

APPAR APAR SINGH

v.

THE STATE OF PUNJAB AND OTHERS

December 3, 1970

[J. M. SHELAT, C. A. VAIDIALINGAM AND P. JAGANMOHAN
REDDY, JJ.]

Constitution of India—Article 311—Civil Service—Enquiry into allegation by principal against members of college—After enquiry principal reverted to his substantive rank—If article attracted.

The appellant, a member of the Punjab Education Service Class II was promoted to Class I service on an officiating basis and thereafter appointed Principal of the College. K, a member of the College staff, made certain allegations against him at a public meeting. An inquiry was held to investigate into the allegations made by the appellant against some members of the staff and the allegations made by K against the appellant and also the conduct of K. The evidence recorded at the enquiry was not disclosed to the appellant nor was he allowed to cross-examine any witnesses. The finding at the enquiry was against the appellant, and K, K was dismissed from service. The appellant was reverted to his substantive rank. The appellant filed a petition under Article 226 of the Constitution of India challenging his reversion. The Government defended the order on the grounds that the appellant was only in an officiating post that no enquiry was held up on his conduct and the enquiry was directed against K and only to find out the suitability of the appellant's continuation as Principal, that no departmental enquiry as envisaged by Article 311(2) was made against the appellant before his reversion was ordered and therefore the finding recorded at the enquiry may have operated only as a motive for the government to pass the order of reversion, and that the order under the circumstances could not be considered to be by way of punishment.

HELD : The order was one reducing the rank of appellant by way of punishment. As it was passed in violation of Article 311(2) of the Constitution the order must be set aside.

Officiating and temporary Government servants are also entitled to the protection of Art. 311(2) in the same manner as permanent Government servants, if the Government takes action against them by meeting out one of the punishments, i.e., dismissal, removal or reduction in rank. Notwithstanding the fact that the appellant was in P.E.S. Class I only officiating, he was entitled to invoke Article 311(2) if he was able to establish that the order of reversion was by way of punishment and that it amounted to reducing him in rank. [903 G]

The enquiry was not conducted with a view to finding out the suitability or otherwise of the appellant to be continued as Principal. On the other hand, the inquiry was held with a view to investigate into the allegations made by the Principal against some of the members of the staff and the allegations made by K against the appellant.

The Government accepted the finding recorded at the enquiry as well as the recommendation to impose punishment against the appellant and

A it was on the basis of such acceptance that the order of reversion was passed. No doubt, the order by itself and on the face of it was innocuous, but, the finding recorded at the enquiry against the appellant and its recommendation to impose punishment upon the appellant were the very foundation for the government passing the order reverting the appellant from P.E.S. Class 1 to P.E.S. Class II. [905 F]

B *Farshotam Lal Dhingra v. Union of India*, [1958] S.C.R. 828, *Champaklal Chimanlal Shah v. Union of India*, [1964] 5 S.C.R. 190, *State of Punjab v. Shri Sukh Raj Bahadur*, [1968] 3 S.C.R. 234, *State of Orissa v. Ram Narain Das*, [1961] 1 S.C.R. 606, *Jagdish Mitter v. Union of India*, A.I.R. 1964 S.C. 449 and *State of Bihar v. Shiva Bhishuk Mishra*, [1971] 2 S.C.R. 191, referred to.

Union of India v. R. S. Dhaba, 1969 3 Supreme Court Cases 603, distinguished.

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 25 of 1967.

Appeal by special leave from the judgment and order dated July 21, 1966 of the Punjab High Court in Letters Patent Appeal No. 346 of 1965.

D *R. K. Garg, S. C. Agarwala and S. Chakravarty*, for the appellant.

Harbans Singh, for the respondents.

The Judgment of the Court was delivered by

E **Vaidialingam, J.** The sole point that arises for consideration in this appeal by special leave is whether the order dated April 26, 1964 passed by the Governor of Punjab reverting the appellant from the Punjab Education Service Class I (officiating service) to the Punjab Education Service Class II with immediate effect, amounts to 'reduction in rank' attracting the applicability of Art. 311(2) of the Constitution.

