

CASE NO.:
Appeal (civil) 1295 of 1998

PETITIONER:
STATE OF U.P. AND ANR.

RESPONDENT:
CHANDRAPAL SINGH AND ANR.

DATE OF JUDGMENT: 12/03/2003

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT

JUDGMENT:
JUDGMENT

2003 (2) SCR 1062

The following Order of the Court was delivered :

The State of U.P. and another are before us in this appeal, assailing the order passed by the High Court in a writ petition affirming the order passed by the U.P. Public Service Tribunal No. Ill, Lucknow. The respondent No. 1 herein was appointed as Assistant Agriculture Inspector, Group-Ill by the Director of Agriculture. On account of certain irregularity or misconduct the disciplinary proceedings were initiated against him by the District Agriculture Officer. After holding enquiry, he submitted a report to the disciplinary authority which authority, accepting the report of the District Agriculture Officer, passed the order of dismissal dated 11.4.1977 dismissing the respondent no. 1 from service. Challenging the said order of dismissal, the respondent No. 1 filed a claim petition before the U.P. Public Service Tribunal. Before the said Tribunal, a contention was raised that respondent No. 1 having been appointed by the Director of Agriculture, the District Agriculture Officer could not have initiated the disciplinary proceedings. Consequently, the disciplinary proceedings initiated and further proceedings taken, culminating into an order of dismissal, were all vitiated. The Tribunal accepted this contention, observing that subsequent delegation of power or making the District Agriculture Officer an appointing authority in relation to Group III posts, to which respondent No. 1 belonged at the relevant point of time, would not cure the defect, namely, initiation of disciplinary proceedings by the District Agriculture Officer while the Director of Agriculture having been the appointing authority. Aggrieved by the said order of the Tribunal, the State filed writ petition before the High Court. The High Court agreeing with the findings recorded by the Tribunal, dismissed the writ petition. Hence, this appeal.

The learned counsel for the appellants contended that respondent No. 1 was appointed as Assistant Agriculture Inspector on 24.6.1966; disciplinary proceedings were initiated against him by the District Agriculture Officer on 10.1.1974 and the order of dismissed came to be passed on 11.4.1977. He pointed out two G.Os. dated 15.6.1961 and 26.12.1983 to show that on those dates the District Agriculture Officer was the appointing authority by virtue of the powers conferred on them by all the relevant G.Os. which had the assent of the Governor. On the basis of these G.Os., the learned counsel contended that prior to the appointment of the respondent No. 1, these G.Os. were very much in existence. It appears to us that the Tribunal and the High Court were under a wrong impression that the District Agriculture Officer was made an appointing authority subsequent to the initiation of the disciplinary proceedings. He further submitted that initiation of disciplinary proceedings could be by an authority lower in rank than the disciplinary authority. In support of this submission, he placed reliance on the decisions of this court in 1970 (1) SCC 108, 1993 (1) SCC 419 and, 1994 (2) SCC 746. According to the learned counsel, having

regard to these aspects both the Tribunal and the High Court committed an error and the impugned order cannot be sustained.

In opposition, the learned counsel for respondent No. 1 strongly contended that the two suspension orders were passed - one by the Project Officer who was lower in rank to the District Agriculture Officer and the second by the District Agriculture Officer and there was inconsistency between the two. Even though the G.Os. referred to by the learned counsel for the appellant were prior to the appointment of respondent No. 1, and the District Agriculture Officer was the appointing authority yet he was appointed by the Director of Agriculture. He further submitted that when the Tribunal and the High Court have concurrently found in favour of respondent No., 1 this Court may not disturb the concurrent finding.

The facts that are not in dispute are: the respondent no. 1 was appointed on 24.6.1966; the two G.Os. afore-mentioned were very much in existence and operative much prior to his appointment, under which G.Os. the District Agriculture Officer was competent to initiate disciplinary proceedings as an appointing authority, as is evident from the G.Os. themselves. He was appointed by the Director of Agriculture and the order of dismissal was passed by the Director of Agriculture on 11.4.1977. In other words, it is the appointing authority which passed the order of dismissal. Before the Tribunal, the stand of respondent No. 1 was that the District Agriculture Officer being lower in rank than the appointing authority of respondent No. 1, namely the Director of Agriculture, neither he could initiate disciplinary proceedings nor any action could be taken on the disciplinary proceedings so initiated by an incompetent authority. This contention found favour with the Tribunal as well as with the High Court. Before us, the learned counsel for respondent No. 1 submitted that the District Agriculture Officer was the appointing Authority in the year 1966, when the respondent No. 1 was appointed, the Director of Agriculture could not have appointed him. This submission ignores the basic fact that if this order of appointment was incompetent, in that case the very appointment of respondent No. 1 goes away. It appears that this is a stand taken before us for the first time and we have no hesitation to reject this contention. In terms of Article 311 of the Constitution, no person who is a member of civil service of the Union or All India Service or civil service of a State or holds a civil post under the Union or a State, shall be dismissed or removed by an authority subordinate to that by which he was appointed. Admittedly, in this case, the Director of Agriculture actually appointed the respondent No. 1.

