

Appar Apar Singh

Vs

The State of Punjab and Others

Civil Appeal No. 25 of 1967

(J. M. Shelat, C. A. Vaidialingam, P. Jagmohan Reddy JJ)

03.12.1970

JUDGMENT

VAIDIALINGAM, J. -

1. The sole point that arises for consideration in this appeal by special leave is whether the order, dated April 26, 1964, passed by the Governor of Punjab reverting the appellant from the Punjab Education Service, Class I (Officiating Service) to the Punjab Education Service, Class II, with immediate effect, amounts to 'reduction in rank' attracting the applicability of Article. 311(2) of the Constitution.
2. The appellant when this order was passed was Principal, Government College, Muktsar and on reversion he was posted as Deputy Inspector of Schools, Agriculture, Chandigarh. The learned Single Judge, who heard Civil Writ No. 1506 of 1964, filed by the appellant to quash the said order, held by this judgment, dated September 9, 1965, that the order amounts to 'reduction in rank' of the appellant and quashed the same. On appeal by the State of Punjab and two other officers, the Division Bench by its order, dated July 21, 1966, in Letters Patent Appeal No. 346 of 1965, set aside the order of the learned Single Judge and held that the impugned order of reversion was not passed by way of punishment and that on the other hand it was only reversion of the appellant from his officiating post to his substantive rank and that in consequence Article 311(2) has no application.
3. The circumstances leading up to the passing of the impugned order may be stated : The appellant having obtained in 1943 a degree of the Punjab University in Agriculture, joined the Education Department of the Punjab State on November 9, 1944, as a teacher in agriculture. Later on he obtained degrees of B.T., M.Ed., and M.A. He also got degree of basic education as a nominee of the Punjab Government and he was further nominated by the State Government in 1953, for higher studies in the United States. In August, 1954, he was selected as a Lecturer in Agriculture by the Subordinate Services Selection Board, Punjab and in 1955 he was selected for promotion to P.E.S., Class II, by the State Service Commission. In September, 1960, he was promoted to P.E.S., Class I, on an officiating basis and on May 9, 1963, he was appointed Principal of the Government College, Muktsar.
4. It is seen from the records that the appellant had some trouble with the members of the staff and in consequence reports had been sent to his superiors who advised the appellant to act tactfully. The appellant was later on invited to meet the superior officers at Chandigarh and he was appraised of the complaints received about him, but his request to have the names of the complainants divulged to him and also to go through the complaints said to have been received and to be furnished with the copies of the same were all rejected by the authorities. The appellant appears to have been advised

to proceed on leave, but he declined to accede to the request of the authorities. Later on the appellant made request to the second respondent, the Director of Public Instruction, Punjab, to come over to Chandigarh and visit the institution to enable him to have a personal knowledge about the working of the college. The second respondent accordingly presided over the annual prize distribution function in the College on February 26, 1964. When the appellant was reading the College's annual report in which certain aspersions had been made as against some of the members of the teaching staff. Prof. S. C. Kapur (who was one of the professors in the College), interrupted the proceedings and remarked "What about those principals who come drunk to the stage and do make up of the girls ?". This incident led to some commotion and one of the parents of the students demanded an enquiry into the allegations of misconduct made against the appellant by Professor Kapur. According to the appellant, the Director of Public Instruction, Mr. Sharma then and there assured the appellant that an enquiry will be made promptly by two senior officers and action would be taken to punish the guilty persons whether they belong to Class I or Class II. But according to the second respondent no such assurance attributed to him was made then. But there is no controversy that an enquiry was demanded by some of the parents of the students and that the second respondent promised to depute two senior officers for that purpose. Accordingly the second respondent deputed two Deputy Directors, namely, Sri Harbans Singh and Sri Govardhan Lal to make an enquiry into the affairs of the College. The points that required investigation were formulated by these two Enquiring Officers as follows :

- "(1) Were the allegations levelled by the Principal in his report true in respect to some members of the staff ?
- (2) Was it proper for the Principal to say all this in public meeting ?
- (3) Were the allegations levelled by Shri S. C. Kapur true ?
- (4) Was it proper for Shri S. C. Kapur to say this during the annual function presided over by the D.P.I. and attended by public men besides students and staff ?
- (5) The effect of all this on the general public mind particularly their reaction towards sending of their daughters to the colleges.
- (6) The remedial measures to restore in the College a normal and healthy atmosphere conducive to academic pursuits."