F The appellant when this order was passed was Principal, Government College, Muktsar, and on reversion he was posted as Deputy Inspector of Schools, Agriculture, Chandigarh. The learned Single Judge, who heard Civil Writ No. 1506 of 1964 filed by the appellant to quash the said order, held by his judgment dated September 9, 1965 that the order amounts to 'reduction in rank' of the appellant and quashed the same. On appeal by the State of Punjab and two other officers, the Division Bench by its order dated July 21, 1966 in Letters Patent Appeal No. 346 of 1965 set aside the order of the learned Single Judge and held that the impugned order of reversion was not passed by way of punishment and that on the other hand it was only reversion of the appellant from his officiating post to his substantive rank and that in consequence Art. 311(2) has no application.

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The circumstances leading up to the passing of the impugned order may be stated : The appellant having obtained in 1943 a degree of the Punjab University in Agriculture joined the Education Department of the Punjab State on November 9, 1944 as teacher in agriculture. Later on he obtained degrees of B.T., M.Ed., and M.A. He also got degree of basic education as a nominee of the Punjab Government and he was further nominated by the State Government in 1953 for higher studies in the United States. In August 1954, he was selected as a Lecturer in Agriculture by the Subordinate Services Selection Board, Punjab and in 1955 he was selected for promotion to P.E.S. Class II by the State Service Commission. In September 1960 he was promoted to P.E.S. Class I on an officiating basis and on May 9, 1963 he was appointed Principal of the Government College, Muktsar.

It is seen from the records that the appellant had some trouble with the members of the staff and in consequence reports had been sent to his superiors who advised the appellant to act tactfully. The appellant was later on invited to meet the superior officers at Chandigarh and he was appraised of the complaints received about him, but his request to have the names of the complainants divulged to him and also to go through the complaints said to have been received and to be furnished with the copies of the same were all rejected by the authorities. The appellant appears to have been advised to proceed on leave, but he declined to accede to the request of the authorities. Later on the appellant made a request to the second respondent, the Director of Public Instruction, Punjab to come over to Chandigarh and visit the institution to enable him to have a personal knowledge about the working of the college. The second respondent accordingly presided over the annual prize distribution function in the College on February 26, 1964. When the appellant was reading the College's annual report in which certain aspersions had been made as against some of the members of the teaching staff, Prof. S. C. Kapur (who was one of the professor in the College) interrupted the proceedings and remarked "what about those principals who come drunk to the stage and do make up of the girls". This incident led to some commotion and one of the parents of the students demanded an inquiry into the allegations of misconduct made against the appellant by Professor Kapoor. According to the appellant, the Director of Public Instruction, Mr. Sharma then and there assured the appellant that an inquiry will be made promptly by two senior officers and action would be taken to punish the guilty persons whether they belong to Class I or Class II. But according to the second respondent no such assurance attributed to him was

- A made then. But there is no controversy that an inquiry was demanded by some of the parents of the students and that the second respondent promised to depute two senior officers for that purpose. Accordingly the second respondent deputed two Deputy Directors, namely, Sri Harbans Singh and Sri Govardhan Lal to make an inquiry into the affairs of the College. The
- B points that required investigation were formulated by these two Inquiry Officers as follows :
- (1) Were the allegations levelled by the Principal in his report true in respect to some members of the Staff ?
 - C (2) Was it proper for the Principal to say all this in public meeting ?
 - (3) Were the allegations levelled by Shri S. C. Kapur true ?
 - D (4) Was it proper for Shri S. C. Kapur to say this during the annual function presided over by the D.P.I. and attended by Publicmen besides students and staff ?
 - (5) The effect of all, this on the general public mind particularly their reaction towards sending of their daughters to the colleges.
 - E (6) The remedial measures to restore in the College a normal and healthy atmosphere conducive to academic pursuits."

The said two officers made inquiries in respect of these matters from various persons including the Appellant and arrived at the following conclusions :

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- "(1) The allegations levelled by the Principal against the members of the staff in his report are not borne out by facts.
 - G (2) The Principal's remarks were highly offensive and were quite misplaced in the annual report. He could have sent confidential reports against his colleagues but to criticise them in public before parents and the general body of students was highly improper and was in very bad taste.
 - H (3) The allegations levelled by Sri S. C. Kapur in regard to the Principal having come to the stage drunk and having done make-up of the girls have been corroborated by the girls themselves and by the members of the staff who were pre-

sent on the stage except one whose reluctance to say anything against the Principal can be easily understood.

