

State of Gujarat

Vs

Akhilesh C. Bhargav and Others

Civil Appeal No. 1273 of 1979

(Ranganath Misra, M. M. Dutt JJ)

26.08.1987

ORDER

1. This appeal by special leave is against the appellate order off the Division Bench of the Gujarat High Court. Respondent 1 was appointed to the Indian Police Service on July 4, 1969 and has been discharged by the impugned order dated April 9, 1974. After he was appointed by the Union of India he was allotted to the State cadre of Gujarat and the order of discharge has been made on the basis of steps taken by the State of Gujarat. The order of discharge was assailed by filing a writ petition under Article 226 of the Constitution. The Single Judge annulled the order. The writ petition both the Union of India and the State of Gujarat were party-respondents. Against the Single Judge's decisions, two appeals were preferred to the Division Bench. The Division Bench for reasons mostly different from what had been recorded by the learned Single Judge, came to the same conclusion. Before this Court, there is only one appeal by the State of Gujarat and the Union of India has been joined as a respondent. Initially a preliminary objection had been raised regarding the maintainability of the appeal in the absence of any appeal by the Union of India but Mr. Kacker appearing for respondent 1 has given up the same. It is, therefore, not necessary to go into that question.

2. The order of discharge read as follows :

Under clause (bb) of Rule 12 of the Indian Police Service (Probation) Rules, 1954, the President hereby discharges Shri A. C. Bhargav, a person appointed to the Indian Police Service, on probation, on the results of the IAS etc. Examination held in 1968, and allocated to the service cadre of Gujarat from the said service with effect from the date on which this order is served on the said Shri A. C. Bhargav.

Reference to Rule 12 (bb), it was contended on behalf of the respondent, brought into the otherwise innocuous order stigma in sufficient measure warranting a proceeding of the nature contemplated under Article 311(2) of the Constitution. It is unnecessary for us to go into that question as in our opinion the view expressed by the High Court is quite sound. We may refer to the Constitution Bench decision of this Court reported in the case of State of Orissa v. Ram Narayan Das ((1961) 1 SCR 606 : AIR 1961 SC 177 : (1961) 1 Lab LJ 552) wherein this Court considered the order of discharge of a police officer on probation and held that in the case of a probationer observation like 'unsatisfactory work and conduct' would not amount to stigma.

3. The other aspect which has been canvassed before us at length is as to whether the respondent should have been treated as a confirmed officer of the cadre at the time the order of discharge was made. Admittedly, the order of discharge is about five years after the appointment.

4. Rule 3(1) of the Indian Police Service (Probation) Rules, 1954, provides that every person recruited to the service in accordance with Indian Police Service (Appointment by Competitive Examination) Regulations, 1955, ... shall be appointed to the service on probation for a period of two years. At the relevant time, sub-rule (3) of the said rule provided that the Central government may, if it so thinks fit in any case or class of cases extend the period of probation. Admittedly, in this case there was no order of extension. It has been contended that no order of extension is necessary to be made as the process of confirmation is not automatic and even if the two year period as provided in rule 3(1) has expired confirmation would not ipso fact follow and a special order has to be made

5. Reliance has been placed on a series of decisions of this Court which have held that an order of confirmation has to be made and confirmation would not follow automatically. The position here, however, is somewhat different.

6. While the Probation Rules prescribed an initial period of two years of probation it did not provide any optimum period off probation. Administrative instructions were issued by the Ministry of Home Affairs, Government of India, on March 16, 1973, indicating the guidelines to be followed in the matter. The relevant portion thereof may be extracted :

(ii) It is not desirable that a member of the service should be kept on probation for years as happens occasionally at present. Save for exceptional reasons, the period of probation should not, therefore, be extended by more than one year and no member of the service should, by convention, be kept on probation for more than double the normal period i.e. four years. Accordingly, a probationer, who does not complete the probationers' final examination within a period of four years, should ordinarily be discharged from the service.

7. It is not disputed that the circular of the Home Ministry was with reference to the Indian Police Service (Probation) Rules. We have not been shown that these instructions run counter to the rules. It is well settled that within the limits of executive powers under the constitutional scheme, it is open to the appropriate government to issue instructions to cover the gap where there be any vacuum or lacuna. Since instructions do not run counter to the rules in existence, the validity of the instructions cannot be disputed. Reliance has been placed in the courts below on the constitution Bench Judgment of this Court, and which is reported in Sant Ram Sharma v. State of Rajasthan ((1968) 1 SCR 111 : AIR 1967 SC 1910 : (1968) 2 Lab LJ 830) where Ramaswami, J. speaking for the court stated thus :

We are unable to accept this argument as correct. It is true that there is no specific provision in the rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point government can fill up the gaps and supplement the rules and issue instructions not inconsistent with they rules already framed.

8. We are of the view that the rules read with instructions create a situation as arose for consideration by this Court in the case of State of Punjab v. Dharam Singh ((1968) 3 SCR 1 : AIR

1968 SC 1210 : 34 FJR 408). The constitution Bench of this Court in that case interpreted the Punjab Education Service (Provincialised Cadre) Class III Rules and found that there was a maximum limit of three years beyond which the period of probation could not be extended. When an officer appointed initially on probation was found to be continuing in service beyond three years without a written order of confirmation, this Court held that it tantamounts to confirmation. In view of what we have stated above we are in agreement with the High Court about the combined effect of the rules and instructions. We hold that the respondent stood confirmed in the cadre on the relevant date when he was discharged. For a confirmed officer in the cadre, the Probation Rules did not apply and therefore, proceedings in accordance with law, were necessary to terminate service. That exactly was the ratio of the decision in Moti Ram Deka v. general Manager, N. E. F. Railways, Maligaon, Pandu ((1964) 5 SCR 683 : AIR 1964 SC 600). On the analysis indicated above, the net result, therefore, is that respondent 1 had become a confirmed officer of the Gujarat I.P.S. cadre and under Rule 12 (bb) of the Probation Rules his services could not be brought to an end by the impugned order of discharge.

9. The appeal fails and is dismissed, there will be no order as to costs.

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