The said two officers made enquiries in respect of these matters from various persons including the appellant and arrived at the following conclusions :

- "(1) The allegations levelled by the Principal against the members of the staff in his report are not borne out by facts.
- (2) The Principal's remarks were highly offensive and were quite misplaced in the annual report. He could have sent confidential reports against his colleagues but to criticise them in public before parents and the general body of students was highly improper and was in very bad taste.
- (3) The allegations levelled by Sri S. C. Kapur in regard to the Principal having come to the stage drunk and having done make up of the girls have been corroborated by the girls themselves and by the members of the staff who were present on the stage,

except one whose reluctance to say anything against the Principal can be easily understood.

(4) The conduct of Shri S. C. Kapur was subversive of all discipline. It was most improper for him to have acted in such a rude manner. He has shown himself incapable of any self-restraint and has set a bad example. It will not be out of place to mention here that he was transferred from G.C., Ludhiana, as he had fallen out with the Head of his Department there. Such a person cannot have a salutary influence on the students."

5. At this stage it may be mentioned that during the enquiry conducted by the two Deputy Directors, the appellant appears to have been very reluctant to give answers regarding some of the points in the questionnaire as they were directed against his conduct though the questionnaire itself was headed "Investigation into the Conduct of Shri Satish Kapur". But nevertheless he filed a very lengthy explanatory statement before the Enquiry Officers controverting the allegations made against him and giving his own version regarding those points. We shall refer later to the point raised in the questionnaire as also to the nature of the answers given by the appellant. He has also protested against the enquiry being conducted behind his back without copies of the statements being made available to him and without his being furnished an opportunity of cross-examining those witnesses. He has also attributed bias against the Enquiry Officers. In the report itself the Enquiry Officers had suggested the following remedial measures :

"(a) Shri S. C. Kapur deserves exemplary punishment and his services should be terminated in terms of his conditions of service on giving him one month's notice without assigning any reason.

(b) It is further understood that D.P.I. is separately holding a secret probe into the conduct of the Principal for allegations of uncalled for connections with a lady teacher with whom he carried on correspondence at personal level in his own handwriting, through the manager of the Punjabi Publishers, Jullundur, in a most objectionable manner. The Principal therefore, also needs some exemplary punishment without being called upon to face a regular department enquiry. It will not be desirable to conduct a formal departmental enquiry into his conduct in regard to the probe which D.P.I. is already having and particularly so in respect of incident pertaining to the make-up of the girl students in a drunken condition Thus it is clear that the Principal deserves to be given some exemplary punishment. He is an unconfirmed hand and in consultation with the Legal Remembrancer steps may be taken to revert this officer to P.E.S., Class II, without assigning any reason ... Immediately, the Principal should be transferred to an equivalent post at Headquarters to remove the impression in the minds of the Lecturers or even the public that undesirable Lecturers were also able to get the Principal demoted. Separate proceedings should be initiated against the Principal in the meanwhile and final action taken later when the situation has quietened out quite a bit so to avoid any kind of unsavoury reactions both in the minds of the public at Muktsar and the students of the College as well as the teachers working in that institution.

##(c)(d)(e)##

6. The learned Judges before whom records had been produced have noted that as against the

suggestion of the Deputy Directors that steps may be taken to revert the appellant to P.E.S., Class II, without assigning any reason, the Competent Authority had made the following note in the margin :

"This case should be referred to the L.R. for advice."

7. As against the suggestion about the transfer of the Principal (appellant) to avoid the impression in the minds of the Lecturers or even the public that undesirable Lecturers were able to get the Principal demoted, the Competent Authority has again noted : "Not yet. To be sorted out later". As against the suggestion of the Deputy Directors to terminate the services of Prof. S. C. Kapur, the Authority had made the note : "Agreed". There is no controversy that the services of Prof. Kapur were terminated on March 30, 1964, by giving him one month's notice. Shri S. C. Kapur appears to have filed a writ petition No. C.W. 764 of 1964, challenging the order terminating his services but the said writ petition was dismissed by the High Court on July 28, 1964.