- (4) The conduct of Shri S. C. Kapur was subversive of all discipline. It was most improper for him to have acted in such a rude manner. He has shown himself in capable of any self-restraint and has set a bad example. It will not be out of place to mention here that he was transferred from G. C. Ludhiana as he had fallen out with the Head of his Department there. Such a person cannot have a salutary influence on the students."

At this stage it may be mentioned that during the inquiry conducted by the two Deputy Directors, the appellant appears to have been very reluctant to give answers regarding some of the points in the questionnaire as they were directed against his conduct though the questionnaire itself was headed "Investigation into the conduct of Shri Satish Kapur" But nevertheless he filed a very lengthy explanatory statement before the Inquiry Officers controverting the allegations made against him and giving his own version regarding those points. We shall refer later to the points raised in the questionnaire as also to the nature of the answers given by the appellant. He has also protested against the inquiry being conducted behind his back without copies of the statements being made available to him and without his being furnished an opportunity of cross-examining those witnesses. He has also attributed bias against the Inquiry Officers. In the report itself the Inquiry Officers had suggested the following remedial measures :

- "(a) Shri S. C. Kapur deserves exemplary punishment and his services should be terminated in terms of his conditions of service on giving him one month's notice without assigning any reason.
- (b) It is further understood that D.P.I. is separately holding a secret probe into the conduct of the Principal for allegations of uncalled for connections with a lady teacher with whom he carried on correspondence at personal level in his own hand-writing, through the Manager of the Punjabi Publishers, Jullundur, in a most objectionable manner. The Principal therefore, also needs some Exemplary Punishment without being called upon to face a Regular Depart-

- A ment Enquiry. It will not be desirable to conduct a formal Departmental enquiry into his conduct in regard to the probe which D.P.I. is already having and particularly so in respect of incident pertaining to the make-up of the girl students in a drunken condition. . . Thus it is clear that the Principal deserves to be given some exemplary punishment. He is an unconfirmed hand and in consultation with the Legal Remembrancer steps may be taken to revert this officer to P.E.S. Class II without assigning any reason. . . Immediately, the Principal should be transferred to an equivalent post at Headquarters to remove the impression in the minds of the Lecturers or even the public that undesirable Lecturers were able to get the Principal demoted. Separate proceedings should be initiated against the Principal in the mean while and final action taken later when the situation has quietened out quite a bit so to avoid any kind of unsavoury reactions both in the minds of the public at Muktsar and the students of the College as well as the teachers working in that institution.
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- E (c)
(d)
(e)"

- F The learned Judges before whom records had been produced have noted that as against the suggestion of the Deputy Directors that steps may be taken to revert the appellant to P.E.S. Class II without assigning any reason, the Competent Authority had made the following note in the margin : "This case should be referred to the L.R. for advice".

- G As against the suggestion about the transfer of the Principal (appellant) to avoid the impression in the minds of the lecturers or even the public that undesirable lecturers were able to get the Principal demoted, the Competent Authority has again noted : "Not yet. To be sorted out later". As against the suggestion of the Deputy Directors to terminate the services of Prof. S. C. Kapur, the Authority had made the note : "Agreed". There is no controversy that the services of Prof. Kapur were terminated on March 30, 1964 by giving him one month's notice. Shri S. C. Kapur appears to have filed a writ petition No. C.W.754 of 1964 challenging the order terminating his services but the
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said writ petition was dismissed by the High Court on July 28, 1964. A

“Order of the Governor of Punjab. Shri Apparapar Singh, P.E.S. Class I (Officiating) Principal, Government College, Muktsar is reverted in P.E.S. Class II with immediate effect and is posted as Deputy Inspector of Schools, Agriculture, Chandigarh vice Shri Man Mohan Singh. B

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Dated Sd/- C. D. Kapur C
Chandigarh the Education Commissioner & Secretary to
28th April, 1964 Government, Punjab, Education
Department.

No. 4788-Ed(1)-64/8284, dated Chandigarh the 28th April, 1964. D

A copy is forwarded to the :—

1. Director of Public Instruction, Punjab, Chandigarh for information and necessary action with reference to the communication noted in the margin. The personal file of Shri Apparapar Singh is returned herewith. Please acknowledge receipt. E
2. Accountant General, Punjab (GADVI) Simla for information and necessary action.
3. Circle Education Officer, Ambala, for information. F

Sd/- Deputy Secretary
for Education Commissioner & Secretary
to Government, Punjab, Education
Department.

