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STATE OF GUJARAT

v.

RAMESH CHANDRA MASHRUWALA

January 21, 1977

B

[A. N. RAY, C.J., M. H. BEG AND P. S. KAILASAM, JJ.]

Disciplinary jurisdiction of the High Court—The Registrar of the Small Causes Court, Ahmedabad appointed by the Governor, is “in judicial service” and subject to disciplinary jurisdiction of the High Court—The question of “appointing authority” is not relevant in regard to the disciplinary jurisdiction of the High Court—Articles 235, and 236 of the Constitution of India, Sections 9(1) (aa), 13, 14, 33 to 36 of the Presidency Small Causes Court Act 1882—Scope of.

C

Reasonable opportunity—Failure to give copies of documents demanded is contrary to the provisions of Art. 311.

Pursuant to the departmental enquiry conducted by the High Court and on its recommendation, the Gujarat Governor dismissed the respondent from the service of Registrar, Small Causes Court, Ahmedabad. The respondent challenged by way of a writ the said order contending : (1) The High Court was not his appointing authority and he being the member of general State service, the High Court has no authority to initiate proceedings, the appointment of the enquiry officer, framing of charges of misconduct and taking disciplinary proceedings etc. (2) The High Court has no authority to direct further enquiry to be made in respect of recording the statement of one Mr. Bhatt, an advocate or to consider the reports made by the enquiry officer and come to the conclusion about his guilt or to issue show cause notice of punishment. (3) The direction of the High Court that the statement of Mr. Bhatt is recorded was passed without hearing the petitioner and this violated the rules of natural justice. (4) The failure to give copies of certain documents demanded by the petitioner deprived him of a reasonable opportunity to defend himself and, therefore, the enquiry was contrary to the provisions of Art. 311 of the Constitution; and (5) The impugned order was passed by the Government without consulting the Public Service Commission and the same was illegal and bad in law.

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The High Court held : (1) The post of the Registrar of Small Causes Court does not fall within the expression “judicial service” within the meaning of Art. 235 and (2) The High Court has no disciplinary jurisdiction over the Registrar in view of the fact that the High Court is not the “appointing authority”.

Accepting the State's appeal by certificate and remitting the case, the Court,

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HELD : (1) The Registrar of the Court of Small Causes is a person holding a civil judicial post inferior to the post of District Judge and he is in judicial service. Sections 9(1), 13 14, 33 to 36 of the Presidency Small Causes Court Act, 1882 indicate in no uncertain manner that the Registrar of Small Causes Court exercises judicial powers, Inasmuch as the Registrar Small Causes Court exercises his judicial function, he is a judicial officer in judicial service and comes within the scope and intent of Art. 235 and 236. [711 H, 712 G-H]

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(2) The High Court was in error in considering the question of “appointing authority” as relevant in regard to the disciplinary jurisdiction of the High Court and also in holding that it had no power to order disciplinary proceedings. The High Court abdicated its own disciplinary jurisdiction. The High Court is the competent authority to hold departmental enquiries. [711 D-E, 713 A-C]

High Court of Punjab & Haryana etc. v. State of Haryana and Ors. [1975] (3) SCR 365 and *Shamsher Singh & Anr. v. State of Punjab* [1975] (1) SCR 814, referred to.

(3) In the instant case the enquiry was contrary to the provisions of Art. 311 of the Constitution due to the failure to give copies of certain documents demanded by the Registrar, thus deprived him of a reasonable opportunity to defend himself. [713 G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 207 of 1975.

From the Judgment and Order dated the 19-4-74 of the Gujarat High Court in Special Civil Appln. No. 306 of 1973.

S. T. Desai and *Girish Chandra* for the Appellants.

I. N. Shroff and *H. S. Parihar* for Respondent.

The Judgment of the Court was delivered by

RAY, C.J. This appeal is by certificate against the judgment and order dated 19 April 1974 of the High Court of Gujarat in Special Civil Application No. 306 of 1973.

The question for consideration in this appeal is whether the petitioner before the High Court, who was the Registrar of the Small Causes Court, Ahmedabad was subject to the disciplinary jurisdiction of the High Court.

The Registrar was appointed on 12 September, 1969 by an order of the Governor of Gujarat.

The High Court said that in view of the fact that the High Court is not the appointing authority the High Court has no disciplinary jurisdiction over the Registrar.

