State of Punjab

Vs

Jagdip Singh & Ors

Civil Appeal Nos. 290 to 293 of 1962

(P. B. Gajendragadkar, K. N. Wanchoo, N. Rajagopala Ayyangar, J. R. Mudholkar JJ)

19.09.1963

JUDGEMENT

MUDHOLKAR, J. –

These four appeals arise out of four writ petitions preferred by four persons under Art. 226 of the Constitution challenging a notification made by the Government of Punjab on October 31, 1957 "de-confirming" the petitioners from permanent posts of Tahsildars and according to them the rank of officiating Tehsildars. The petitions were heard together and were disposed of by a common judgment by Mehr Singh J. Appeals preferred against his judgment were dismissed summarily by a Division Bench of the Punjab High Court. The State of Punjab has come up before us by special leave against the decisions in all the four writ petitions and we have heard the appeals preferred by it together. This judgment will govern all these appeals.

The respondents were officiating Tahsildars in the erstwhile State of PEPSU. By notification No. RD/Est. 74 dated October 23, 1956 made by the Financial Commissioner, seven officiating Tahsildars, including the four respondents before us, were confirmed as Tahsildars with immediate effect. No posts were, however, available at that time in which the respondents could be confirmed. On October 24, 1956 the Rajpramukh of PEPSU sanctioned the creation of seven supernumerary posts of Tahsildars to provide liens for the Tahsildars who had been confirmed under the notification of October 23, 1956. While sanctioning these posts Rajpramukh ordered that the supernumerary posts will be reduced as and when permanent vacancies arose and that no pay will be drawn against these posts. On November 1, 1956 the State of PEPSU was merged with the State of Punjab by virtue of the operation of the States Re-organization Act, 1956. On November 12, 1956 the Deputy Accountant General Punjab, wrote to the Financial Commissioner to the Government of Punjab bringing to his notice the fact that seven Tahsildars were confirmed by the Financial Commissioner of PEPSU before the creation of supernumerary posts and suggested reconsideration of the action taken by the Government of PEPSU. On October 12, 1957 the Deputy Secretary to the Government of Punjab, Revenue Department, addressed the following memorandum to the Commissioner, Patiala Division :

> "Memorandum No. 4665-E(V)-57/3587 dated Simla 2, the 12th October, 1957.
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> Subject : Absorption of Tahsildars of erstwhile Pepsu State. By notification No. RD/Estt.-74, dated the 23rd October, 1956 the erstwhile Pepsu State Government in the Revenue Department confirmed Sarvshri (1) Malvindar Singh, (2) Balwant Singh, (3) Gurdhiana Singh, (4) Jagdip Singh, (5) Rajwant Singh, (6) Avtar Krishna Bhalla, and (7) Ram Singh as Tehsildars. As there were no permanent regular

vacancies available in the cadre of Tehsildar at the time of issuance of the above notification, seven supernumerary posts of Tehsildars were created by a subsequent order vide letter No. RD/18/(193)-E-56 dated the 24th October, 1956 of the erstwhile Pepsu State Government. The position has been examined in the Revenue Department of the new State Government. Since the availability of permanent posts should always precede confirmation and not follow it, and since supernumerary posts are not, as a rule, created to confirm officiating hands, the procedure adopted by the late Pepsu Government in confirming the above named seven Tehsildars was wholly wrong. In the circumstances, the Governor of Punjab is pleased to order the cancellation of Notification No. RD/Est.-74, dated the 23rd October, 1956 regarding confirmation of 7 Tehsildars and letter No. RD-18(193) E/56, dated the 24th October, 1956 regarding creation of 7 supernumerary posts of Tehsildars. The aforementioned seven Tehsildars will consequently stand deconfirmed reverting to their original status as officiating Tehsildars.

2. The Tehsildars concerned may please be informed accordingly.

#Sd/ V. P. GautamaDeputy Secretary, Revenue."##

On October 31, 1957 the Government of Punjab made a notification "de-confirming" the seven Tahsildars who were confirmed by the Financial Commissioner, PEPSU on October 23, 1956. What the Government of Punjab evidently meant by "de-confirming" was that the order of confirmation be treated as cancelled.

