A SMT. BEENA TIWARI & ANR. ETC.

v.

STATE OF MADHYA PRADESH & ANR. ETC.

DECEMBER 18, 1987

B [RANGANATH MISRA AND MURARI MOHON DUTT, JJ.]

Madhya Pradesh Government Servants (Temporary and Quasi-Permanent) Service Rules, 1960: Sections 3A and 12—Whether Section 33-A applicable to members of the Subordinate Judicial Service.

C *Madhya Pradesh Judicial Service (Classification Requirement & Conditions of Service) Rules, 1955: Rule 16—Civil Judges—Appointed on temporary and officiating basis—Confirmation of—Sole concern of the High Court under Art. 235 of the Constitution of India.*

D **The appellants in C.A. Nos. 59 and 60 of 1982, who were appointed as Civil Judges on temporary and officiating basis on probation, were not confirmed after the expiry of the period of probation or the extended period of probation, and their services were terminated by the State Government under Rule 12 of the Madhya Pradesh Government Services (Temporary and Quasi-Permanent Service) Rules, 1960. They filed writ petitions before the High Court, challenging the orders** E **of termination of service as illegal and invalid, contending that in view of Rule 3-A, providing that a Government servant in respect of whom a declaration under cl. (ii) of Rule 3 had not been issued, but had been in temporary service continuously for five years in a service or post in respect of which such declaration could be made, shall be deemed to be in quasi-permanent service unless for reasons to be recorded in writing** F **they should be deemed to be in Quasi-Permanent Service, since no declaration under cl. (ii) of Rule 3 had been issued and they had been in service continuously for five years.**

On behalf of the respondents it was contended that the question of confirmation came within the purview of Article 235 of the Constitution G **vesting in the High Court control over subordinate courts and, consequently, the provision of Rule 3-A had no application to the members of the Subordinate Judicial Service.**

A Division Bench of the High Court took the view that if in Rule 3-A in place of the words "appointing authority" the words "compe- H **tent authority" be read it would be consistent with Article 235 of the**

Constitution, and dismissed the writ petitions holding that the resolution passed in the Court meeting, adjudicating the appellants unfit for confirmation, satisfied the requirement of Rule 3-A as continuance in Quasi-Permanent capacity was included within the ambit of confirmation. A

The services of the respondent in C.A. No. 2860 of 1985 were also terminated under Rule 12 of the Rules. In the writ petition filed by him, the Full Bench of the High Court, while approving the aforesaid view expressed by the Division Bench, held that the findings of the High Court in its resolution, considering the respondent unfit for confirmation, could not be regarded as reasons within the meaning of Rule 3-A, and quashed the impugned termination order. B C

Disposing of the appeals,

HELD: Whether a member of Subordinate Judicial Service should be confirmed or not is absolutely the concern of the High Court. The question of confirmation falls squarely within Article 235 of the Constitution and no rule framed by the State Government can interfere with the control vested in the High Court under Rule 235. [498A-B] D

B.S. Yadav v. *State of Haryana,* [1981] 1 SCR 1024 and *High Court of Punjab & Haryana* v. *State of Haryana,* [1975] 3 SCR 365 relied on. E

Both the Full Bench and the Division Bench were wrong in placing reliance upon Rule 3-A of the M.P. Government Service (Temporary and Quasi-Permanent) Rules, 1960. As the High Court did not confirm the officials, the question of their being deemed to be in Quasi-Permanent Service does not arise. Further, as the question of confirmation was completely within the domain of the control of the High Court under Article 235 of the Constitution, there is no necessity to read the words "competent authority" in place of "appointing authority", for Rule 3-A was inapplicable to the members of the Subordinate Judicial Service. Moreover, there is a specific provision in the termination of service of a Judicial Officer who is found by the High Court to be unfit for confirmation as provided in Rule 16(5) of the Madhya Pradesh Judicial Service (Classification, Requirement & Conditions of Service) Rules, 1955. [498D-F] F G

Although Rule 3-A was not applicable to the members of the Subordinate Judicial Service and the question of confirmation of judi- H

cial officer was completely within the domain of control of the High Court under Article 235 of the Constitution the findings of the High Court that the officers should not be confirmed cannot be accepted. [499E-F]

The judgment and orders of the Division Bench set aside. Appellants reinstated in service with the arrears of pay since the date of termination. The orders of the Full Bench quashing the impugned order of termination of respondent in C.A. No. 2860 of 1985 affirmed, but not the reasons for such quashing. [499G-H]

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 59 & 60 of 1982 etc.