8. As against the appellant the impugned order which is to the following effect was passed by the Governor of Punjab on April 26, 1964 :

ORDER OF THE GOVERNOR OF PUNJAB Shri Appar apar Singh, P.E.S., Class I (Officiating) Principal, Government College, Muktsar, is reverted in P.E.S., Class II, with immediate effect and is posted as Deputy Inspector of Schools, Agriculture, Chandigarh, vice Shri Man Mohan Singh. * * * * Dated (Sd/- G. D. Kapur), Chandigarh Education Commissioner and the 28th April, 1964. Secretary to Government, Punjab Education Department. "No. 4788-Ed(1)-64/8284, dated Chandigarh, the 28th April, 1964. A copy is forwarded to the :|-----| 1. Director of Public Instruction, |D.D.G. A's D. | Chandigarh, for information and |O. No. 509-2 (2-Z), | necessary action with reference |dated 26th April, 1964. | to the communication noted in the|-----| margin. The personal file of Shri Apparapar Singh is returned herewith. Please acknowledge receipt. 2. Accountant General, Punjab (GADVI), Simla, for information and necessary action. 3. Circle Education Officer, Ambala, for information. Sd/- Deputy Secretary, for Education Commissioner and Secretary to Government, Punjab Education Deptt. No. 4782. Ed(I)-64/8285-A, dated Chandigarh, the 28th/29th April, 1964. A copy is forwarded to Shri Appar Apar Singh, Principal, Govt. College, Muktsar, for information and necessary action. Sd/- Deputy Secretary, for Education Commissioner and Secretary to Government, Punjab Education Deptt."###

9. The appellant filed the writ petition in the High Court challenging this order as contravening Article 311(2) of the Constitution. According to the appellant he has been "reduced in rank" as a punishment without any enquiry and being mala fide. The appellant made a grievance that the evidence collected by the Enquiry Officers were not made available to him nor was he given any opportunity to participate in the enquiry and cross-examine the witnesses. Though his conduct was being enquired into, the evidence was collected behind the back and a finding had been recorded against him on the basis of such materials on which he had no opportunity either to scrutinise or controvert.

10. The appellant further alleged that though the order on the face of it appears to be very innocuous having regard to the surrounding circumstances attendant on the passing of the order, it is clear that it was one by way of punishment.

11. The State did not dispute that the two Deputy Directors, who held the enquiry did not give any opportunity to the appellant to participate in the same. In fact it was admitted that the enquiry was an ex parte one and during such an enquiry statements were recorded from members of the staff, students and parents of the students of the College. It was also admitted that copies of the statements so recorded were not furnished to the appellant and that he was also not allowed to cross-examine any witness. But the stand taken by the State was that it was totally unnecessary to allow the appellant to participate in the enquiry because it was not directed against him and that the enquiry was only a preliminary confidential enquiry into the affairs of the College. It was further averred on behalf of the State that the appellant had no right to continue in P.E.S., Class I, when he was only officiating and that his reversion to P.E.S., Class II, which was in the usual course, cannot be considered to be a reduction in rank so as to attract Article 311(2) of the Constitution.

12. The State has further averred that his seniority in the substantive post of P.E.S., Class II, for his emoluments, which he was entitled to draw in that grade were affected by the order of reversion. In short the State contended that as no penal consequences flowed from the impugned order and as the appellant had no right to post of P.E.S., Class I, the order of reversion does not amount to 'reduction in rank' so as to attract Article 311(2).

13. The learned Single Judge has proceeded on the basis that the question whether the impugned order amounts to a 'reduction in rank' so as to attract Article 311(2) is to be considered only by looking to the form of the order but also the surrounding circumstances attendant upon the passing of the order. He further took the view that the order on the face of it appeared to be innocuous. So he took into account the enquiry conducted by the two Deputy Directors, the nature of the questions dealt with by them, the allegations made against the appellant and the finding recorded in the said report together with the recommendation that some punishment must be imposed upon the appellant. The learned single Judge did not accept the case of the State that the enquiry was only regarding the working of the institution. On the other hand, it was held that specific allegations were made against the appellant and findings recorded against him and that it was on the basis of those findings that action was taken against Prof. Kapur by way of terminating his services by giving him one month's notice and against the appellant by reverting him to P.E.S., Class II. As it was admitted that the enquiry had been conducted behind the back of the appellant without giving an opportunity to him to cross-examine the witness, the learned Single Judge held that the enquiry proceedings were vitiated. Having regard to all the attendant circumstances, the learned Judge finally held that the order of reduction was passed with the intention to inflict punishment on the appellant in view of the finding recorded against him in the enquiry by the two Deputy Directors. It was further held that the innocuous form which the respondents gave to the impugned order in consultation with the Legal Remembrancer was merely a cloak to avoid the consequences of Article 311(2) and amounts to fraud on the constitutional guarantee given to civil services. In view of these findings recorded in favour of the appellant, the learned Single Judge did not consider the second ground of attack levelled against the order that the respondents were actuated by malice, official bias and influenced by extraneous considerations in passing the order of reversion. In the end the learned Single Judge set aside the order reverting the appellant to P.E.S., Class II.