The respondents challenged before the High Court the action taken by the Government of Punjab on two grounds. In the first place they said that the action of the Government amounted to a reduction in rank and, therefore, it could not be taken without compliance with the requirements of Art. 311(2) of the Constitution. The second ground was that by virtue of the States re-organization, the respondents who held the status of permanent Tahsildars in the State of PEPSU could not be deprived of it by the successor Government. Both the contentions were accepted by Mehr Singh J.

The learned Advocate-General of Punjab challenges the view taken by the learned Judge on both the points and further contends that it is always open to the Government to abolish posts and that if the Government abolished the supernumerary posts its action was not justiciable and could not challenged in a petition under Art. 226.

In view of our conclusion that the respondents were never validly confirmed in their posts as Tahsildars, no question of the validity of the abolition of substantive posts held by the officers appointed to them could arise, and we do not therefore propose to deal with the larger question as to whether and if so, when and how such action could be challenged in Courts.

It was stated before us by the Advocate-General that the Punjab Tahsildari Rules were adopted by the former State of Patiala and that by virtue of a covenant entered into among the States which formed the PEPSU union, laws of Patiala State became the laws of the State of PEPSU after its coming into being. This position was not disputed by the respondents' counsel, and so, we are dealing with these appeals on the basis that at the relevant time, the Patiala laws applied. Rule 6(a) of those Rules provided that the posts of Tahsildars will be filled by (1) promotion of naibitahsildars; (2) direct appointment; (3) transfer from among officials employed as Superintendents of Deputy Commissioners' officer or head vernacular clerks of a Commissioner's or

Deputy Commissioner's office or district kanungos of not less than five years' standing. Rule 7(2) provides that when a substantive vacancy occurs or is about to occur in the post of Tahsildar it shall be filled from among the classes mentioned in r. 6 (a) in such proportions or rotation as the Government shall by general of special order direct. This rule thus empowers the Financial Commissioner to make an appointment of a person to the post of Tahsildar only when a substantive vacancy occurs or is about to occur in the post of Tahsildar. Rule 8 deals with the method of filling officiating vacancies and r. 9 deals with appointments against suspended lien. The present case is not governed by either of these two rules, and the only rule which could possibly be invoked for supporting the action of the Financial Commissioner is r. 7. Before, however, advantage could be taken of that rule, there had to be an actual or an anticipated substantive vacancy. Moreover, there is no rule which empowers the Financial Commissioner to create a post of Tahsildar. It is admitted before us that there was neither a substantive vacancy nor an anticipated vacancy in the cadre of permanent Tahsildars on October 23, 1956. Indeed, this is clear from the fact that for providing for lien for the seven Tahsildars who were confirmed by the Financial Commissioner on October 23, 1956, the Rajpramukh realised that new posts had to be created and, therefore, created seven supernumerary posts the very next day. Had there been any substantive vacancies, actual or anticipated, there would have been no occasion to create supernumerary posts. In the circumstances, therefore, only one conclusion must follow and that is that order of the Financial Commissioner had no legal foundation, there being no vacancies in which the confirmations could take place. The order of the Financial Commissioner dated October 23, 1956 confirming the respondents as permanent Tahsildars must, therefore, be held to be wholly void.

It was, however, argued before us that the order of the Rajpramukh dated October 24, 1956 and the order of the Financial Commissioner dated October 23, 1956 should be read as complementary to each other and that though the confirmation of the respondents preceded the creation of supernumerary posts we should infer that the Government of PEPSU intended that the respondents should be confirmed in accordance with law. No such ground has been urged in the petition and we have no material before us from which we could infer that the proposal to create supernumerary posts and the one to confirm the seven Tahsildars were being considered simultaneously, though by two different authorities. Apart from that, they are not in the proper sequence and cannot, therefore, be read as complementary. Further, we cannot read the two orders as parts of the same transaction because they have emanated from different authorities. It must be borne in mind that the power to create posts rests in the State. The Tahsildari Rules have not delegated to the Financial Commissioner, the appointing authority, the power to create the posts of Tahsildars. Nor again, can we read the order of the Rajpramukh of October 24, 1956 as appointing the respondents as permanent Tahsildars, as that order does not purport to do any such thing. In fact it clearly mentions the fact of the confirmation of the respondents and others. On the face of it, therefore the creation of supernumerary posts appears to be an after-thought and is of no avail as a means of validating the original order of confirmation.

