

# The Indian Law Reports

FULL BENCH

*Before S. S. Dulat, P. D. Sharma and S. K. Kapur, JJ.*

P. H. LAXMINARAYANAN,—Appellant

*versus*

ENGINEER-IN-CHIEF, ARMY HEADQUARTERS AND ANOTHER,—  
*Respondents*

L.P.A. No. 8-D of 1962

*Constitution of India (1950)—Arts. 309, 310 and 311— President or Governor—Whether can delegate his power under Art. 310 to a subordinate officer—Violation of any rules or statute enacted under Art. 309 regulating the conditions of service of such servants of the State as are not protected by Art. 311—Whether justiciable.*

1965

September, 23rd.

*Held*, that the pleasure of the President or the Governor mentioned in Article 310 can be exercised by such person as the President or the Governor may respectively direct but such pleasure must be exercised in accordance with the rules or the statute made in that behalf. The President can delegate his powers under Article 310 but Article 309 cannot impair or affect the pleasure of the President therein specified.

*Held*, that the question of violation of any rules or statute enacted under Article 309 of the Constitution regulating the conditions of service of such servants of the State as are not protected by Article 311 would be a justiciable matter.

*Letters Patent Appeal under Clause 10 of the Letters Patent of the Punjab High Court from the order of the Hon'ble Mr. Justice Shamsher Bahadur, dated 18th December, 1961, in Civil Writ No. 163-D of 1960 dismissing the same.*

M. S. K. SASTRI AND M. S. NARSIMHA, ADVOCATES, for the Appellant.

NIRAN DE, ADDITIONAL SOLICITOR-GENERAL WITH S. N. SHANKER, ADVOCATE, for the Respondents.

## JUDGMENT

Kapur, J.

**KAPUR, J.**—The following two questions have been referred to us for decision:—

- (1) Whether on the true construction of Articles 309 and 310 of the Constitution the pleasure of the President under Article 310 can be exercised by him alone or can it be delegated to any subordinate officer to be exercised in accordance with the rules framed or statute enacted under Article 309 of the Constitution; and
- (2) Whether violation of any rules or statute enacted under Article 309 of the Constitution regulating the conditions of service of such servants of the State as are not protected by Article 311 is justiciable ?

The reference arises in the following circumstances : The petitioner-appellant was an Assistant Executive Engineer in the Military Engineer Service. By order, dated 24th December, 1958, the Chief Engineer dismissed the appellant. Aggrieved by the said order of dismissal he filed a writ petition which was dismissed by Shamsher Bahadur, J., on 13th December, 1961. The main contention of the petitioner-appellant was that under Article 309 of the Constitution certain Rules called the Civilians of Defence Services (Classification, Control and Appeal) Rules, 1952, had been framed regulating the conditions of service of civilians in defence services and that he had been dismissed in violation of clause 15 of the said Rules. The petitioner-appellant contended that since the rights under the said Rules were justiciable, he was entitled to seek relief in case of non-observance thereof. The case of the petitioner-appellant was that he had not been dismissed by President in exercise of his powers under Article 310 but under the said Rules and violation thereof rendered the dismissal order invalid. In support of the plea his learned counsel relied on the proposition that the powers of the President under Article 310 could not be delegated and could be exercised by him alone and since the impugned order had not been passed by the President, it could not have been an order under Article 310. On the

other hand, the contention of the respondents was that the order of dismissal was an order under Article 310 of the Constitution in exercise of the pleasure of the President and that such pleasure could be exercised either by himself or through officers subordinate to him. The controversy, in short, was that whereas according to the petitioner-appellant the dismissal order, not having been signed by the President, could not be an order by the President in exercise of his pleasure under Article 310 but an order in exercise of the statutory powers under the Rules framed under Article 309 and any violation in the procedure prescribed by the said Rules would entitle the petitioner-appellant to relief, while according to the respondents an order made in exercise of the Rules framed under Article 309 by an authority competent to do so would be an order in exercise of the pleasure of the President and since Article 311 was not applicable to the petitioner-appellant, the matter would not be justiciable. The Letters Patent Appeal against the order of Shamsheer Bahadur, J., dismissing the writ petition came up before the Division Bench of this Court consisting of A. N. Grover, J., and myself and the same contentions were repeated. In view of the importance of the questions raised the Bench directed that the points of law should be decided by a larger Bench. This is how the reference has come to us for decision.

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In support of his plea that powers under Article 310 can be exercised by the President personally and cannot be delegated, the learned counsel for the petitioner-appellant has relied on *State of Uttar Pradesh and others v. Babu Ram Upadhya* (1), and particularly the following passage:—

“This argument is based upon the misapprehension of the scope of Article 309 of the Constitution. A law made by the appropriate Legislature or the rules made by the President or the Governor, as the case may be, under the said Article may confer a power upon a particular authority to remove a public servant from service, but the conferment of such a power does not amount to a delegation of the Governor’s pleasure.