14. The Letters Patent Bench before whom the State challenged the order of the learned Single Judge has accepted the position that from the file and the notice thereon, it is clear that the findings recorded against the appellant in the report of the two Deputy Directors as well as the remedies suggested by them in the main were accepted by the Government after obtaining the advise from the Legal Remembrancer. The Division Bench has also held that it was in consequence of the acceptance by the Government in the findings and suggestions contained in the report that the

appellants was reverted to P.E.S., Class II. The Division Bench has taken the view that the reversion was ordered because the appellant was found unfit to hold the responsible post of Principal of the College. In view of the admitted fact that the appellant's emoluments, position and other rights in P.E.S., Class II, were not affected by the order of reversion, it cannot be held in this case that the impugned order in one, which can be construed as 'reduction in rank' of the appellant attracting Article 311(2). It was further held that the reversion is not by way of punishment but only because the person reverted was not found suitable to hold the post. Ultimately the Letters Patent Bench held that there was no inquiry conducted against the appellant as contemplated by the relevant rules and there were no charges of misconduct levelled against the appellant which were being inquired into by the Deputy Directors. The enquiry conducted by them was only to find out the actual state of affairs of the normal functioning of the College. No penalty has been imposed against the appellant as he was holding P.E.S., Class I, post only on an officiating basis and it was open to the authorities to revert him to his substantive post at any time. Such reversion, according to the Division Bench in this case, does not amount to 'reduction in rank' so as to attract Article 311(2). On this reasoning the Letters Patent Bench, held that the impugned order of reversion was not one passed by way of punishment and in consequence set aside the order of the learned single Judge and dismissed the appellant's writ petition.

15. Mr. Garg, learned counsel for the appellant, has raised substantially the same contentions that were argued before the High Court, both before the learned Single Judge and the Letters Patent Bench. The counsel urged that though the impugned order on the face of it appears to be very innocuous, it is really an order imposing punishment on the appellant by way of reversion in view of the fact that the very basis of the order was the acceptance by the Government of the findings recorded against the appellant in the enquiry conducted by the two Deputy Directors. If the order is read in the context in which it has been passed, the irresistible conclusion is that the Government intended to impose a penalty by reverting the appellant to P.E.S., Class II. In particular the counsel stressed that the findings recorded by the two Deputy Directors that the allegations against the appellant that he had come to the stage drunk and did the makeup of the girls has been corroborated by the girls themselves and members of the staff whose statements had been recorded by them behind the back of the appellant, are of a very serious nature casting reflection against the character and conduct of the appellant. These findings were accepted by the Government and the order of reversion passed in consequence can only be construed as an order imposing punishment. To establish that the appellant has suffered penal consequences, Mr. Garg pointed out, that while the appellant was reverted to P.E.S., Class II, his juniors in the said class were retained in P.E.S., Class I and that in consequence it has resulted in the appellant's losing his seniority even in P.E.S., Class II and the chances of appellant's further promotion have become indefinite and very remote possibility.

16. Mr. Harbans Singh, learned counsel for the State, on the other hand, urged that the order of reversion is one passed by the Government on the basis of the enquiry conducted into the affairs of the College and as the Government felt that the appellant was not suitable to be continued as Principal. No action for imposing punishment on the appellant has been taken by the State. The counsel pointed out that the very fact that no charges were framed against the appellant and no enquiry conducted according to the rule clearly shows that no disciplinary action was intended to be taken against the appellant. He also pointed out that the appellant was only officiating in P.E.S., Class I and his reversion to P.E.S., Class II, on the ground that he was found unsuitable to be the Principal is not "reduction in rank" so as to attract Article 311(2). The counsel also pointed out that in the P.E.S., Class II, his seniority and the emoluments to which he was entitled to have not been affected and therefore no penal consequences have resulted by the order of reversion.

