

RAJASTHAN HIGH COURT

Chiranjilal

Vs.

Union of India

Civil Writs Nos. 126 of 1954 and 6, 7 and 8 of 1956
(Wanchoo, C.J. and Dave, J.)

06.08.1956

JUDGMENT

Wanchoo, C.J.

1. These are four connected writ applications of Chiranjilal, Madansingh, Udaibhan and Ramsingh against the Union of India and the Divisional Superintendent, Northern Railway, Jodhpur. We shall deal with them together as their facts are exactly similar, and the points raised are exactly the same.

2. The case of the applicants is that they entered service of the former Jodhpur Railway as clerks in the grain shop in 1946. Though the applicants have not said so in so many words in their applications, it appears that the grain shop department was a temporary department. This is clear from what they have said in paragraph 3 of their petition, namely, that they were rendered surplus on the grain shop department being wound up in 1952. Their case further is that on the winding up of this department they were absorbed with effect from 1st of January, 1953, in a clerk's grade from Rs. 55 to 130. Later, they weretransferred to the Bikaner division as trains clerks in the same grade.

In September, 1953, the applicants were, however, transferred back to Jodhpur. On their arrival in Jodhpur, they were appointed as Acting Pointsmen in class IV in the grade of Rs. 30 to Rs. 50. Their main complaint, therefore, is that they were reduced in rank without assigning any reason or affording any opportunity to them to show cause against such reduction within the meaning of Article 311 of the Constitution. The applicants have narrated the further history of their various posts. It is not necessary to set that out because the reduction in rank, if any, took place in September,

1953, when they were transferred back to Jodhpur from Bikaner. It is enough to say that at present the applicants are holding posts in the grade of Rs. 55 to Rs. 85, and their contention is that this also amounts to reduction in rank from the grade of Rs. 55 to Rs. 130.

3. The applications have been opposed on behalf of the Railway, and their case is simple. It is admitted that the applicants were first employed by the former Jodhpur Railway in the grain-shop department. The department itself was temporary, but as it was expected to last for more than 3 years, the staff was confirmed provisionally in long temporary posts. When however the department came to an end, the provisional confirmation was set aside. Thereafter, the Railway tried its best to absorb the applicants in alternative posts, and their case is that they were first absorbed from the 1st of January, 1953, as temporary clerks in the grade of Rs. 55 to Rs. 130. Later, they were transferred in the same grade to Bikaner as train clerks, but they still remained temporary. They were transferred back from Bikaner to Jodhpur to make way for properly qualified candidates approved by the Railway Service Commission. When they came back to Jodhpur, the question of their absorption arose again, and this time they were offered alternative employment without break of service in a lower grade. Since then they have been promoted to the grade of Rs. 55 to Rs. 85. The case of the Railway in a nutshell is that the applicants were never permanent employees, and were not entitled to the rights and privileges of permanent employees, and there was, therefore, no question of the application of Article 311 of the Constitution to them, and they were not entitled to ask the Railway to follow the procedure provided for those to whom Article 311 of the Constitution applied.

4. It will be clear from this narration of the case of the parties before us that there is a dispute between them as to the petitioners' status. The applicants claim to be in some kind of permanent service, at any rate, from the time of their absorption on the 1st of January, 1953. The Railway authorities, however, contend that they have all along remained temporary employees, and have never been permanently or substantively employed. The question whether the applicants have become permanent employees, or are still temporary servants of the Railway is a question of fact which we are not prepared to go into in our extraordinary jurisdiction. If the applicants feel that they have really any case on the basis of their being permanent employees, they have their remedy open by way of a suit. So far as we are concerned, we must accept the case put forward by the Railway, namely that the applicants are temporary employees, and

then proceed to decide whether they are entitled to the protection of Article 311 of the Constitution.

5. The contention on behalf of the applicants, on the assumption that they are temporary employees, is that they are entitled to the protection of Article 311 even though they might be temporary employees. The argument is that they had been holding posts in the grade of Rs. 55 to Rs. 130 even though temporarily, and they could not be reduced from this grade without action being taken against them as provided under Article 311, for otherwise it would amount to reduction in rank. Reliance in this connection was placed on two cases.

