

Gurdev Singh

Vs

State of Punjab

Criminal Appeal No. 1018 of 1967

(G. K. Mitter, A. N. Ray JJ)

27.01.1971

JUDGMENT

MITTER, J. -

1. The appellant who originally belonged to the police service in the State of Patiala and was promoted to officiate as a Superintendent of Police on February 11, 1950, in the erstwhile State of Pepsu filed a suit against the State of Punjab in January, 1961, for a declaration to the effect that the order of the Pepsu Government, dated December, 1, 1954, reverting him to the post of Deputy Superintendent of Police (the substantive post which was formerly held by him), was unconstitutional and void and that he was entitled to all the rights by way of arrears of salary and allowances, etc., of the post of Superintendent of Police and that he continued as such in that capacity even after the date of the impugned order. The suit was dismissed by the subordinate Judge of Patiala and his appeal to the Punjab High Court met with no better fate. He has come to this Court by a certificate granted by the High Court under Article 133(1)(c) of the Constitution.

2. The relevant facts are as follows : The appellant started his career in the police service in the year 1942 as an Assistant Superintendent of Police in the former State of Patiala. On the formation of Pepsu he started to function in the same capacity in the said State. In 1950 he was promoted to officiate as a Superintendent of Police. It appears that a scheme known as the Indian Police Service Scheme was extended to Pepsu in the year 1950. The appellant was one of several persons who were called up for interview before the Federal Public Service Commission in June, 1950, under the orders of the Pepsu Government and his name was placed on what was styled the Second List in the above scheme after the interview. He continued working as an officiating Superintendent of Police without being confirmed in that post. On December 1, 1954, he was reverted to his substantive rank of Deputy Superintendent of Police by an order of the Inspector-General of Police and he was directed to make over charge to one S. Ajaib Singh, Superintendent of Police. As he was on leave at that time he was given liberty to proceed on leave from that date after submitting a formal charge report.

3. The appellant's case before the subordinate Judge in substance was that the inclusion of his name in List II of the scheme mentioned gave him a right to continue as an officiating Superintendent of Police for five years and his reversion within that period to his substantive post amounted to a punishment : the order of reversion was bad as there was no compliance with the provisions of Article 311 of the Constitution. He also complained that while he was reverted persons who were junior to him in the sense that their names had not been approved by the Special Recruitment Board for inclusion in any of the Lists set forth in the Police Service Scheme were allowed to continue in their posts as officiating Superintendents of Police : the order of reversion was bad because of

discrimination. He thus complained of loss of seniority and postponement of chances of promotion in violation of his rights.

4. The defence set up in the written statement of the State of Punjab was that the reversion was not by way of penalty and did not affect that appellant's chances of promotion. It was further pleaded that the inclusion of the appellant's name in List II did not entitle him to be absorbed immediately in the Indian Police Service cadre. Neither did it confer any right of seniority over other officers of the same rank. The reversion had been effected purely on administrative grounds as there was no vacancy in which he could be allowed to work as a Superintendent of Police and consequently there was no reduction in rank of the appellant. Article 311 of Constitution did not in the circumstances of the case apply to the appellant.

5. The issue on which the appellant lost before the Trial Judge was "Whether the order, dated December 1, 1954, reverting the plaintiff to the post of Deputy Superintendent of Police was illegal, unconstitutional and void and not binding on him for reasons given in Paragraph 7 of the plaint ? " The learned subordinate Judge held that the order of December 1, 1954, was not made by way of punishment and the plaintiff had failed to prove that there was any discrimination against him in favour of any persons junior to him.

