

A

STATE OF ORISSA AND ORS.

v.

SHIVA PARASHAD DAS AND ORS.

B

February 22, 1985

[D.A. DESAI, A P. SEN AND V. BALAKRISHNA ERADI, JJ.]

Constitution of India, 1950, Article 311 (1)—Scope of—Suspension order passed against a government servant is not violative of Art. 311(1).

C

Civil Services—

Orissa Civil Services (CCA) Rules, 1962, Rule 12—Govt. servant—Suspension of—Whether can be suspended by an authority subordinate to the appointing authority.

D

The respondent in C.A. No. 201 of 1977, was appointed as a Forester by the Conservator of Forests. He was placed under suspension pending enquiry into charges of negligence of duties on 26.2.1969 by the District Forest Officer under whom he was working. He challenged before the High Court under Art. 226 the validity of the order of suspension on the ground (i) that the order was made in contravention of Art. 311 of the Constitution; and (ii) that it was also violative of Rule 12 of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962. The High Court while rejecting the second contention held that the order was violative of clause (1) of Art. 311 inasmuch as the respondent could not have been validly suspended from service by the District Forest Officer, who is an authority subordinate to the authority which originally appointed him namely the Conservator of Forests. The question of law raised in C.A. No. 200 (N)/71 is also identical.

E

F

●
Allowing the appeals,

G

HELD : (1) An order of suspension passed against a Government servant pending disciplinary enquiry is neither one of dismissal nor of removal from service within Art. 311 of the Constitution. Clause (1) of Art. 311 will get attracted only when a person who is a member of Civil Service of the Union or an All India Service or a Civil Service of a State or one who holds a civil post under the Union or a State is 'dismissed' or 'removed' from service. The provisions of the said clause have no application whatever to a situation where a Government servant has been merely placed under

H

suspension pending departmental enquiry since such action does not constitute either dismissal or removal from service. [964E-G]

(2) The High Court was right in rejecting the second contention of the respondent. Rule 12 of the Rules lays down that any authority empowered by the Governor or the appointing authority in that behalf may place a government servant under suspension, where a disciplinary proceeding against him is either contemplated or is pending. In the instant case, it is not in dispute that under a Notification issued by the State Government in exercise of the powers conferred by Rule 11 of the Rules, the District Forest Officer was constituted "the appointing authority" in respect of Foresters with effect from 7.5.1962. It is therefore clear that on the date on which the impugned order of suspension was passed—26.2.1969, the District Forest Officer under whom the respondent was working in the Ghumsur North Division was fully competent to pass the impugned order of suspension. [964H; 965A-C]

Mohammad Ghouse v. State of Andhra Pradesh [1957] S.C.R., 414 followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 200 (N) of 1971.

From the Judgment and Order dated 1. 5. 1970 of the Orissa High Court in O. J. C. No. 101/70.

AND

Civil Appeal No. 201 of 1971

From the Judgment and Order dated 28.4.70 of the Orissa High Court in O.J.C. No. 10/70.

G. S. Chatterjee for the appellants in both the appeals.

Ex-Parte for the respondents in both the appeals.

The Judgment of the Court was delivered by

BALAKRISHNA ERADI J. In these two appeals filed by Special leave against two judgments of the Orissa High Court, the question raised is identical namely, whether an order of suspension from service passed against a Government servant falls within the scope and purview of Art. 311 of the Constitution. The judgment appealed against in Civil Appeal No. 201 of 1971 is prior in point of time and in the judgment under challenge in C. A. No. 200 of 1971 the High Court has merely followed the former judgment. We shall, therefore, refer only to the facts relating to C. A. No. 201 of 1971.

A The respondent—Shri Ram Parshad—was appointed as a Forester by the Conservator of Forests, Berhampur, District Ganjam, on 17.7.1952. Subsequently, while working as a Forester under the District Forest Officer, Ghumsur North Division, the respondent was placed under suspension by an order dated 26.2.1969 passed by the said District Officer, pending enquiry into charges of negligence of duties. The respondent thereupon filed a Writ Petition in the High Court of Orissa under Art. 226 of the Constitution challenging the order of suspension passed against him on the ground that it was made in contravention of Art. 311 of the Constitution as well as rule 12 of the Orissa Civil Services (Classification Control and Appeal) Rules, 1962 (hereinafter called the ‘Rules’). The High Court by its impugned judgment allowed the Writ Petition and quashed the order of suspension holding the same to be in contravention of Art. 311 (1) of the Constitution. The High Court took the view that inasmuch as the respondent had been appointed as Forester by the Conservator of Forests, he could not have been validly suspended from service by the District Forest Officer, who is an authority subordinate to the Conservator of Forests. The correctness of this view taken by the High Court is called in question by the appellant—the State of Orissa in these two appeals.

E An order of suspension passed against a Government servant pending disciplinary enquiry is neither one of dismissal nor of removal from service within Art. 311 of the Constitution. This position was clearly laid down by a Constitution Bench of this Court in *Mohammad Ghouse v. State of Andhra*⁽¹⁾. It is unfortunate that this decision was not brought to the notice of the learned Judges of the High Court. Clause (1) of Art. 311 will get attracted only when a person who is a member of Civil Service of the Union or an All India Service or a Civil Service of a State or one who holds a civil post under the Union or a State is ‘dismissed or removed’ from service. The provisions of the said clause have no application whatever to a situation where a Government servant has been merely placed under suspension pending departmental enquiry since such action does not constitute either dismissal or removal from service. The High Court was, therefore, manifestly in error in quashing the order of suspension passed against the respondent on the ground that it was violative of clause (1) of Art. 311 of the Constitution.

Rule 12 of the Rules lays down that the appointing authority

(1) [1957] S.C.R. 414.

or any authority to which it is subordinate or any authority empowered by the Governor or the appointing authority in that behalf may place a Government servant under suspension, where a disciplinary proceeding against him is either contemplated or is pending. It is not in dispute that under a Notification issued by the State Government in exercise of the powers conferred by Rule-11 of the Rules, the District Forest Officer was constituted "the appointing authority" in respect of Foresters with effect from 7.5.1962. It is therefore clear that on the date on which the impugned order of suspension was passed—26.2.1969, the District Forest Officer under whom the respondent was working in the Ghumsur North Division was fully competent to pass the impugned order of suspension. Hence the High Court was perfectly right in rejecting the further contention advanced before it by the respondent herein that the impugned action had been taken in violation of the provisions of Rule 12.

We accordingly allow this appeal—C. A. No. 201 of 1971, set aside the judgment of the High Court and dismiss the Writ Petition in O. J. C. No. 10 of 1970. The parties will bear their respective costs for this Court.

In the light of the legal position enunciated above, it follows that C. A. No. 200 of 1971 has also to be allowed. The judgment of the High Court is accordingly set aside and the Writ Petition filed by the respondent therein—O. J. C. No. 101 of 1970 will also stand dismissed. The parties will bear their respective costs in this appeal also.

M.L.A.

Appeal allowed.