The State of Bombay

Vs

F. A. Abraham

Civil Appeal No. 59 of 1961

(P. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo, K. C. Das Gupta, N. Rajgopala Ayyangar JJ)

12.12.1961

JUDGMENT

SARKAR, J. –

This is an appeal by the State of Maharashtra against the judgment of the High Court at Nagpur confirming the decree of the Additional District Judge, Nagpur, declaring that the order reverting the respondent from the rank of officiating Deputy Superintendent of Police to the rank of Inspector of Police, was illegal and void, and granting certain consequential reliefs.

The judgment of the High Court and the learned Additional District Judge seem to us to be clearly unsustainable. The Courts below held that the respondent had been reduced in rank in violation of the terms of s. 240(3) of the Government of India Act, 1935, which corresponds to Art. 311 of the Constitution, inasmuch as he was not given an opportunity to show cause against the order proposed to be made. It is not in dispute that the opportunity had not been given. In our view, however, for reasons to be presently stated, the respondent was not entitled to that opportunity.

On June 8, 1948, the respondent was holding the post of Inspector in the Central Provinces and Berar Police Service. He was appointed to officiate as Deputy Superintendent of Police with effect from June 9, 1948. On January 27, 1949, his services were lent to the Hyderabad Government in connection with the police action then being taken there. On February 5, 1949, he was sent back to the Central Provinces and Berar. On February 19. 1949, the Inspector General of Police, Central Provinces and Berar, passed an order which reads as follows :

> "Shri F. A. Abraham (respondent) Deputy Superintendent Police, Parbhani, is reverted to rank of Inspector."

It is this order which was sought to be impugned by the respondent in the suit out of which this appeal arises.

After the order of reversion had been made the respondent, on February 23, 1949, asked for the reason for which he was reverted. On March 3, 1949, the Government refused to communicate the reasons to him. On May 25, 1949, a confidential memorandum was sent by the District Superintendent of Police, Parbhani, to the Deputy Inspector General of Police, Aurangabad, in which he stated that he had conducted an inquiry into certain allegations of corruption made against the respondent while he was acting in the service of the Hyderabad Government at Parbhani and he thought that those allegations were of substance. Thereupon, the Deputy Inspector General of Police, Aurangabad, held a departmental inquiry regarding these allegations and found that they had

not been proved. This inquiry had been held behind the back of the respondent. Notwithstanding this, the order reverting the respondent was maintained. There is a letter addressed by the Inspector General of Police to the Chief Secretary to the Government of Madhya Pradesh date August 19, 1950, written after the departmental inquiry wherein it is stated that the respondent's previous record was not satisfactory and that he had been promoted to officiate as Deputy Superintendent of Police as the Government was is in need of officers and that he had been given a chance in the expectation that he would turn a new leaf but the complaint made in the confidential memorandum was a clear proof that the officer was habitually dishonest and did not deserve promotion. The respondent made representations to the Government to revise the order reverting him to the lower rank but the Government expressed its inability to do so. It may be stated here that on the promulgation of the Constitution the Central Provinces and Berar became the State of Madhya Pradesh in the Indian Union.

In the judgment under appeal the High Court followed its earlier decision in M. A. Waheed v. State of Madhya Pradesh [[1954] N.L.J. 305] in which it had been held that if a person officiating in a higher post is reverted to his original post in the normal course, that is, on account of the cessation of the vacancy or his failure to acquire the required qualification, the reversion does not amount to a reduction in rank but if he is reverted for unsatisfactory work, then the reversion amounts to reduction in rank. The High Court held that the Government's plea that the respondent had been promoted as there was dearth of officers was an afterthought and that the fact that the respondent had been given a chance to officiate in the higher post prima facie showed that he was fit to hold that post. The High Court also held that the Government's refusal to communicate to the respondent the reasons for his reversion or to give him the report of the inquiry, indicated that the Government was reverting him on the ground that his work was not satisfactory. It, therefore, came to the conclusion on the authority of M. A. Waheed's case [[1954] N.L.J. 305] that the respondent must be held to have reduced in rank and this reduction in rank was illegal as the respondent had not been given an opportunity to show cause against it.

