

Union of Indian and Others

Vs

P. S. Bhatt

Civil Appeal No. 2973 of 1979

(A.D. Koshal, A.P. Sen JJ)

11.02.1981

JUDGMENT

A. N. SEN, J. -

1. This appeal by Special leave is against the Judgment and order of the Division Bench of the Andhra Pradesh High Court affirming the judgment and order of the learned single Judge in a writ petition filed by P. Subrahmonia Bhatt, the respondent in the present appeal. Shri Bhatt filed the writ petition challenging the validity of an order passed by the appellants reverting him to the post of an Announcer from the post of a Producer (Women and Children), All India Radio to which Shri Bhatt had been appointed on probation. For reasons recorded in the judgment, the learned single Judge came to the conclusion that the order of reversion passed against Shri Bhatt was by way of punishment; and in that view of the matter, the learned single Judge quashed the said order and made the rule, absolute. Against the order of the learned single Judge with the view expressed by the learned single Judge and dismissed the appeal. This appeal was thereafter preferred by the appellants with special leave granted by this Court.

2. The facts material for the purpose of this appeal may be set out. The respondent, Shri Bhatt, was originally recruited as a Compere on May 29, 1972 in the All India Radio, Vijayawada. The post of Compere was subsequently redesignated as Announcer from July 25, 1973. He was then selected by direct appointment for the post of a Producer and was acting as a Producer on probation, he was reverted to the post of Announcer by the order of station Director, Vijayawada dated January 28, 1977. The order of reversion reads as follows :

Shri P. S. Bhatt, Producer (Women and Children) All India Radio, Vijayawada is informed, that, during his probation period in the present post, he has not been found suitable for the post of producer. It has therefore been decided by the Directorate to revert him back to the post of Announcer with immediate effect i. e. from the afternoon of January 28, 1977.

The validity of this order was challenged by Shri Bhatt in a writ petition, filed by him. The allegations made by Shri Bhatt in the writ petition were that the said order had been passed by the Station Director arbitrarily and illegally inasmuch as Shri Bhatt had incurred the displeasure and wrath of the Station Director. It has been alleged in the writ petition that on the Station Director. It has been alleged in the writ petition that on November 13, 1976 Shri Bhatt had organised a children's programme before a selected audience and had invited the Station Director to speak. The Station Director, it appears, was not quite pleased with the arrangements made. During the course of his speech, the Station Director mentioned, by mistake, that the function was arranged in connection

with the death anniversary of Nehru instead of the birth anniversary. On November 16, 1976, Shri Bhatt and one Shri M. V. S. Prasad were discussing in the studios of the All India Radio, about the speech of the Station Director. In the course of their conversation they had indulged in some loose talks using filthy and abusive language also about the other officers of the department. The conversation had been tape-recorded by the Engineering Assistants who, it appears, had forwarded the same to the Station Director. The Station Director by his memo dated December 1, 1976 warned Shri Bhatt in the following terms :

It has been brought to my notice that Shri P. S. Bhatt, Producer (Women and Children) has conducted himself in a manner not conducive to the discipline of the office by indulging himself in loose talk in the studios on November 16, 1976. A serious view is being taken of such an irresponsible lapse on his part. He is severely warned of such misdemeanour.

It appears that the Station Director reported the matter to the Director General, All India Radio, for appropriate action, enclosing along with his report a brief substance of the conversation which had been tape-recorded. The order under appeal, which we have already set out, terminating the period of probation and reverting Shri Bhatt to his post of Announcer, was thereafter passed.

3. The main contention which was urged on behalf of Shri Bhatt in the writ petition before the learned single Judge was that the order of reversion of the petitioner from the post of Producer to that of the Announcer was by way of punishment and the said order was passed in breach of the provisions of Article 311(2) of the Constitution. The learned Judge accepted this contention, holding that the order was influenced by the report of the Station Director to the Director General. The Division Bench had also agreed with this finding of the learned Judge.

