

STATE (SPE HYDERABAD)

v.

AIR COMMODORE KAILASH CHAND

December 21, 1979

[S. MURTAZA FAZAL ALI, P. S. KAILASAM AND A. D. KOSHAL, JJ.]

Prevention of Corruption Act, 1947 (11 of 1947), S. 5(2)—Air Force Officer retiring from service—Reemployed—Services transferred to Regular Air Force Reserve—Prosecution of officer under the Act—Officer if a public servant—Sanction whether necessary.

The respondent a member of the Indian Air Force, retired from service on June 15, 1965 but was reemployed for a period of two years with effect from June 16, 1965. On September 7, 1966 the respondent was transferred to the Regular Air Force Reserve with effect from June 16, 1965 to June 15, 1970 i.e. for a period of five years. On March 13, 1968 the reemployment given to the respondent ceased and his services were terminated with effect from April 1, 1968. A charge-sheet was submitted against the respondent for having committed offences under section 5(2) of the Prevention of Corruption Act, 1947, during the period March 29, 1965 to March 16, 1967. The respondent filed a petition before the Special Judge for dropping the proceedings against him on the ground that the Judge could not take any cognizance of the offences in the absence of any valid sanction of the appointing authority of the respondent. The application was rejected on the ground that as the respondent was not a Commissioned Officer in the Air Force at the time when the cognizance was taken, no sanction of the President was necessary.

The respondent moved the High Court in revision, which quashed the proceedings, holding that as the respondent continued to be a public servant within the meaning of section 21 of the Indian Penal Code inasmuch as he remained a member of Air Force Reserve, sanction was necessary before prosecuting the respondent.

In the appeal to this Court, it was contended on behalf of the appellant: (1) that as the respondent had retired from the Indian Air Force and his employment was terminated with effect from April 1, 1968 he ceased to be a public servant and therefore no sanction was necessary, and (2) that reemployment under the provisions of the Regular Air Force Reserve Act would not amount to an employment in the Regular Force of the Service and therefore even though the respondent may have been reemployed he could not be said to hold the status of a public servant.

Dismissing the appeal,

HELD: 1. The prosecution must prove that at the time when cognizance of the offence was taken the respondent ceased to be a public servant. [700 C]

In the instant case, the Special Judge took cognizance on June 19, 1969 at a time when the respondent continued to be a public servant having been reemployed and though his services were terminated only on April 1, 1968 he

A continued to be a member of the Auxiliary Air Force upto June 15, 1970, that is a long time after cognizance of the offence was taken. [700 D]

S. A. Venkataraman v. The State [1958] S.C.R. 1037; *State of West Bengal etc. v. Manmal Bhutoria & Ors.* Etc. [1977] 3 S.C.R. 758 referred to.

B 2(i) The Provisions of the Auxiliary Air Force Act do not expressly contain the nature of the emoluments that the respondent may receive but the general tenor and setting of the Act clearly show that a member of the Auxiliary Force is as much a public servant as an acting member of the Indian Air Force. [703 G]

(ii) Even after the respondent was transferred to the Auxiliary Air Force he retained his character as a public servant because he was required to undergo training and to be called up for service as and when required. [703 F]

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 259 of 1973.

From the Judgment and Order dated 27-4-1973 of the Andhra Pradesh High Court in Criminal Revision Case No. 72/73.

D *R. B. Datar, M. N. Shroff and R. N. Sachthey* for the Appellant.
P. Govindan Nair and A. Subba Rao for the Respondent.

The Judgment of the Court was delivered by

E FAZAL ALI, J.—This appeal by certificate is directed against the judgment dated 27th April 1973 of the Andhra Pradesh High Court allowing the revisional application and quashing the proceedings taken against the respondent for offences committed under s. 5(2) of the Prevention of Corruption Act.

F In the view that we take in the case, it is not necessary to give the facts in detail. It appears that the respondent was a member of the Indian Air Force having entered the service on 17th November 1941. He retired from the service on the 15th June 1965 but was reemployed for a period of two years with effect from 16th June 1965. On 7th September 1966, the respondent was transferred to the Regular Air Force Reserve with effect from 16th June 1965 to 15th June 1970, *i.e.*, for a period of five years. In other words, the respondent was transferred to the Auxiliary Reserve Air Force under the provisions of the Reserve and Auxiliary Air Force Act 1952 (hereinafter to be referred to as the 'Act') and rules thereunder. On 13th March 1968, the reemployment given to the respondent ceased and his services were terminated from 1st April 1968.