No. 4782-Ed(I)-64/8285-A, dated Chandigarh the 28th 29th April, 1964. G

A copy is forwarded to Shri Apparapar Singh, Principal, Govt. College, Muktsar for information and necessary action.

Sd/- Deputy Secretary
for Education Commissioner & Secretary
to Government, Punjab, Education
Department.” H

A The appellant filed the writ petition in the High Court challenging this order as contravening Art. 311(2) of the Constitution. According to the appellant he has been "reduced in rank" as a punishment without any inquiry and *mala fide*. The appellant made a grievance that the evidence collected by the Inquiry Officers were not made available to him nor was he given
 B any opportunity to participate in the inquiry and cross-examine the witnesses. Though his conduct was being inquired into, the evidence was collected behind his back and a finding had been recorded against him on the basis of such materials of which he had no opportunity either to scrutinise or controvert.

C The appellant further alleged that though the order on the face of it appears to be very innocuous having regard to the surrounding circumstances attendant on the passing of the order, it is clear that it was one by way of punishment.

D The State did not dispute that the two Deputy Directors, who held the inquiry did not give any opportunity to the appellants is accepted it will be tantamount to holding that Digambe- the acute controversy between these 2 sects and their reluctance
 E ments were recorded from members of the staff, students and parents of the students of the College. It was also admitted that copies of the statements so recorded were not furnished to the appellant and that he was also not allowed to cross-examine any witness. But the stand taken by the State was that it was
 F totally unnecessary to allow the appellant to participate in the inquiry because it was not directed against him and that the inquiry was only a preliminary confidential inquiry into the affairs of the College. It was further averred on behalf of the State that the appellant had no right to continue in P.E.S. Class I when he was only officiating and that his reversion to P.E.S. Class II, which was in the usual course, cannot be considered to be a reduction in rank so as to attract Art. 311(2) of the Constitution.

G The State has further averred that his seniority in the substantive post of P.E.S. Class II nor his emoluments, which he was entitled to draw in that grade were affected by the order of reversion. In short the State contended that as no penal consequences flowed from the impugned order and as the appellant had no right to the post of P.E.S. Class I, the order of reversion does not amount to 'reduction in rank' so as to attract Art. 311(2).

H The learned Single Judge has proceeded on the basis that the question whether the impugned order amounts to a 'reduction in rank' so as to attract Art. 311(2) is to be considered

not only by looking to the form of the order but also the surrounding circumstances attendant upon the passing of the order. He further took the view that the order on the face of it appeared to be innocuous. So he took into account the inquiry conducted by the two Deputy Directors, the nature of the questions dealt with by them, the allegations made against the appellant and the finding recorded in the said report together with the recommendation that some punishment must be imposed upon the appellant. The learned Single Judge did not accept the case of the State that the inquiry was only regarding the working of the institution. On the other hand, it was held that specific allegations were made against the appellant and findings recorded against him and that it was on the basis of those findings that action was taken against Prof. Kapur by way of terminating his services by giving him one month's notice and against the appellant by reverting him to P.E.S. Class II. As it was admitted that the inquiry had been conducted behind the back of the appellant without giving an opportunity to him to cross-examine the witnesses, the learned Single Judge held that the inquiry proceedings were vitiated. Having regard to all the attendant circumstances, the learned Judge finally held that the order of reduction was passed with the intention to inflict punishment on the appellant in view of the finding recorded against him in the inquiry by the two Deputy Directors. It was further held that the innocuous form which the respondents gave to the impugned order in consultation with the Legal Remembrancer was merely a cloak to avoid the consequences of Art. 311(2) and amounts to a fraud on the constitutional guarantee given to civil servants. In view of these findings recorded in favour of the appellant, the learned Single Judge did not consider the second ground of attack levelled against the order that the respondents were actuated by malice, official bias and influenced by extraneous considerations in passing the order of reversion. In the end the learned Single Judge set aside the order of reverting the appellant to P.E.S. Class II.

