

Sukhbans Singh

Vs

State of Punjab

Civil Appeal No. 412/1960

(CJI B. P. Sinha, T. L. Venkatarama Ayyar, K. Subha Rao,

N. Rajgopala Ayyangar, J. R. Mudholkar JJ)

06.04.1962

JUDGMENT

MUDHOLKAR, J. -

This is an appeal from the judgment of a Division Bench of the Punjab High Court upon a certificate granted by it under Article 133(1)(a) of the constitution declaring that the case is fit for appeal to this Court.

The appellant was directly recruited as Tehsildar in the year 1936. According to him his work was found to be extremely satisfactory and for this reason he was appointed as an Extra Assistant Commissioner on probation in the year 1945. His appointment amounted to promotion to the Provincial Civil Service (Executive Branch) and was made by selection through the Punjab Services Commission. The notification pertaining to the appellant's promotion appears in the Gazette of June 5, 1949, and dates from May 31, 1945.

According to the appellant, throughout his career as a public servant he had been very honest, hard-working and impartial and was extremely popular with all committee such as Hindus, Sikhs and Muslims. He also claims to have "helped the public cause of all communities alike".

Then, according to him, his popularity with the people was not appreciated by at least two of his superior officers, one of whom was Dewan X Hukan Chand, Sub-Divisional Magistrate, Fazilka and on account of that he had to face an enquiry on seven charges. The aforesaid enquiry was held by Mr. S. B. Kapur, Commissioner under the Public Servants (Inquiries) Act, 1850 (37 of 1850). He, however, exonerated the appellant pointing out that far from the gravamen of these charges, communal bias, being established "witness after witness not only for the defence but also for the prosecution has deposed that while the respondent was at Fazilka he had a good reputation for honesty". As a result of this report the Government, however, stopped the increment of the appellant for one year without future effect. The ground of doing so was that he had allotted some evacuee property to this father who was an evacuee from West Pakistan.

The appellant who had in the meanwhile been transferred from Fazilka, made a representation against the stoppage of increment. Upon that representation Mr. S. D. Midha, Deputy Commissioner wrote to the effect that the appellant had been working very hard to clear off heavy arrears and that his case deserves very sympathetic consideration. He was then transferred to Jullundur as Revenue Assistant in September 1950. It is the appellant's complaint that even before he joined his post the

mind of the Deputy Commissioner, Mr. Kashyap, was "poisoned" by some people against him and that before the Deputy Commissioner could see the appellants' work he wrote to the Government protesting against the appellant's transfer to Jullundur. This protest was, however, ignored by the Government and according to the appellant Mr. Kashyap treated this as "a personal grievance" and initially did not even allow the appellant to take independent charge of the post to which he was transferred. The appellant then refers to four specific instances in support of his contention that Mr. Kashyap was highly prejudiced against him. We do not think that any useful purpose will be served to set them out here. Then according to him when he was asked to collect funds for the Government College, Tanda, the Deputy Commissioner actually posted the C.I.D. to watch what he was doing and asked the C.I.D. to start a case against him, if possible. He, therefore, wrote to the Deputy Commissioner on September 6, 1951 upon which the Deputy Commissioner asked him to stop the collection. He, however, admits that despite all this Mr. Kashyap gave him a good report about his work. His complaint, however, is that inspite of his good report he received a warning from Government "at the instances of the wrong reports sent by the Deputy Commissioner which were based on malice." This warning was received by him on September 18, 1953. Prior to the receipt of this warning he was, however, reverted to his post of Tehsildar on May 20, 1952. According to him this warning was merely an after-thought. The warning which he received is in the following terms :

"Government have noticed with regret that while you are hard working and honest and possess adequate knowledge of revenue law and procedure, you have created an impression during the period under report that you were not free from communalism or intrigue. It has also been reported that you were in the habit of indulging in loose talk unnecessarily which created difficulties for you. Government hope this warning will assist in affecting an improvement."

Upon his reversion the appellant asked to be furnished the grounds of his reversion. But by a letter dated June 18, 1952, the Government refused to furnish him the grounds. In that letter it was claimed on behalf of the Government that the appellant could be reverted according to Rule 14.10 of the Civil Services Rules (Punjab) Vol. I, Part 1. His grievance, however, is that the provisions of Article 311(2) of the Constitution are violated.

