

A

HARGOVIND PANT

v.

DR. RAGHUKUL TILAK & ORS.

May 4, 1979

B

[Y. V. CHANDRACHUD, C.J., P. N. BHAGWATI, N. L. UNTWALLA,
S. MURTAZA FAZAL ALI AND R. S. PATHAK, JJ.]

Constitution of India, 1950—Art. 319(d)—Scope of—Governor—If an “employee” of the Government of India—If could be regarded as “employed under the Government of India”—Employed—Meaning of.

C

Article 319(d) of the Constitution provides that on ceasing to hold office a member, other than the Chairman of a State Public Service Commission, shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission but not for any other employment either under the Government of India or under the Government of a State.

D

The first respondent, who was a member of the Rajasthan State Public Service Commission during the years 1958-59, was later appointed as Governor of the State of Rajasthan. The petitioner contended that by virtue of Art. 319(d) of the Constitution the respondent was ineligible to be appointed as Governor of a State because he was a member of the State Public Service Commission earlier.

E

On the question whether, by reason of Art. 319 (d) the respondent was ineligible for employment either under the Government of India or under the Government of a State and whether the office of Governor was an employment under the Government of India.

F

HELD : 1. The office of Governor of a State is not an employment under the Government of India and it does not therefore come within the prohibition of cl.(d) of Art. 319. The appointment of the first respondent as Governor of Rajasthan could not be held to be invalid. [982 F].

2. Howsoever wide and expansive a meaning one may give to the words “employment under the Government of India” the office of Governor cannot come within that term. [978 F].

G

3. The word “employment” is not a word with a single fixed meaning but has many connotations. If the term “employment” is construed in the narrow sense of employer employee relationship the office of Governor would not be an employment within the meaning of Art. 319(d) because the Governor of a State is not an employee or servant of anyone. He occupies a high constitutional office with important constitutional functions and duties. The executive power of the State is vested in him and every executive action of the Government is required to be expressed to be taken in his name. He constitutes an integral part of the legislature of the State though not in the fullest sense and is also vested with the legislative power to promulgate ordinances while the Houses of the Legislature are not in session. He also exercises the sovereign power to grant pardons, reprieves, respite etc. He is vested with the power to summon

H

each House of the Legislature, or to prorogue either House or to dissolve the legislative assembly and this power may be exercised by him from time to time. No bill passed by the Houses of the Legislature can become law unless it is assented to by him and before assenting to the bill he may return the bill, (provided it is not a money bill) to the Houses of Legislature for reconsideration. He has the power to reserve for consideration of the President any bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Constitution designed to fill. Another important function of his is to make a report to the President where he finds that a situation has arisen in which the Government of a State cannot be carried on in accordance with the provisions of the Constitution. It is the Governor's report which generally forms the basis for the President taking action under Art. 356, of the Constitution. These powers and functions of the Governor make it clear that he is not an employee or servant in any sense of the term. [978 H; 979 A-B].

4. Though the Governor is appointed by the President, which means in effect and substance the Government of India, it does not make him an employee or servant of the Government of India. Every person appointed by the President is not necessarily an employee of the Government of India. [979 G].

5. The fact that the Governor holds office during the pleasure of the President does not make the Government of India an employer of the Governor. It is only a constitutional provision for determination of the term of office of the Governor. The Governor is the head of the State and holds a high constitutional office which carries with it important constitutional functions and duties and he cannot be regarded as an employee or servant of the Government of India. If the word "employment" were construed to mean relationship of employer and employee, the office of Governor would not be an "employment" within the meaning of cl.(d) of Art. 319. [979 H].

6. An employment can be said to be under the Government of India if the holder or incumbent of the employment is under the control of the Government of India *vis-a-vis* such employment. If this test is applied to the office of Governor, it is impossible to hold that the Governor is under the control of the Government of India. His office is not subordinate or subservient to the Government of India. He is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carries out his functions and duties. His is an independent constitutional office which is not subject to the control of the Government of India. He is constitutionally the head of the State in whom is vested the executive power of the State and without whose assent there can be no legislation in exercise of the legislative power of the State. There can be no doubt that the office of Governor is not an employment under the Government of India and it does not come within the prohibition of Art. 319(d). [981 A-B].

