The State of Bihar and Others

Vs

Shiva Bhikshuk Mishra

Civil Appeal No. 1363 of 1966

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

14.09.1970

JUDGMENT

GROVER, J. -

1. This is an appeal by certificate from a judgment of the Patna High Court. The respondent was holding the substantive post of Sergeant in the police force till July 31, 1946, in the State of Bihar. On August 1, 1946, he was promoted to officiate in the higher post of Subedar. On January 9, 1948, while he was still holding the substantive post of a Sergeant he was promoted to officiate temporarily as a Subedar-Major. It appears that on October 3, 1950, the Commandant of the Bihar Military Police, Muzaffarpur wrote to the Deputy Inspector-General of Police, Armed Forces, mentioning an incident between the respondent and his orderly on the night of September 22, 1950. The incident involved a physical assault by the respondent on the orderly. The Commandant made an inquiry in the matter and expressed the opinion that the respondent had actually assaulted his orderly by taking the law into his own hand instead of bringing complaint which existed against the orderly to the notice of the higher authorities for proper action. In the penultimate paragraph of his letter the Commandant wrote, "to drop the above incident without taking action, in order to prevent any re-occurrence of the Subedar Major's gross misconduct, I suggest he be censured for his unsatisfactory behaviour where he failed to maintain the required discipline". The Deputy Inspector-General wrote a note to the Inspector-General as follows :

> "Kindly see pp. 15-12 Which relate to the notorious Subedar-Major S. B. Missir of M.B.P. VI whose conduct is already under enquiry by a Board to be presided over by the I.G. himself.
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> In this particular case Subedar-Major Missir appears to have tripped up very badly and I feel that transfer, as recommended by D.I.G.
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> It is indeed strange that our Board accepted the Subedar-Major for promotion to the rank of Sergeant-Major although he was not yet undergone training of a Sergeant. In a similar case the then D.I.G.A.F. recommended that a temporary Sergeant must undergo the Sergeant's course before his case was considered for promotion. The Subedar-Major, is perhaps, too old to learn and in any case cannot be posted as a Sergeant-Major in view of the fact that he was never trained as a Sergeant and has never worked in a district. He was originally appointed in the R.P.P. by Mr. Creed's Board.
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> I recommend that the officiating Subedar-Major should be reverted to his substantive

> rank of Sergeant and posted to Hazaribagh. The question whether he should be retained in service will be decided after the Board of enquiry concludes its labour. I am purposely suggesting his posting to Hazaribagh because he will be far away from the witnesses and would not be able to tamper with the evidence recorded of each witness. Even the present charge against Subedar Major Missir is serious but the order of reversion would meet with the case, as it is obvious that he is not likely to make either a suitable Subedar-Major or Sergeant-Major."

The Inspector-General made an order on November 2, 1950, "as proposed". In the first week of November, 1950, the respondent was asked to attend a Board of Enquiry for answering charges of misconduct. On November 14, 1950, the respondent was reverted to his substantive post of Sergeant. On April 7, 1953, an order was made by the Deputy Inspector-General dismissing the respondent from service.

2. In February, 1954, the respondent filed a suit for a declaration that his demotion from the tank of a Subedar-Major to that Sergeant and dismissal from service were wrongful, illegal and inoperative and that he had all along remained a Subedar-Major. He further claimed a decree for a sum of Rs. 3,118/- on account of arrears of pay as detailed in Schedule I attached to the plaint with future interest. The Trial Court dismissed the suit on the view that the order of reversion did not contain any stigma on the competence and character of the respondent and that it had not been made by way of punishment. The High Court on appeal reversed the decision of the Trial Court on the finding that the "reversion was not in the usual course or for administrative reasons but it was after a finding on an inquiry about some complaint against the plaintiff and by way of punishment to him". The order of dismissal was set aside on the short ground that if the respondent continued to remain in the post of Subedar-Major even in an officiating capacity on the date with effect from which the order of dismissal was passed the provisions of Article 311(1) had not been complied with. The Deputy Inspector-General who had passed the order of dismissal was subordinate to the authority by which he had been appointed to officiate in the post of Subedar-Major, that authority being the Inspector-General of Police. The dismissal order was, therefore, invalid and not binding on the respondent. He was granted the declaration asked for by him together with a decree for Rs. 3,118/- with future interest at the rate of 6% per annum.

