PETITIONER:
UNlON OF lNDlA & OTHERS

Vs.

RESPONDENT:
SRIPATI RANJAN BISWAS AND ANOTHER

DATE OF JUDGMENT07/08/1975

BENCH:
GOSWAMI, P.K.
BENCH:
GOSWAMI, P.K.
ALAGIRISWAMI, A.
UNTWALIA, N.L.

CITATION:
1975 AIR 1755 1976 SCR (1) 268
1975 SCC (4) 699

ACT:
Central Services (Classification Control & Appeal) Rules 1957-r. 23(2) Appeal to the President of India against all order of dismissal from service-Dismmisal of appeal by the Minister-If proper and legal.

HEADNOTE:
The respondent was dismissed from government service. His appeal to the President against his dismissal was heard by the Minister in the Ministry of Finance, and was rejected. A single judge of the High Court dismissed his writ petition under Art. 226 of the Constitution but the division bench quashed the order of dismissal, holding that the functions and duties of the President as an appellate authority under the Central Civil Services (Classification, Control and Appeal) Rules 1957, were not part of the business of the Government of India nor were they part of the President's duty under the Constitution. It further held that the Minister had no right to deal with the appeal which had been preferred to the President of India under the Rules

On appeal it was contended in this Court for the respondent that hearing appeal under a statutory rule a quasi-judicial act and it could not be delegated by the President to the Minister Allowing the appeal,

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HELD: (a) There is no constitutional infirmity in impugned order Disposal of the appeal by the Minister under r. 23(2)(b) of the Rules is a proper and legal disposal of the appeal to the President who has acted on the advice of tho Minister is confirming the impugned order of dismissal No question of delegation is involved in such a matter [272A]

(b) When the Constitution conclusively contemplates a constitutional President it is not permissible nor is not even intended to invest upon the President a different role of ruling monarch. any reference to the President under any rule made under tho Constitution must needs be to the President as the constitutional head as envisaged in the Constitution acting with the aid and advice of tho Council of Ministers.[271H]

In the present case the question relates to the domain

of appointment or dismissal of Government Servant. Such a question falls within the ambit of purely executive function of the President in the case of the Union Government of the Governor in the case of State. Such a function being ultimately an ultimately an executive function of the President, the fact that final order is preceded or accompanied by a quasi-judicial inquiry held by the Minister did not affect the character of the exercise of that function by the President. [271A-B]

Samsher singh v. State of Punjab and Another, A.I.R. 1974 S.C. 2192, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No 556 of 1975.

Appeal by special leave from the judgment and order dated the 13th: December, 1973 of the Calcutta High Court in Appeal from original order No. 683 of 1971 (Mandamus Appeal).

L. N. Sinha, Solicitor General, P.P. Rao and Girish Chandra for the appellants

269

A. K. Sell and Prodyot Kumar Chakravarty, for respondent No.

The Judgment of the Court was delivered by

GOSWAMI, J.-This appeal by special leave is directed against the judgement of the Division Bench of the High Court of Calcutta of December 13, 1973 reversing the judgment of the learned single Judge who had earlier found no infirmity in the impugned order of dismissal of the first respondent (hereinafter to be described as the respondent).

The respondent was a confirmed Appraiser with about eleven years; service ill the Customs Department in Class II of Gazetted officers. On December 1961, he was suspended and a chargesheet was served upon him. The charges related to firstly taking illegal gratifications secondly possession of assests disproportionate to his disclosed income and thirdly purchase of a plot of land without sanction of the appropriate authority. The respondent was Found guilty in the course of a departmental enquiry of the second and third charges and was exonerated with regard to the first charge. A second notice was served upon him on December 17, 1962, affording an opportunity to show cause why he should not be dismissed from service. Thereupon the respondent preferred an application under article 226 of the constitution in the High Court challenging the show cause notice as obtained a Rule. Thus rule was disposed of by the High Court quashing third charge and the Collector of Customs was directed to reconsider the appropriate penalty to be imposed on the surviving second charge. On February 37 1964, the collector of Customs passed an order dismissing the respondent basing on the second charge. The respondent preferred an appeal to the President of India under rule 23(2)(b) of the Central Civil Services (Classification, Control and Appeal) Rules 1957 (briefly the rules). After consulting the Union Public Service Commission under rule 30(2) of the Rules, the President of India rejected the respondents appeal.

On November 25 1966, the respondent filed a petition under article 226 the Constitution in the High Court challenging the validity of the dismissal order as well as the appellate order of the President. The learned single Judge allowed the writ petition on August 29 1967? holding that the appellate authority decided the appeal without

considering whether the drastic punishment of dismissal was excessive or not in violation of the provisions of rule 30(2)(c). The learned Judge, however, gave liberty to proceed with the appeal afresh. Thereafter the Minister in the Ministry of Finance, Government of India, heard the appeal on March 28, 1969. Ultimately the respondent's appeal to the resident of India was rejected on April 25, 1969 and the Under Secretary to the Government of India in the Finance Ministry communicated the order in the name of the President on May 9, 1969. The communication was in the following terms:-

I am directed to refer to your letter dated 2-4-1968 and 5-6-1969, containing your further submission ill reply to the notice issued to you vide this Ministry's No.