Pradyat Kumar Bose v. The Hon'ble the Chief Justice of Calcutta High Court, [1955] 2 SCR 1331; *Baldev Raj Guliani & Ors. v. The Punjab & Haryana High Court & Ors.*, [1977] 1 SCR 425; *Union of India v. S. H. Sheth & Anr.*, [1978] 1 SCR 423; referred to.

A CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil)
No. 1596 of 1978.

From the Judgment and Order dated 8-11-1977 of the Rajasthan High Court in S. B. Civil Writ Petition No. 311/77.

B *Somnath Chatterjee, Dilip Sinha and K. R. Nambiar* for the Petitioner.

F. S. Nariman, (for R. 1), *Soli J. Sorabjee*, Addl. Sol. Genl. (for RR 5 and 6) *Dr. S. K. Tewari, S. M. Jain and S. K. Jain* for Respondent 1, 5 and 6.

C *V. M. Tarkunde, C. M. Mathur, Manoj Swarup and Miss Lalita Kohli* for Respondents 3 and 4.

The Judgment of the Court was delivered by

D BHAGWATI, J., This petition for special leave to appeal is directed against an order made by a Full Bench of the Rajasthan High Court dismissing the writ petition filed by the petitioner for quashing and setting aside an order of reversion passed against him by the 4th respondent in his capacity as the Acting Vice-Chancellor of the University of Rajasthan. The order of reversion was challenged on several grounds, but they were all negatived by the Full Bench and the writ petition was dismissed on a preliminary hearing. The petitioner has raised the same grounds of challenge in this special leave petition, but barring one ground, which calls for a reasoned judgment, we do not think there are any other grounds which require detailed consideration and we reject them *in limine*. The only ground which needs to be considered and which we propose to dispose of by this judgment is a constitutional one, namely, whether the appointment of the 1st respondent as Governor of Rajasthan is valid. This question becomes material because if it is found that the 1st respondent could not be validly appointed as Governor of Rajasthan and his appointment as Governor is invalid, he would not be the Chancellor of the Rajasthan University and he would have no authority to appoint the 4th respondent as Acting Vice-Chancellor under section 12, sub-section (7) of the University of Rajasthan Act and if the appointment of the 4th respondent as Acting Vice-Chancellor is invalid, the impugned order of reversion made by him would fall. We are, therefore, called upon to consider in this special leave petition whether the appointment of the 1st respondent as Governor of Rajasthan is valid. The only ground on which the validity of the appointment has been assailed is that the 1st respondent was a member of the Rajasthan Public Service

Commission during 1958-59 and he was, therefore, by reason of Article 319, clause (d) of the Constitution, ineligible for any employment either under the Government of India or under the Government of a State and since the office of Governor is an employment under the Government of India, the 1st respondent could not validly be appointed to that office. This ground raises a question of considerable importance relating to the applicability of Article 319, clause (d) to the office of Governor.

We shall have to consider the true nature of the office of Governor in order to determine whether it is an employment under the Government of India, but before we do so, we may first have a look at Article 319. This Article consists of clauses (a) to (d) and these clauses, on a combined reading, impose prohibition on holding of any employment under the Government of India or the Government of a State by the Chairman or member of the Union Public Service Commission or a State Public Service Commission on his ceasing to be such Chairman or member. This prohibition has been enacted in public interest with a view to ensuring that no allurements are held out to the Chairman or members of the Union Public Service Commission or a State Public Service Commission which would deflect them from the path of rectitude and duty. The Union and State Public Service Commissions are charged *inter alia* with the duty of advising the Government on various matters relating to civil services and civil posts such as methods of recruitment, appointments, promotions and transfers and disciplinary matters and it is of utmost importance for the efficiency and integrity of the civil services that this duty should be performed by the Union and State Public Service Commissions objectively, impartially and without being influenced by any extraneous considerations. The Union and State Public Service Commissions have vast powers of recruitment to an immense and increasing host of Government posts and in a country with considerable unemployment, these powers may be prone to be abused if the office of Chairman and member of the Union and State Public Service Commissions is exposed to executive or political pressures. The prospect and peril of the executive or the politician trying to influence overtly or covertly the Chairman and members of the Union and State Public Service Commissions by dangling the carrot or holding out the possibility of employment under the Government after the expiry of their term of office may corrupt the integrity of the institution of the Union and State Public Service Commissions. It is true that by and large the Chairman and members of the Union and State Public Service Commissions would be men of proven merit and integrity and no allurements, however attractive, would deflect them from doing their duty without fear