The question then is as to the effect of a void order of confirmation. When an order is void on the ground that the authority which made it had no power to make it cannot give rise to any legal rights, and as suggested by the learned Advocate-General, any person could have challenged the status of the respondents as Tahsildars by instituting proceedings for the issue of a writ of quo warranto under Art. 226 of the Constitution. Had such proceedings been taken it would not have been possible for the respondents to justify their status as permanent Tahsildars and the High Court would have issued a writ of quo warranto depriving the respondents of their status as permanent Tahsildars. Now, where the Government itself realizes that an order made by an authority under the Government is void, is it powerless to do anything in the matter ? Is it bound to give effect to a void

order and treat as confirmed Tahsildars persons who have no legal right to be treated as confirmed Tahsildars ? Is it not open to the Government to treat the confirmation as void and notify the persons affected and the public in general of the fact of its having done so by issuing a notification of the kind it made on October 31, 1957 ? In our opinion where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law be deemed to have been validly appointed to the post or given the particular status. No doubt, the Government has used the expression "de-confirming" in its notification which may be susceptible of the meaning that it purported to undo an act which was therefore valid. We must, however, interpret the expression in the light of actual facts which led up to the notification. These facts clearly show that the so-called confirmation by the Financial Commissioner of PEPSU was no confirmation at all and was thus invalid. In view of this, the notification of October 31, 1957 could be interpreted to mean that the Government did not accept the validity of the confirmation of the respondents and other persons who were confirmed as Tahsildars by the Financial Commissioner, PEPSU.

It was next contended that the respondents were in fact confirmed Tahsildars of the State of Punjab on November 1, 1956, having lien on their posts and that by virtue of the Government notification de-confirming them they have become merely officiating Tahsildars, thus having lien only on the post of naib-Tahsildars. This, it was said, amounted to a reduction in rank and further that it affected their seniority vis-a-vis other Tahsildars and prejudiced their future promotion. Relying upon the decision of this Court in Parshotam Lal Dhingra v. Union of India ([1958] S.C.R. 828.) it is contended that their reduction in rank must be held to be by way of punishment and that consequently without recourse to the procedure indicated in Art. 311(2), this could not be done. On the other hand the Advocate General, Punjab, contends that the action of the Government in issuing the notification does not operate as a punishment and that, therefore, Art. 311(2) is not attracted. We have already held that the respondents could not be validly confirmed as Tahsildars by the Financial Commissioner of PEPSU. Therefore, even though upon their allocation to the State of Punjab as from November 1, 1956, they were shown as confirmed Tahsildars, they could not in law be regarded as holding that status. Legally their status was only that of officiating Tahsildars. The notification in question in effect recognises only this as their status and cannot be said to have the effect of reducing them in rank by reason merely of correcting an earlier error. Article 311 (2) does not, therefore, come into the picture at all.

The learned Advocate-General of Punjab contended that for the application of Art. 311(2) not only should the reduction in rank be by way of punishment but also that the action taken by the Government should be on a ground personal to the officer concerned. In other words, the submission was that the punishment must be for misconduct. In support of this view, he has relied upon the decision of a single Judge of the Madras High Court in N. Devasahayam v. The State of Madras (I.L.R. [1958] Mad. 158.) which was affirmed by the Division Bench of that Court in appeal under Letters Patent. That decision is reported in the same volume at p. 968. In that case the question was whether loss of seniority which results from re-adjustment and re-fixing of seniority inter se between certain officers in the service would amount to a reduction in rank so as to attract the application of Art. 311(2). This contention was rejected both by the learned single Judge and the Division Bench for the reason that the reduction in rank contemplated by Art. 311 (2) was one by way of punishment, which in its turn implied some conduct on the part of the officer which led to the reduction. Prima facie this view appears to be correct and to accord with the effect of the decision of this Court in Dhingra's case ([1958] S.C.R. 828.). However, in the present appeals we are not called upon to express a definite opinion on this aspect of the matter.

