

Mohammad Ibrahim

Vs

The State of Andhra Pradesh and Others

Civil Appeal No. 1185(N) of 1969

(J.C. Shah, K.S. Hegde JJ)

04.12.1969

JUDGMENT

SHAH, J. -

1. Mohammad Ibrahim, appellant in this appeal entered service in the Public Works Department of the State of Hyderabad as a Sub-Overseer. In December, 1950, he was promoted to the post of a Supervisor. He was later promoted on November 23, 1963, as Assistant Engineer but was reverted on April 23, 1965, to his substantive post of Supervisor. The appellant filed a petition in the High Court of Andhra Pradesh for a writ quashing the order of reversion. Obul Reddy, J., dismissed the petition holding that the order of reversion was made on administrative grounds and the appellant being only a temporary employee and the emergency during which he was promoted as Assistant Engineer having ceased he could lawfully be reverted to substantive post. In appeal under the Letters Patent, the High Court confirmed the order passed by Obul Reddy, J., holding that the order of reversion did not amount to imposition of punishment. The High Court also held that merely because for administrative exigencies persons who were junior to the appellant in service were retained and the appellant was reverted did not amount to infringement of the guarantee of the equal protection under the Constitution. In the view of the High Court the appellant was reverted because his work was not found satisfactory and since the order on the fact of it did not involve any penal consequences there was no violation of Article 311 or Article 14 of the Constitution.

2. The order reverting the appellant to the post of Supervisor does not involve any penal consequences nor does it cast any stigma upon the appellant. There was no violation of the protection of Article 311 of the Constitution, merely because the appellant was not given an opportunity to explain why he should not be reverted. Mr. Garg, for the appellant contends that the appellant had averred in the petition that the order was made with a view to harass the appellant because he had charged some officers of the Department with corruption, but the Trial Court did not consider that plea, and the High Court in appeal after referring to that plea also did not deal with it. Counsel says that since the appellant had not fair trial of his case the order is liable to be set aside.

3. There is no reference in the order passed by Obul Reddy, J., to the plea that the order was made mala fide raised by the appellant in his petition. The High Court in appeal observed in the course of the judgment :

"The appellant was temporarily promoted as Assistant Engineer and was reverted by an order which merely states that he was appointed as Assistant Engineer under the Emergency provision of rules in G.O. Ms. 1130, dated 23-4-1965 was reverted.

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4. The High Court then proceeded to set out the defence out in Paras 6 and 7 of the affidavit filed in reply, but did not consider the plea that the order was made maliciously or for a collateral purpose. In his petition the appellant and displeasure by the authorities in exposing corruption and wastage by the officers in the Electricity Department", said that "the punishment put upon him by passing the Constitutional guarantee was illegal." He also said that his work as Assistant Engineer was satisfactory. He then set out in Paragraphs 16, 17 that he had reported to the Executive Engineer the corrupt practices of the Divisional Accountant, but no action was taken against him. In paragraph 27, 39, he made several allegations which if true may support his case that the order or reversion was "motivated by mala fides". In para 41 he averred that the order of reversion was passed upon him as punishment "by enraged authorities to shield the corrupt officers who had failed to prove anything against him and on the other hand reverted him from a Gazetted post to a non-Gazetted post" and that "the authorities had misused the Rule 10-A (1) of the Andhra Pradesh Services Rules". In Para 42 he averred that the impugned order of reversion was passed to harass him, and that the authorities were trying to punish him and shield the corrupt practices of officers.

5. In reply to the allegations made by the appellant practically nothing was stated in the affidavit filed on behalf of the State. It was merely said that the appellant was "short tempered, quarrelsome" and that he had been censured by the Chief Engineer, and that the allegations made against the officers were found baseless except one allegation against the Divisional Accountant which was referred to the Accountant-General. In Para 5 it was stated that a warning memo was issued to the appellant for not joining at the new station, in spite of repeated instructions and for "making advance copies to the higher authorities."

6. A number of serious allegations were made by the appellant in his petition, in support of his plea that the order passed against him was made out of malice and practically no reply was submitted to that by the State. Apparently the plea was urged before the High Court. The High Court observed in the course of the judgment that the appellant had challenged the order on the "ground of mala fide" but did not proceed to consider that plea. We are of the view that there has been no fair trial of the petition filed by the appellant. The order of the High Court is set aside and the case is remanded for trial according to law.

7. Costs in this Court and in the High Court in the appeal under the Letters Patent will be costs in the petition.

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