The High Court was in error in considering that the question of appointing authority is relevant in regard to the disciplinary jurisdiction of the High Court.

Under Article 235 the control over district Courts and Courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court.

The expression 'judicial service' is defined in Article 236 to mean "a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge".

These two articles 235 and 236 are relevant for the purpose of ascertaining the extent of disciplinary jurisdiction of the High Court. The Registrar of the Court of Small Causes is a person holding a civil judicial post inferior to the Post of district judge and is 'in Judicial service.'

Reference to the presidency Small Causes Courts Act 1882 is necessary to find out the powers, position and duties of the Registrar

A of the Small Causes Court. Section 13 of the Act states : "There shall be appointed an officer to be called the Registrar of the Court who shall be chief ministerial officer of the Court".

The other provisions in the Act which deal with the Powers of the Registrar are to be found in Sections 9(1) (aa), 14, 33, 34, 35 and 36, which read as follows :

B "9(1)(aa). The High Court may, from time to time, by rules having the force of law empower the Registrar to hear and dispose of undefended suits and interlocutory applications or matters.

C 14 - The Provincial Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try.

D 33 - Any non-judicial or quasi-judicial act which the Code of Civil Procedure as applied by this Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

E 34 - The suits cognizable by the Registrar under section 14 shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same.

F 35 - The Registrar may receive applications for the execution of decrees of any value passed by the Court, and may commit and discharge judgment debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

G 36 - Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court."

These provisions of the Act indicate in no uncertain manner that the Registrar of a Small Causes Court exercises judicial powers, hears suits, passes decrees and an appeal is preferred from a decree of the Registrar.

H Counsel for the appellant is right in his contention that the Registrar, Small Causes Court, inasmuch as he exercises judicial functions, is a judicial officer in Judicial Service and comes within the scope and intent of Articles 235 and 236.

The High Court was in error in holding that the High Court had no power to order disciplinary proceedings. It is significant that the High Court abdicated its own disciplinary jurisdiction. The independence of the judiciary has been emphasised by this Court in un-mistakable terms in the following two decisions :

1. *High Court of Punjab & Haryana etc. v. State of Haryana & Ors.*, reported in 1975 (3) S.C.R. 365 and
2. *Shamsher Singh & Anr. v. State of Punjab*, reported in 1975 (1) S.C.R. 814.

The Gujarat High Court like other High Courts is competent to enquire into such disciplinary matters.

In the present appeal there were five contentions before the High Court on behalf of the Registrar. The first contention fails in view of our conclusion that the High Court is the competent authority to hold departmental enquiry. The second contention of the Registrar was that the High Court had no authority to direct further inquiry to be made in respect of recording the statement of Bhatt or to consider the reports made by the inquiry officer and come to a conclusion about the guilt of the Registrar. The third contention of the Registrar was that the direction of the High Court that the statement of Bhatt be recorded was passed without hearing the Registrar and was violative of the rule of natural justice.

It will appear that the High Court issued directions and the statement of Bhatt was recorded by the Inquiry Officer. Bhatt is a Lawyer. He was busy in Court. He could not appear before the Inquiry officer on the date fixed for taking his evidence. The High Court asked the Inquiry Officer to record the evidence of Bhatt. The Registrar was given a copy of the statement of Bhatt after recording of Bhatt's evidence. The Registrar was given an opportunity to deal with the evidence of Bhatt. It is idle to contend that the Registrar ought to have been heard before the High Court directed that the statement of Bhatt should be recorded.

The fourth contention of the Registrar was that there was failure to give copies of documents demanded by him; therefore he did not have reasonable opportunity to defend himself. The High Court did not go into this question in view of the fact that the High Court did not consider this question. Counsel for the Registrar submitted that he wanted to address the Court on the materials which were not available now. We are of opinion that the matter should be remitted to the High Court only on this question viz 'failure to give copies of certain documents demanded by the Registrar thus depriving him of a reasonable opportunity to defend himself and therefore, the inquiry was contrary to the provisions of Article 311 of the Constitution'.

The fifth contention that the impugned order was passed by the Government without consulting the Public Service Commission does not survive in view of our conclusion that the High Court is the competent authority to make departmental inquiry.

A For the foregoing reasons the judgment of the High Court is set aside and the matter is remitted to the High Court for consideration only of the fourth question as indicated above.

Parties will pay and bear their own costs.

S.R.

Appeal allowed and case remitted.