

G. S. Gill and Others

Vs

The State of Punjab and Others

Civil Appeal No. 1098 of 1970

(CJI A. N. Ray, K. K. Mathew JJ)

30.07.1974

JUDGMENT

MATHEW, J. -

1. The appellants filed a petition before the High Court of Punjab under Arts. 226 and 227 of the Constitution for quashing the orders passed by the State of Punjab reverting them from the posts held by them in an officiating capacity in the cadre and excadre posts of senior scale of Indian Administrative Service to their substantive posts in the State Civil Service from which they were promoted.

2. The appellants contended before the High Court that the orders of reversion were punitive in character and, therefore, attracted the provisions of Art. 311 of the Constitution and since they were given no reasonable opportunity to make their representations against the reversion, the orders were bad, and prayed for quashing them. The High Court overruled the contention and dismissed the petition. This appeal, by certificate, is against that order.

3. The case of the appellants in the writ petition was that their names were included in the Select List prepared under Regulation 4 of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as the 'Promotion Regulations') and that they thereby acquired right to be appointed to the cadre and ex-cadre posts in the Indian Administrative Service. In Paragraphs 11 and 13 of the writ petition, they said that in the State of Punjab there were two types of posts in the senior duty scale, namely, (i) cadre posts which are specified in the Schedule to the Indian Administrative Service (Cadre) Rules, 1954 and (ii) ex-cadre posts; that the ex-cadre posts were created by the State Government from time to time according to exigencies of service and in matters of pay, promotion and other benefits, the ex-cadre posts were declared equivalent to a cadre post and that they were appointed to senior duty posts in cadre and ex-cadre in 1963 and 1964.

4. The creation of ex-cadre posts by State Government can only be in terms of the second proviso to Rule 4(2) of the Indian Administrative Service (Cadre) Rules, 1954. That proviso reads as follows :

Provided further that the State Government concerned may add for a period not exceeding one year and with the approval of the Central Government for a further period not exceeding two years, to a State or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts.

5. Even if it be assumed that the State Government could appoint any person to these ex-cadre posts, the appointment must necessarily be temporary appointment. So far as Appellants 1, 3 and 5 are

concerned, there can be no doubt that since the appointments were made by the State Government to cadre posts in the Indian Administrative Service, the appointments could not have been in any capacity other than in an officiating capacity under Rule 9 of the Indian Administrative Service (Cadre) Rules. Mr. Garg for the appellants contended that Appellants 2, 4 and 6 to 12 were appointed to senior duty posts which were declared as equivalent to cadre posts in the Indian Administrative Service and as the orders of appointment did not indicate that they were appointed in any officiating capacity, the appointments must be deemed to be substantive in character. No doubt, the orders of appointment of these appellants do not say that they were appointed in an officiating capacity; and in Paragraph 15 of the writ petition, they said that they were appointed to various senior duty posts not in an officiating capacity. This averment was denied by the Government of India. In the affidavit in reply, the appellants stated that it was wrong to equate regular officiating appointments with stop-gap or local arrangements. They said that officiation is of two kinds, one, officiation of a subordinate service official against a post in a superior service in a stop-gap or local arrangement when the regular incumbent of the post is, say, on leave, and the other, officiation of a regular recruit on appointment to service in which he is to be confirmed and made substantive permanent in due course on availability of a substantive vacancy and that "the officiating appointments of the appellants in the senior scale of the I.A.S. was of the second type". The appellants also said that they retained their lien in their posts in the State Civil Service which would make it clear that they were not appointed substantively to the senior duty posts, but only in an officiating capacity. The Judgment of the High Court also proceeds on the basis that these appellants were appointed in an officiating capacity to senior duty posts. These appellants had no case that they were substantively appointed to any posts.

6. There can be two types of officiating appointments. Fundamental Rule 9(19) provides :

9(19) Officiate. - A Government servant officiates in a post when he performs the duties of a post on which another person holds a lien. The Central Government may, if it thinks fit, appoint a Government servant to officiate in a vacant post on which no other Government servant holds a lien.

If the appointments were officiating appointments, whether of the type mentioned in the first portion of the meaning of the word 'officiate' in F.R. 9(19) or in its latter part, there can be no doubt that the reversion of the appellants to their substantive posts in the State Civil Service would not attract the application of Art. 311 unless the orders of reversion cast stigma and were, therefore, punitive in character. There is no case that orders of reversion cast any stigma upon the appellants. *Parshotam Lal Dhingra v. Union of India* (1958 SCR 828 : AIR 1958 SC 36 : (1958) 1 Lab LJ 544) is clear authority for the proposition that unless a person has a right to a post, a simple order of reversion from that post cannot amount to dismissal or removal within the meaning of Art. 311 and that a person gets a right to a post only when he is substantively appointed to it. This is what their Lordships said at p. 842 :

It is, therefore, quite clear that appointment to a permanent post in a Government service, either on probation, or on an officiating basis, is, from the very nature of such employment, itself of a very transitory character and, in the absence of any special contract or specific rule regulating the conditions of the service, the implied term of such appointment, under the ordinary law of master and servant, is that it is terminable at any time. In short, in the case of an appointment to a permanent post in a Government service on probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is

terminated at any time.

7. This passage was quoted with approval in *The State of Bombay v. F. A. Abraham* ((1962) Supp 2 SCR 92, at 97 : AIR 1962 SC 794 : (1962) 2 SCJ 168). See also *Divisional Personnel Officer, Southern Railway v. S. Raghavendrachar* ((1966) 3 SCR 106 : AIR 1966 SC 1529 : (1962) 2 SCJ 535) and *Union of India v. Gajendra Singh* ((1972) 3 SCR 660 : (1973) 3 SCC 797 : 1973 SCC (L&S) 269).

8. As Appellants 1, 3 and 5 were appointed under Rule 9 of the Indian Administrative Service (Cadre) Rules, there can be no doubt that the State Government was competent to terminate their appointments at any time (see *Union of India v. M. L. Capoor* ((1973) 2 SCC 836, 861 : 1974 SCC (L&S) 5, 29, 30).

9. The appellants have not made out their case as specified in the writ petition or as urged by them before the High Court.

10. We hold that the High Court was right in its conclusion. We dismiss the appeal. No order as to costs.

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