3. The sole point which falls for determination is whether the reversion of the respondent from the post of officiating Subedar-Major was made in circumstances which would attract the applicability of Article 311(2) of the Constitution. Mitter, J., delivering the judgment of this court in State of Punjab and Another v. Shri Raj Bahadur ((1968) 3 SCR 234), stated the following propositions on a consideration of the numerous decisions on the point :

> "1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.
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> 2. The circumstances preceding or attendant on the order of termination have to be examined in each case, the motive behind it being immaterial.
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> 3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.

> 4. An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service does not attract the operation of Article 311 of the Constitution.
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> 5. If there be a full-scale departmental enquiry envisaged by Article 311, i.e. an Enquiry Officer is appointed, a charge-sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article."

4. The argument sought to be raised on behalf of the appellant is that the order of reversion of the respondent to his substantive post casts on aspersion against his character or integrity. Even if the motive behind the making of the order was the report of the Deputy Inspector-General, dated November 1, 1950, consequent on the communication received from the Commandant, dated October 3, 1950, arising out of the incident involving an assault by the respondent on his orderly it would not be a case of reversion by way of punishment. A great deal of stress is laid on the fact that no departmental enquiry as envisaged by Article 311 was made into the abovementioned incident before reversion was ordered. Our attention has been invited to this court's decision in the Union of India and Another v. R. S. Dhaba, Income-tax officer, Hoshiarpur ((1969) (3) SCC 603), in which Mr. Pillai the then Commissioner of Income-tax had said that the officer concerned should be reverted because of the large number of complaints which the department had received against his integrity and the bad reports received by him from his superiors. The successor of Mr. Pillai Mr. S. R. Mehta made an order on May 22, 1964, to the effect that Dhaba officiating Income-tax Officer, Class II, had been found unsuitable, after trial, to hold that post and his reversion was ordered as Officiating Inspector, Income-tax. It was held by this court that the order of reversion had not been made by way of punishment and the decision of the High Court to the contrary was set aside. A large measure of support is sought to be derived from this decision because of the previous opinion of the Commissioner of Income-tax which was highly prejudicial to Dhaba and the argument raised there was that the reversion of Dhaba was the direct result of the note of Mr. Pillai. This is what was observed by this court in that case :

> "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 Champaklal 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."

5. We are unable to accede to the contention of the appellant that the ratio of the above decision is that so long as there no express words of stigma attributed to the conduct of a Government Officer in the impugned order it cannot be held to have been made by way of punishment. The test as previously laid and which was relied on was whether the misconduct or negligence was a mere motive for the order of reversion or whether it was the very foundation of that order. In Dhaba's case (supra), it was not found that the order of reversion was based on misconduct or negligence of the officer. So far as we are aware no such rigid principle has ever been laid down by this court that one has only to look to the order and if it does not contain any imputation of misconduct or words

attaching a stigma to the character or reputation of a Government Officer it must be held to have been made in the ordinary course of administrative routine and the court is debarred from looking at all the attendant circumstances to discover whether the order had been made by way of punishment. The form of the order is not conclusive of its true nature and it might merely be a cloak or camouflage for an order founded on misconduct (see S. R. Tewari v. District Board, Agra and Another ((1964) 3 SCR 55)). It may be that an order which is innocuous on the face and does not contain any imputation of misconduct is a circumstance or a piece of evidence for finding whether it was made by way of punishment or administrative routine. But the entirety of circumstances preceding or attendant on the impugned order must be examined and the overriding test will always be whether the misconduct is a mere motive or is the very foundation of the order.

6. In the present case the High Court found that the order of reversion was made owing to the note of the Deputy Inspector-General of Police following the report of the Commandant. The order of reversion was directly and proximately founded on what the Commandant and the Deputy Inspector-General said relating to the respondent's conduct generally and in particular with reference to the incident of assault by him on his orderly. We find no reason to disagree with the view of the Court. It is not disputed that if the order of reversion was void the subsequent order of dismissal which was passed by the Deputy Inspector-General of Police would be violative of Article 311(1) of the Constitution.

7. The appeal fails and it is dismissed with costs.

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