(1956) 01 MP CK 0003

Madhya Pradesh High Court

Case No: Miscellaneous Civil Writ No. 53 of 1955

Ghanshyam Dass		APPELLANT
	Vs	
D.D. Saigal and another		RESPONDENT

Date of Decision: Jan. 12, 1956

Acts Referred:

- Constitution of India, 1950 - Article 226, 311, 311(1)

Hon'ble Judges: Jagat Narayan, J.C.

Bench: Single Bench

Advocate: G.P. Bhargawa, for the Appellant; Maheswari Prasad, Government Advocate, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Jagat Narayan, J.C.

1. This is an application under Art. 226 of the Constitution against an order dated 3-11-1954 passed by the Chief Conservator of Forests purporting to terminate the services of the applicant. It has been opposed on behalf of the opposite parties. I have heard the Learned Counsel for the parties.

2. The applicant was appointed as Ranger in the Forest Department of the erstwhile Rewa State in 1948 under an order of the then Government. At that time Rewa State had a Chief Conservator of Forests but he had no power to appoint Rangers. Rewa State was taken over by the Government of India on 31-12-1949 and the applicant continued in service.

He was posted to Sidhi Forest Division in March 1954. On 25-6-1954 the Divisional Forest Officer Sidhi framed four charges against him and asked him to submit his reply within 4 days. A copy of the charges was served on the applicant on 28-6-1954 but he did not give any reply. Reminders were issued to him on the 1st, 3rd and 7th July 1954 respectively.

When he failed to furnish an explanation the Divisional Forest Officer sent an ex parte report to the Chief Conservator of Forests who issued a show cause notice to the applicant on 27-9-1954. The applicant then gave a reply on the same day defending himself against all the charges. The Divisional Forest Officer submitted his comments on the reply and taking them into consideration the Chief Conservator of Forests passed an order terminating his services.

3. It has been urged on behalf of the applicant that as he was appointed by the then Government of Rewa State he could not be removed or dismissed by the Chief Conservator of Forests in view of Art. 311(1) of the Constitution. The present State of Vindhya Pradesh was formed on 31-12-1949 by the merger of a number of former States. The Agreement of Merger contained the following guarantee:

The Government of India hereby guarantees either the continuance in service of the permanent members of the public services of the United States of Vindhya Pradesh on conditions which will not be less advantageous than those on which they were serving on 1-12-1949 or the payment of reasonable compensation or retirement on proportionate pension.

4. The applicant continued in service after the formation of Vindhya Pradesh. In the new State so formed the State Government continued to be the appointing authority for Forest Rangers till 17-4-1953 when by an order this power was delegated to the Chief Conservator of Forests. Forest Rangers were integrated into the permanent services of Vindhya Pradesh under a notification published in Vindhya Pradesh Gazette dated 21-11-1953 under the signature of the Chief Conservator of Forests.

The then existing Forest Rangers were first screened by a Departmental Integration Committee consisting of the Chief Conservator of Forests and two gazetted officers of the department and their seniority was fixed by this Committee. An appeal against the decision of this Committee lay to the Central Integration Committee the decisions of which were to be approved by Government before they could be enforced.

After such approval the seniority list of Forest Rangers was finalised and was published under the signature of the Chief Conservator of Forests who had been made the appointing authority for Forest Rangers by Government order dated 17-4-1953.

5. The learned Government Advocate cited ''Sobhagmal v. State of Rajasthan'', 1954 Raj 207 (AIR V41) (A) - and argued that Art. 311(1) contemplates that the authority appointing and the authority dismissing must be an authority of the same State. His contention is that when there is a merger of number of former States to form the present State what has to be seen is the authority appointing the applicant in the present. State after it was created.

His argument is that as the, applicant''s integration took place by an order published under the signature of the Chief Conservator of Forests on 21-11-1953 he should be deemed to have been appointed by the Chief Conservator of Forests for purposes of Art. 311(1).

6. In the Rajasthan case the petitioner was appointed by an order of the Government of Jaipur dated 16-10-1946. He was suspended from service by the Assistant Commissioner Customs and Excise, Jaipur and gave over charge on 11-6-1949. On 31-8-1951 the Divisional Assistant Commissioner Customs and Excise charge-sheeted the applicant.

He was removed from service on 29-7-1952 by the Commissioner, Customs and Excise. The Rajasthan Union was inaugurated in its present form on 18-4-1948. It became a Part B state on 26-1-1950. It was then that the protection contained in Art. 311 became applicable to him. It was held that Art. 311(1) contemplates that the authority appointing and the authority dismissing must be an authority of the same State.

Where however, as in the case of Rajasthan, there has been a merger of a number of former States to form the present State of Rajasthan the position is different. In these circumstances it must not be seen what was the authority which appointed the applicant originally when he was appointed in a former State which has been merged in the State of Rajasthan. What is to be seen is the authority which appointed the applicant in the State of Rajasthan after it was created.

Their Lordships obviously meant the part B State of Rajasthan to which the Constitution was applicable. They went on to observe:

Therefore the correct interpretation of Art. 311(1) of the Constitution in the situation is that the dismissal or removal cannot be made by an authority subordinate to that which appointed a civil servant on integration in the State of Rajasthan. It is not the original appointing authority in the State of Rajasthan that is to be seen and the dismissal cannot be made by an authority subordinate in rank to such an authority in the State of Rajasthan.

But where the civil servant was never appointed in the integrated set up for he was suspended before the integration was completed the proper way to look at it is to see who would have appointed him in the State of Rajasthan if he had been brought into the integrated set up.