H A chargesheet was submitted against the respondent for having committed offences under s. 5(2) of the Prevention of Corruption Act during the period 27th March 1965 to 16th March 1967. The

respondent filed a Petition before the Special Judge, Hyderabad for dropping the proceedings against him on the ground that the Judge could not take any cognizance of the offences in the absence of any valid sanction of the appointing authority of the respondent. The Special Judge, however, rejected this application on the 20th of October 1972 on the ground that as the respondent was not a Commissioned officer in the Air Force at the time when the cognizance was taken, no sanction of the President was necessary. Thereafter, the respondent moved the High Court in revision and succeeded before the High Court which held that as the respondent continued to be a public servant within the meaning of s. 21 of the Indian Penal Code inasmuch as he remained a member of the Air Force Reserve, sanction was essential before prosecuting the respondent. The High Court accordingly accepted the revision petition and quashed the proceedings against the respondent but granted a certificate to the appellant for leave to appeal to this Court. Hence this appeal before us.

The only point that has been canvassed before us was whether the respondent having retired from the active service of the Indian Air Force continued to be a public servant even though he was transferred to Regular Air Force Reserve. The counsel for the Union submitted that as the respondent had retired from the Indian Air Force and his reemployment was terminated w.e.f. April 1, 1968, he ceased to be a public servant and, therefore, no sanction was necessary. We have heard counsel for the parties and have also persued the judgment of the High Court and the Special Judge. The facts, mentioned above, are not disputed and two questions fall for determination in this case.

In the first place, it has to be decided whether or not the respondent was a public servant during the period 27-3-65 to 16-3-67. Secondly, what is the point of time when the sanction was necessary, viz., the time when the offences were actually committed or when the court took cognizance of the said offences. We will take up the second point first. An identical question came up for consideration before this Court in the case of *S. A. Venkataraman v. The State*⁽¹⁾ where the Court, speaking through Imam J., observed as follows :

“In our opinion, in giving effect to the ordinary meaning of the words used in s. 6 of the Act, the conclusion is inevitable that at the time a court is asked to take cognizance

(1) [1958] S.C.R. 1037.

- A** not only the offence must have been committed by a public servant but the person accused is still a public servant removable from his office by a competent authority before the provisions of s. 6 can apply."

B This case was followed by a recent decision of this Court in the case of *State of West Bengal Etc. v. Manmal Bhutoria & Ors. Etc.*(1) where the previous decision was followed. In view of the decisions of this Court, referred to above, the matter is no longer *res integra* but is concluded by the decisions of this Court. It follows, therefore, that the prosecution must prove that at the time when the cognizance of the offence was taken, the respondent ceased to be a public servant. In the instant case, the Special Judge appears to have taken cognizance on June 19, 1969 at a time when the respondent continued to be a public servant having been reemployed and as referred to above his services were terminated only on 1-4-1968 but he continued to be a member of the Auxiliary Air Force upto 15-6-70 that is to say, a long time after the cognizance of the offence was taken. The learned counsel for the Union, however, submitted that reemployment under the provisions of the Regular Air Force Reserve Act would not amount to an employment in the Regular Force of the Service and therefore even though the respondent may have been reemployed, he could not be said to hold the status of a public servant. In this connection, some of the Rules have been placed before us to show the nature of the employment held by the respondent after his retirement. It is not disputed that even after reemployment, the respondent was transferred to the Air Force Auxiliary Reserve and continued to be a member of the Auxiliary Air Force Reserve. Relevant sections of the Act are extracted below :--

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"4. Constitution of Regular Air Force Reserve--The Central Government may raise and maintain in the manner hereafter in this Chapter provided an Air Force Reserve to be designated the Regular Air Force Reserve which shall consist solely of persons transferred or appointed to it under section 5.