The appellant made representation to the Government against his reversion on November 17, 1952. But it was rejected by the Government on March 2, 1953. He then preferred a memorial to the Government which was rejected on December 14, 1953. Thereafter he preferred a petition to the High Court of Punjab under Article 226 of the Constitution. The petition went up before a single Judge of that Court. The learned Judge quashed the order of the Government upon the ground that the appellant's reversion to the post of Tehsildar was by way of punishment and as he had not been afforded an opportunity of showing cause against the action taken is the provisions of Article 311 of the Constitution were contravened. The Government of Punjab preferred an appeal under the Letters Patent which was heard by a Division Bench of that Court. The learned Judges reversed the decision of the learned single Judge upon the view that the appellant was holding the post of Extra Assistant Commissioner as a probationer and his reversion from that post to his former post of Tehsildar did not amount to a punishment and consequently the provisions of Article 311 were not attracted. It is this order the appellant is challenging before us.

The appellant was selected to the post of Extra Assistant Commissioner by the Public Services Commission under Rule 17 of the Punjab Civil Services (Executive Branch) Rules, 1930 framed under section 96-B the Government of India, Act, 1919. That rule runs thus :

"The Government of Punjab shall ordinarily make appointments to the Service in pursuance of rule 5 from among candidates entered on the various registers in rotation as follows :-

#From Register B ... Two candidatesFrom Register A-I(Tehsildars and Naib-Tehsildars) ... One candidateFrom Register B ... Two candidatesFrom Register A-I(Tehsildar and Naib-Tehsildars) ... One candidateFrom Register B ... Two candidatesFrom Register A-II(Ministerial Governmentservants) ... One candidateFrom Register A-I(Tehsildars and Naib-Tehsildars) ... One candidateFrom Register B ... Two candidatesFrom Register C ... One candidateFrom Register B ... Two candidatesFrom Register A-II(Ministerial Governmentservants) ... One candidateFrom Register A-I(Tehsildars and Naib-Tehsildars) ... One candidateFrom Register B ... Two candidatesFrom Register A-I(Tehsildars and Naib-Tehsildars) ... One candidate##

and thereafter in the same rotation beginning again from Register B, provided that all such appointments shall in the first instance be either officer or substantive provisional."

Rule 5 which is referred to in rule 17 provides that members of the service shall be appointed by the Governor from time to time as required from among the accepted candidates whose names have been duly entered in accordance with the Punjab Civil Services Rules in one or the other of the Registers of accepted candidates required to be maintained under these rules. Rule 22 of these Rules provides that candidates on first appointment to the service shall remain on probation for a period, in the case of candidates appointed from Register A-I, or Registers A-II of eighteen months. One of the three provisos to rule 22 enable the Governor to extend the period of probation of any candidate. There are two more important rules which have a bearing on this case and, therefore; it would be desirable to quote them. Rule 23 which is one of them runs thus :

"Any officer appointed to the Service may, during the period of his probation be removed from the service under the orders of the Governor of Punjab; or if he was appointed from Register A-I or A-II may be prevented to his former appointment if in the opinion of the Governor of Punjab his work or conduct is unsatisfactory."

Rule 24 which is the other rule runs thus :

"On the completion of the period of probation prescribed by, or determined by, the Governor of Punjab under the provisions of rule 22, a member of the Service shall be qualified for substantive permanent appointment."

It is common ground that the period of probation of the appellant was not extended by the Governor in exercise of the power conferred upon him by and of the provisos to rule 22. The question to be first considered is what was the position of the appellant after the expiry of his probationary period of eighteen months ? Upon this point the learned single Judge, after quoting the observation of Khosla J., in another case said :

"Thus according to this Court a man who is on probation does not merely because his probation continues for more than the period prescribed by the rules become a permanent servant of the States, but if the periods of probation is unduly prolonged

or the confirmation is unduly delayed, confirmation will be assumed. In the present case the petitioner was recruited to the Provincial Civil Service with effect from the 31st May, 1945 and he continued to work as an officer of the service upto the 17th May, 1962. According to the rules the period of probation was eighteen months and there is no indication that his period of probation was by order of the Governor extended....." I am, therefore, of the opinion that the petitioner was not on probation as is submitted by the State."

Then the learned Judge went on to observe :

"No rule has been cited and I do not know of any which would show that a person who has been recruited by the Public Service Commission can after having been in service for seven years or so be reverted merely on the ground that he is officiating."

