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UNION OF INDIA
v.
M.A. CHOWDHARY

MAY 7, 1987

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[E.S. VENKATARAMIAH AND M.M. DUTT, JJ.]

Constitution of India—Article 311—Protection of—Whether available to staff artists of All India Radio.

The respondent was appointed as a staff artist in the All India Radio under an agreement on contract basis. On November 2, 1967 the Government of India passed an order stating that staff artists should be allowed to remain in service upto the age of 55 years and accordingly a clause was added to the agreement executed by the respondent. Clause 4(v) of the agreement however provided that the respondent's service will be liable to be terminated on six months notice on either side. On October 5, 1970 a notice was issued to the respondent intimating that his services would stand terminated on the expiry of six months from the date of that notice. The respondent challenged the validity of the termination notice by a writ petition. A learned Single Judge of the High Court and the Division Bench of the High Court found that the post of staff artists held by the respondent was a 'civil post' within the meaning of Article 311(1) of the Constitution and had the protection of Article 311. Though the authority to terminate the respondent's service emanated from the contract but nevertheless it has the effect of violating Article 311(1) of the Constitution. The notice of termination was found void as it did not comply with Article 311(2). Hence this appeal.

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Agreeing with the High Court dismissing the appeal this Court,

HELD: That the staff artists of the All India Radio hold civil posts under the Government and Article 311 of the Constitution is applicable to them. [426F]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 384 of 1977.

From the Judgment and Order dated 18.11.1974 of the Allahabad High Court in Special Appeal No. 258 of 1974.

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A.K. Ganguli, R.P. Srivastava, P. Parmeswaran and Miss. A.

Subhashini for the Appellant.

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Mrs. Rani Chhabra for the Respondent.

The following Order of the Court was delivered:

SUPREME COURT EDITORIAL NOTE: Facts of the case:

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The respondent-M.A. Chowdhary was appointed as a Staff

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Artist in All India Radio, Bombay under an agreement executed by him with the Director General of All India Radio. The agreement was for three years. On the expiry of three years, the respondent was re-employed and his contract was renewed on yearly basis up to 30th November, 1964. Thereafter he was re-employed on a five years' contract.

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On November 2, 1967 the Government of India passed an order stating that Staff Artists should be allowed to remain in service upto the age of 55 years. Accordingly, a clause was added to the agreement

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executed by the respondent, stipulating that the respondent shall remain in service upto December 31, 1985 on which date he was to attain the age of 55 years. Clause 4(v) of the agreement, however, provided that the respondent's service will be liable to be terminated on 6 months' notice on either side.

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In due course, the respondent was transferred to All India Radio, Varanasi. The Assistant Station Director of All India Radio, Varanasi issued a notice dated 5th October, 1970 intimating the respondent that his services would stand terminated on the expiry of 6 months from 5th October, 1970 in accordance with clause 4(v) of the agreement.

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The respondent challenged the validity of the aforesaid termination notice by Writ Petition filed in the High Court of Allahabad. The learned Single Judge held that having regard to the service conditions, it must be held that the respondent was holding a 'civil post', and as such was entitled to the protection of Articles 311(2) and 16 of the Constitution, and that inasmuch as persons junior to him had been retained in service, the Appointing Authority in terminating his services had violated Article 16 of the Constitution. On these grounds, the notice of termination of the respondent's service was held bad and quashed.

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A In appeal, the Division Bench held that in view of clauses (1) to (4) of the Agreement it is apparent that the Government in consideration of a monthly salary, controls the nature and manner of work assigned to the staff artists, that the Government had complete control over the respondent's work and manner and method of doing the work, which was supervised by the higher authorities, that the relationship between the respondent and the appellant was clearly of a master and servant, and the respondent was, therefore, holding a 'civil post' within the meaning of Article 311(1) of the Constitution. The authority to terminate the respondent's service on 6 months' notice emanated from the contract but nonetheless it has the effect of violating Article 311(1) of the Constitution. It must comply with Article 311(2), otherwise the termination would be a removal from service within the meaning of Article 311(2) and in violation of its provisions. The Division Bench held that the notice of termination was void and rightly quashed by the learned Single Judge and dismissed the appeal of the Union of India.

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O R D E R

Shri A.K. Ganguli, Learned Counsel for the Union of India submits that Article 311 of the Constitution is applicable to the Staff Artists of the All India Radio. We are of the view that the statement made on behalf of the Government represents the true legal position because the Staff Artists are holding civil posts under the Government. In view of the above statement, this appeal filed against the judgment of the High Court of Allahabad in Special Appeal No. 258 of 1974 which has also taken the view that article 311 is applicable to those Staff Artists has to be dismissed. This appeal is accordingly dismissed. No costs.

F H.S.K.

Appeal dismissed.