It was contended on behalf of the respondents that the Punjab Government was incompetent to rectify a mistake made by the Government of PEPSU or the Financial Commissioner of PEPSU. The answer to this is to be found in s. 116 of the States Re-organization Act, 1956. Sub-section (1) thereof deals with the continuance of an officer in the same post. Sub-section (2), however, provides that nothing in the section shall be deemed to prevent a competent authority after the appointed day from passing in relation to any such person any order affecting his continuance in such post or office. This provision is thus wide enough to empower the successor Government, which would be the competent authority under the Act, to make the kind of notification with which we are concerned in this case.

For all these reasons we hold that the High Court was in error in granting the writ petition to the respondents. We, therefore, set aside its judgment and dismiss the writ petitions. In the circumstances of the case we direct costs throughout to be borne as incurred.

SUBBA RAO, J. –

I have had the advantage of perusing the judgment prepared by my learned brother Mudholkar J. I regret my inability to agree.

The facts lie in a small compass. In the year 1944, the four respondents were appointed as naib-Tahsildars in the State of Patiala. Presumably after they passed the prescribed tests and their work was found satisfactory, in the year 1949 they were appointed to officiate as Tahsildars by the Pepsu Government. On October 23, 1956, after they had put in a service of about 8 years as Tahsildars, they were confirmed with immediate effect as Tahsildars. The merger of the State of Pepsu and the State of Punjab took place on November 1, 1956. From that date, under the provisions of the States Re-organization Act, 1956, the respondents became the servants of the Punjab State. In November 1957, the respondents were informed that they were "de-confirmed" and reverted to their original status as officiating Tahsildars. The respondents filed petitions under Art. 226 of the Constitution in the High Court of Punjab at Chandigarh, for quashing the said order and notification reverting them to the rank of officiating Tahsildars. The High Court held that the order of the Pepsu Government confirming the respondents as permanent Tahsildars was binding on the Government of the State of Punjab and that it had no power to reduce their rank without complying with the provisions of Art. 311(2) of the Constitution. In that view, the High Court issued writs of certiorari for the relief prayed for. Hence the appeals.

The learned Advocate-General of Punjab raises before us the following three contentions : (1) The order made by the Pepsu Government confirming the respondents was in total disregard of the Punjab Tahsildari Rules, and therefore, the successor Government was well within its rights to rectify the mistake committed by the predecessor Government. (2) Article 311 of the Constitution has no application in a case where the Government reduces the rank of a Government servant without any reference to his conduct but only for the reason that the previous order was contrary to the rules. And (3) assuming that the earlier order was good, it is always open to the Government to abolish the posts and such an action is not justiciable under Art. 226 of the Constitution, as it does not violate any statutory provision.

As I am holding in favour of the respondents on the first two points, it is not necessary to express my view on the third point.

The first question turns upon the validity of the orders may by the Pepsu Government confirming

the respondents as Tahsildars. As the argument turns upon the relevant orders, it would be convenient to read the material parts of the said orders :

Notification No. RD/Est.-74 dated the 23rd October, 1956.

The following officiating Tahsildars are confirmed with immediate effect :

(The names of the respondents and others are given.)

Sd. .....

Financial Commissioner.

Letter from the Deputy Secretary to Government to the Commissioner, Pepsu, Patiala, dated the 24th October, 1956.

RD 18(193) E/56.

To

The Commissioner, Pepsu, Patiala.

Sir,

I am directed to convey sanction of His Highness the Rajpramukh to the creation of seven supernumerary posts of Tahsildars in the pay scale 270-420 to provide liens for the following Tahsildars who have been confirmed under Notification No. 71, dated the 23rd October, 1956.

(The names of the respondents and others are given.)

These supernumerary posts will be reduced as and when permanent vacancies arise. No pay can be drawn against these posts.

#Sd.

R. S. Kang,

Deputy Secretary to Government.

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A copy of this letter was sent to the Finance Department. Rule 7(2) of the Punjab Tahsildari Rules reads :

> "When a substantive vacancy occurs or is about to occur in the post of tahsildar it shall be filled from among the classes mentioned in the rule 6(a) in such proportions or rotation as the local Government shall by general or special order direct. The promotion of naib-tahsildars employed in foreign service will be regulated on the principle laid down in Fundamental Rule 113."