6. No oral evidence was adduced at the trial stage. When the matter appeared before the High Court in the appellant stage, the appellant wanted to have himself examined orally and the High Court allowed that application. The plaintiff-appellant was then examined before the subordinate Judge. He stated in his examination-in-chief that when he was reverted from the rank of Superintendent of Police three persons, Ram Singh, Daljit Singh and Harpaul Singh who were also working in the same capacity as himself and officiating in the cadre of Superintendents of Police but whose names were not borne on List II of the Police Service Scheme on December 1, 1954 were allowed to function as before : besides them there was another person Kanwar Sain who although junior to him was allowed to continue as Superintendent of Police, Civil Defence, in an officiating capacity. His further statement was that after December 1, 1954, two persons by name Piara Lal and Karam Singh were promoted as Superintendents of Police in March, 1955 and June, 1956, respectively and on these occasions his case was not considered for promotion. In his cross-examination he admitted that if the Indian Police Service Scheme had not been extended to Pepsu, Ram Singh, Harpaul Singh and Daljit Singh would have to be treated as senior to him in the Civil List.

7. As the stand taken by the appellant rests on his claim based on the inclusion of his name in List II of the Indian Police Service Scheme it is necessary to examine the same and find out what right it gave him. The scheme, an exhibit in this case, shows that it was meant to provide "for the extension of the organisation of the Indian Police Service" so that senior police officers could be available to the Government of the States and the Union of States in India. The primary object of the extension was to maintain and where necessary introduce a standard of efficiency at the highest administrative level in the States comparable to that maintained in all provincial Governments and at the Centre. The scheme was extended to numerous States including Pepsu. Clause 4 of the scheme shows the initial constitution of the service. It laid down steps to afford opportunities to existing incumbents of the posts to be encadred and all officers holding posts of similar status were to be considered to be the first and primary source for recruitment to the State cadre of the Indian Police Service at its initial constitution. This was done by each State Government setting up a Selection Board in consultation with the Government of India. The Board was to review cases of all officers of the State Government of the description mentioned, make a preliminary selection from among them of all officers of the State Government of the specified description who were suitable for inclusion in

one or the other of the three lists referred to in the subsequent paragraph. The First List was to contain names of officers who were considered suitable for immediate appointment to the Indian Police Service subject to probation, with reference to the minimum All India Standard adopted in assessing the suitability of Provincial Service Officers. The Second List was to "contain names of officers who though not up to the required standard immediately showed sufficient promise to render it likely that they would attain such standard, with further experience during a period not exceeding five years". Officers in List I were to be immediately appointed to the Indian Police Service in the State cadre concerned subject to a probation. The scheme provided that :

"Officers in List II will continue to hold their present post but will not be absorbed in the Indian Police Service immediately. Their work will be watched during the next five years and they will be absorbed in the All India Service as a result of periodical reviews as and when they are found fit for the service. Those of them who are not found fit within the period of five years will either be reverted to posts outside the cadre of the Indian Police Service or retire as the State Government concerned might think fit, unless they are also included in List III."

8. The Order of the Inspector-General of Police, dated December 1, 1954, was worded as follows :

"I am directed to inform you that, on having been relieved by S. Ajaib Singh, Superintendent of Police, you are reverted to your substantive rank of Deputy Superintendent of Police, with effect from to-day. You may proceed on leave from to-day after submitting formal charge report."

By itself the order is unexceptionable in that it merely directed the appellant who was in service in an officiating capacity to go back to his substantive post. There is no stigma cast on him and no adverse remark against his character or efficiency. If it be a fact that he was reverted for administrative reasons he could not complain except on the ground that the inclusion of his name in List II gave him a right to hold the post of the Superintendent of Police in an officiating capacity for five years. Apart from the consideration of the rights based on the inclusion of his name in the said list he could have no grievance about the retention of Ram Singh, Daljit Singh and Harpaul Singh in the cadre of officiating Superintendents of Police. He could only base his complaint on the retention of Kanwar Sain who was junior to him in the cadre in preference to himself. Kanwar Sain it appears from the notes regarding the representation of appellant with regard to reversion made by the Inspector-General of Police, could not be reverted as he was at the material point of time on deputation from Madhya Pradesh Government on particular terms on contract basis and it could not have been in the interest of Government to terminate his services earlier than the scheduled period.