The Letters Patent Bench before whom the State challenged the order of the learned Single Judge has accepted the position that from the file and the noting thereon, it is clear that the findings recorded against the appellant in the report of the two Deputy Directors as well as the remedies suggested by them in the main were accepted by the Government after obtaining the advice from the Legal Remembrancer. The Division Bench has also held that it was in consequence of the acceptance by the Government of the findings and suggestions contained in the report that the appellant was reverted to P.E.S. Class II. The Division Bench has taken the view that the reversion was ordered because the appellant was found unfit to hold the responsible post of Principal

A of the College. In view of the admitted fact that the appellant's emoluments, position and other rights in P.E.S. Class II were not affected by the order of reversion, it cannot be held in this case that the impugned order is one, which can be construed as 'reduction in rank' of the appellant attracting Art. 311(2). It was further held that the reversion is not by way of punishment but only because the person reverted was not found suitable to hold the post. Ultimately the Letters Patent Bench held that there was no inquiry conducted against the appellant as contemplated by the relevant rules and there were no charges of misconduct levelled against the appellant which were being inquired into by the Deputy Directors. The inquiry conducted by them was only to find out the actual state of affairs in the normal functioning of the College. No penalty has been imposed against the appellant as he was holding P.E.S. Class I post only on an officiating basis and it was open to the authorities to revert him to his substantive post at any time. Such reversion, according to the Division Bench in this case, does not amount to 'reduction in rank' so as to attract Art. 311(2). On this reasoning the Letters Patent Bench, held that the impugned order of reversion was not one passed by way of punishment and in consequence set aside the order of the learned Single Judge and dismissed the appellant's writ petition.

E Mr. Garg, learned counsel for the appellant, has raised substantially the same contentions that were argued before the High Court, both before the learned Single Judge and the Letters Patent Bench. The counsel urged that though the impugned order on the face of it appears to be very innocuous, it is really an order imposing punishment on the appellant by way of reversion in view of the fact that the very basis of the order was the acceptance by the Government of the findings recorded against the appellant in the enquiry conducted by the two Deputy Directors. If the order is read in the context in which it has been passed, the irresistible conclusion is that the Government intended to impose a penalty by reverting the appellant to P.E.S. Class II. In particular the counsel stressed that the findings recorded by the two Deputy Directors that the allegations against the appellant that he had come to the stage drunk and did the make up of the girls has been corroborated by the girls themselves and members of the staff whose statements had been recorded by them behind the back of the appellant, are of a very serious nature costing reflection against the character and conduct of the appellant. These findings were accepted by the Government and the order of reversion passed in consequence can only be construed as an order imposing punishment. To establish that the appellant has suffered penal consequences, Mr. Garg pointed out, that while the appellant was reverted to P.E.S. Class II, his juniors in the said class were retained in

P.E.S. Class I and that in consequence it has resulted in the appellant's losing his seniority even in P.E.S. Class II and the chances of appellant's further promotion have become indefinite and a very remote possibility.

Mr. Harbans Singh, learned counsel for the State, on the other hand, urged that the order of reversion is one passed by the Government on the basis of the inquiry conducted into the affairs of the College and as the Government felt that the appellant was not suitable to be continued as Principal. No action for imposing punishment on the appellant has been taken by the State. The counsel pointed out that the very fact that no charges were framed against the appellant and no inquiry conducted according to the rules clearly show that no disciplinary action was intended to be taken against the appellant. He also pointed out that the appellant was only officiating in P.E.S. Class I and his reversion to P.E.S. Class II on the ground that he was found unsuitable to be the Principal is not 'reduction in rank' so as to attract Art. 311(2). The counsel also pointed out that in the P.E.S. Class II, his seniority and the emoluments to which he was entitled, have not been affected and therefore no penal consequences have resulted by the order of reversion.

After giving due consideration to the various aspects placed before us by the learned counsel on both sides and the reasons given by the Letters Patent Bench, we are of the opinion that the impugned order, in the circumstances, is one which amounts to 'reduction in rank' of the appellant to which Art. 311(2) is attracted and as admittedly no inquiry has been held as contemplated by the relevant rules regarding disciplinary proceedings, the Judgment of the Division Bench will have to be set aside.