The first case is *Kashinath Patnaik v. P. K. Kapila*,¹ That was a case of a Government servant who held an inferior post permanently, and was officiating in a higher post which was a temporary post. It was held that the applicant was substantively holding the temporary higher post, and consequently his reversion to the lower post amounted to reduction in rank. The decision in that case appears to have been based on the meaning of the word "lien" in the Orissa Rules, though we must say with all respect that the learned Judges seem to have extended the meaning of the word 'lien' by applying it to a temporary post when, under Rule 27 of the Orissa Service Code, 'lien' only applied to two kinds of posts, namely a permanent post and a tenure post. The learned Judges only looked at that part of the definition of the word 'lien' which said that the Government servant must hold substantively a post, but did not seem to have looked at the nature of the post itself which must be a permanent post or a tenure post. We, therefore, find it difficult to accept the conclusion of the learned Judges in this case.

6. The next case, on which learned counsel for the applicants relies, is *M. V. Vichoray v. State of Madhya Pradesh*,² In that case, it was held that if a person officiating in a higher post was reverted to his original post in the normal course and not by way of penalty he could not be said to be reduced in rank.

On the other hand, where reversion was ordered as penalty, it amounted to reduction in rank because such a reversion was apt to stand in the way of a Government servant in securing his promotion in the normal course. The distinction which the learned Judges drew between reversion in the normal course and reversion as a penalty is difficult to sustain. A person holding a higher post in an officiating capacity has no right to that post, and it is, in our opinion, immaterial for what reason he is reverted, for a person cannot be said to be reduced in rank from a higher post to a lower post when he has no

right to the higher post at all.

7. Learned counsel for the applicants, however, urges that this case is even better than these two cases on which he relies, because the applicants were not holding an inferior post substantively, and were not officiating in a higher post, and that they had been holding the grade of Rs. 55 to Rs. 130 on a temporary basis. He says that as they were holding that grade on a temporary basis, their appointment in a lower grade amounts to reduction in rank. We are of opinion that a temporary servant cannot claim a better position than a permanent servant in an inferior grade who is acting or officiating in a higher grade. In the case of a temporary servant, it is always possible to dispense with his services after a month's notice, and we understand that there is always a contract between the Railway and its servants providing for this. This is also a case where the Railway was trying from 1952 after the abolition of the grain shops to absorb the applicants in some post or the other. They were first absorbed in the grade of Rs. 55 to Rs. 130 temporarily as stated by the Railway. When more qualified candidates became available for these posts, they were absorbed again temporarily in a lower grade. What the Railway contends is that they could have given notices to these applicants when the posts on which they were working temporarily had to be vacated by them in order to provide for qualified candidates selected by the Railway Commission. But instead of doing that they gave option to these persons to accept lower posts. It seems to us that in these circumstances, the applicants cannot claim a better position than permanent servants in an inferior grade officiating in a higher grade, and that the action of the Railway, assuming always that the applicants are temporary employees, in taking them in a lower grade can only amount to giving them an option of either getting out of service after the usual notice or accepting alternative employment. The applicants, therefore, when they were fitted into the lower grade were really given alternative employment and by accepting that they accepted the option. The fact that they joined the posts offered under protest is neither here nor there.

8. We may also refer to certain cases of other High Courts bearing on this point.

9. In *Jatindra Nath v. R. Gupta*,³ the meaning of the term 'reduction in rank' was under consideration. The Calcutta High Court was of the view that 'reduction in rank' under Article 311 must be in the nature of punishment or penalty. It was further held that in a case of a person officiating in a higher post, if he was reverted to his original post in the normal course (for example for inefficiency) there was no question of a punishment or penalty being imposed.

Reference was made to Vichoray's case in support of the view. We would only like to point out that the Calcutta High Court goes a little further than Vichoray's case inasmuch as in Vichoray's case reversion for inefficiency does not appear to have been considered to be in normal course.