17. After giving due consideration to the various aspects placed before us by the learned counsel on both sides and the reasons given by the Letters Patent Bench, we are of the opinion that the impugned order, in the circumstances, is one which amounts to 'reduction in rank' of the appellant to which Article 311(2) is attracted and as admittedly no enquiry has been held as contemplated by the relevant rules regarding disciplinary proceedings, the judgment of the Division Bench will have to be set aside.

18. At the outset we may state that the learned Single Judge has taken the view that by allowing the juniors of the appellant to continue in P.E.S., Class I, while reverting him to P.E.S., Class II, it cannot be held that thereby the appellant's seniority has been affected. We are not inclined to agree with this view. Loss of seniority established by virtue of an order, may amount under certain circumstances to a penal consequence leading to an inference that the order challenged is one imposed by way of punishment. In Paragraph 28 of the Writ Petition the appellant has clearly stated that at the time of the passing of the impugned order as many as nine persons were officiating in P.E.S., Class I, in schools and instruction cadre and amongst them the appellant's name appears at No. 5 in the seniority list. He has further stated there were four persons junior to him who were still permitted to officiate in P.E.S., Class I. In Paragraph 28 of the return filed by the State, the averments of the appellant, referred to above, have been admitted. The State, however, added that the two officers who were senior to the appellant were still officiating in P.E.S., Class I. Therefore, it is clear from the admission of the State that on the date when the appellant was reverted to P.E.S., Class II, some of his juniors in that class were allowed to continue in P.E.S., Class I.

19. The appellant's grievance that the order indefinitely postpones any chances of promotion in future has been accepted by the learned Single Judge. In fact this grievance has been relied on as evidencing that penal consequence has resulted from the order. The Letters Patent Bench was also impressed by the circumstances that an order reverting a person from the officiating post, unless of course it is due to the coming back of the substantive incumbent or by reason of the post being abolished, does affect the chances of a future promotion of the person reverted. But the Letters Patent Bench, as we have already pointed out, took the view that the impugned order is not one by way of imposing any punishment. It may also be pointed out that both the learned Single Judge as well as the Letters Patent Bench have held that the findings recorded by the two Deputy Directors against the appellant were accepted by the Government and that it was in consequence of such acceptance of those findings that the appellant was reverted to P.E.S., Class II. Therefore the close connection between the findings recorded in report against the appellant and the order of reversion has been found established in this case. Therefore, the only question is whether the findings so accepted by the Government operated only as a motive for passing the order of reversion or whether the report against the appellant was the very foundation for passing the impugned order. The appellant admittedly was issued a questionnaire by the two Deputy Directors to which his answers were invited. Those questions were as follows :

"Investigation into the conduct of Shri Satish Kapur.

Q-1. What did Shri Satish Kapur, Lecturer actually do and say while the annual report was being read over by you on 26-2-1964 ?

Q-2. Is there any semblance of truth in what Shri Kapur said about you at that time ? in any case give you comments on the remarks made by him and the reasons as well as the ground which promoted him to adopt this objectionable course ?

Q-3. Were the remarks made by you in the annual report pertaining to the staff directed against any particular member of the staff of your College, If so, please give some instances to support your view and you may as well quote the names of the persons who may be able to substantiate or support these remarks to enable disciplinary action being taken against the concerned members of the staff ?

Q-4. Please state why it was necessary to include these remarks against the staff in the annual report and why it was not considered proper to mention all these matters to the Director in a private meeting rather than raising these issues in a meeting open to the parents of the students and various public men ?

Q-5. What are your suggestions for winning the confidence of the public in the institution which is a co-educational college ?"

There is also no dispute that the appellant filed a very lengthy reply to these questions controverting very strenuously the allegations made against him. Apart from furnishing an explanation to these points raised in the questionnaire he has also given his own reasons as to why Shri Kapur in particular had a grievance against him. We do not think it necessary to elaborately refer to the answers furnished by him excepting to say that in respect of the very serious allegation covered by Question No. 2, he has denied that he ever drinks and has also stated that the allegation made by Prof. Kapur against him was absolutely false. He has very elaborately in his reply dealt with Question No. 2.

20. It is not possible to accept the large proposition advanced on behalf of the State that merely because the appellant was only officiating in P.E.S., Class II, the State had power to revert him to his substantive post of P.E.S., Class II and that such reversion will not amount to reducing the appellant to a lower rank as by way of punishment. As to whether a particular order of reversion amounts to 'reduction in rank' by way of punishment cannot be decided merely on the basis of the terms of the order but regard must be had to the attendant circumstances also.

