REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2420 OF 2011
[Arising out of S.L.P (C) No. 12141 of 2008]

Ajit Kumar .... Appellant

Versus

State of Jharkhand & Ors. ...Respondents

JUDGMENT

Dr. MUKUNDAKAM SHARMA, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 02.11.2007 passed by the Jharkhand High Court dismissing the writ petition filed by the appellant.

3. The appellant herein was working as sub-ordinate Judge in Garhwa, Jharkhand when an order was issued by the Governor of Jharkhand removing him from service by an order issued on 31.07.2003 on the basis of a resolution of the Full

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Court of the High Court of Jharkhand recommending his removal from service.

4. The appellant herein challenged the legality of the aforesaid order before the Jharkhand High Court by filing a writ petition contending inter alia that the High Court does not have any power to dispense with an enquiry as envisaged for the purpose of removal of a judicial officer like the appellant and therefore, the impugned order was illegal and without jurisdiction. It was also submitted that there was no evidence on record to show that the appellant was guilty of any misconduct and therefore the order of removal was illegal and particularly also because of the fact that no notice was issued to the appellant before his removal from service thereby violating the principles of natural justice. It was also submitted that there was a total non-application of mind in passing the impugned order of removal by exercise of power under proviso (b) to Article 311(2) of the Constitution of India.

5. The aforesaid submissions were considered by the High Court in the light of the material available on record. The High Court found that the appellant was promoted as sub-ordinate Judge, Garhwa and that on 05.05.2003, the then Inspecting

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Judge inspected the Garhwa Civil Court and inspected the records relating to the appellant and submitted his confidential report to the then Chief Justice of the Jharkhand High Court against the appellant stating that the appellant did not use to prepare judgments on his own, rather he used to get it prepared through some body else before delivering the judgments. It was also found that the then Chief Justice, after going through the report, referred the matter to the Full Court for considering the appropriate action. On 18.06.2003, the Full Court, after considering the confidential report and the report of the Inspecting Judge, resolved that the appellant can be recommended for removal from the service, without any enquiry as it was felt that it was not practicable in the interest of the institution to hold an inquiry since it may lead to the question of validity of several judgments rendered by him.

6. Consequently the Full Court recommended for invocation of the proviso (b) to Article 311(2) of the Constitution of India to dispense with the inquiry as against the appellant to remove him from service, following which the Governor while exercising his power issued the impugned order of removal of the appellant from the service which was under challenge in the

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writ petition before the High Court. The High Court upheld the order of removal passed by the Governor holding that the order was passed on the recommendation of the resolution of the Full Court by invoking the proviso (b) to Article 311(2) of the Constitution of India which permits the dispensation of an enquiry on the grounds that it is not reasonably practical to hold an enquiry. The High Court also held that the aforesaid exercise of power under Article 311(2) (b) of the Constitution of India is permissible and therefore the action taken removing the appellant from service was legal and justified.

7. Being aggrieved by the aforesaid order the present appeal was filed on which we have heard learned counsel appearing for the parties.

8. Within the scheme of the Constitution of India, provisions relating to public service may be found in Articles 309, 310 and 311. It is important to note that these provisions (namely Arts. 310 and 311) afford protection to public servants from being dismissed, removed or reduced in rank without holding a proper inquiry or giving a hearing.

9. Article 311 provides for the protection to public servant against punitive action being taken against them by an

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authority subordinate to one who appointed him. Exceptions to Article 311 has been provided in clause (a), (b) and (c) to clause (2) of Article 311 itself, which provide that the said Article shall not apply to such employees who have been punished for conviction in a criminal case, where inquiry is not practicable to be held for reasons to be recorded in writing or where the President or the Governor as the case may be is satisfied that such an inquiry is not to be held in the interest of the security of the State.

10. In order to appreciate the power to be exercised under Article 311 of the Constitution of India it would be appropriate to look at Article 310 of the Constitution of India. Under the doctrine of pleasure, which has been recognized under our Constitutional framework, all civil posts under the Government are held at the pleasure of the Government under which they are held and are terminable at its will. The aforesaid power is what the doctrine of pleasure defines, which was recognized in the United Kingdom and also received the constitutional sanction under our Constitution in the light of Article 310 of the Constitution of India. However, it is to be noticed that in India the same is subject to other provisions of the Constitution

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which include the restrictions imposed by Article 310 (2) and Article 311(1) (2). Therefore, under the Indian constitutional framework, dismissal of civil servants must comply with the procedure laid down in Article 311 and Article 310(1) cannot be invoked independently with the object of justifying a contravention of Article 311(2). There is an exception provided by way of incorporation of Article 311 (2) with sub-clauses (a), (b) and (c). No such enquiry is required to be conducted for the purposes of dismissal, removal or reduction in rank of persons when the same related to dismissal on the ground of conviction or where it is not practicable to hold an enquiry for the reasons to be recorded in writing by that authority empowered to dismiss or removed a person or reduce him in rank or it is not practicable to hold an enquiry for the security of the State. These three exceptions are well recognized for dispensing with an enquiry, which is required to be conducted under Article 311 of the Constitution of India when the authority takes a decision for dismissal or removal or reduction in rank in writing. In other words, although there is a pleasure doctrine, however, the same cannot be said to be absolute and the same is subject to the conditions that when a government servant is to be dismissed or removed from service or he is reduced in rank, a