Under the Rajasthan Civil Services (Classification Control and Appeal) Rules, 1950, the Commissioner Customs and Excise Department was the appointing authority in the case of Inspectors. It was accordingly held that removal by the Commissioner was proper.7. So far as vindhya Pradesh is concerned it was first formed on 4-4-1948 by the merger of 35 States in the shape of the United State of Vindhya Pradesh. On 26-12-1949 the Rulers of the States forming the United State of Vindhya Pradesh

entered into a Merger Agreement with the Governor General of India and the State of Vindhya Pradesh was formed on 31-12-1949 in consequence of that agreement. Vindhya Pradesh became a Part C State on 26-1-1950 when the Constitution became applicable to it containing the protection given in Art. 311(1).

In my opinion what is to be seen is the authority which would have appointed the applicant in the Part C State of Vindhya Pradesh on 26-1-1950 if he had been appointed on that date to the post which he was holding. For the constitutional guarantee contained in Art. 311(1) became applicable to him on that date.

From the published report of the Rajasthan case it is not clear whether on the date on which Rajasthan became a Part B State the appointing authority for Inspectors in Customs and Excise Department was any other than the Commissioner Customs and Excise. In Vindhya Pradesh there was a change in the appointing authority for Forest Rangers between 26-1-1950 and the date of removal from service of the applicant. Upto 16-4-1953 Forest Rangers could only be appointed by the Government and not by the Chief Conservator of Forests. The process of reorganization of the services commenced in Vindhya Pradesh in the year 1953. So far as Forest Rangers are concerned it was completed in the same year.

The authority dealing with integration was not the same authority which was the appointing authority. Forest Rangers were integrated by a committee consisting of the Chief Conservator of Forests & two gazetted officers although the Chief Conservator acting alone was the appointing authority for Forest Rangers with effect from 17-4-1953.

In the case of Tehsildars although the Commissioner was the appointing authority they were integrated by the Central Integration Committee, the decisions of which had to be approved by Government. In other words, Tahsildars were integrated under the orders of Government. In the same way in the Secretariat the Chief Secretary is the appointing authority for Superintendents with effect from 17-4-1953. But the Central Integration Committee was the authority which integrated them under orders which had to be approved by Government before they could be enforced.

Moreover integration does not amount to fresh appointment. As has been pointed out above the Government of India gave a guarantee in the agreement of merger that permanent members of the public services will either be continued in services on conditions which will not be less advantageous than those on which they were serving on 1-12-49, or their services will be terminated on payment of reasonable compensation or retirement on proportionate pension.

The applicant continued in service after Vindhya Pradesh became a Part C. State. The provisions of Art. 311(1) became applicable to him on 26-1-50. The authority under the orders of which he was integrated as Forest Ranger in 1953 cannot be regarded as the appointing authority in his case. As has been pointed out above the

applicant was integrated by a committee consisting of the Chief Conservator of forests and two gazetted officers although the final order was published in the gazette under the signature of the Chief Conservator of Forests alone.

If integration was to be regarded as fresh appointment then the appointing authority would be a committee consisting of the Chief Conservator of Forests & two gazetted officers & not the Chief Conservator of Forests alone. That is however not the stand taken even on behalf of the State.

I accordingly held that the appointing authority in the case of the applicant for the purposes of Art. 311(1) is the authority which could have appointed him to the post which he was holding on 26-1-1950, if he had been appointed to it on that date. The applicant was holding the post of Forest Ranger on 26-1-1950 and the appointing authority for Forest Rangers on that date was the Government of Vindhya Pradesh. I accordingly find that the order terminating his services having been passed by the Chief Conservator of Forests is void and inoperative (See ''Mahadev Prasad v. S. N. Chaterjee'', 1954 Pat 235 (AIR V 41) (B) and ''Santosh Kumar Datta v. Commr. of Police'', 1955 Cal 81 ((S) AIR V42 (C).) I accordingly set it aside.

8. The order passed by the Chief Conservator of Forests is bad on another ground also. He has passed an order terminating the services of the applicant. The explanation to para 3 of notification No. 1 dated 17-4-1953 shows that this term should be used only in regard to the termination of employment of a person appointed on probation, or a person engaged under contract of a temporary Government servant appointed under the Central Services (Temporary Service) Rules, 1949.

The applicant was a permanent employee not under probation. He could only be removed or dismissed from service. In the show cause notice the tentative punishment which was proposed was one of removal. The penalty of dismissal could not be inflicted on the applicant.

9. It was also argued that the Divisional Forest Officer not being the appointing authority had no power to start departmental proceedings against the applicant without reference to the authority competent to dismiss him. No authority has been cited in support of the contention. It has not been shown that there is any such provision in the Constitution or in the rules. I am accordingly unable to accept this contention.

10. For reasons given above however the application is allowed. Charges have already been framed and the. applicant has already submitted his reply to those charges. He has however not been asked to state whether he desires to be heard in person. This provision of Rule 55 of the Civil Service (Classification Control and Appeal) Rules is mandatory. If he so desires or if the authority concerned so directs an oral inquiry shall be held.

At that inquiry oral evidence shall be recorded as to such of the allegations as are not admitted and the applicant shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish provided that the officer conducting the inquiry may for special and sufficient reasons to be recorded in writing, refuse to call a witness. The applicant shall also be entitled to adduce documentary evidence in defence. Parties shall bear their own costs.