21. It is well settled that officiating and temporary Government servant are also entitled to the protection of Article 311(2) in the same manner as permanent Government servants, if the Government takes action against them by meting out one of the punishments, i.e., dismissal, removal or reduction in rank (Vide Parshotam Lal Dhingra v. Union of India ((1958) SCR 828 : AIR 1958 SC 36 : (1958) SCJ 217) and Champaklal Chimanlal Shah v. The Union of India. ((1964) 5 SCR 190 : AIR 1964 SC 1854) Notwithstanding the fact that the appellant was in P.E.S., Class I only officiating, he will be entitled to invoke Article 311(2) if he is able to establish that the order of reversion is by way of punishment and that it amounts to reducing him in rank.

22. After a review of the case law on the subject, this Court in State of Punjab and Another v. Shri Sukh Raj Bahadur, ((1968) 3 SCR 234 : AIR 1968 SC 1089) has enunciated the following propositions which have to be borne in mind in considering the grievance of an officer regarding violation of Art. 311(2). Those propositions are as follows :

"(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.

(2) The circumstances preceding or attendant on the order of termination of service

have to be examined in each case, the motive behind it being immaterial.

(3) If the order visits the public servant with any evil consequences or casts an aspersion against his character of 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.

(5) If there be a full-scale departmental enquiry as envisaged by Article 311, i.e., an Enquiry Officer is appointed, charge-sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article."

23. In particular it will be noted from the above propositions that the circumstances preceding or attendant on the impugned order have to be examined in each case, the motive behind it being immaterial and if the order visits the public servant with any evil consequence, it must be considered to be one by way of punishment whether he was a mere probationer or a temporary servant. But it is also clear that an order passed after enquiry is conducted to ascertain whether the public servant should be retained in service or not, does not attract Article 311(2) of the Constitution.

24. In *State of Orissa v. Ram Narain Das*, ((1961) 1 SCR 606 : AIR 1961 SC 177 : (1961) 1 SCJ 209) this Court having regard to the particular circumstances attendant upon the enquiry in that case held that the order discharging the officer therein, who was a probationer, following upon an enquiry to ascertain whether he should be confirmed or not, was not an order passed by way of punishment.

25. Similarly in *Jagdish Mitter v. The Union of India*, (AIR 1964 SC 449) this Court held that even before discharging a temporary servant the superior authorities may have to determine the question about the suitability of the said temporary servant being continued in service and if such an enquiry limited to the purpose of deciding whether the said officer should be continued or not, was held and on the basis of his being found unsuitable to be continued in service, an order of discharge was passed, there is no element of punitive proceeding in such an enquiry or in the order passed as a result of such enquiry. This Court further held that consideration of the motive operating in the mind of the authority who passed the order had to be eliminated in determining the character of the order of termination of services of a temporary servant. It was also held that the form in which the order terminating his services was expressed would not also be decisive.

26. This Court has again in *Champaklal Chimanlal Shah v. The Union of India*, (supra) held "..... what is important to see is what actually happened after this memorandum for the Courts are not to go by the particular name given by a party to a certain proceeding but are concerned with the spirit and substance of it in the light of what precede and succeeded it".

27. From a review of the decisions cited above, it is clear that in order to find out whether an impugned order is one passed by way of punishment, the form in which the order is expressed is not decisive and the circumstances preceding or attendant on the order have to be examined in each