If the learned Judge meant by all this that a probationer must be deemed to have been confirmed in his post by sheer lapse of time we think, with respect, that he was in error. A probationer cannot, as rightly pointed out by the Division Bench, automatically acquire the status of a permanent member of a service, unless of course the rules under which he is appointed expressly provide for such a result. The rules governing the Provincial Civil Services of Punjab do not contain any provision whereby a probationer at the end of the probationary period is automatically absorbed as a permanent member of the Civil Service. What happens to such a person is clearly set out in 24 cit sup. Under the aforesaid rule such a probationer is merely qualified for substantive permanent appointment. Reading rr. 23 and 24 together it would appear that where a probation is not reverted by the Government before the termination of his period of probation he continues to be probationer but requires the qualification for substantive permanent appointment.

It has been held by this Court in *Parshotam Lal Dhingra v. Union of India* ([1958] S.C.R. 828.) that Article 311 makes no distinction between permanent and temporary posts and extends its protection equally to all Government servants holding permanent or the temporary posts or officiating in any of them. But the protection of Article 311 can be available only where the dismissal, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise. One of the tests laid down in that case for determining whether the termination of service was by way of punishment or otherwise is whether under the Service Rules, but for such termination, the servant has the right to hold the post.

Reliance is placed upon rule 24 of the Punjab Civil Service Rules and it is said that since it qualifies a probationer for being absorbed in a substantive-permanent appointment it gives him a right and the reversion of such a person deprives him of that right and thus amounts to punishment. The provisions of Article 311(2) are said to be attracted to the situation and where, as here, they have not been complied with the reversion must be regarded as illegal.

This argument assumes that a probationer who continues to be such without being reverted after the expiry of the period of probation has a legal right to be confirmed or to be treated as if he were confirmed. The rule in question says no more than this that at the end of the probationary period the probationer, unless reverted or absorbed in a substantive post will be eligible for being made permanent. In other words it means that he will continue to be a probationer unless he is reverted or absorbed in a permanent post. But the very fact that a person is a probationer implies that he has to prove his worth his suitability for the higher post in which he is officiating. If his work is not found to be satisfactory he will be liable to be reverted to his original post even without assigning any

reason. It would, therefore, not be correct to say that a probationer has any right to the higher post in which he is officiating or a right to be confirmed. A probationer being merely made eligible for being absorbed in a permanent post is in no better position.

Even though that is so, a probationer cannot be as pointed out in Dhingra's case ((1958) S.C.R. 828.) punished for misconduct without complying with the requirements of Article 311(2). The question then is whether it can be said that the appellant was so punished. The sequence of events which led up to a departmental inquiry against him, his exoneration, his transfer to Jullundur, the unsuccessful attempt of Mr. Kashyap, the Deputy Commissioner to have the transfer cancelled followed by his being asked to stop collecting funds for a Government College and then by his reversion on May 20, 1952 would go to show that the reversion was not in the ordinary course. No reason was given for his reversion but it would not be easy to say that the reversion must, therefore, be regarded as having been made in the ordinary course or in the bona fide exercise of his Government's undoubted power to revert a probationer because of his unsuitability for the higher post. For, even Mr. Kashyap had in fact commended his work as Revenue Assistant in Jullundur. Further, the District Board, Jullundur had passed a resolution on March 30, 1951 expressing its appreciation for the work done by the appellant in fighting the locust invasion. In addition, the Commissioner wrote in his report for the year ending December, 1951 that the appellant stood first in the consolidation work in the Punjab State during his stay at Jullundur. An "extract from the second progress of work in respect of villages taken up after April 1, 1952" is to the effect that as Revenue Assistant Jullundur, the appellant stood first in the Division in connection with land revenue collection work and that he had also collected Rs. 25,000 for Red Cross which was "an outstanding performance" and for which he received the "Government of Punjab commendation certificate". He also received the "President of India's Sanad and Silver Medal" for his excellent work in the Census of 1951. Shortly thereafter we find that the appellant was reverted. Though no reason were stated at that time, on September 18, 1953, that is, a year and half after the reversion he received the warning from the Government, which we have already quoted. The only reasonable inference which can be drawn from all these facts is that the Government in fact wanted to punish him for what it though was misconduct on his part and, therefore, reverted him. The omission of the Government to give reasons for the reversion does not make the action any the less a punishment but as the requirements of Article 311(2) were not fulfilled, as they ought to have been, the Government wanted to give the reversion the appearance of an act done in the ordinary course entailing no penal consequences. The circumstances clearly show that the action of the Government was mala fide and the reversion was by way of punishment for misconduct without complying with the provisions of Act. 311(2). The reversion of the appellant is, therefore, illegal.

We, therefore, allow the appeal, quash the order dated May 28, 1952, reverting the appellant and direct that costs here and in the High Court will be paid by the Government.

Appeal allowed.

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