4. The correctness of the decision of the High Court has been questioned in this appeal.

5. The learned Solicitor-General appearing on behalf of the appellants has submitted that the order of termination in the instant case is not by way of punishment and does not attach any kind of stigma to Shri Bhatt. The learned Solicitor-General has drawn our attention to the order which we have earlier set out and has contended that the other is one of termination of the probation simpliciter without involving any stigma or penalty. He has argued that Shri Bhatt who was on probation was not found suitable and was, therefore, reverted to the post of the Announcer. It is argued that Shri Bhatt who was merely on probation in his post of a Producer could be reverted to his old post terminating his probation, if the authorities found him to be unsuitable in the post of Producer in which he had been placed on probation. He has further argued that the termination of the probation of Shri Bhatt and reversion to the post Announcer cannot be said to be by way of punishment. He has submitted that because of the conduct of Shri Bhatt, the authorities concerned could very legitimately consider that the employment of Shri Bhatt as Producer in which post he was still on probation was likely to affect the discipline in the administration and as such he was not a person suitable to be employed in that post and his employment in that post in which he was still a probationer should be terminated and he should be reverted to his original post of Announcer. The learned Solicitor-General contends that the conduct of Shri Bhatt might have motivated the authorities in taking the action against him and in passing the order; but it cannot be said that the termination of the period of probation in such circumstances would amount to any punishment. He has referred to the decision of this Court in the case of State U. P. v. Bhoop Singh Verma, and also to the decision in the case of Oil and Natural Gas Commission v. Dr. Md. S. Iskender Ali. The learned Solicitor-General, therefore, contends that as the order in question is an order of simple

termination of employment on probation of the petitioner, there can be no question of Article 311 of the Constitution being attracted.

6. On behalf of Shri Bhatt, the petitioner in the writ petition and respondent in the appeal, it has been argued that the termination of the period of probation in the instant case and reversion of Shri Bhatt from his post of Producer to his old post of Announcer is in the facts and circumstances of this case by way of punishment. It has been argued that the facts and circumstances of the case go to indicate that the Station Director wanted to punish him because of loose talks which had been taped and placed before him and with the object of punishing him, the Station Director had made a report on the basis of which the authorities reverted Shri Bhatt to his old post of Announcer after terminating his employment as Producer in which post he was on probation. It has been argued that if the order termination of the employment of Shri Bhatt as producer on probation and his reversion is by way of punishment the said order must be held to be illegal, as Article 311 of the Constitution will be clearly attracted. In support of this case, reference has been made to the decisions of the Supreme Court in *Parshotam Lal Dhingra v. Union of India*, *S. Sukhbans Singh v. State of Punjab*, *K. H. Phadnis v. State of Maharashtra* and *Shamsher Singh v. State Punjab*.

7. The law in relation to termination of service of an employee on probation is well settled. If any order terminating the service of a probationer be an order of termination simpliciter without attaching any stigma to the employee and if the said order is not an order by way of punishment, there will be no question of the provisions of Article 311 being attracted. As the law on the question appears to be well settled it does not become necessary to consider the various decisions which have been cited.

8. The only question which falls for determination in the present appeal is whether the impugned order was passed by way of punishment or not. It has not been argued that the impugned order attaches any kind of stigma to Shri Bhatt. We have earlier noticed the order and it is clear from the order that the order is an order of termination of the employment on probation simpliciter and reversion to the old post without attaching any kind of stigma. The High Court had proceeded on the basis that the impugned order was by way of punishment.

9. It may be true that in deciding whether an order is by way of punishment or not, the relevant facts and circumstances may have to be considered. In the instant case, the broad facts, as established, appear to be as follows :

1. Shri Bhatt and Shri Prasad had indulged in loose talk and used filthy language against the Station Director and other officers of All India Radio, Vijayawada, while in office;
2. This Finding has been recorded by the learned single Judge;
3. The tape-recording of the conversation of Shri Bhatt and Prasad had been forwarded to the Station Director :
4. The Station Director by his memo dated December 1, 1976 which we have earlier noted, had warned Mr. Bhatt;
5. The Station Director had further reported the matter to the Director General, All India Radio for appropriate action;

6. The impugned order terminating the period of probation of Shri Bhatt as producer and reverting him to his post of Announcer had thereafter been passed.

On a proper consideration of these facts, in our opinion, it cannot be said that the impugned order was passed by way of punishment; and, in our view, the High Court was in error in arriving at the finding that the impugned order was by way of punishment, as the report of the Station Director had influenced the Director General to pass the said order. Loose talks and filthy and abusive language which had been used against the Station director and the other officers may legitimately in the facts and circumstances of the case lead to the formation of a reasonable belief in the minds of the authorities that the person be having in such fashion is not a suitable person to be employed as a producer. This undesirable conduct on the part of Shri Bhatt might have been the motive for terminating the employment on probation and for reverting him to his old post of Announcer. Even if misconduct, negligence, inefficiency may be the motive or the inducing factor which influences the authority to terminate the service of the employee on probation, such termination cannot be termed as penalty or punishment. This principle has been clearly enunciated and reiterated in the case of oil and natural Gas Commission v. Dr. Md. S. Iskender Ali.

10. From the broad facts which we have earlier recorded, it is manifest that even if the conduct of Shri Bhatt in indulging in loose talks and filthy and abusive language may be considered to be the motive or the inducing factor cannot be said to be by way of punishment. This appeal must, therefore, succeed. The judgment and order of the High Court are set aside and the writ petition filed by Shri Bhatt is dismissed. There, will, however, be no order as to costs.

</html