9. It is also of interest to note that the reversion of the appellant was ordered after mature consideration. A note prepared at the office of the Inspector-General of Police which also bears the endorsement of the Chief Secretary and the Chief Minister shows that Ajaib Singh Gill who had completed 23 years and 7 months of service was due back from leave on December 1, 1954 and he had to be retained for another year and five months before he could be pensioned off. As there was no job of S.P. lying vacant in Pepsu at the moment it was suggested that the appellant who was the "junior (most) D.S.P." officiating as S.P. should revert and S. Ajaib Singh should be posted in his place.

10. If the above note was a genuine document - and we have no reason to hold that it was otherwise - it is quite clear that the appellant was not sought to be reverted because of any shortcoming, but

because room had to be made for S. Ajaib Singh Gill and the axe fell on the appellant as he was considered to be the person at the bottom of the list of officers officiating as Superintendent of Police. It is true that Kanwar Sain's name does not occur in this note but if Kanwar Sain's was on deputation from Madhya Pradesh Government on a contract basis no exception can be taken to his having been retained in preference to the appellant.

11. It appears that in dismissing the appeal of the appellant to the High Court, the learned Judges proceeded on the assumption that the Indian Police Service Scheme was legally binding and its provisions would have the same effect as the statutory rules and regulations. We may proceed to dispose of the appeal on the same assumption. The learned Judges of the High Court took the view that the appellant's grievance even based on List II could not be upheld because he had been found unfit for retention in List II. The High Court apparently came to take this view on the strength of a document which was exhibited as C-2. The letter Ex. C-2, dated September 8, 1956, was addressed by the deputy Secretary to the Government of India to the Chief Secretary to the Government of Pepsu. It purports to show that the Chief Secretary's memorandum to the Government of India on August 13, 1956 containing the assessment of the State Government in respect of the work of Siasat Singh Sekhon and Gurdev Singh Sindhu and the finding that these two officers were not fit to be recommended for appointment to the Indian Police Service cadre in accordance with the provisions contained in Paragraph 4(iii)(b) of the said extension was accepted by the Government of India. As the letter of the Chief Secretary, dated August 13, 1956, was not produced before the court we are not in a position to say when the assessment of the work of the appellant in connection with the retention of his name in List II was made, i.e., whether it was before December 1, 1954 or subsequent thereto and in our view the High Court should not have relied on this document. Moreover, the ground for reverting the appellant to the substantive post of Deputy Superintendent of Police as borne out by the note prepared in the office of the Inspector-General of Police and acceded to by the Chief Minister made no reference to any such assessment. It is also note-worthy that no such ground was put forward in the written statement where the only plea raised was founded on administrative convenience.

12. Even though we find ourselves unable to uphold the judgment of the High Court based on the contents of Ex. C-2, we take the view that the reversion was justified on administrative grounds and, there was no bar to such reversion by reason of the inclusion of the appellant's name in List II. The said list merely ensured that the officers whose names were borne thereon would be watched for the space of five years and they might be absorbed in the All India Service even within the said period as a result of periodical reviews. Although reversion on the ground of unfitness was mentioned in the scheme the possibility of such reversion when there was no available post in the cadre of Superintendents of Police was not ruled out. As the officers in List II had no right to be absorbed in the Indian Police Service immediately the direction in the scheme that "officers placed in List II will continue to hold their present post" merely meant that they would not be made to go out of their posts except on justifiable grounds. Holding a post in an officiating capacity as a Superintendent of Police did not entitle the appellant to continue in that post even if officers senior to him who were on leave or had been sent out of the State on deputation were to come back to the State and there was no room in the cadre to absorb them all. All that Paragraph 4(iii)(b) ensured was that if they were found fit within five years they would be absorbed in the All India Service Cadre. If they were not found fit after the end of that period they could be reverted to posts outside the cadre of the Indian Police Service or made to retire unless their names were also included in List III - a contingency which has not arisen in this case. In our view, although the order of the High Court cannot be upheld on the ground mentioned in the judgment, the order cannot be quashed for reasons indicated by us. The appeal is therefore, dismissed, but, in the circumstances of this case we make

no order as to costs.

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