A or favour, but even so, the possibility of obtaining employment under
the Government in future may consciously or unconsciously induce
them to fall in line with the wishes of the executive or the politician.
B The office of the Chairman and member of the Union and the State
Public Service Commissions must, therefore, be zealously kept beyond
reproach and above suspicion. It was pointed out as far back as
1924 by the Royal Commission on Superior Services in India, popularly called the Lee Commission :

C "Wherever democratic institutions exist, experience has
shown that to secure an efficient civil service it is essential to
protect it as far as possible from political or personal influence
and give it that position of stability and security which is
vital to its successful working as the impartial and efficient instrument
by which governments, of whatever political complexion, may give effect
to their policies. In countries where this principle has been neglected,
and where the 'spoils system' has taken its place, an inefficient and
disorganised civil service has been the inevitable result and corruption
has been rampant."

E It was as a result of this recommendation that Public Service Commissions
were set up in the country with the objective outlined by the
Lee Commission. When Article 285(3) of the Draft Constitution providing
for ineligibility of the Chairman and members of the Union and the State
Public Service Commissions for future employment under the Government
was being debated in the Constituent Assembly, Dr. Ambedkar pointed out
the *raison d'être* of that provision in the following words :

F "Now I come to the other important matter relating to
the employment or eligibility for employment of the members of the
Public Services Commission both the Union and State Public Services
Commissions. Members will see that according to Article 285, clause (3),
we have made both the Chairman and the Members of the Central Public
Services Commission as well as the Chairman of the State Commission and
the members of the State Commission, ineligible for reappointment to
the same posts : that is to say, once a term of office of a Chairman and
Member is over, whether he is a Chairman of the Union Commission or
the Chairman of a State Commission, we have said that he shall not be
reappointed. I think that is a very salutary provision, because any hope
that might be held out for reappointment, or continuation in the same

appointment, may act as a sort of temptation which may induce the Member not to act with the same impartiality that he is expected to act in discharging his duties. Therefore, that is a fundamental bar which has been provided in the draft article."

A

Shri H. V. Kamath also spoke in the same strain while adverting to this topic :

B

"It is agreed on all hands that the permanent services play an important role in the administration of any country. With the independence of our country the responsibilities of the services have become more onerous. They may make or mar the efficiency of the machinery of administration call it steel frame or what you will—a machinery which is so vital for the peace and progress of the country."

C

x x x x

D

"If a Member of the Public Service Commission is under the impression that by serving and kotowing to those in power he could get an office of profit under the Government of India or in the Government of a State, then I am sure he would not be able to discharge his functions impartially or with integrity."

E

x x x x

"The public here have sometimes been made to feel that family or group interests have been promoted at the expense of the national; and to protect the Ministers against such a charge, it is necessary that the Public Service Commissions must be kept completely independent of the executive...."

F

It is, therefore, clear that the Constitution makers were anxious to insulate the Chairman and members of the Union and State Public Service Commissions from executive or political pressures or influences and to place them beyond the reach of any allurements or temptations which may cloud their judgment and deflect them from doing their duty. The Constitution makers were keen to ensure that the Chairmen and members of the Union and State Public Service Commissions were above reproach, free from coercion and political influence and they could, if necessary, stand up against the executive and defy any political pressure. It was with this end in view that the Constitution makers enacted

G

H

A clauses (a) to (d) of Article 319 prohibiting future employment under the Government of India or under the Government of a State for the Chairmen and members of the Union and State Public Service Commissions.

B We are concerned in this special leave petition only with clause (d) of Article 319 since the 1st respondent was a member of the Rajasthan Public Service Commission and it is on account of that fact that it is claimed that he was ineligible to be appointed Governor of Rajasthan. Clause (d) of Article 319 provides : "On ceasing to hold office—a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State". It is, therefore, obvious that the 1st respondent could be appointed Chairman or any other member of the Union Public Service Commission or Chairman of the Rajasthan or any other State Public Service Commission, but he was ineligible for any other employment either under the Government of India or under the Government of a State. Now, it was not the case of the petitioner that the office of Governor was an employment under the Government of a State and the only question which, therefore, requires to be considered is whether the office of Governor can be said to be an employment under the Government of India. If it is, then undoubtedly the 1st respondent could not be appointed Governor of Rajasthan and his appointment would be invalid. But we are of the view that howsoever wide and expansive a meaning we may give to the words "employment . . . under the Government of India", the office of Governor cannot come within it.