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departmental enquiry is required to be conducted to enquire into his misconduct and only after holding such an enquiry and in the course of such enquiry if he is found guilty then only a person can be removed or dismissed from service or reduced in rank. As stated herein such constitutional provision for holding an enquiry as set out under Article 311 of the Constitution of India could also be dispensed with under the exceptions provided to Article 311(2) of the constitution where clause (a) relates to a case where upon a conviction of a person by a criminal court on certain charges he could be removed from service without holding an enquiry. Similarly, under clause (c) an enquiry to be held against the government employee could be dispensed with if it is not possible to hold such an enquiry in the interest of the security of the State. Sub-clause (b) on the other hand provides that such an enquiry could be dispensed with by the concerned authority, after recording reasons, for which it is not practicable to hold an enquiry. The aforesaid power is an absolute power of the disciplinary authority who after following the procedure laid down therein could resort to such extra ordinary power provided it follows the pre-conditions laid down therein meaningfully and effectively.

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11. In the case in hand, the officer concerned was working as sub-ordinate Judge and during the course of inspection by the Inspecting Judge it was found that he did not use to prepare judgments on his own, he used to get it prepared through some body else before delivering the judgments. Undisputedly, the inspecting Judge submitted his report to the Chief Justice of the High Court. The High Court considered the said report and thereafter was of the opinion that it is not possible to hold an enquiry in the case of the appellant and that holding of such enquiry should be dispensed with in view of the fact that if an enquiry is held the same may lead to the question of validity of several judgments rendered by the appellant. The aforesaid reason recorded by the High Court was a legal and valid ground for not holding an enquiry. There was therefore also no necessity of giving him any opportunity of hearing as the scope of holding an enquiry and giving him an opportunity of hearing was specifically dispensed with.

12. Consequently, the High Court recommended the removal of the appellant from service. Subsequent to that, the Governor decided to invoke the provisions of Article 311(2) (b) of the Constitution of India as holding of enquiry may lead to

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question of the validity of several judgments delivered by the appellant. The procedure and the pre-conditions laid down for invoking the extra-ordinary power under Article 311(2) (b) having been complied with and properly exercised within the parameters of the provisions, the order passed by the competent authority removing the appellant from the services cannot be held to be without jurisdiction and power.

13. The next contention raised by the appellant was that the aforesaid power under Article 311(2) (b) of the Constitution could not have been invoked by the High Court. The aforesaid submission also cannot be accepted in view of the fact that a sub-ordinate judge is also a judge within the meaning of the provision of Article 233 of the Constitution of India read with the provisions of Articles 235 and 236 of the Constitution of India.

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14. Article 233 clearly lays down that appointments and promotions of district judges in any State is to be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. The aforesaid provision, like Articles 234 - 236, have been incorporated in the Constitution of India *inter alia* to secure the independence of

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judiciary from the executive and the same deals with the scope of separation of power of the three wings of the State.

15. It cannot be disputed that the power under the aforesaid Articles is to be exercised by the Governor in consultation with the High Court. Under the scheme of the Indian Constitution the High Court is vested with the power to take decision for appointment of the sub-ordinate judiciary under Articles 234 to 236 of the Constitution. The High Court is also vested with the power to see that the high traditions and standards of the judiciary are maintained by the selection of proper persons to run the district judiciary. If a person is found not worthy to be a member of the judicial service or it is found that he has committed a misconduct he could be removed from the service by following the procedure laid. Power could also be exercised for such dismissal or removal by following the pre-conditions as laid down under Article 311(2) (b) of the Constitution of India. Even for imposing a punishment of dismissal or removal or reduction in rank, the High Court can hold disciplinary proceedings and recommend such punishments. The Governor, alone is competent to impose such punishment upon persons coming under Articles 233 - 235 read with Article 311(2) of the

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Constitution of India. Similarly, such a power could be exercised by the High Court to dispense with an enquiry for a reason to be recorded in writing and such dispensation of an enquiry for valid reasons when recommended to the Governor, it is within the competence of the Governor to issue such orders in terms of the recommendation of the High Court in exercise of power under Article 311(2) (b) of the Constitution of India.

16. Therefore, we find no reason to interfere with the action taken against the appellant nor we find any infirmity in the impugned judgment and order of the High Court. All the contentions raised are found to be without merit.

17. Accordingly, we do not find any merit in this appeal and we dismiss the same but leaving the parties to bear their own costs.

.....J
[Dr. Mukundakam Sharma]

.....J
[Anil R. Dave]

New Delhi,
March 10, 2011.

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