From the Judgment and Order dated 9.4.1981 of the Madhya Pradesh High Court in Misc. Petition Nos. 61 and 120 of 1980.

Dr. Y.S. Chitale, G.L. Sanghi, Mrs. A.K. Verma, Miss F. Desai, S. Sukumaran, D.N. Mishra, Vivek Gambhir and S.K. Gambhir for the Appellants.

R.P. Bhatt, T.C. Sharma, Shri Narain and Sandeep Narain for the Respondents.

The Judgment of the Court was delivered by

DUTT, J. The only question that arises for consideration in these appeals by special leave is whether Rule 3-A of M.P. Government Service (Temporary & Quasi-Permanent Service) Rules, 1960, hereinafter referred to as 'the Rules', is applicable to the members of the Subordinate Judicial Service of the Madhya Pradesh Government.

In Civil Appeals Nos. 59 & 60 of 1982, both the appellants were appointed Civil judges on temporary and officiating basis for a period of six months for training and thereafter for a period of two years on probation. It is not necessary to state in detail the facts, and suffice it to say that both the appellants were not ultimately confirmed by the High Court after the expiry of the period of probation or the extended period of probation. The High Court recommended the termination of services of the appellants to the State Government and pursuant to such recommendation, the State Government terminated the services of the appellants under Rule 12 of the Rules. Being aggrieved by the orders of termination of their services, the appellants filed writ petitions

before the Madhya Pradesh High Court. It was contended by them that in view of Rule 3-A of the Rules, they should be deemed to be in quasi-permanent service. Rule 3-A provides as follows:

> "R. 3-A. Government servant in respect of whom a declaration under clause (ii) of Rule 3 has not been issued but has been in temporary service continuously for five years in a service or post in respect of which such declaration could be made shall be deemed to be in quasi-permanent service unless for reasons to be recorded in writing the appointing authority otherwise order."

As a declaration under clause (ii) of Rule 3 had not been issued and as the appellants were in temporary service continuously for five years in the post of Civil Judges in respect of which such declaration could be made, it was contended they should be deemed to be in quasi-permanent service, and that, accordingly, the orders of termination of their services were illegal and invalid.

It was, however, contended on behalf of the respondents that the question of confirmation came within the purview of Article 235 of the Constitution of India vesting in the High Court control over subordinate courts and, consequently, the provision of Rule 3-A had no application to the members of Subordinate Judicial Service. The Division Bench of the High Court took the view that if in Rule 3-A in place of the words "appointing authority", the words "competent authority" be read, it would be consistent with Article 235 of the Constitution. The Division Bench overruled the contention of the appellants that although the High Court considered them unfit for confirmation, yet Rule 3-A would apply as it did not record any reason why they should not be deemed to be in quasi-permanent service, as provided in Rule 3-A. The Division Bench observed as follows:

> "It was also argued by the learned counsel for the Petitioners that the case of the petitioners was considered by the High Court only for their confirmation and not suitability for employment in a quasi-permanent capacity, when a resolution was passed declaring them to be unfit for confirmation. On this basis, it was argued that the High Court's resolution could not, therefore, be construed as 'otherwise order' contemplated by the latter part of Rule 3-A. There is no merit in this contention. The resolution passed in the Court meeting adjudging them not fit for confirmation

A satisfies the reqquirement, as continuance in quasi-permanent capacity is included within the ambit or confirmation against the post held by the petitioners."