At the outset we may state that the learned Single Judge has taken the view that by allowing the juniors of the appellant to continue in P.E.S. Class I while reverting him to P.E.S. Class II, it cannot be held that thereby the appellant's seniority has been affected. We are not inclined to agree with this view. Loss of seniority established by virtue of an order may amount under certain circumstances to a penal consequence leading to an inference that the order challenged is one imposed by way of punishment. In paragraph 28 of the Writ Petition the appellant has clearly stated that at the time of the passing of the impugned order as many as nine persons were officiating in P.E.S. Class I in schools and instruction cadre and amongst them the appellant's name appears at No. 5 in the seniority list. He has further stated that there were four persons junior to him who were still permitted to officiate in P.E.S. Class I. In paragraph 28 of the return filed by the State, the averments of the appellant, referred to above, have been admitted. The State, however, added that

A the two officers who were senior to the appellant were still officiating in P.E.S. Class I. Therefore, it is clear from the admission of the State that on the date when the appellant was reverted to P.E.S. Class II, some of his juniors in that class were allowed to continue in P.E.S. Class I.

B The appellant's grievance that the order indefinitely postponed any chances of promotion in future has been accepted by the learned Single Judge. In fact this grievance has been relied on as evidencing that penal consequence has resulted from the order. The Letters Patent Bench was also impressed by the circumstance that an order reverting a person from the officiating post, unless
C of course it is due to the coming back of the substantive incumbent or by reason of the post being abolished, does affect the chances of a future promotion of the person reverted. But the Letters Patent Bench, as we have already pointed out, took the view that the impugned order is not one by way of imposing any punishment. It may also be pointed out that both the learned
D Single Judge as well as the Letters Patent Bench have held that the findings recorded by the two Deputy Directors against the appellant were accepted by the Government and that it was in consequence of such acceptance of those findings that the appellant was reverted to P.E.S. Class II. Therefore the close connection between the findings recorded in the report against the appellant and the order of reversion has been found established
E in this case. Therefore, the only question whether the findings so accepted by the Government operated only as a motive for passing the order of reversion or whether the report against the appellant was the very foundation for passing the impugned order. The appellant admittedly was issued a questionnaire by the two Deputy Directors to which his answers were invited. Those questions were as follows :—

F "Investigation into the conduct of Shri Satish Kapur.

G Q. 1 What did Shri Satish Kapur, Lecturer actually do and say while the Annual report was being read over by you on 26-2-1964?

Q. 2 Is there any samblance of truth in what Shri Kapur said about you at that time? In any case give your comments on the remarks made by him and the reasons as well as background which promoted him to adopt this objectionable course?

H Q. 3 Were the remarks made by you in the annual report pertaining to the staff directed against any particular member of the staff of your college? If so please

give some instances to support your view and you may as well quote the names of the persons who may be able to substantiate or support these remarks to enable disciplinary action being taken against the concerned members of the staff.

Q. 4 Please state why it was necessary to include these remarks against the staff in the annual report and why it was not considered proper to mention all these matters to the Director in a private meeting rather than raising these issues in a meeting open to the parents of the students and various public men ?

Q. 5 What are your suggestions for winning the confidence of the public in the institution which is a co-educational college ?

There is also no dispute that the appellant filed a very lengthy reply to these questions controverting very strenuously the allegations made against him. Apart from furnishing an explanation to the points raised in the questionnaire he has also given his own reasons as to why Shri Kapur in particular had a grievance against him. We do not think it necessary to elaborately refer to the answers furnished by him excepting to say that in respect of the very serious allegation covered by question No. 2, he has denied that he ever drinks and has also stated that the allegation made by Prof. Kapur against him was absolutely false. He has very elaborately in his reply dealt with question No. 2.

It is not possible to accept the large proposition advanced on behalf of the State that merely because the appellant was only officiating in P.E.S. Class II, the State had power to revert him to his substantive post of P.E.S. Class II and that such reversion will not amount to reducing the appellant to a lower rank as by way of punishment. As to whether a particular order of reversion amounts to 'reduction in rank' by way of punishment cannot be decided merely on the basis of the terms of the order but regard must be had to the attendant circumstances also.