This Court in *State of M.P. and Ors. v. Shardul Singh*, [1970] 1 SCC 108 has held that Article 311(1) provides that no person who is a member of civil service of the Union or State shall be dismissed or removed by an authority subordinate to that by which he was appointed. However, that Article does not in terms require that the authority is empowered under that provision to dismiss or remove an official should itself initiate or conduct enquiry proceeding.

In the case of *P. V. Srinivas and Ors. v. Union of India and Ors.*, [1993] 1 SCC 419 referring to the judgment of this Court in *Shardul Singh (supra)* the position is retreated.

In *Registrar of Cooperative Societies v. Fernando*, [1994] 2 SCC 746, referring to the two afore-mentioned decisions of this Court, the position is made clear thus in paragraph 16:-

"It was on the basis of this G.O., on March 20, 1989 the Registrar issued the charge memo. In this connection, it is worthwhile to refer to a recent decision of this Court reported in *P. V. Srinivasa Sastry v. Controller and Auditor General*. The relevant Observations at pages 1323-24 are as under:- (SCC pp.422-23, paras 4-5 and 6)

'But Article 311(1) does not say that even the departmental proceeding must

be initiated only by the appointing authority. However, it is open to Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority. Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holder of a civil post. But in absence of any such rule, this right or guarantee does not flow from Article 311 of the Constitution.

It need not be pointed out that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences, and the framers of the Constitution did not consider it necessary to guarantee even that to holders of civil posts under the Union of India or under the State Government. At the same time, this will not give right to authorities having the same rank as that of the officer against whom proceeding is to be initiated to take a decision whether any such proceeding should be initiated. In absence of a rule, any superior authority who can be held to be the controlling authority, can initiate such proceeding.

In the case of State of U.P. v. Shardul Singh, the departmental enquiry had been initiated against the Sub-Inspector of Police by the Superintendent of Police, who sent his inquiry report to the Inspector-General, who was the appointing authority. The Inspector General of Police dismissed the officer concerned from the service of the State Government. That order was challenged on the ground that the initiation of the departmental enquiry by the Superintendent of Police was against the mandate of Article 311(1) of the Constitution. This contention was accepted by the High Court. But this Court said:-(SCC p. 112, para 10)

"We are unable to agree with the High Court that the guarantee given under Article 311 (1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that Article.

Although Article 311 of the Constitution does not speak as to who shall initiate the disciplinary proceedings but, as already stated above, that can be provided and prescribed by the rules. But if no rules have been framed, saying as to who shall initiate the departmental proceeding, then on the basis of Article 311 of the Constitution, it cannot be urged that it is only the appointing authority and no officer subordinate to such authority can initiate the departmental proceeding. In the present case, it was not brought to our notice that any rule prescribed that the Accountant General, who is the appointing authority alone could have initiated a departmental proceeding."

Thus, looking to the terms and content of Article 311(1) of the Constitution, it does not follow that even initiation or conduct of inquiry proceedings should be by that authority itself, which is empowered to dismiss or remove an official under the said Article, unless there is an express rule governing the official requiring it to be so.

We have to take note of one more fact that is the order of dismissal was passed in 1977. We are told that respondent No. 1 was not reinstated in service even after the Tribunal passed the order of reinstatement because of the interim order granted by the High Court as well as by the status quo order passed by this Court. Even otherwise, having regard to the age of respondent No. 1 in all probability, the respondent No. 1 would have attained the age of superannuation by now. Thus, having regard to all aspects, the impugned judgment cannot be sustained. Hence, it is set aside, the order of dismissal of respondent No. 1 from service is upheld. Appeal allowed accordingly. No costs.