C

D

E

F

The first question that arises on the applicability of the words "employment . . . under the Government of India" is whether the office of Governor is an 'employment' within the meaning of that expression in clause (d) of Article 319. What is the sense in which that word has been used in this Article ? Semantically, the word 'employment' is not a word with a single fixed meaning but it has many connotations. On the one side it may bear the narrow meaning of relationship of employer and employee and on the other, it may mean in its widest connotation any engagement or any work in which one is engaged. If the former be the sense in which the word 'employment' is used in clause (d) of Article 319, the office of Governor would certainly not be an employment, because the Governor of a State is not an employee or servant of any

G

H

one. He occupies a high constitutional office with important constitutional functions and duties. The executive power of the State is vested in him and every executive action of the Government is required to be expressed to be taken in his name. He constitutes an integral part of the legislature of the State though not in the fullest sense, and is also vested with the legislative power to promulgate ordinances while the Houses of the Legislature are not in session. He also exercises the sovereign power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. He is vested with the power to summon each House of the Legislature or to prorogue either House or to dissolve the legislative assembly and this power may be exercised by him from time to time. He is also entitled to address either House of the Legislature or both Houses assembled together and he may send messages to the House or Houses of the Legislature with respect to a bill then pending in the legislature or otherwise. No bill passed by the Houses of the Legislature can become law unless it is assented to by him and before assenting to the bill he may return the bill, provided it is not a money bill to the Houses of the Legislature for reconsideration. He has also the power to reserve for consideration of the President any bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that court is by the Constitution designed to fill. There is also one highly significant role which he has to play under the Constitution and that is of making a report where he finds that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. It is the Governor's report which generally forms the basis for the President taking action under Article 356 of the Constitution. It will be seen from this enumeration of the constitutional powers and functions of the Governor that he is not an employee or servant in any sense of the term. It is no doubt true that the Governor is appointed by the President which means in effect and substance the Government of India, but that is only a mode of appointment and it does not make the Governor an employee or servant of the Government of India. Every person appointed by the President is not necessarily an employee of the Government of India. So also it is not material that the Governor holds office during the pleasure of the President : it is a constitutional provision for determination of the term of office of the Governor and it does not make the Government of India an employer of the Governor. The Governor is the head of the State and holds a high constitutional office which carries with it important constitutional functions and duties and he cannot, therefore, even by stretching the language

A to a breaking point, be regarded as an employee or servant of the Government of India. If, therefore, the word 'employment' were construed to mean relationship of employer and employee, the office of Governor would certainly not be an 'employment' within the meaning of clause (d) of Article 319.

B But if we accept the wider meaning of the word 'employment' as connoting any engagement or any work in which one is engaged, as in the expression 'self-employment', the office of Governor would clearly be an 'employment' within the meaning of clause (d) of Art. 319. That, however, would not be enough to attract the applicability of this provision. There is a further requirement which is necessary and that is that the employment must be under the Government of India. Now, what is the meaning of this expression "under the Government of India"? Fortunately, there are two decisions of this Court which throw some light on this question. The first is the decision in *Pradyat Kumar Bose v. The Hon'ble the Chief Justice of Calcutta High Court*⁽¹⁾ where the question was as to whether the officers and members of the staff of the High Court could be said to be persons "serving under the Government of India or the Government of a State in a civil capacity" so as to be within the scope of Article 320(3) (c) which requires consultation with the appropriate Public Service Commission in disciplinary matters. This Court speaking through Jagannadhadas, J., pointed out: "the phrase 'a person' serving under the Government of India or the Government of a State' it seems to have reference to such persons in respect of whom the administrative control is vested in the respective executive Governments functioning in the name of the President or of the Governor or of a Rajpramukh. The officers and staff of the High Court cannot be said to fall within the scope of the above phrase because in respect of them the administrative control is clearly vested in the Chief Justice—". The question which arose in the other decision in *Baldev Raj Guliani & Ors. v. The Punjab & Haryana High Court & Ors.*⁽²⁾ was a similar one and it related to the applicability of Article 320(3) (c) to Judicial Officers in the State. Here in this case also the Court took the same view and, after referring to the earlier decision in *Pradyat Kumar Bose's* case with approval, held that "just as the High Court staff are not serving under the Government of the State, the Judicial Officers are also not serving under the State Government", because they are "entirely under the jurisdiction of the High Court for the purpose of control and discipline". It will,

(1) [1955] 2 S. C. R. 1331.