Accordingly, the Division Bench dismissed the writ petitions filed by the appellants.

B

In Civil Appeal No. 2860 of 1985, the High Court of Madhya Pradesh has assailed the judgment and order of its Full Bench. The respondent, in that appeal also, was appointed a Civil Judge on a temporary and officiating basis for a period of six months for training and thereafter for a period of two years on probation. In his case also, C the High Court did not confirm him after the expiry of the probationary period and he continued without an order of confirmation or discharge. In a Full Court Meeting held on February 27, 1981, it was decided not to confirm the respondent, presumable in view of certain adverse remarks against him which were directed to be communicated to him. Ultimately, his services were terminated under Rule 12 of the D Rules. Aggrieved by the order of termination, the respondent filed a writ petition in the High Court of Madhya Pradesh. The learned Single Judge referred the petition to the Full Bench for answering the following question:

"Whether the resolution of the Court Meeting dated E 27.2.1981 satisfies the requirement of an otherwise order of the appointing authority by recording reasons in writing as contemplated under Rule 3-A of the Madhya Pradesh Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960?"

F The Full bench approved of the view expressed by the Division Bench in its judgment which is under appeal in the above Civil Appeals Nos. 59 & 60 of 1982 to the extent that in Rule 3-A in place of the words "appointing authority", the words "competent authority" should be read so as to make the rule workable and consistent with Article 235 of the Constitution. The Full Bench, however, did not G agree with the Division Bench that the finding of the High Court in its resolution that the respondent was not fit for confirmation, could not be regarded as 'reasons' within the meaning of Rule 3-A, but was the 'conclusion' of the High Court. The full Bench also made a distinction between 'reason' and 'conclusion' and took the view that as no reason was given by the High Court as to why the respondent should not be H deemed to be in quasi-permanent service, the impugned order of

termination of the service of the respondent was illegal and invalid. In that view of the matter, the Full Bench quashed the impugned order of termination of the respondent and allowed the writ petition, although the learned Single Judge referred the writ petition to the Full Bench for answering the question as mentioned above.

Dr. Chitale, learned Counsel appearing on behalf of the High Court, submits that both the Division Bench and the Full Bench proceeded on an erroneous view that Rule 3-A would apply to the members of the Subordinate Judicial Service. He has drawn our attention to the Madhya Pradesh Judicial Service (Classification, Requirement & Conditions of Service) Rules, 1955, hereinafter referred to as 'M.P. Judicial Service Rules', framed under the proviso to Article 309 of the Constitution. There can be no doubt the M.P. Judicial Service Rules are special rules applying to the members of the Subordinate Judicial Service of the State of Madhya Pradesh. Rule 16 provides as follows:

> "R.16. (1) Every person appointed to the cadre by direct recruitment shall be required to undergo training for a period of one year at the end of which he shall be placed on probation for a period of one year.
>
> (2) The training shall be such as may be prescribed by the High Court.
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> (3) Every such person shall be required to pass the departmental examinations prescribed for Civil Judges.
>
> (4) The probationers may, at the end of the period of their probation, be confirmed subject to their fitness for confirmation and to having passed the departmental examinations by the higher standard.
>
> (5) The High Court may in any case recommend the extension of the period of probation by a period not exceeding one year. If the person concerned is not considered fit for confirmation at the end of such period, or fails to pass the prescribed departmental examinations, his services shall be dispensed with."

Rule 16(5) provides, *inter alia*, that if the person concerned is not considered for confirmation at the end of the probationary period, his services shall be dispensed with. Whether a member of Subordinate

A Judicial Service should be confirmed or not is absolutely the concern of the High Court. The question of confirmation falls squarely within Article 235 of the Constitution and no rule framed by the State Government can interfere with the control vested in the High Court under Article 235. In *B.S. Yadav* v. *State of Haryana,* [1981] 1 SCR 1024 a B Constitution Bench of this Court held that the question whether a particular judicial officer has successfully completed his probation or not is a matter which is exclusively within the domain of the High Court to decide. In an earlier decision of this Court in *High Court of Punjab & Haryana* v. *State of Haryana,* [1975] 3 SCR 365 it was held that the confirmation of persons appointed to be or promoted to be District Judges was clearly within the control of the High Court under C Article 235 of the Constitution.

