMICALS LTD.,—*Appellant*

versus

THE UNION OF INDIA AND ANOTHER,—*Respondents.*

Regular First Appeal No. 153 of 1953

Indian Independence (Rights, Property and Liabilities) Order, 1947—Articles 8 and 10—Contract Act (IX of 1872)—Sections 43 and 70—Government of United Punjab allotting maize, receiving price and issuing permit for despatch—Maize lying in Lyallpur and Hoshiarpur Districts—