10. The next case is *Rattan Lal Gulati v. Union of India*,⁴ There the Punjab High Court was considering the meaning of the words 'reduction in rank' in Article 311. It was held that a person who was appointed substantively to a temporary post could not acquire a lien on the said post for a lien could be acquired only on a permanent post or a tenure post and not on a temporary post.

The High Court, therefore, held that a person holding a temporary post in a substantive capacity had no right to hold that post indefinitely and might be removed or transferred to a post carrying a lower salary without contravening the provisions of the Fundamental Rules, and therefore there was no necessity of affording the person a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

We are in respectful agreement with this view as we shall explain further after consideration of other authorities.

11. In *Gurbachan Singh v. State of Pepsu*,⁵ the question arose whether reversion of an employee from the grade he was temporarily holding, purely on administrative grounds amounted to a reduction in rank, and it was held that it did not. The learned Judges were of the view that where an appointment was on an officiating or provisional basis, the reversion to a permanent post on the ground of integration did not amount to reduction in rank. This case is in line with the Nagpur Case, and we respectfully agree with it so far as it goes.

12. The next case is *Ganesh Balkrishna Deshmukh v. State of Madhya Bharat*,⁶ There also the meaning of the words 'reduction in rank' came up for consideration, and it was held that reduction must be in the nature of a punishment or a penalty. It was further held that if a person officiating in a higher post was reverted to the substantive post in the normal course (e.g., for incompetence for holding a higher charge), there was no question of a punishment or a penalty being imposed. The learned Judges relied on Vichoray's case. But it is enough to point out that this case like Jatindra Nath Biswas' case goes further than Vichoray's case.

13. The next case is *Shrinivas Ganesh v. Union of India*,⁷ That was not a case of reduction in rank, but of removal from service of a temporary servant. The learned Judges held that removal of a temporary servant by Government according to the terms of the contract, or the rules, or according to the principles of common law would not attract the provisions of Article 311, thus drawing a distinction between permanent and temporary employees in the matter of the application of Article 311 so far as it related to removal and dismissal.

14. The next case to which reference may be made is the *Union of India v. Mr. Parshotam Lal Dhingra*,⁸ In that case the question arose whether a person officiating in a higher post having a substantive lower post could be said to have been reduced in rank when he was reverted to the substantive post.

The learned Judges considered the question at length, and were of the view that reduction in rank contemplated by Article 311 referred to those cases where the civil servant had a substantive right to the post from which he was reduced, and had thus a lien on that post. The learned Judges also pointed out that it was therefore difficult to sustain the distinction which was drawn by some High Courts between reversion on purely administrative grounds and reversion for other reasons. We are of opinion that, if we may say so with respect, this is the correct view to take, and that it is not possible to draw a distinction on any valid basis in the manner in which some High Courts have done. The difficulty of drawing that distinction is clear from the fact that the Calcutta High Court and the Madhya Bharat High Court have used the same principle in a different way from the Nagpur High Court.

15. Even the Nagpur High Court seems to have changed its view in *Laxminarayan Chironjilal v. Union of India*,⁹ though Vichoray's case has not unfortunately been referred to in this judgment. In this case, the Nagpur High Court has held that a person cannot be deemed to be a member of a service unless he is permanently absorbed therein; nor can he be deemed to be the holder of such post unless he holds it permanently. Therefore there can be no reduction in rank where a person in temporary employ holding a temporary post is given a post of lower rank. We are in agreement, if we may say so with respect, with the view expressed in this case.

16. Our attention was also drawn to two cases of this Court, namely - *Nihal Chand v. State of Rajasthan*¹⁰ and *Kewal Mal Singhi v. Heta Ram*¹¹ The first was a case of removal of a temporary employee, and the second was a case of retirement of

permanent servants on the basis of a general order. Neither of these is a case of reduction in rank, and they are therefore not directly in point in this case. What we want to guard against, however, is the application of what we have said in a case which relates to reduction in rank to a case of removal or dismissal. We say this in order to avoid the apparent inconsistency of the application of Article 311 in the case of removal or dismissal of temporary servants as in Nihalchand's case, and its non-application in cases of reduction in rank. It is enough to point out that cases of reduction in rank stand in a class by themselves, and reduction is only possible where the person reduced was holding a higher post substantively, and the post itself was of a permanent character or a tenure post.