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5. Recruitment to the Regular Air Force Reserve--(1) The competent authority may, by general or special order transfer to the regular Air Force Reserve--

- H** (a) any officer or airman of the Air Force who under the terms and conditions of his service is liable to

(1) [1977] 3 S.C.R. 758.

serve in any Air Force Reserve if and when constituted; **A**

(b) any officer or airman of the Air Force whose commission or engagement in the Air Force has been terminated before the commencement of this Act and who under the terms of his commission or engagement was liable to serve in any Air Force Reserve if and when constituted; **B**

(c) any officer or airman who has served in the Air Force and has retired therefrom;

and any officer or airman so transferred shall be deemed to be a member of the said Reserve. **C**

(2) The competent authority may, in such circumstances and subject to such conditions as may be prescribed, by special order, appoint to the Regular Air Force Reserve any member of the Air Defence Reserve or the Auxiliary Air Force raised and maintained under this Act, and where any such member is so appointed, he shall cease to be a member of the Air Defence Reserve or the Auxiliary Air Force, as the case may be, and shall as from the date of such appointment be deemed to be a member of the Regular Air Force Reserve. **D**

(3) **E**

6. Classes of persons in the Regular Air Force Reserve—Members of the Regular Air Force Reserve shall be divided into the following classes, namely :—

- (a) general duties officers, and **F**
- (b) ground duties officers, and
- (c) airmen,

and every officer shall be entitled on transfer or appointment to the Reserve to hold the same rank as that which he last held in the Air Force or the Air Defence Reserve or the Auxiliary Air Force, as the case may be, before such transfer or appointment. **G**

7. Period of service—(1) Every member of the Regular Air Force Reserve shall be liable to serve in the Reserve—

- (a) if he is transferred to the Reserve under subsection (1) of section 5, for the period of his Reserve liability; and **H**

- A** (b) if he is appointed to the Reserve under sub-section (2) of section 5, for the remainder of the period for which he was liable to serve in the Air Defence Reserve or the Auxiliary Air Force, as the case may be :

B Provided that the competent authority may require any such member to serve in the Reserve for such further period or periods not exceeding in the aggregate five years as it may think fit.

x x x x x x

C 9. Constitution of Air Defence Reserve—The Central Government may raise and maintain in the manner hereafter in this Chapter provided an Air Force Reserve to be designated the Air Defence Reserve which shall consist of persons deemed under the provisions of section 16 to be enrolled therein.

D 10. Classes of persons in the Air Defence Reserve—Members of the Air Defence Reserve shall be divided into the following classes, namely :—

- (a) general duties officers;
- (b) ground duties officers; and
- (c) airmen.

E x x x x x x

12. Liability to be called up for inquiry—Every person to whom the provisions of section 11 are applicable shall be liable to be called up for inquiry under section 13—

F (a) if he belongs to any of the classes specified in clauses (a) to (f) of sub-section (1) of section 11, until he has completed his thirty-seventh year, and

(b) if he belongs to any of the classes specified in clauses (g) and (h) of the said sub-section, until he has completed his fiftieth year.

G x x x x x x

18. Constitution of Auxiliary Air Force—(1) The Central Government may raise and maintain in the manner hereafter in this Chapter provided an Air Force to be designated the Auxiliary Air Force.

H (2) The Central Government may constitute such number of squadrons and units of the Auxiliary Air Force as it thinks fit and may disband or reconstitute any squadron or unit.

19. Classes of persons in the Auxiliary Air Force—Members of the Auxiliary Air Force shall be divided into the following classes, namely :

- (a) general duties officers;
- (b) ground duties officers; and
- (c) airmen.

20. Officers of the Auxiliary Air Force—The President may grant to such person as he thinks fit a commission as an officer in the Auxiliary Air Force with the designation of rank corresponding to that of any commissioned officer in the Air Force.

22. Periods of service—Every officer and every enrolled person shall, subject to any rules that may be made in this behalf under this Act, be required to serve in the Auxiliary Air Force for a period of five years from the date of his appointment or enrolment but may, after the completion of his period of service, volunteer to serve therein for further periods each of not more than five years' duration.

23. Termination of Service—The service of any officer or enrolled person in the Auxiliary Air Force may, at any time before the completion of his period of service, be terminated by such authority and under such conditions as may be prescribed.”

(Emphasis ours)

A perusal of the provisions of these sections would clearly reveal that once the respondent was transferred to the Auxiliary Air Force he retained his character as a public servant because he was required to undergo training and to be called up for service as and when required. It is true that these provisions do not expressly contain the nature of the emoluments that the respondent may receive but the general tenor and setting of the Act clearly show that a member of the Auxiliary Force is as much a public servant as an acting member of the Indian Air Force. This is the view which the High Court appears to have taken and we find ourselves in complete agreement with the same. It is not disputed in this case that no sanction was taken from the appointing authority before prosecuting the respondent. For these reasons, therefore, we do not find any error of law in the judgment of the High Court and the appeal fails and is accordingly dismissed.