

State of U.P. and Others

Vs

G. P. Swami

Civil Appeal No. 809 of 1987

(M. N. Venkatachaliah, M. M. Punchhi JJ)

16.10.1992

JUDGMENT

1. This appeal by the State of Uttar Pradesh arises out of and is against the order dated 14-5-1986 made by the High Court of Allahabad in Writ Petition No. 2812 of 1981 quashing the orders dated 28th April 1981 and 21st February 1984 of the Conservator of Forests and the Chief Conservator of Forests respectively touching the service of the respondent, G. P. Swami. By the first of these orders the respondent was dismissed from service pursuant to the findings of a disciplinary inquiry into certain charges of misconduct against the respondent. By the latter order the Chief Conservator of Forests sought to give effect to certain order of the U.P. Public Services Tribunal which had directed the consideration of the case of the respondent for promotion to the post of Forest Ranger with effect from 19th August 1977 when allegedly his juniors had been promoted.
2. We have heard Shri Adarsh Goel for the appellant-State and Shri Siddiqui, learned counsel for the respondent.
3. The respondent entered the service of the Forest Department of the State of U. P. as Forester in the year 1956. He became Deputy Ranger in the year 1963. In 1977 when certain ad hoc promotions to the post of Forest Rangers were taken up he was superseded on account of certain adverse entries in his service rolls. The respondent moved the Uttar Pradesh Public Services Tribunal for relief. The Tribunal by its order dated 28th November, 1980 directed the State of Uttar Pradesh to consider respondent's case for promotion from 19th August, 1977 on which date his juniors had been so promoted. But in the meanwhile, certain disciplinary proceedings were initiated against the respondent. On charges of misconduct, culminating in the Inquiry Report dated 31st March, 1981 holding that the charges were substantiated. An order for his dismissal from service was made on 28th April, 1981. In the meanwhile, the Selection Committee, acting upon and implementing the directions of the U.P. Public Services Tribunal contained in its order dated 28th November, 1980 considered the respondent's case and recommended him for promotion.
4. The respondent challenged the earlier order of dismissal dated 28th April, 1981 in Writ Petition No. 2812 of 1981 before the High court. Though a number of grounds were taken, the ground on which decision in the present appeal turns is whether the order of dismissal was passed by an authority lower in rank than the appointing authority. This, in turn, depends on whether pursuant to the proceedings of the Selection Committee the respondent had, in fact, been promoted to the post of Ranger, in which event the order of dismissal dated 28th April, 1981 passed by the Conservator (Forests) would indeed be by an authority lower in rank than the appointing authority. This

contention was reinforced by a reliance on the order dated 21st February, 1984 passed by the Chief Conservator the operative part of it provides:

".....Therefore, now in compliance of the order of the U.P. Public Service Commission Mr. Swami is granted Notional Promotion to the post of Forest Ranger from 19-8-1977 (the date when his Junior Deputy Rajik was promoted) to 28-4-1981 (the day when he was dismissed from service) and he shall be deemed to be reinstated at his substantive post prior to the removal from the above service."

This order, it was contended before the High Court, had no effect of reinstating and promoting the respondent to the post of Ranger and that accordingly the earlier order of dismissal dated 28th April, 1981 passed by the Conservator could not be said to have been effective in relation to the post of Ranger. The High Court quashed the order of dismissal as well as the subsequent order dated 21st February, 1984. As to the effect of the order dated 21st February, 1984 made by the Chief Conservator the High Court held:

"Another infirmity in the order of dismissal came into existence on account of the order of promotion dated 21-2-1984. On account of this promotion order the petitioner was promoted to the post of Forest Ranger from 19-8-1977. On account of this promotion Chief Conservator of Forest opposite party No. 2 became disciplinary authority of the petitioner. There is nothing on record showing that he delegated his authority to the Conservator of Forest opposite party No. 3 and thus charges could not be framed by the Conservator of Forest and he could not appoint enquiry officer. All this could be done by the Chief Conservator of Forests only. The enquiry, therefore, stands vitiated on this ground and the order of dismissal could not be passed on the basis of such an enquiry."

State of Uttar Pradesh has now come up in appeal by special leave.

5. Shri Adarsh Goel contended that the view taken by the High Court as to the lack of competence on the part of the Conservator who passed the order of dismissal dated 28th April, 1981 which, in turn, presupposes and proceeds on the premise that the respondent was not a Deputy Ranger but had the rank of a Ranger is palpably erroneous. Learned Counsel sought to maintain that on a clear understanding of the order dated 21st February, 1984 the only inference that could reasonably be drawn is that the respondent was notionally promoted to the post of the Ranger as a matter of technical obedience to the directions of the Tribunal and that simultaneously respondent was reverted to the substantive post of Deputy Ranger and that this exercise was confined to and only for the purpose of giving the benefit of the order of the Tribunal to the respondent. Shri Goel submitted that the reversion was perfectly competent and valid. The notional promotion was merely on an ad hoc arrangement. He pointed out that even the Tribunal's order made it clear that the promotion was only ad hoc.

6. There is much to be said in favour of the stand of the appellant. Indeed, referring to the Tribunal's order, the High Court in the course of its earlier order dated 5th August, 1983, in the Civil Revision No. 502 of 1982 had held:

"The direction only was to consider the case of Swami for promotion with effect from August 19, 1977 on which date Swami was admittedly in the service of the State Government. He continued to remain in the service till April 28, 1981. In case,

after consideration, it was thought that Swami was not fit for promotion, an order to that effect could have been passed. If, on the other hand, Swami was found to be fit for promotion, an order promoting him with effect from August 19, 1977 till April 28, 1981 when his relationship with the State Government as its employee was snapped could have validly been made in law."

This order of the High Court came up in a Special Leave Petition, but this Court declined to interfere. The contention of the appellant that the notional promotion granted subsequent to the dismissal only for purposes of affording financial benefits up to the date of snapping of the relationship of employer and employee should not undo the order of dismissal itself is eminently arguable.

7. But the need to go into this controversy is obviated in view of the submission made by Shri Siddiqui that the order dated 21st February, 1984 may also be susceptible of the interpretation that the order of dismissal could take effect only on 21st February, 1984 when respondent stood reverted to the post of Deputy Ranger from the post of Ranger to which he had been notionally promoted and that accordingly, it will be reasonable to construe that order as putting an end to his service only with effect from that date. Learned Counsel submitted that the respondent would be content if his service is held to have subsisted till 21st February, 1984 instead of 28th April, 1981 in the rank of a Ranger and between 19th August, 1977 and 21st February, 1984 with all the attendant emoluments that may go with that position. He also submitted that it will also be reasonable, having regard to the long and chequered history of this litigation that the respondent be treated as compulsorily retired with effect from 21st February, 1984.

Learned Counsel for the State could not disagree that that this would not be unreasonable basis for resolving the controversy.

8. In the result, in modification of the order of the High Court we direct that the respondent be treated as in service till 21st February, 1984 and in the rank of a Ranger from 19th August, 1977 to 21st February, 1984 and shall be deemed to have been compulsorily retired on the expiry of 21st February, 1984. He shall be entitled to the salary and emoluments of a Ranger during this period, less, of course, whatever has been paid to him by way of subsistence allowance or otherwise. For purposes of pension payable from 22nd February, 1984 the respondent shall be deemed to have held the post of a Ranger during that period in a substantive capacity. The appeal is disposed of and the order under appeal modified, accordingly. No costs. Order accordingly.

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