

Shri Kedar Nath Bahl

Vs

The State of Punjab and Others

Civil Appeal No. 1836 of 1968

(K. S. Hegde, P. Jagmohan Reddy, D. G. Palekar JJ)

02.02.1972

JUDGMENT

PALEKAR, J. –

1. This appeal arises out of a certificate granted by the High Court of Punjab under Article 133(1)(c) of the Constitution. The appellant graduated from the College of Agriculture at Lyallpur with high academic distinctions in the year 1935. He then entered the service of the then Punjab Government as an Overseer of Gardens. After the partition in 1947, he opted for service in India and entered the service of the Government of East Punjab. In 1950 the Union Public Service Commission selected him for appointment to the post of Assistant Superintendent of Archaeological Gardens at Delhi and he joined that post with the consent of the East Punjab Government. In 1951 he proceeded abroad for further studies in U.S.A and England and obtained high qualifications in Landscape Architecture. While he was still abroad, the Punjab Government advertised a post of Landscape Architect in the Capital Project Administration in the grade of Rupees 625-40-1,025/50-1,275. The appellant having applied for the same, was selected for the appointment. He could not, however, take charge of the post. He returned to India in 1953 and found that the post advertised had already been filled.

2. On June 25, 1954, the Punjab Government through the Punjab Public Service Commission again advertised for the post of Landscape Architect in the Capital Project Administration, Chandigarh, on the same terms. The appellant applied for the post and was selected by the Punjab Public Service Commission. The terms of appointment which the appellant accepted were as follows :

"(1) The post belongs to provincial service Class I and is temporarily sanctioned up to February 28, 1955, for the present but is likely to continue thereafter. It is non-pensionable but the permanent Government servant if appointed to it will be allowed to retain his pensionary status. The incumbent of the post will be eligible to subscribe to the General Provident Fund according to the rule of that fund.

(2) The period of probation will be six months for candidates already in service and one year for direct recruits. The appointment can be terminated by three months' notice on either side, except in the case of misconduct, inefficiency, neglect or failure of duty, when the service will be terminated without notice."

3. The appellant accepted this post on a starting salary of Rs. 825/- per month and the letter of appointment was issued to him on October 21, 1954. The appellant joined the post.

4. As already stated the post was a temporary post sanctioned up to February 28, 1955, but its tenure was extended from time to time up to February 28, 1958. After that, the post was extended monthly up to November 4, 1958, when the post was discontinued. On the discontinuance of that post, the appellant was reverted to the non-Gazetted post of Agriculture Inspector at Panipat in the scale of Rs. 100-10-300/-, which was the post permanently held by him and over which he had his lien. The appellant complained that he was reduced to a lower rank in violation of the protection of Article 311(2) of the Constitution and applied to the High Court of Punjab for a writ of mandamus directing the State Government to revive the post of Landscape Architect in the Department of Capital Project and to restore the appellant to it on the old conditions of service.

5. The writ petition was heard by Grover, J. as he then was, who finding no substance in the petition, dismissed the same on September 7, 1961. The appellant then filed a Letters Patent Appeal, which was heard by a bench of that court. That appeal was also dismissed on May 27, 1963. On a certificate under Article 133(1)(c) the present appeal has been filed in this court.

6. The appellant's attack on the order of reversion was two-fold : (1) that he was reduced in rank from a Class I post to a Class III post in violation of the protection given by Article 311 of the Constitution; (2) that the order to discontinue the post of Landscape Architect was a dishonest device to get rid of the appellant, and being dishonest, was illegal. In other words, the action was mala fide.

7. The appellant agrees that the post of Landscape Architect which he had held till November 4, 1958, was a temporary post. The post had been sanctioned up to February 28, 1955, and as admitted by the appellant in his writ petition "there was further extension of the post up to February 28, 1958, and at the end of March, 1958, and after that, the post was extended monthly up to November 4, 1958". If the tenure of the post was not extended the post automatically ceased to exist. The contention, however, of the appellant is that he was confirmed in this post and being confirmed in that post he was entitled to be absorbed in a similar post like that of an Executive Engineer in the Engineering Section of the Capital Project carrying the same scale of pay as the post of Landscape Architect. Instead of doing so the appellant was reverted to his original post in Class III service, the result of which was not merely to reduce him from a Class I post to a Class III post but also affected seriously his pecuniary benefits. It was submitted on behalf of the State, on the other hand, that the appellant was not confirmed and could not have been confirmed in the post of Landscape Architect because it was a temporary post, the tenure of which was extended from time to time, and the appellant was not entitled to any equivalent post in the Engineering Section of the Capital Project not only because he was not qualified for that post but also because he had no claim to it. On the discontinuance of the post of Landscape Architect, there was no other alternative for him but to revert to his original post and hence no protection could be claimed by him under Article 311(2) of the Constitution.