(2) [1977] 1 S. C. R. 425.

therefore, be seen that the employment can be said to be *under* the Government of India if the holder or incumbent of the employment is under the control of the Government of India *vis-a-vis* such employment. Now, if one applies this test to the office of Governor, it is impossible to hold that the Governor is under the control of the Government of India. His office is not subordinate or subservient to the Government of India. He is not amenable to the directions of the Government of India, nor is he accountable to them for the manner in which he carries out his functions and duties. His is an independent constitutional office which is not subject to the control of the Government of India. He is constitutionally the head of the State in whom is vested the executive power of the State and without whose assent there can be no legislation in exercise of the legislative power of the State. There can, therefore, be no doubt that the office of Governor is not an employment under the Government of India and it does not come within the prohibition of clause (d) of Article 319.

We may point out that the Governor of a State is not the only constitutional functionary whose employment is not under the Government. There are under the Constitution many other high functionaries, such as Judges of the Supreme Court and the High Courts, who do not hold any employment under the Government of India, although they exercise State power. This Court, while examining the constitutional position of a High Court Judge, pointed out in the *Union of India v. S. H. Sheth & Anr.*⁽¹⁾ that a High Court Judge is not a Government servant: there is no relationship of employee and employer subsisting between him and the Government. He is a holder of a constitutional office which has important constitutional functions and duties. One of us (*Bhagwati, J.*) pointed out in that case at page 463 of the Report that a High Court Judge :

“... is as much part of the State as the executive Government. The State has in fact three organs, one exercising executive power, another exercising legislative power and the third exercising judicial power. Each is independent and supreme within its allotted sphere and it is not possible to say that one is superior to the other. The High Court, constituted of the Chief Justice and other Judges, exercising the judicial power of the State and is coordinate in position and status with the Governor aided and advised by the council of Ministers,

(1) [1978] 1 S. C. R. 423.

A who exercises the executive power and the Legislative Assembly together with the Legislative Council, if any, which exercises the legislative power of the State. Plainly and unquestionably, therefore, a High Court Judge is not subordinate either to the executive or to the legislature. It would, indeed, be a constitutional heresy to so regard him. He has a constitutional function to discharge, which includes adjudication of the question whether the executive or the legislature has overstepped the limits of its power under the Constitution. No doubt Article 217, cl. (1) provides for appointment of a person to the office of a High Court Judge by the President, which means in effect and substance the Central Government, but that is only laying down a mode of appointment and it does not make the Central Government an employer of a High Court Judge. In fact a High Court Judge has no employer : he occupies a high constitutional office which is coordinate with the executive and the legislative."

D These observations apply equally to the office of a Judge of the Supreme Court. We are mentioning this merely to bring home, through comparable constitutional functionaries, the validity of the proposition that holders of high constitutional offices exercising State power and drawing salaries from State coffers may nevertheless be not employees or servants or holders of employment under the Government.

E We are, therefore, of the view that the office of Governor of a State is not an employment under the Government of India and it does not, therefore, come within the prohibition of clause (d) of Article 319 and on this view, the appointment of the 1st respondent as the Governor of Rajasthan cannot be held to be invalid.

F We may point out that in the course of the argument there was much discussion about the paramount public policy underlying the need to ban appointment of holders of public offices after retirement to higher offices and posts under the Government. We do not wish to expand on this policy or to say more on the merits of this contention, but we think it would be appropriate to sound a note of caution that Ceaser's wife must be above suspicion, that purity of public offices of high status is a constitutional value in itself, that nothing should be done which may create an impression that a holder of a public office can look forward to a higher appointment after retirement if he pleases the Government of the day and that no appointments should be made which may lend sup-

port to the criticism of favouritism or patronage and consequential weakening of credibility. The confidence of the community in the key instrumentalities is of considerable significance in the maintenance of the rule of law. **A**

These were the reasons for which we made our order dated 23rd November, 1978 rejecting the special leave petition and confirming the order passed by the Full Bench of the Rajasthan High Court. **B**

P.B.R.