

PETITIONER:
STATE OF ANDHRA PRADESH

Vs.

RESPONDENT:
S.N. NIZAMUDDIN ALI KHAN

DATE OF JUDGMENT 05/08/1976

BENCH:
RAY, A.N. (CJ)
BENCH:
RAY, A.N. (CJ)
BEG, M. HAMEEDULLAH
SINGH, JASWANT

CITATION:
1976 AIR 1964 1977 SCR (1) 128
1976 SCC (4) 745
CITATOR INFO :
RF 1988 SC 908 (5)

ACT:

Constitution of India, Article 311(2), violation of--Penalty of compulsory retirement--Hyderabad Civil Service (Classification, Control and Appeal) Rules---Reasonable opportunity of defence at the stages of enquiry and punishment--Consideration of extraneous matters in recommendation of penalty by High Court Chief Justice, whether valid.

HEADNOTE:

The respondent, Munsiff Magistrate, was found guilty in an enquiry held by a High Court Judge, regarding serious allegations against him. The Chief Justice of the High Court also examined the evidence on his own, and confirming the findings of the Enquiry Officer, recommended compulsory retirement. Both reports were sent to the Government, and a show-cause notice with the Enquiry Officer's report was issued to the respondent. Later, with the Public Service Commission's approval, the respondent was compulsorily retired. His appeal to the Rajpramukh was dismissed, but the City Civil Court and High Court decided in his favour. The question before this Court was, whether the Chief Justice's report was in accordance with the Hyderabad Civil Service (Classification, Control and Appeal) Rules and the High Court Act, and whether the failure to communicate it to the respondent, amounted to a denial of reasonable opportunity for defending himself at the stages of enquiry and punishment.

Dismissing the appeal, the Court,

HELD: (1) The report of the Chief Justice of the proposed punishment of compulsory retirement took into consideration extraneous matters, and he was not authorised to do so under the Rules, or the High Court Act. The report was based, to a large extent, on secret information which the respondent had no opportunity of meeting. [132 D-E]

(2) The Government accepted the Chief Justice's report and took action on it. The report was not given to the respondent. He was denied the opportunity of being heard at that stage of enquiry. The respondent was denied a reasona-

ble opportunity of making a representation against the penalty proposed by the Government. [132 E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: CIVIL Appeal No. 1863 of 1968.

P. Ram Reddy, K. Jayaram and A. V. V. Nair, for the appellant.

T.C. Raghavan, B. Parthasarathi and S. Shaukat Hussain, for the respondent.

The Judgment of the Court was delivered by

RAY, C.J. This appeal by special leave is against the judgment dated 3 April, 1967 of the High Court of Andhra Pradesh.

The respondent filed this suit to set aside the order of compulsory retirement on the ground that it was illegal, wrongful, ultra vires and inoperative. The respondent alleged that the departmental enquiry was initiated by the Chief Justice and not by the Administrative Bench of the High Court which alone could do so under the Hyderabad High Court Act. The respondent alleged that he was not given a reasonable opportunity inasmuch as the report of the Enquiry Officer was submitted

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to the Chief Justice and not to the Administrative Bench and that the Public Service Commission was not consulted. The respondent further alleged that the Chief Justice added his own findings to the report of the Enquiry Officer while sending it to the Government and in doing so he took extraneous matters which had not been the subject matter of the enquiry. The respondent alleged that he had no opportunity to defend himself with reference to the findings of the Chief Justice.

The High Court held that the report of the High Court took into consideration extraneous matters and thus deprived the respondent from giving a reasonable opportunity. The High Court, therefore, held that Article 311(2) was violated. The High Court confirmed the decree of the trial Court but modified the order to the extent that the respondent was entitled to arrears of salary.

