

RANJIT PRASAD SINHA
v.
STATE OF BIHAR & ANOTHER

JULY 16, 1987

[R.S. PATHAK, CJ, RANGANATH MISRA AND
K.N. SINGH, JJ.]

Civil Services (Classification, Control and Appeal) Rules, 1930—Rules 14, 18 and 57(5)—Read with Constitution of India—Art. 235—Right of appeal against imposition of penalty—Whether accrues to a member if a Provincial Service in the absence of a notification issued under r. 18.

Rule 14 of the Civil Services Rules, 1930 classifies Public Services in India into a number of categories and one such category is constituted of the 'Provincial Services'; and, r. 18 thereof declares that it shall consist of such services under the administrative control of the Local Government of a Governor's Province as the Local Government may from time to time declare, by notification in the local Official Gazette, to be included in the Provincial Services of that Province. Rule 49 specifies the penalties which could be imposed upon the members of the Services specified in r. 14. Rule 56 read with sub-r. (5) of r. 57 confers on a person belonging to any of the classified services specified in r. 14 a right of appeal to the Governor against an order imposing any of the penalties specified in r. 49, which right is saved by Art. 235 of the Constitution.

The appellant, a member of the Bihar Judicial Service, challenged an order of punishment served on him *inter alia* on the ground that the appeal filed by him to the Governor against the order of punishment should not have been withheld by the High Court but should have been despatched to the State Government for consideration. The High Court dismissed the writ petition holding that no appeal lay to the State Government.

Dismissing the appeal,

HELD: In the absence of positive material providing that the Subordinate Judicial Service can be regarded as having been brought within the scope of the Civil Services Rules of 1930, it is not open to the appellant to rely on the right of appeal created by those Rules. [525G]

A In this case, neither counsel was able to refer to any notification designating the Subordinate Judicial Service, of which the appellant was a member, as one of the Provincial Services specified in r. 14. [525F-G]

B CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3534 of 1986.

From the Judgment and Order dated 17.2.1986 of the Patna High Court in C.W.J.C. No. 6215 of 1985.

C Govind Mukhoty, S.K. Bhattacharya and U.S. Prasad for the Appellant.

Jaya Narain, R.P. Singh, B.P. Singh and Ranjit Kumar for the Respondent.

D The Judgment of the Court was delivered by

PATHAK, CJ. This appeal by Special Leave is directed against the Judgment and Order of the High Court of Patna dismissing a Writ Petition filed by the appellant.

E The appellant is an Additional Subordinate Judge in the Bihar Judicial Service. Disciplinary proceedings were taken against him and ended in an order imposing the punishment of censure, the withholding of annual increments for two years, postponement of his case for promotion for a like period and the denial of emoluments in excess of the subsistence allowance for the period of suspension. The appellant filed a Writ Petition in the High Court challenging the order of punishment on several grounds but did not succeed. He urged also that the appeal filed by him to the Governor against the order of punishment should not have been withheld by the High Court but should have been despatched to the State Government for consideration. The High Court held that no appeal lay to the State Government and therefore rejected the plea.

G On 16 September, 1986 this Court granted special leave to the appellant confined to the question whether an appeal lay to the Governor against the order of the High Court. That is the sole question for consideration before us.

H To support his claim to a right of appeal the appellant relies on

the Civil Services (Classification, Control and Appeal) Rules 1930. It is pointed out that these Civil Services Rules of 1930 have been kept in force by the State Government by notification No. III/RI/101/63-8051-A dated 3 July, 1963 issued under the proviso to Article 309 of the Constitution. The submission of the appellant is that the right of appeal is saved by Article 235 of the Constitution. Article 235 of the Constitution provides that the control over District Courts and Courts subordinate thereto, including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of the State and holding any post inferior to the post of District Judge shall be vested in the High Court but that nothing in that Article may be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of service.

The question is whether the appellant is governed by the Civil Services Rules of 1930, Rule 14 classifies the Public Services in India into a number of categories, and one such category is constituted of the Provincial Services. Rule 18 declares that the Provincial Services shall consist of such services under the administrative control of the Local Government of a Governor's Province as the Local Government may from time to time declare, by notification in the local official Gazette, to be included in the Provincial Services of that Province. Rule 49 specifies the penalties which could be imposed upon members of the Services specified in Rule 14. Rule 56 confers a right of appeal on a person belonging to any of the classified Services specified in Rule 14 against an order imposing any of the penalties specified in Rule 49. Rule 57(5) provides:

"A member of a Provincial Service may appeal to the Governor from an order passed by the Local Government".

We enquired of learned counsel for the parties whether a Notification had been issued designating the Subordinate Judicial Service, of which the appellant is a member, as one of the Provincial Services specified in Rule 14. Neither counsel was able to refer to any Notification in that behalf. In the absence of positive material providing that the Subordinate Judicial Service can be regarded as having been brought within the scope of the Civil Services Rules of 1930, it is not open to the appellant to rely on the right of appeal created by those Rules.

Our attention has been drawn to the fact that the Civil Services Rules of 1930 were continued with effect from 22 December 1956, by

A Notification No. III/RI/101/63-8051-A dated 3 July, 1963. That does not advance the case of the appellant any further because the Notification can take effect in respect of such Service only as has already been brought within the scope of those Rules.

B Before leaving this case, we must give expression to our great disappointment that neither party was able to indicate what were the Rules which governed the Judicial Service to which the appellant belonged. If no Notification was issued applying the Civil Service Rules of 1930 to such Judicial Service, there must surely be some other body of Rules which does apply. And if there is none, it is time that such body of Rules was framed. The present regrettable state of confusion

C must be ended. It would certainly be a matter of gratification for the Judicial officers of the State of Bihar to know where they stand.

In the result, the appeal fails and is dismissed but in the circumstances we make no orders as to costs.

D A.P.J.

Appeal dismissed.