It is well settled that officiating and temporary Government servants are also entitled to the protection of Art. 311(2) in the same manner as permanent Government servants, if the Government takes action against them by meting out one of the punishments i.e. dismissal, removal or reduction in rank. (Vide *Parshotam Lal Dhingra v. Union of India*⁽¹⁾ and *Champaklal Chimanlal Shah v. The Union of India*⁽²⁾). Notwithstanding the fact that the appellant was in P.E.S. Class I only officiating, he will be entitled to invoke Art. 311(2) if he is able to establish that the

(1) [1958] S.C.R. 828.

(2) [1964] 5 S.C.R. 190

A order of reversion is by way of punishment and that it amounts to reducing him in rank.

After a review of the case law on the subject, this Court in *State of Punjab and another v. Shri Sukh Raj Bahaur*⁽³⁾ has enunciated the following propositions which have to be borne in mind in considering the grievance of an officer regarding violation of Art. 311(2). Those propositions are as follows :

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- (1) The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Art. 311 of the Constitution.
 - (2) The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.
 - (3) If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.
 - (d) An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Art. 311 of the Constitution.
 - (5) If there be a full-scale departmental enquiry envisaged by Art. 311 i.e. an Enquiry Officer is appointed, a charge sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article."

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In particular it will be noted from the above propositions that the circumstances preceding or attendant on the impugned order have to be examined in each case, the motive behind it being immaterial and if the order visits the public servant with any evil consequence, it must be considered to be one by way of punishment whether he was a mere probationer or a temporary servant. But it is also clear that an order passed after an enquiry is conducted to ascertain whether the public servant should be retained in service or not, does not attract Art. 311(2) of the Constitution.

(3) [1968] 3 S.C.R. 234

In *State of Orissa v. Ram Narain Das*⁽¹⁾ this Court having regard to the particular circumstances attendant upon the enquiry in that case held that the order discharging the officer therein, who was a probationer, following upon an enquiry to ascertain whether he should be confirmed or not, was not an order passed by way of punishment. A

Similarly in *Jagdish Mitter v. The Union of India*⁽²⁾ this Court held that even before discharging a temporary servant the superior authorities may have to determine the question about the suitability of the said temporary servant being continued in service and if such an enquiry limited to the purpose of deciding whether the said officer should be continued or not, was held and on the basis of his being found unsuitable to be continued in service, an order of discharge was passed, there is no element of punitive proceeding in such an enquiry or in the order passed as a result of such enquiry. This Court further held that consideration of the motive operating in the mind of the authority who passed the order had to be eliminated in determining the character of the order of termination of services of a temporary servant. It was also held that the form in which the order terminating his services was expressed would not also be decisive. B C D

This Court has again in *Champaklal Chimanlal Shah v. The Union of India*⁽³⁾ held "..... what is important to see is what actually happened after this memorandum for the courts are not to go by the particular name given by a party to a certain proceeding but are concerned with the spirit and substance of it in the light of what preceded and succeeded it." E

From a review of the decisions cited above, it is clear that in order to find out whether an impugned order is one passed by way of punishment, the form in which the order is expressed is not decisive and the circumstances preceding or attendant on the order have to be examined in each case. It is also clear that the motive behind the passing of the order is of no consequence. Whether penal consequences flow from the order will have also to be investigated. Having due regard to the propositions enunciated, we will now proceed to consider whether the impugned order can be considered to be one reducing the rank of the appellant as by way of punishment. If the State is able to establish its plea that the inquiry conducted by the two Deputy Directors was only to find out the suitability of the appellant to be continued as Principal and that as he was found to be unsuitable he was reverted, then the order cannot be considered to be by way of punishment. We however find considerable difficulty in F G H

(1) [1961] 1 S.C.R. 606.

(2) A.I.R. 1964 S.C. 449.

(3) [1964] 5 S.C.R. 190.