(1) A.I.R. 1961 S.C. 751=(1961)2 S.C.R. 679.

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Whatever the said authority does is by virtue of express power conferred on it by a statute or rules made by competent authorities and not by virtue of any delegation by the Governor of his power. There cannot be conflict between the exercise of the Governor's pleasure under Article 310 and that of an authority under a statute, for the statutory power would be always subject to the overriding pleasure of the Governor;"

and also on the passage that—

"The power to dismiss a public servant at pleasure is outside the scope of Article 154 and, therefore, cannot be delegated by the Governor to a subordinate officer, and can be exercised by him, only in the manner prescribed by the Constitution".

The learned counsel for the appellant would like us to deduce from the above-quoted passages that the pleasure of the President under Article 310 can be exercised by him alone and cannot be delegated since it is not an exercise of the executive power of the Union and unless the President himself passes the order, the Union cannot take shelter under Article 310 of the Constitution. The learned Solicitor-General appearing for the respondents, on the other hand, submits that the President can delegate his powers under Article 310 and when power is exercised under the Rules framed under Article 309 by an authority competent to act thereunder it would be an exercise of the pleasure by the President. The argument of the learned Solicitor-General, in short, is that *Upadhya's case* does not lay down that a law cannot be made under Article 309 or a rule cannot be framed under the proviso to the said Article prescribing the procedure by which, and the authority by whom, the said pleasure can be exercised. According to the learned Solicitor-General the correct position is that in exercising the power conferred by Article 309 the extent of the pleasure recognised by Article 310 cannot be affected or impaired but a law or a rule can be made under Article 309 prescribing the procedure by which, and the authority by whom, the said pleasure can be exercised.

In *Moti Ram v. N. E. Frontier Railway* (2), their Lordships of the Supreme Court held as under:—

“The pleasure of the President or the Governor mentioned in Article 310(1) can thus be exercised by such person as the President or the Governor may respectively direct in that behalf, and the pleasure thus exercised has to be exercised in accordance with the rules made in that behalf. These rules, and indeed, the exercise of the powers conferred on the delegate must be subject to Article 310, and so, Article 309 cannot impair or affect the pleasure of the President or the Governor therein specified. There is thus no doubt that Article 309 has to be read subject to Articles 310 and 311, and Article 310 has to be read subject to Article 311.”

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It was further observed in the said judgment:—

“In support of this conclusion, the learned Judge has relied on the observations made in the majority judgment delivered by this Court in *State of Uttar Pradesh v. Babu Ram Upadhya* (1). We ought to point out that the learned Judge has misconstrued the effect of the observations on which he relies. What the said judgment has held is that while Article 310 provides for a tenure at pleasure of the President or the Governor, Article 309 enables the legislature or the executive, as the case may be, to make any law or rule in regard, *inter alia*, to conditions of service without impinging upon the overriding power recognised under Article 310. In other words, in exercising the power conferred by Article 309, the extent of the pleasure recognised by Article 310 cannot be affected, or impaired. In fact, while stating the conclusions in the form of propositions, the said judgment has observed that the Parliament or the Legislature can make a law regulating the conditions of service without affecting the powers of the President or the Governor under Article 310 read with Article 311. It has also been stated at the same place that the power to dismiss a public servant at pleasure is outside

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the scope of Article 154 and, therefore, cannot be delegated by the Governor to a subordinate Officer and can be exercised by him only in the manner prescribed by the Constitution. In the context, it would be clear that this latter observation is not intended to lay down that a law cannot be made under Article 309 or a Rule cannot be framed under the proviso to the said Article prescribing the procedure by which, and the authority by whom, the said pleasure can be exercised."

In view of the decision in *Moti Ram's case* our answer to the first question must be that the pleasure of the President or the Governor mentioned in Article 310 can be exercised by such person as the President or the Governor may respectively direct but such pleasure must be exercised in accordance with the rules or the statute made in that behalf. We, therefore, hold that the President can delegate the powers under Article 310, but Article 309 cannot impair or affect the pleasure of the President therein specified.

Coming now to the second question, the learned Solicitor-General contends that in cases where Article 311 is not applicable, the rights arising out of the rules or the law made under Article 309 are not justiciable. He says that the only remedy in case of violation of such rules is to approach the Government but not the Court. In support of this proposition he relies on *Venkata Rao v. Secretary of State* (3). He, however, does not dispute that according to the decision in *Babu Ram Upadhya's case* (1) such rights would be justiciable. In the circumstances, we are of the opinion that the question of violation of any rules or statute enacted under Article 309 of the Constitution regulating the conditions of service of such servants of the State as are not protected by Article 311 would be a justiciable matter.

The Letters Patent Appeal will now go back to a Division Bench for decision on merits. The parties will bear their own costs.

Sharma, J.

P. D. SHARMA, J.—I agree.

Dulat J.

S. S. DULAT, J.—I agree.

B.R.T.

(3) A.I.R. 1937 P.C. 31.