Rule 6(a) says that posts in the service shall be filled up in the case of Tahsildars, inter alia, by

promotion of naib-Tahsildars. I am assuming that similar rules were in vogue in the Pepsu State. It is contended that on October 23, 1956, when the Financial Commissioner confirmed the officiating Tahsildars there were no corresponding substantive vacancies in the posts of Tahsildars and, therefore, the appointments were void. The subsequent creation of supernumerary posts by the Government, the argument proceeds, did not have retrospective effect and that, as the Finance Commissioner did not purport to make a fresh order of confirmation after the creation of the said supernumerary posts, the respondents did not get any title to their posts. This argument, if I may say so, runs in the teeth of the clear intention of the appropriate authorities that made the said orders, and asks us to construe the said orders as provisions of a statute instead of putting a reasonable construction on the said orders to effecuate the real intention of the makers of the orders. It cannot be denied that a State can create supernumerary posts if the exigencies of administration require. It is in substance creation of posts to meet a given situation. It is a wellknown device adopted by the executive for confirming its servants if the number of permanent posts exceed the sanctioned strength of the cadre. Therefore, if the order dated October 24, 1956 was made either on October 23, 1956 or earlier, it would be impossible to contend that the order of confirmation made on October 23, 1956 was bad. But what prevents the Government in order to get over a technical difficulty to make an order creating supernumerary posts to take effect earlier than that on which the said order was made ? Indeed the said order in express terms refers to the earlier order of the Commissioner. It says that the supernumerary posts were created to provide liens for the Tahsildars confirmed on October 23, 1956. This order, therefore, fills up the lacuna found in the earlier order and thus validates it.

Assuming that the order passed by the Government on October 23, 1956, could not be given retrospective effect, the result could not be different. The order of the Commissioner would take effect from October 24, 1956. The Commissioner was admittedly the appointing authority. He confirmed the respondents, but his order could not take effect for want of permanent vacancies. The Government by creating supernumerary posts made the order effective. In one view the order would take effect from October 23, 1956 and in another view, it would take effect from October 24, 1956 : in either view it was a valid order. I, therefore, agree with the High Court that the order of confirmation was good, and that the Pepsu Government could not have reduced the rank of the said officers duly confirmed except in the manner prescribed. After the States Re-organization Act, 1956, the said respondents became the servants of the Punjab State. The Punjab State also could not reduce their rank except in the manner prescribed by the rules and the provisions of the Constitution.

The second argument turns upon the construction of Art. 311 (2) of the Constitution. It reads :

> "No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him."

In the present case, if the order of the Government stands, the respondents were certainly reduced in rank, for before the order they were permanent Tahsildars, but after the order they become officiating Tahsildars, with liens on their substantive posts of naib-tahsildars. Their future prospects for promotion were affected, for other officers in the State Punjab, who would have been juniors to them, must now, after the said order, have taken precedence over them. A plain reading of the Article certainly entitles the respondents to have a reasonable opportunity of showing cause before being reduced in rank. But the learned Advocate-General contends that for the application of the said clause of the Article the punishment of reduction in rank should be in the context of the

Government servant's conduct and where, as in the present case, an order is made dehors his conduct and only for correcting an alleged error committed by the previous Government, the said clause has no application. I find it difficult to accept this argument. If these arguments were correct, it would lead to an extraordinary result, namely, that a Government servant who had been guilty of misconduct would be entitled to reasonable opportunity whereas an honest Government servant could be reduced in rank contrary to the provisions of the statutory service rules without giving him such an opportunity. This anomaly is not created by Art. 311(2), for the words used therein are wide enough to take in both categories, but by introducing words of qualification in the Article which are not there.

Conduct of a party is certainly relevant to punishment. Ordinarily punishment is meted out for misconduct. If there was no misconduct, there could not be a punishment. Punishment is, therefore, correlated to misconduct both in its positive and negative aspects; that is to say, punishment could be sustained if there was misconduct. The reasonable opportunity given to a Government servant enables him to establish that he does not deserve the punishment because he has not been guilty of misconduct. It is no doubt open to the Government to establish that the reduction of rank is not a punishment because the said Government servant has no right to a substantive rank and no evil consequences have flown from the reduction. If those two facts were established, Art. 311 would not apply, not because the punishment was not related to the conduct of the Government servant, but because it was not a punishment. The only question relevant, therefore, under Art. 311(2) is whether reduction in rank in a particular case is punishment or not. If that is punishment, the Government, in my view, obviously cannot take a advantage of the fact that the punishment has been illegally meted out to him though he has not been guilty of any misconduct. This Court, in Parshotam Lal Dhingra v. The Union of India ([1958] S.C.R. 828.), has finally, and authoritatively decided this point. On the question of criteria to be applied to ascertain whether an order of the Government amounts to punishment or not, Das C.J., speaking for the Court summarized his conclusions therein. The learned Chief Justice dealing in particular with a case of reduction in rank observed, at p. 863 :