17. A review, therefore, of all these authorities reveals that in some cases some High Courts have held that reversion even from an officiating post to a substantive post may amount to reduction in rank if it is not in what is called the normal course. The Nagpur High Court in Vichoray's case has held that if a man is reverted from the higher post to the lower post on any ground other than mere administrative convenience, (as for example the return of a man from leave in whose place the person was officiating) it would amount to reduction in rank.

The Madhya Bharat and Calcutta High Courts have, as we have pointed out, gone a little further, and have held that reversion on the ground of inefficiency or incompetence would also be in normal course, and would not amount to reduction in rank. It seems to us that it is very difficult to draw the line in such cases between what is called reversion in normal course and reversion on other grounds. Article 311 provides protection against reduction in rank without reasonable opportunity of showing cause against the action proposed. What we have to see is the meaning to be put on the words 'reduction in rank' appearing in that Article. There is no mention in the Article whether the rank contemplated in it is a permanent rank, or temporary rank, or officiating rank, or any other kind of rank. But as will be clear from a review of these authorities, the opinion of most of the High Courts is that the rank here means permanent rank. It seems to us that there can be no question of reduction from a post to which a person is not entitled. Reduction only takes place where a person entitled to a certain rank is reduced to a post which is not equal to the one which he formerly held.

That is why, if we may say so with respect, the Punjab High Court in Rattan Lal Gulhati's case laid stress on the word 'lien', and held that there could be reduction in rank only where a person was reduced from a post over which he had a lien. This

implies that the post must be held substantively, and must be a permanent post or a tenure post. In order therefore to attract the provisions of Article 311 (2) a person must be holding the post substantively and have a lien on it, and the post must also be a permanent post or a tenure post. It is only when these conditions are satisfied that it can be said that there is such reduction in rank as will attract the provisions of Article 311 (2). It follows, therefore, that a person who is holding a higher post in an officiating or acting capacity and is substantively holding an inferior post has a lien only on the inferior post and not on the higher post, and if he is reverted to the post on which he has a lien, he cannot complain of reduction in rank. Similarly, if a person is holding a post only temporarily, he has no lien on that post, and cannot complain if he is given some other post of lower rank even though the post which he might be holding temporarily might be permanent because the other element, namely, that he should be holding the post substantively is absent.

The present case is a case of the second type. The posts which the applicants were holding might be permanent; but the case of the Railway is, and it is on that assumption that we have proceeded in this case, that the applicants were only holding those posts temporarily. In the circumstances, they had no lien on those posts. 'Lien' is defined in R. 2003 (14) of the Indian Railway Establishment Code, Volume II. Consequently if the Railway offered them posts of lower rank when for some reason they could not be kept on the posts of higher rank, it cannot be said that there was any reduction in rank. We have already said that the Railway could have dispensed with their services by giving them notice, and it was only in order to find some alternative employment for them that they were given the option of accepting a lower post.

18. There is, therefore, no force in these applications, and we hereby dismiss them. We do not think that in this case we should award costs to the parties, and order accordingly.

Applications dismissed.

Cases Referred.

1. AIR 1952 Ori 285
2. AIR 1952 Nag 288
3. AIR 1954 Cal 383
4. AIR 1955 Pun229
5. AIR 1956 Pep 26

6. AIR 1956 Mad Bha 172
7. AIR 1956 Bom 455
8. LPA No. 28 of 1955 D/-19-1-1956: (AIR 1956 Punjab 207)
9. AIR 1956 Nag, 113
10. 1950 Raj LW 192
11. ILR (1951) Raj 405: (AIR 1952 Raj 17)