The Hyderabad Civil Services (Classification, Control and Appeal) Rules referred to as the Rules contain in Part III the following relevant provisions. Rule 9(b) states that compulsory retirement before completion of 30 years or 25 years of qualifying service is one of the penalties. Rule 12 provides that the Government may impose any of the penalties mentioned in items (ii) to (viii) of Rule 9 on members of the State Services after consultation with the Public Service Commission where such consultation is necessary. Rule 17(b) provides that in every case where it is proposed to impose on a member of a Service any of the penalties mentioned in items (iv), (vi), (vii) and (viii) of rule 9. the grounds shall be communicated. The charges are to be communicated together with the statement of the allegations on which each charge is based. A written statement is required to be filed by the officer and an enquiry shall be held. After the enquiry has been completed, the person charged shall be entitled to put in, if he so desires. any further written statement in his defence. After the enquiry has been completed and after the authority competent to impose the penalty mentioned in that clause has arrived at provisional conclusions, the person charged shall be supplied with the copy of the report of the enquiring authority

and be called upon to show cause within a reasonable time against the particular penalty proposed to be inflicted.

Rule 14 states that after completing the oral enquiry, if any, and giving the person charged an opportunity of making a written statement, the inquiry officer should record his findings on each charge, the reason for such findings and recommendations as regards the penalty on each of the charges. Rule 16 states that on receipt of the report of the enquiry officer the punishing authority should arrive at a provisional conclusion in regard to the penalty to be imposed and the person charged shall be supplied with a copy of the report of the enquiry officer and be called upon to show cause within a reasonable time why the particular penalty or penalties should not be inflicted upon him. Any representation submitted by the person charged in this behalf shall be duly taken into consideration by the punishing authority before final orders are passed.

The Rules further provide that in a case in which it is necessary to consult the Public Service Commission according to the provisions of

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the Public Service Commission Regulations, the complete papers of the case should be sent to the Commission for their advice as regards the action to be taken without any observation on the merits of the case. On receipt of the advice of the Commission, if it be found that the Commission have agreed with the provisional conclusion reached by the punishing authority as regards the penalty to be inflicted, final orders should be issued to the person charged. If, however, it be found that there has been disagreement on this point and the punishing authority has no objection to accept the advice of the Commission, final orders should be issued to the person charged. If, however, the punishing authority does not consider it feasible to accept the advice of the Commission another reference on this point should be made to the Commission and if they still adhere to their views the case should be submitted through the Services Branch of the General Administrative Department for the orders of the Chief Minister showing reason for the proposal and such orders as may be passed by the Chief Minister shall be communicated to the person charged.

Under the Hyderabad High Court Act 3 of 1337 fasli corresponding to the year 1937 section 12 provides for the Administrative Bench consisting of at least two Judges appointed by the Chief Justice. The Chief Justice may constitute more than one Administrative Bench. Every question before the Administrative Bench shall be decided either by a consensus or by majority of opinion. But where a disagreement does not produce a majority of opinion, action shall be taken in accordance with the view with which the Chief Justice might concur. If the Chief Justice does not join the Bench and there is no majority of opinion all opinions shall be placed before the Chief Justice and the opinion concurred by him shall be given effect to. Section 13 of the Hyderabad High Court Act deals with powers of Administrative Bench of the High Court. The Administrative Bench shall have power inter alia to sanction, suspension, fines, dismissal.

The respondent was appointed as Munsiff Magistrate in the year 1948. Sometime in 1951 and 1952 a preliminary enquiry by the District and Sessions Judge was made. The Administrative Bench consisting of the Chief Justice of the High Court and another learned Judge deputed Justice Manohar Prasad to conduct the enquiry in accordance with the Rules. On 16 April, 1953 the respondent was suspended. A charge-

sheet was served on the respondent along with the statements of four persons. On the following charges it was proposed to remove the respondent from service namely (1) Communal bias in deciding case, (2) disregarding judicial orders, (3) suggesting names of Muslim lawyers to Muslim parties and (4) inefficiency.

On 3 August, 1953 the Enquiry Officer Justice Manohar Prasad submitted a report finding the respondent guilty of charges numbered 1 and 3 and he recommended a warning. On 25 August, 1953 the report of the Chief Justice on his own examination of the evidence confirmed the findings of the enquiry officer and he recommended compulsory retirement. On 5 September, 1953 the Administrative Bench the High Court sent both the reports to the Government.