> "A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the Government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank."

Finally, he proceeded to observe, at p. 863 :

> "In spite of the use of innocuous expressions the court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences or the kind hereinbefore referred to. If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Art. 311, which give protection to Government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant."

This decision, in my view, is a clear authority on the interpretation of Art. 311(2) of the Constitution. The question that falls to be considered under that Article is whether the Government servant was dismissed or removed or reduced in rank as punishment. It would be punishment if

either of the said two tests was satisfied namely, if he had a right to the post or if he had been visited with evil consequences of the kind mentioned in the abovementioned judgment. If either of the said two tests was satisfied, he was punished; and if so, he should be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The argument of the learned Advocate-General is untenable for three reasons. By accepting it, (i) we would be adding a third test, (ii) we would be introducting an anomaly viz., a servant guilty of misconduct gets a preferential treatment, and (iii) we would be confusing the reason for punishment with punishment itself.

Strong reliance is placed upon the judgment of a Division Bench of the Madras High Court in Devasahayam v. The State of Madras (I.L.R. [1958] Mad. 158) in respect of the contention that unless a reduction of rank is connected with the misconduct of a Government servant, Art. 311 of the Constitution cannot be invoked. In that case, the appellant as well as certain others was appointed by the Government of Madras as Assistant Commandant, Special Armed Police, Madras, in 1948 during the Hyderabad Action. When normal conditions were restored, the Government passed an order in and by which it appointed the appellant and others who had been serving in the Special Armed Police, Madras, in posts in the Madras Police Service. In that order the appellant was shown as first in the list. After a lapse of more than 5 years, the Government of Madras passed another order fixing the seniority of the Deputy Superintendent of Police in a different way. The question raised in that case was whether the changes made in the seniority list affecting the appellant adversely was reduction of rank within the meaning of Art. 311(2) of the Constitution and whether, as no reasonable opportunity was given to the affected parties within the meaning of that Article, the said second order was bad. The Court found that the refixation of seniority on what the Government considered to be just and equitable grounds was a matter of policy and was well within its powers. On that finding the question arose where Art. 311(2) of the Constitution would apply to that case. The learned judges, after considering the decisions of this Court, held that Art. 311(2) of the Constitution would be attracted only if a Government servant was punished on any ground personal to the servant concerned. This decision would have relevance only if a Government servant was dealt with in a legally permissible manner by the Government without any reference to his misconduct. Indeed, on the facts of that case the High Court proceeded on the basis that refixation of seniority was legally permissible. The decisions referred to in that judgment were also related to valid orders made by the Government dehors misconduct of the Government servants concerned. In all those decisions no punishment was inflicted upon the Government servant, for he did not satisfy either of the two tests laid down in, Parshotam Lal Dhingra's Case ([1958] S.C.R. 828.). But in the present case I have held that the Government has no power to "de-confirm" the respondents who were lawfully appointed as permanent Tahsildars. If that be so, their reduction in rank was punishment inflicted on them. They were punished, though they were not guilty of any misconduct. The said judgment and the decisions referred to therein have therefore no application to the present case.

I, therefore hold that the respondents had a right to occupy a substantive rank in the posts of Tahsildars and their reduction as officiating Tahsildar was certainly reduction in rank as punishment.

In this view, it is not necessary to express my view whether, if the reduction in rank of the respondents was not punishment, the High Court could have interfered under Art. 226 of the Constitution on the ground that the Government acted in derogation of the statutory rules.

In the result, the appeals fail and are dismissed with costs.

ORDER BY COURT

In view of the opinion of the majority, the appeals are allowed. Costs throughout will be borne as incurred.

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