

UNION OF INDIA
v.
U.D. DWIVEDI ETC.

A

DECEMBER 3, 1996

[KULDIP SINGH AND S.C. SEN, JJ.]

B

Constitution of India, 1950—Art 319(c)—Scope of—Former member of U.P.S.C.—Appointment in other employment on contract basis—Held, bar on any other employment will include even an appointment by contract.

C

The respondent, a scientist in Defence Research and Development Organisation [DRDO] was assessed for promotion, by Recruitment and Assessment Centre [RAC] under chairmanship of 'S' who was former member of U.P.S.C.

The respondent challenged the assessment before Administrative Tribunal on ground that RAC was set up in unconstitutional manner, because former member of U.P.S.C. was prohibited from taking up any employment under UOI and State Govt. as per Art. 319[c] of the Constitution. The Tribunal held the assessment as null and void upholding the contention of the respondent.

D

In appeal to this Court, the petitioner contended that 'S' was not in employment of Central Govt. but was employed as consultant on contract basis.

E

Dismissing the appeal, this Court

F

HELD : Clause [c] of Article 319 bars "any other employment" which will include even an employment by contract under the Government of India or the State Government. That is the constitutional mandate. The constitutional mandate cannot be evaded by giving 'S' a contract and not a letter of employment. Therefore, apart from the post of Chairman of Union Public Service Commission or Chairman of the State Public Service Commission, he was ineligible for employment in any other capacity under the Government of India or a State Government. [502-E-G]

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 15344 of 1996 etc.

H

A From the Judgment and Order dated 17.8.91 of the Central Administrative Tribunal in O.A. No. 2738 of 1990.

N.N. Goswamy, S.N. Terdol and Mrs. Anil Katiyar for Mrs. Sushma Suri for the Appellants.

B N.S. Bisht and Umesh Misra (N.P.) for the Respondents.

The Judgment of the Court was delivered by :

SEN, J. Leave granted.

C U.D. Dwivedi was employed in Defence Research & Development Organisation (DRDO) in 1974 and was working as Scientist 'B' in the pay-scale of Rs. 2200-4000, Gazetted Group 'A', DRDS Service at Solid State Physics Laboratory, Timarpur, Delhi, with effect from 1st July, 1983. He was working under Dr. A.K. Sreedhar, Director, Solid State Physics Laboratory, Timarpur, Delhi. Dwivedi was assessed by the Assessment Board at Recruitment and Assessment Centre (RAC), Timarpur, on 1.2.89 for the service period from July, 1983 to June, 1988 for promotion to the post of Scientist 'C' in the pay-scale of Rs. 3000-4500 in DRDS. The assessment is called as Assessment Year 1988. The result of the assessment was declared in May, 1989 and Dwivedi was not declared successful in the assessment.

E Dwivedi challenged the assessment for the year 1988 before the Principal Bench of the Central Administrative Tribunal, New Delhi. The ground of challenge was that RAC, which conducted the assessment, was set up in an unconstitutional manner because the entire assessment was conducted under the chairmanship of one Professor S. Sampath. Professor Sampath, being a former member of the Union Public Service Commission (UPSC), was prohibited from taking up any employment under Union of India or State Government as laid down in Article 319(c) of the Constitution of India. The Tribunal upheld the contention of Dwivedi and held that the Assessment made under the Chairmanship of Professor Sampath was null and void. Union of India has come up in appeal against the order of the Tribunal.

F The ground taken by the Director General, Research and Development Organisation, Ministry of Defence, is that prior to the issue of GSR-512 dated 1.6.85, promotion and recruitment to scientific and techni-

H

cal posts under DRDO were under the purview of UPSC and all the assessment boards for promotion of scientists prior to the issue of the said GSR were conducted by the UPSC. Appointment and promotion to these posts were, however, excluded from the purview of UPSC by the said GSR. Therefore, Recruitment & Assessment Centre was constituted at DRDO Headquarter headed by a Director to provide secretarial services to the Assessment Board constituted to assess candidates for recruitment to scientific and technical posts and promotion of Scientists to higher posts. Assessment for promotion of Scientists of DRDS to higher grades was made by an Assessment Board consisting of a Chairman nominated by the Government, two departmental officers of appropriate status nominated as members and two outside experts nominated by the Government. It was contended that Professor Sampath, Chairman of the Recruitment and Assessment Centre under DRDO, was not in the employment of the Central Government and was not holding any employment under the Government. He was a full time non-official consultant on contract basis to advise DRDO on the matters of recruitment and assessment of Scientists and Engineers. He functioned as Chairman of Assessment Board constituted for the purpose of recruitment to scientific and technical posts under DRDO. Promotion of Scientists of DRDS to higher grades on the basis of assessment made by RAC was, therefore, valid. A point was also taken that statutory remedies had not been exhausted before coming to the Tribunal.

After hearing the parties, we are of the view that the Tribunal has come to a right decision in this matter in holding that the entire process of assessment was bad in law, and therefore, had to be struck down.

Article 319 of the Constitution is as under :-

"319. Prohibition as to the holding of offices by members of Commission on ceasing to be such members.-On ceasing to hold office,

- (a) the Chairman of the Union Public Service Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;
- (b) the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other mem-

- A ber of the Union Public Service Commission or as the Chairman of any other State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;
- B (c) a member under other than the Chairman of the Union Public Service Commission shall be eligible for appointment as the Chairman of the Union Public Service Commission or as the Chairman of a State Public Service Commission, but not for any other employment either under the Government of India or under the Government of a State;
- C (d) a member other than the Chairman of a State Public Service Commission shall be eligible for appointment as the Chairman or any other member of the Union Public Service Commission or as the Chairman of that or any other State Public Service Commission, but not for any other employment either
- D under the Government of India or under the Government of a State."

E Clause (c) of Article 319 prohibits holding of any employment either under the Government of India or under the Government of a State by a person who has been a member of the Union Public Service Commission, except as the Chairman of Union Public Service Commission or as the Chairman of a State Public Service Commission. There is no dispute that Professor Sampath was a member of the Union Public Service Commission. Therefore, apart from the post of the Chairman of Union Public Service Commission or Chairman of a State Public Service Commission, he was

F ineligible for employment in any other capacity under the Government of India or a State Government. That is the constitutional mandate. Whether the employment was held under a contract or otherwise is quite immaterial for this purpose. The fact of the matter is that Professor Sampath was employed as the Chairman of the Assessment Board at Recruitment and

G Assessment Centre. The constitutional mandate cannot be evaded by giving Professor a contract and not a letter of employment. Clause (c) of Article 319 bars "any other employment" which will include even an employment by contract under the Government of India or the State Government.

H In this view of the matter, the appeal must fail and is dismissed. There will be no order as to costs.

Civil Appeal No. 15345 of 1996.

A

(Arising out of S.L.P. (C) No. 9793 of 1992)

Leave granted.

In view of our judgment in Civil Appeal no. 15344 of 1996 (Arising out S.L.P. (C) No. 1477 of 1992), this appeal is also dismissed. There will be no order as to costs.

B

K.K.T.

Appeal dismissed.