

Union of India and Others

Vs

R. S. Dhaba

Civil Appeal No. 882 of 1966

(Ramaswami, JJ)

07.03.1969

JUDGMENT

RAMASWAMI, J. -

1. This appeal is brought by special leave from the judgment of the Punjab High Court dated May 28, 1965 in Letters Patent Appeal No. 192 of 1965.
2. The respondent joined the Income-tax Department as an Upper Division Clerk. He was confirmed as an Upper Division Clerk with effect from December 1, 1949. On October 25, 1951 he was promoted as Inspector of Income-tax in an officiating capacity. On April 8, 1953 the respondent was "promoted to officiate until further orders as Income-tax Officer, Class II, Grade III". The order of the Commissioner of Income-tax dated April 8, 1953 is to the following effect :

"ORDER

Establishment Gazetted Class II servants promotion, transfer and posting of Shri Ranjit Singh Dhaba, officiating Inspector, Special Survey Circle, Amritsar is promoted to officiate until further orders as Income-tax Officer, Class II, Grade III in the scale of Rs. 278-25-560-EB-30-800 and posted as Income-tax Officer, Special Survey Circle, Patiala with effect from the date he relieves S. Bahadur Singh since reverted. He is also appointed to hold charge of Special Survey Circle Patiala II in addition to his own duties relieving S. Gurbax Singh since reverted.

He should relieve both S. Bahadur Singh and S. Gurbax Singh as soon as possible but not later than 14th April, 1953.

Sd/- P. K. Sen Gupta, Commissioner of Income-tax.###

On May 22, 1964 the respondent was reverted from his officiating position of Income-tax Officer, Class II as his work was not considered satisfactory. The order of reversion reads as follows :

"ORDER

Establishment Gazetted Class II Income-tax Officer - Reversion of - Shri R. S. Dhaba, officiating Income-tax Officer, Class II at present employed as Income-tax Officer, E-Ward, Ludhiana, having been found unsuitable after trial to hold the post of Income-tax Officer, Class II is hereby reverted as officiating Inspector, Income-tax with immediate effect.

Sd/- S. R. Mehta Commissioner of Income-tax.###

The respondent thereupon moved the High Court for grant of a writ to quash the order of reversion dated May 22, 1964. It was contended on behalf of the respondent that the order of reversion was made by way of punishment and the provisions of Article 311 of the Constitution were attracted and the procedure contemplated by that Article should have been followed. The Single judge allowed the writ petition by his judgment dated May 12, 1965 holding that the reversion of the respondent from the officiating position of Income-tax Officer' Class II to a lower position of officiating Inspector of Income-tax was tantamount to a reduction in rank and the respondent was entitled to the safeguards provided in Article 311 of the Constitution. The appellants took the matter in appeal under the Letters Patent but the appeal was dismissed on May 28, 1965.

3. It was contended by Mr. A. K. Sen on behalf of the respondent that the order of reversion was made by way of punishment and the provisions of Article 311(2) of the Constitution were attracted. It was pointed out that in his demi-official letter dated February 6, 1964 Mr. M. Kasivisvanatha Pillai, the then Commissioner of Income-tax, said that the respondent should be reverted because of the large number of complaints which the department had received against the integrity of the respondent and the bad reports received by him from his superiors. It was said that the Commissioner was largely influenced by the complaints received against the respondent about his honesty while coming to the conclusion that he was not suitable for the post of Income-tax Officer. We are unable to accept the argument of Mr. Sen that the order of reversion is punitive in character and that the procedure of Article 311(2) of the Constitution is applicable to this case. In the order of reversion dated May 22, 1964 there is nothing to show that a stigma was attached to the respondent. No reference is made to the imputation on the integrity of the respondent and the only reason given is that the respondent was found unsuitable to hold the post of Income-tax Officer, Class II. It is well-established that a Government servant who is officiating in a post has no right to hold it for all time and the Government servant who is given an officiating post holds it on the implied term that he will have to be reverted if his work was found unsuitable. In a case of this description a reversion on the ground of unsuitability is an action in accordance with the terms of which the officiating post is held and not a reduction in rank by way of punishment to which Article 311 of the Constitution could be attracted. It is of course well-settled that temporary Government servants are also entitled to the protection of Article 311(2) of the Constitution in the same manner as permanent Government servants if the Government takes action against them meting out one of the three punishments, namely, dismissal, removal or reduction in rank. (See *Parashotam Lal Dhingra v. Union of India*. (1958 SCR 828) But this protection is only available where the dismissal, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise. As pointed out in *Parashotam Lal Dhingra's case*, (supra) the two tests applicable in a matter of this description are : (1) whether the Government servant has a right to the post or the rank or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the Government servant had been punished. Further, even though misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the express or implied terms of the contract of employment or under the statutory rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is wholly irrelevant. The test for attracting Article 311(2) of the Constitution in such a case is whether the misconduct or negligence is a mere motive for the order of reversion or termination of service or whether it is the very foundation of the order of termination of service of the temporary employee (see the decision of this Court in *Chamapaklal Chimanlal Shah v. The Union of India* ((1964) 5 SCR 190). In the present case, however, the order of reversion does not contain any express words of stigma attributed to the

conduct of the respondent and, therefore, it cannot be held that the order of reversion was made by way of punishment and the provisions of Article 311 of the Constitution are consequently attracted. This view is supported by the decision of this Court in *The State of Bombay v. F. A. Abrabam*, ((1964) 5 SCR 190) in which the respondent who held the substantive post of Inspector of Police and had been officiating as the Deputy Superintendent of Police was reverted to his original rank of Inspector without being given any opportunity of being heard in respect of the reversion. His request to furnish him with reasons of his reversion was refused. Later a departmental enquiry was held behind his back in respect of certain allegations of misconduct made against him in a confidential communication from the District Superintendent of Police to the Deputy Inspector General of Police but these allegations were not proved at the enquiry. The Inspector General of Police thereafter wrote to the Government that the respondent's previous record was not satisfactory and that he had been promoted to officiate as Deputy Superintendent of Police in the expectation that he would turn a new leaf but the complaint made in the confidential memorandum was a clear proof that the respondent was habitually dishonest and did not deserve promotion. As the order of reversion was maintained by the Government, the respondent filed a suit challenging the order. The suit was decreed by the Court of first instance and the decree was affirmed by the High Court on appeal. On further appeal to this Court it was held that the reversion of the respondent on the ground of unsuitability was an action in accordance with the terms on which the officiating post was being held and was not a reduction in rank by way of punishment to which Section 240 of the Government of India Act, 1935 would be attracted. The appeal of the Government was allowed and the suit of the respondent dismissed. A similar view was expressed by this Court in *I. R. Saksena v. State of Madhya Pradesh* and *Jasbir Singh Badi v. Union of India & Others*.

4. We are accordingly of opinion that in the present case the High Court was in error in holding that the reversion of the respondent from the position of officiating Income-tax Officer, Class II to a lower position as Inspector of Income-tax was tantamount to a reduction in rank and, therefore, the respondent was entitled to the safeguards provided in Article 311 of the Constitution.

For these reasons we hold that the judgment of the Punjab High Court dated May 28, 1965 should be set aside and the writ petition filed by the respondent should be ordered to be dismissed. We accordinally allow the appeal. But there will be no order as to costs throughout.

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