case. It is also clear that the motive behind the passing of the order is of no consequence. Whether penal consequences flow from the order will have also to be investigated. Having due regard to the propositions enunciated, we will now proceed to consider whether the impugned order can be considered to be one reducing the rank of the appellant as by way of punishment. If the State is able to establish its plea that the enquiry conducted by the two Deputy Directors was only to find out the suitability of the appellant to be continued as Principal and that as he was found to be unsuitable he was reverted, then the order cannot be considered to be by way of punishment. We however find considerable difficulty in accepting this plea of the State. From the facts given by us in setting out the circumstances leading to the filing of the writ petition, it is clear that the enquiry conducted by the two Deputy Directors was not with a view to find out the suitability or otherwise of the appellant to be continued as Principal. On the other hand, the enquiry was held with a view to investigate into allegations made by the Principal against some of the members of the staff and the allegations made by Prof. Kapur against the appellant. We have already referred to the questionnaire issued to the appellant and also the points set for determination by the Deputy Directors as also the findings recorded by them. We have already pointed out that one of the allegations which were investigated by the Deputy Directors related to a very serious matter, namely, the charge levelled by the Prof. Kapur against the Principal having come to the stage drunk and having done makeup of the girls. We are not concerned with the validity of the enquiry conducted by the Deputy Directors because it is admitted by the State that the said enquiry was conducted ex parte and behind the back of the appellant. It has also been admitted that the statements recorded by the Deputy Directors from various persons were not disclosed to the appellant and the latter had also no opportunity to cross-examine those witnesses. But a finding was recorded by the Deputy Directors that the said allegations made against the Principal had been corroborated by the girls themselves and by the members of the staff who were on the stage. The Deputy Directors after recording this finding against the appellant also recommended that the appellant needs "some exemplary punishment without being called upon to face a regular departmental enquiry". The Government accepted the finding of the Deputy Directors as well as their recommendation to impose punishment against the appellant and it is on the basis of such acceptance that the order of reversion was passed. No doubt, the order by itself and on the face of it is innocuous, but, in our view, the finding recorded by the Deputy Directors against the appellant and their recommendation to impose punishment upon the appellant are the very foundation for the Government for passing the order reverting the appellant from P.E.S., Class I, to P.E.S. Class II.

28. Considerable stress has been laid by Mr. Harbans Singh, learned counsel for the State, that no departmental enquiry as envisaged by Article 311(2) was made against the appellant before his reversion was ordered and therefore the finding recorded by the Deputy Directors may have operated only as a motive for the Government to pass the order of reversion. The counsel urged that an order passed under such circumstances cannot be considered to be by way of punishment. We are not inclined to agree with this contention of Mr. Harbans Singh. In *Union of India and Others v. R. S. Dhaba*, (1969)3 SCC 603 this court had to deal with a case of an officer who was reverted on the recommendation of his superiors, because of a large number of complaints the department had received against the officer's integrity. After consideration of the circumstances under which the order was passed, this Court held that the report of the superior officers must be considered to have operated as a motive for passing the order of reversion and it cannot be said that the report was the very foundation for the order of reversion. This decision, in our opinion, does not assist the State in the case before us.

29. We may point out that in *The State of Bihar v. Shiva Bhikshuk Mishra*, (1970)2 SCC 871 this Court had to consider the applicability of Article 311(2) to an order of reversion passed on the

recommendation of a superior officer. In view of certain contemplated disciplinary proceedings an officer who was officiating in a higher rank was recommended by his superior officer to be reverted to his substantive post. Accepting the said recommendation, the competent authority reverted the officer concerned. The order was challenged on the ground that it amounts to reducing the rank of the officer concerned and as it has been passed in violation of Article 311(2) it was illegal. This Court held that though the order passed did not contain any express words of stigma attributed to the conduct of the officer concerned, nevertheless having due regard to the attendant circumstances under which it was passed, the order was one passed by way of punishment. This Court further held that as Article 311(2) has been contravened the order is illegal and in consequence set aside the same. This decision affords in our opinion a very close parallel to the case before us.

30. It is not the case of the State before us that the appellant was reverted to his substantive post because the officiating post which he held at the time of reversion i.e., P.E.S., Class II, has been abolished. If that is so, there will be nothing further to say because his services in the officiating post would automatically come to an end when the post itself comes to an end. Again it is not the case of the State that the appellant has been reverted to his substantive post because the permanent incumbent of the higher post in which the appellant was officiating has come back to duty. It is not even the case of the State that the higher post was created for a temporary period and that it has come to an end. If any one of these circumstances had existed one can very well say that the order reverting the appellant to his substantive post cannot be said to be by way of punishment. On the other hand the position is, as pointed out by us earlier, that the reversion of the appellant is based entirely and exclusively on the basis of the adverse finding recorded against him by the Deputy Directors and the report itself forms the foundation for the order of reversion being passed.

31. We accordingly hold that the order, dated April 26, 1964, is one reducing the rank of the appellant as a punishment. As it has been passed in violation of Article 311(2) of the Constitution that order has to be set aside.

32. In the result we allow the appeal, set aside the judgment and order of the Division Bench, dated July 21, 1966, in Letters Patent Appeal No. 346 of 1965 and restore the judgment and order of the learned Single Judge, dated September 9, 1965, in Civil Writ Petition No. 1506 of 1964. The appellant will be entitled to his costs.

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