8. It is an admitted fact that there is no order of the Government confirming the appellant as a Landscape Architect nor was any such order communicated to him. The appellant, however, relied upon certain nothings made by the Revenue Minister on his file for his contention that he was confirmed. The first of these nothing is dated February 11, 1958 and is as follows :

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"R.M.I have carefully considered the representation of Shri Bahlalong with its enclosures. I see from the Office note that twoprevious Ministers, viz. Shri Brish Bhan and Shri

Gurbachan Singh Bajwa have given him good reports. I, therefore, consider that the adverse entries made against him should be expunged and he should be confirmed on the completion of his probation. If C.M. considers any further discussion necessary, he may call me. (Sd.) Kartar Singh R.M. 11-2-58."##

The note being marked for the C.M. i.e., the Chief Minister, the latter made the following noting :

"C.M. I agree with R.M. but he may kindly arrange to assign requisite staff to the Landscape Architect so that his services may be fully utilised by the Capital Project Administration in the preparation and execution of Landscape Plans. (Sd.) Partap Singh C.M. 13-2-58."##

These notings, however, were not implemented, apparently, because this appellant was holding a temporary post and could not be confirmed substantively. So the Revenue Minister made further noting on the file as follows :

"On 8th July 1958, I sent a note to Secy. (C) relating to the confirmation of Shri K. N. Bahl, Landscape Architect Capital Project vide my U.O. No. 3975-RM, dated July 9, 1958. About a month has lapsed and I have not received the file so far. Will Secy. (C) please arrange to send the file immediately, but not later than August 13, 1958. (Sd.) R.M. 5-8-58."##

When the file was received, the following note was made on August 18, 1958 :

"I was the Chairman of a Sub-Committee of Capital Control Board on landscaping. Since on account of reshuffle among portfolios, I may not be on this Committee, I lay down my views:

2. Landscaping work in the Capital has been next to nothing so far. All major buildings have to be landscaped, the leisure valley park put in proper shape and maintained and parks set up. The post of a Landscape Architect for the Project is most essential.

3. Besides, we have a capable Landscape Architect who has a grouse that he has not been given an opportunity so far to work. Government had ordered his confirmation and provision of staff to him. Orders of Government have still to be implemented and this should be done immediately.

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(Sd.)

Kartar Singh

R.M. 18-8-58."

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Though in the last note, dated August 18, 1958, the Revenue Minister had stated that the Government had ordered the appellant's confirmation that was obviously a slip of memory. There was no Government order confirming the appellant. All that the Revenue Minister had done on February 11, 1958, was to suggest to the Secretary that the appellant should be confirmed on the completion of his probation. That suggestion could not be implemented owing to the nature of the

post which the appellant had held. On August 18, 1958, when the Revenue Minister made the above note, he was no longer in charge of the Capital Project. It is obvious that these notings by the Minister with regard to the confirmation of the appellant could not be implemented as under the rules the appellant's confirmation in the temporary post of Landscape Architect was impossible. The appellant, therefore, was not entitled to rely upon these notings for proving the fact that he had been actually confirmed when it is admitted that no effective order confirming him in that post was ever passed or communicated to him.