We are unable to agree with the observation in M. A. Waheed's case [[1954] N.L.J. 305] that when a person officiating in a post, is reverted for unsatisfactory work, that reversion amounts to a reduction in rank. A person officiating in a post has no right to hold it for all times. He may have been given the officiating post because the permanent incumbent was not available, having gone on leave or being away for some other reasons. When the permanent incumbent comes back, the person officiating is naturally reverted to his original post. This is no reduction in rank for it was the very term on which he had been given the officiating post. Again, sometimes a person is given an officiating post to test his suitability to be made permanent in it later. Here again, it is an implied term of the officiating appointment that if he is found unsuitable, he would have to go back. If, therefore, the appropriate authorises find him unsuitable for the higher rank and then revert him back to his original lower rank, the action taken is in accordance with the terms on which the officiating post had been given. It is in no way a punishment and is not, therefore, a reduction in rank. It has been held by this Court in Parshotam Lal Dhingra v. Union of India [[1958] S.C.R. 828, 842] that,

> "It is, therefore, quite clear that appointment to a permanent post in a Government service, either on probation, or on an officiating basis, is, from the very nature of such employment, itself of a very transitory character and, in the absence of any special contract or specific rule regulating the conditions of the service, the implied term of such appointment, under the ordinary law of master and servant, is that it is terminable at any time. In short, in the case of an appointment to a permanent post in

> a Government service on probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time."

The respondent had of course no right to the post of Deputy Superintendent of Police to which he had been given an officiating appointment and he does not contend to the contrary. He cannot therefore, without more, complain if he is sent back to his original post. This is what happened in this case even if it be taken that the respondent had been reverted to his original rank because he has found unsuitable for the higher rank to which he had been given an officiating appointment.

It is however true that even an officiating person may be reverted to his original rank by way of punishment. It was therefore, observed in Dhingra's case [[1958] S.C.R. 828, 842] at p. 863,

> "Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstances may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty."

It is quite clear that the circumstances mentioned in this observation have not occurred in the present case. The reversion has not in any way affected the respondent so far as his condition and prospect of service are concerned. He, of course, lost the benefit of the appointment to the higher rank but that by itself cannot indicate that the reversion was by way of punishment because he had no right to continue in the higher post or to the benefits arising from it. He had been reverted in exercise of a right which the Government had under the terms of the officiating employment. The High Court seems to us to have been in error in thinking that the Government's refusal to supply the respondent with the reasons why action was taken against him proved that the reversion was a reduction in rank by way of punishment; the refusal cannot prove that. It may give rise to a suspicion about the motive which led the Government to take the action, but it is now firmly established that if the action is justifiable under the terms of the employment, then the motive inducing the action is irrelevant in deciding the question whether the action had been taken by way of punishment : see Parshotam Lal Dhingra's case [[1958] S.C.R. 828, 842] at p. 862. It does not require to be repeated now that unless the reversion is by way of punishment, s. 240(3) is not attracted.

The High Court seems to have been in error also in drawing an inference from the holding of the departmental inquiry that the respondent must have been reduced in rank by way of punishment. The departmental inquiry was held long after the order reverting the respondent had been passed and could not have been the occasion for the reversion of the respondent. The Government had the right to consider the suitability of the respondent to hold the position to which he had been appointed to officiate. It was entitled for that purpose to make inquiries about his suitability. This is all that the Government did in this case. This inquiry cannot show, whatever the findings may have been, that the reversion earlier made was by way of punishment.

Mr. Anthony for the respondent referred us to State of Bihar v. Gopi Kishor Prasad [A.I.R. 1960, S.C. 689] in which it was observed,

> "But, if instead of terminating such a person's service without any enquiry, the employer chooses to hold an enquiry into his alleged misconduct, or inefficiency, or for or some similar reason, the termination of service is by way of punishment, because it puts a stigma on his competence and thus affect his future career."

That case dealt with the discharge of a probationer officer on the ground that he was unsuitable. The observation there made was considered by this Court in the later case of The State of Orissa v. Ram Narayan Das [C.A. No. 61 of 1959, unreported) where it was said,

> "The third proposition in the latter case refers to an enquiry into allegations of misconduct or inefficiency with a view, if they were found established, to imposing punishment and not to an enquiry whether a probationer should be confirmed."

We would repeat that in the present case the enquiry was concerned, with ascertaining the suitability of the respondent for the higher rank and was not a punishment.

At one stage Mr. Anthony was inclined to argue that the enquiry was really a part of the original order of reversion and that it had been deliberately postponed so as to avoid the applicability of s. 240(3) of the Government of India Act, 1935. No such case is made in the plaint. Neither was it made in the Courts below nor can it be based on their findings. Such a case cannot now be made.

We think, therefore, that the appeal must be allowed with costs throughout and we order accordingly.

Appeal allowed.

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