270

Ad.-II, dated 23-2-1968, and to say that the President has carefully considered the further submissions made by you in consultation with the Union Public Service Commission. The arguments advanced by you at the time of the hearing granted to you by Shri P. C. Sethi, Minister in the Ministry of Finance, on behalf of the President on 28-3-1969 have also been carefully considered by him. Upon consideration of all the facts and circumstances of the case the President has decided that the penalty of dismissal from service imposed on you by the Disciplinary Authority (viz.) the Collector of Customs, Calcutta is not excessive or severe and that your appeal should be rejected. The President hereby orders accordingly. A copy of the U.P.S.C.'s letter No. F.3/56b 68-SI dated 26-10-1968 and a copy of the order passed by the Minister on behalf of the President are enclosed herewith".

The respondent in a third round of litigation challenged the above order in the High Court under article 226 of the Constitution. The learned single Judge dismissed the same but in appeal against that judgment the Division Bench set aside the order of the learned single Judge and quashed the aforesaid order of May 9, 1969. Hence this appeal by the Union of India.

The High Court held that, the powers and duties which the President is required to exercise as an appellate authority under rule 23(2)(b) of the Rules are not constitutional duties imposed upon the President under the Constitution. According to the High Court the functions and duties of the President as an appellate authority under the said Rules are not part of business of the Government of India nor are they part of the President's duties under the Constitution. The High Court, therefore, came to the conclusion that the Minister had no right to deal with the appeal which had been preferred to the President of India under the said Rules.

The above question is squarely covered by a recent decision of this Court in Samsher Singh v. State of Punjab and Another(1). Even so, Mr. A. K. Sen appearing on behalf of the respondent submits that there is still an area which has not been covered by the said decision. Mr. Sen submits that hearing of an appeal under a statutory rule, as in this case, it is a quasi- judicial act and, therefore, it cannot be delegated by the President to the Minister. It is, however, clear that in Samsher Singh's case the question related to the termination of service of a subordinate Judge under rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 and that of another officer in the Punjab Civil Service (Judicial Branch) under rule 7(3) in

Part of the Punjab Civil Services (Judicial Branch) Rules 1951 as amended from time to time It is not disputed that the above two Rules under which the termination took place are statutory Rules.

271

The question which is raised in this appeal relates to the domain of appointment or dismissal of a Government servant. Such a question falls within the ambit of a purely executive function of the President in the case of the Union Government and of the Governor in the case of a State. In the present case, such a function being ultimately Lull executive function of the President, the fact that the final order is pre ceded or accompanied by a quasi-Judicial enquiry held by the Minister does not affect the character of the exercise of that function by the President. There is, therefore, nothing in principle which can be distinguished ill this appeal from the ratio of the decision in Samsher Singh case. The legal position is brought out very clearly in paragraph 57 of the report in Shamsher Singh (supra) in the following extracts:-

> "Appointment or dismissal or removal of persons belonging to the Judicial Service of the State is not a personal function but is an executive function of the Governor exercised in accordance with the rules in that behalf under the Constitution".
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> Again in para 48 the Court observed
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> "The President as well as the Governor is the Constitutional or formal head. The President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid advice of his Council of Ministers, save in sphere where the Governor is required by or under the Constitution to exercise his functions in his discretion. Wherever the Constitution requires the satisfaction of the President or the-Governor for the exercise by the President or the Governor o any power of function, the satisfaction required by the Constitution is not the personal satisfaction o the President or Governor but the satisfaction of the President or Governor in the Constitutional sense in the Cabinet system of Government, that is, satisfaction of his Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. The decision of any Minister or officer under rules o business made under any of these two Articles 77(3) and 166 (3) is the decision of the President or the Governor respectively. These articles did not provide for any delegation. Therefore, the decision of Minister or officer under the rules of business is the decision of the President or the Governor".

We are, therefore, unable to see how the present case of the respondent can get out of the rules laid down in Samsher Singh's case (supra).

In the history of the entire background of the constitutional development o our country, when the Constitution conclusively contemplates a Constitutional President it is not permissible nor is it even intended to invest upon the President a different role of a ruling monarch. Any reference to the President under any rule made under the Constitution must needs be to the President as the constitutional head, as envisaged in the Constitution acting with the aid and advice o the Council of Ministers.

272

Disposal of the appeal by the Minister under rule

23(2)(b) of the Rules is, therefore, a proper and legal disposal of the appeal to the President who has acted on the advice of the Minister in confirming the imugned order of dismissal. There is no question of delegation involved in such a matter. We find no constitutional infirmity in the impugned order of May 9, 1969.

In the result the appeal is allowed. The judgment of the Division ; Bench of the High (Court is set aside. We win, however, make no order as to costs.

P.B.R. Appeal allowed.

273