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On 14 October, 1953 a show cause notice was issued from the Government for compulsory retirement of the respondent. The Government show cause notice enclosed the report of Justice Manohar Prasad. The respondent answered the findings of the enquiry report and also protested against the report of the Chief Justice saying that the Chief Justice had no authority to add his own remarks and his findings were arrived at without hearing the respondent.

On 22 December, 1953 the matter was referred to the Public Service Commission. On 27 February, 1954 the Public Service Commission approved compulsory retirement. On 8 April, 1954 the respondent was compulsorily retired.

On 28 June, 1954 the respondent preferred an appeal to the Rajpramukh. On 4 November, 1954 the Rajpramukh dismissed the appeal. In 1957 the respondent filed this suit.

The City Civil Court found that the respondent did not have a chance to meet some of the allegations referred to by the Chief Justice. The City Civil Court also found that the report of the Chief Justice weighed with the Government. The City Civil Court also found that the respondent had no reasonable opportunity for defending himself against the imposition of penalty of compulsory retirement.

The High Court held that the findings of the Chief Justice were based to a considerable extent on material which was not produced before the High Court. The High Court also held that the Government had accepted the report of the Chief Justice both with regard to the guilt and punishment. The High Court held that since the report of the Chief Justice formed an integral part of the enquiry, the respondent was denied reasonable opportunity at both the stages of enquiry and punishment and, therefore, the compulsory retirement was bad.

On behalf of the appellant it was contended that assuming the report of the Chief Justice was taken into consideration by the Government the findings of the Chief Justice were based on evidence let in before the Enquiry Officer and not any extraneous circumstances. It was also submitted that it was open to the Government to accept or reject the recommendation of the Chief Justice on the question of punishment. The further submission was that the respondent was given a reasonable opportunity at both the stages of the enquiry and punishment, and, therefore, the order of compulsory retirement, is good.

In the alternative it was submitted on behalf of the appellant that the Government of its own came to the conclusion that compulsory retirement was the proper punishment, and, therefore, the Government did not act on the recommendation of the Chief Justice.

The report of the Chief Justice referred to the report of the Enquiring Judge. The Enquiring Judge held that

charges relating to the communal bias of the respondent and charges relating to unbecoming conduct of the respondent in relation to engagement of counsel in pending cases were proved. The Chief Justice in his report said that he was flooded with complaints from lawyers, litigants and from all sides

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which emanated not only from the members of the Bar but also from responsible officers. The Chief Justice said in his report that on consideration of all the facts he had not the slightest doubt that in this case leniency would be misplaced and in the interest of purity of services such practices, when proved, as they have been proved, must be dealt with firmly. He, therefore, expressed the opinion that the respondent should be compulsorily retired and he concluded with the observation "let the Government be moved accordingly".

Under the Rules the Government has power under rule 12 to impose, inter alia, the penalty of compulsory retirement after consultation with the Public Service Commission where such consultation is necessary. The Chief Justice recommended compulsory retirement. He took note of complaints received by him from lawyers and other persons. The Chief Justice took note of insubordination which charge was rejected by the Enquiry Officer. Rule 17(e) of the Rules requires that all orders of punishment shall state the grounds on which they are based and shall be communicated to the person against whom they are passed. The report of the Chief Justice was not given to the respondent. The High Court Act did not authorise the Chief Justice to send a supplementary report with his own findings. The respondent had no reasonable opportunity of making any representation against the report of the Chief Justice of the proposed punishment of compulsory retirement.

The High Court rightly held that the report of the Chief Justice took into consideration extraneous matters, and he was not authorised to do so under the Rules of the High Court Act. The report submitted by the Chief Justice is not the report of the Administrative Bench. The High Court rightly held that the Government accepted the Chief Justice's report and took action on it. The High Court was right in holding that the report of the Chief Justice was based to a large extent on secret information which the respondent had no opportunity of meeting. The respondent was denied the opportunity of being heard at that stage of enquiry. The respondent was denied a reasonable opportunity of making a representation against the penalty proposed by the Government.

For these reasons the appeal is dismissed. The respondent is entitled to costs.

M.R.

dismissed

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Appeal