A accepting this plea of the State. From the facts given by us in setting out the circumstances leading to the filing of the writ petition, it is clear that the inquiry conducted by the two Deputy Directors was not with a view to find out the suitability or otherwise of the appellant to be continued as Principal. On the other hand, the inquiry was held with a view to investigate into the B allegations made by the Principal against some of the members of the staff and the allegations made by Prof. Kapur against the appellant. We have already referred to the questionnaire issued to the appellant and also the points set for determination by the Deputy Directors as also the findings recorded by them. We have already pointed out that one of the allegations which were C investigated by the Deputy Directors related to a very serious matter, namely, the charge levelled by Prof. Kapur against the Principal having come to the stage drunk and having done make-up of the girls. We are not concerned with the validity of the inquiry conducted by the Deputy Directors because it is admitted by the State that the said inquiry was conducted *ex parte* and behind the back of the appellant. It has also been admitted that D the statements recorded by the Deputy Directors from various persons were not disclosed to the appellant and the latter had also no opportunity to cross-examine those witnesses. But a finding was recorded by the Deputy Directors that the said allegation made against the Principal has been corroborated by the girls themselves and by the members of the staff who were on the E stage. The Deputy Directors after recording this finding against the appellant also recommended that the appellant needs "some exemplary punishment without being called upon to face a regular departmental enquiry". The government accepted the finding of the Deputy Directors as well as their recommendation to impose punishment against the appellant and it is on the basis of F such acceptance that the order of reversion was passed. No doubt, the order by itself and on the face of it is innocuous, but, in our view, the finding recorded by the Deputy Directors against the appellant and their recommendation to impose punishment upon the appellant are the very foundation for the government for passing the order reverting the appellant from P.E.S. Class I to P.E.S. Class II.

G Considerable stress has been laid by Mr. Harbans Singh, learned counsel for the State, that no departmental inquiry as envisaged by Art. 311(2) was made against the appellant before his reversion was ordered and therefore the finding recorded by the Deputy Directors may have operated only as a motive for the H government to pass the order of reversion. The counsel urged that an order passed under such circumstances cannot be considered to be by way of punishment. We are not inclined to agree with this contention of Mr. Harbans Singh. In *Union of*

India and other v. R. S. Dhaba⁽¹⁾ this Court had to deal with a case of an officer who was reverted on the recommendation of his superiors because of a large number of complaints the department had received against the officer's integrity. After consideration of the circumstances under which the order was passed, this Court held that the report of the superior officer must be considered to have operated as a motive for passing the order of reversion and it cannot be said that the report was the very foundation for the order of reversion. This decision, in our opinion, does not assist the State in the case before us.

We may point out that in *The State of Bihar v. Shiva Bhikshuk Mishra*⁽²⁾, this Court had to consider the applicability of Art. 311(2) to an order of reversion passed on the recommendation of a superior officer. In view of certain contemplated disciplinary proceedings an officer who was officiating in a higher rank was recommended by his superior officer to be reverted to his substantive post. Accepting the said recommendation, the competent authority reverted the officer concerned. The order was challenged on the ground that it amounts to reducing the rank of the officer concerned and as it has been passed in violation of Art. 311(2) it was illegal. This Court held that though the order passed did not contain any express words of stigma attributed to the conduct of the officer concerned, nevertheless having due regard to the attendant circumstances under which it was passed, the order was one passed by way of punishment. This Court further held that as Art. 311(2) has been contravened the order is illegal and in consequence set aside the same. This decision affords in our opinion a very close parallel to the case before us.

It was not the case of the State before us that the appellant was reverted to his substantive post because the officiating post which he held at the time of reversion *i.e.* P.E.S. Class II was abolished. If that was so, nothing further remained to be said because his services in the officiating post would automatically come to an end when the post itself comes to an end. Again it was not the case of the State that the appellant was reverted to his substantive post because the permanent incumbent of the higher post in which the appellant was officiating had come back to duty. It was not even the case of the State that the higher post was created for a temporary period and that it had come to an end. If any one of these circumstances had existed one can very well say that the order reverting the appellant to his substantive post could not be said to be by way of punishment. On the other hand the position was that the reversion of the appellant was based entirely and exclusively on the basis

(1) [1969] 3 S.C.C. 603

(2) [1971] 2 S.C.R. 191.

A of the adverse finding recorded against him by the enquiry and the report itself formed the foundation for the order of reversion being passed.

B We accordingly hold that the order dated April 26, 1964 is one reducing the rank of the appellant as a punishment. As it has been passed in violation of Art. 311(2) of the Constitution that order has to be set aside.

C In the result we allow the appeal, set aside the judgment and order of the Division Bench dated July 21, 1966 in Letters Patent Appeal No. 346 of 1965 and restore the judgment and order of the learned Single Judge dated September 9, 1965 in Civil Writ Petition No. 1506 of 1964. The appellant will be entitled to his costs.

Y.P.

Appeal allowed.