In view of the above decisions of this Court, it must be held that both the Full Bench and the Division Bench were wrong in placing reliance upon Rule 3-A of the Rules. As the High Court did not D confirm the appellants in Civil Appeals Nos. 59 & 60 of 1982 and the respondent in Civil Appeal No. 2860 of 1985, the question of their being deemed to be in quasi-permanent service does not arise. Further, as the question of confirmation was completely within the domain of the control of the High Court under Article 235 of the Constitution, there was no necessity to read the words "competent E authority" in place of the words "appointing authority", for Rule 3-A was inapplicable to the members of the Subordinate Judicial Service. Moreover, as already noticed, there is a specific provision for termination of service of a judicial officer who is found by the High Court to be unfit for confirmation as provided in Rule 16(5) of the M.P. Judicial Service Rules.

F

Dr. Chitale, learned Counsel for the High Court, has produced before us the confidential service records of all these judicial officers. We have carefully gone through the yearly reports of the appellants in Civil Appeal Nos. 59 & 60 of 1982. Whatever might be the adverse G remarks against the appellant No. 1, the report of the learned District & Sessions Judge dated March 31, 1978, is quite favourable except that it has been pointed out in the report that she should be careful to see that all her judgments are properly paragraphed and findings are noted against all issues. Further, it has been observed that there is need for improvement in the quality of her work. In view of the said H report of the District & Sessions Judge, we do not think that the High

Court was justified in not confirming the appellant.

So far as appellant No. 2 in Civil Appeal Nos. 59 & 60 of 1982 is concerned, the report for the period from 1-4-1977 to 31-3-1978 contains the remark "very good". It was also recorded under the general remarks "He is very industrious. During the year under report he disposed of 68 old civil suits." In the report for the period ending September 30, 1978 it has been observed "His reputation is bad at present. He has been asked to improve his image." This observation is somewhat vague. The report for the period ending March 31, 1979 is, however, completely in favour of the appellant. The performances of the appellant have been found to be highly satisfactory.

As regards the respondent in Civil Appeal No. 2860 of 1985, although he succeeded before the Full Bench on a technical plea based on Rule 3-A of the Rules which is not applicable, we are of the view that the High Court had justification for not confirming the respondent. It, however, appears from the records that the respondent has improved much and, indeed, the report for the period from 24-10-1985 to 31-3-1986 shows that his performances for the said period were satisfactory. The subsequent report for the period from 1-4-1986 to 31-3-1987 also shows that on the whole his performances were satisfactory. Accordingly, we are not inclined to interfere with the order of the Full Bench.

In the circumstances, although we accept the contention made on behalf of the High Court that Rule 3-A of the Rules was not applicable to the members of the Subordinate Judicial Service, and that the question of confirmation of judicial officer was completely within the domain of control of the High Court under Article 235 of the Constitution, we are unable to accept the finding of the High Court that the appellants in Civil Appeals Nos. 59 & 60 of 1982 and the respondent in Civil Appeal No. 2860 of 1985 should not be confirmed as Civil Judges.

In view of the discussion made above, we set aside the judgment and order of the Division Bench in Civil Appeals Nos. 59 & 60 of 1982 and also the impugned orders terminating the services of the appellants. The appellants are reinstated in service with arrears of pay, since the date of termination, to be paid within three months from date.

So far as Civil Appeal No. 2860 of 1985 is concerned, we affirm the order of the Full Bench quashing the impugned order of termination of services of the respondent, but not the reasons for such quash-

A ing and direct that for a period of three years the respondent shall be under a close watch.

The appeals are disposed of as above. There will, however, be no order as to costs in any of them.

N.P.V. Appeals disposed of.