9. It was next contended that even if it is assumed that he was not confirmed by the Government in the post, it must be held that he was automatically confirmed in the post after the first six months of probation. He was a Government servant before he accepted this post and under the terms of appointment already referred to, he was on probation for six months. The period of probation was over on May 5, 1955. It is the contention of the appellant that on the expiry of this period of probation he was automatically confirmed. The record, however, shows that the probationary period was extended by the Government from time to time though the orders were made with retrospective effect. The appellant contends that these orders extending the period of probation were irregular and illegal. Either he should have been discharged within the first six months of probation, or, if he was not so discharged he was entitled to automatic confirmation. We do not think that this contention is correct. The law on the point is now well settled. Where a person is appointed as a probationer in any post and a period of probation is specified, it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf. Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period, or there is a specific service rule to that effect, the expression of the probationary period does not necessarily lead to confirmation. At the end of the period of probation an order confirming the officer is required to be passed and if no such order is passed and he is not reverted to his substantive post, the result merely is that he continues in his post as a probationer. See : *Narain Singh Ahluwalia v. State of Punjab* (Civil Appeal No. 492 of 1963, decided on 29-1-1964 (SC)); *Accountant General Madhya Pradesh, Gwalior v. Beni Prasad Bhatnagara*, (Civil Appeal No. 548 of 1962, decided on 23-1-1964 (SC)) *G. S. Ramaswamy v. Inspector-General of Police, Mysore State*. (Civil Appeal No. 972 to 977 of 1963, decided on 21-1-64, reported in AIR 1966 SC 175) The terms of appointment do not show that the appellant would be automatically confirmed on the expiry of the first six months of probation nor is any rule brought to our notice which has the effect of confirming him in the post after six months of probation. The position of the appellant, therefore, till the abolition of the post on November 4, 1958, was that he continued to be a probationer and has no right to the post. It, therefore, follows that when the tenure of the post came to an end, he was automatically reverted to his original post as an Inspector on which he had the lien.

10. The suggestion that since he had occupied a Class I post till November 4, 1958, he should have been absorbed in an equivalent post like that of an executive Engineer, has no merit at all. It is true that by the reversion to class III post he suffers great pecuniary loss but that could not be helped because he must have known when he applied for this temporary post that after all he was holding it for a temporary period and after the abolition of the post he was liable to be reverted to his original post. Though it is true that in the advertisement of the post it was stated that the post was "likely to continue" after February 28, 1955, but that was no assurance that the post would be made permanent.

11. The second ground of attack based on mala fides is as follows. According to the appellant, soon after he assumed charge of his new post he made disclosures of several irregularities which had

taken place in the project and this made him a persona-non-grata with the senior Officers of his Department including the Chief Engineer and the Superintending Engineer of the Capital Project. He also alleged that the project Administration did not like his appointment as Landscape Architect, and every opportunity was taken to condemn him. Adverse Confidential Reports were made against him which, though at one stage were ordered to be expunged by the Government, were later restored. Since the Administration found no way of removing him from the post, they decided to abolish the post which he was holding, though, in the opinion of the appellant, the post was essential and necessary to be continued. In other words, the appellant's contention is that the Administration sought to achieve his removal from the post not by taking in a straight-forward manner disciplinary action against him but by maliciously abolishing the post. These allegations are denied on behalf of the State. According to the State the Capital Project itself was a temporary project and the post of the Landscape Architect was a temporary post. As a matter of fact in the very first instance in the advertisement for the post, it was stated to be for a short period namely till February 28, 1955. It was found in due course that the post was no longer useful and was abolished, after the question of its continuance had been examined by the Special Committee consisting of Ch. Surajmal, Public Works Minister, Shri M. S. Randhava and Shri Swaroop, Krishan. The Committee recommended that the continuance of the post was not necessary and it should be abolished forthwith. Government accepted this recommendation and discontinued the post, which till November 4, 1958, had been continued from time to time by orders extending its duration. The High Court has found no substance in the allegation of mala fides. If, in the interest of the Administration, the temporary post is abolished the question as to what were the personal relations between the appellant and his superiors was irrelevant. Moreover, all that the appellant has been able to say is that his immediate superiors in the Department were hostile to him. But here we are concerned not with the action of his immediate superiors but the action of the Government. The decision to discontinue the post was the decision of the Government. and it is not alleged in the Writ Petition that in taking this decision the Government acted mala fide. We, therefore, agree with the High Court that there is no substance in the allegation that the post was discontinued or abolished in order to punish the appellant.

12. It is a tragedy that it has not been possible to utilize the services of a highly qualified Officer like the appellant in an appropriate post which could bring the best out of him. However, we can do no more than express our sympathy.

13. The appeal fails and is dismissed. No order as to costs.

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