

State of Mysore and Others

Vs

M. K. Gadgoli and Others

Civil Appeal No. 874 of 1968

(V.R. Krishna Iyer, A.C. Gupta JJ )

25.09.1975

JUDGMENT

KRISHNA IYER, J. –

The first respondent was holding the substantive post of Clerk under the Bombay Government and had been promoted as officiating Aval Karkun on May 16, 1949. Subsequently however, the Collector of Dharwar reverted the first respondent to his substantive post as clerk for the reason mentioned in his order dated September 2, 1956 which runs as follows :

No. E.S.T. 384 Office of the Collector, Dharwar 2.9.1956.

CONFIDENTIAL

To

Shri. M. K. Gadgoli, Circle Officer, Dharwar.

Your work was recently reviewed and your confidential sheet was examined, it was found that your work as a Aval Karkun is unsatisfactory.

#O.C. Signed by the Sd/-Collector. For Collector Dharwar.##

He was thereafter posted a clerk. He challenged this order before government and the Mysore Government (by this time the district of Dharwar had, under the States Reorganization Act, become part of the Mysore State) rejected his appeal. However, on August 1, 1959, the Additional Commissioner went into the case of the first respondent again and found that he had improved considerably "during the last two years". Consequently, he ordered the promotion, on an officiating basis, of the first respondent to the post of Aval Karkun, with a direction superadded that his work would be watched for a period of one year before confirmation. It appears that his work was found satisfactory and, therefore, he was confirmed. By now, however, it happens that he has retired.

2. The first respondent, notwithstanding the order repromoting him, on an officiating basis, passed on August 1, 1959, felt aggrieved by the earlier order of reversion dated September 2, 1956. His appeal to government not having yielded any fruitful results, he challenged that order by writ petition in 1964. The High Court allowed his writ petition taking the view that the imputation made against the petitioner, that is, the first respondent, that his work was unsatisfactory and that his record was not good is also a clear stigma on his work as an Aval Karkun and entails penal consequences since his future chance of promotion undoubtedly has been imperilled.

The court, having taken the view that holding an officiating incumbent's work unsatisfactory was itself a punishment, struck down the reversion as a reduction in rank. The State has come up in appeal challenging this order of the High Court.

3. The law on the subject, to the extent we are concerned with in the circumstances of this case, is free from complication. The leading case in *Parshotam Lal Dhingra v. Union of India* [1958 SCR 828 : AIR 1958 SC 36 : (1958) 1 LLJ 544] itself has indicated that while a person occupying an officiating post might come within the scope of Article 311 if disciplinary action and punishment were imposed on him entailing penal consequences, there are categories of reversions of officiating promotees where Article 311(2) is not attracted. The court speaking through Das, C.J. observed thus :

Applying the principles discussed above it is quite clear that the petitioner before us was appointed to the higher post on an officiating basis, that is to say, he was appointed to officiate in that post which, according to Indian Railway Code, Rule 2003(19) corresponding to F.R. 9(19) means, that he was appointed only to perform the duties of that post. He had no right to continue in that post and under the general law the implied term of such appointment was that it was terminable at any time on reasonable notice by the Government and, therefore, his reduction did not operate as a forfeiture of any right and could not be described as a reduction in rank by way of punishment. Nor did this reduction under Note 1 to Rule 1702 amount to his dismissal or removal. Further it is quite clear from the orders passed by the General Manager that it did not entail the forfeiture of his chances of future promotion or affect his seniority in his substantive post. In these circumstances there is no escape from the conclusion that the petitioner was not reduced in rank by way of punishment and, therefore, the provisions of Article 311(2) do not come into play at all. In this view of the matter the petitioner cannot complain that the requirements of Article 311(2) were not complied with, for those requirements never applied to him.

In *State of Bombay v. F. A. Abraham* [1962 Supp 2 SCR 92 : AIR 1962 SC 794 : (1963) 2 LLJ 422] this Court has taken the view that a person officiating in a post has no right to hold it for all times. Indeed, such a person is given a higher officiating post to test his suitability to be made permanent later and holds it on the implied term that he would have to be reverted if he was found unsuitable. The reversion in such a case on the ground of unsuitability is an action in accordance with the terms on which the officiating post was being held and is not a reduction in rank by way of punishment. The law being plain, it is to be applied to the circumstances of the present case. Had there been any disciplinary inquiry against the first respondent and, instead of punishing him, the action was masked as a reversion simpliciter, there might have been some force in the contention that the step was punitive and attracted Article 311. Had there been any stigma cast on the employee based on tainted conduct or other moral unworthiness, it might probably have been urged that he suffered punishment even if the order bore an innocent face. But, in the present circumstances, all that we notice is that a person who was promoted on an officiating basis was not found suitable to be continued as such on account of his record. Indeed, as soon as he was found suitable, he was promoted, as is evident from the order of 1959. What reinforces our conclusion still more is the fact that after a year of close watch, the first respondent was confirmed in the promotion post and he continued in the rest of his career as a promotee. In the circumstances, we find it difficult to uphold the High Court's view that merely because an officiating hand is reverted being found not suitable for the time being, the action should be treated as a punishment attracting Article 311(2).

4. We allow the appeal of the State but in the circumstances of the case direct that parties will bear cost throughout.

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