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K. H. PHADNIS

v.

STATE OF MAHARASHTRA*March 19, 1971*

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[S. M. SIKRI, C. J., J. M. SHELAT, C. A. VAIDIALINGAM,
A. N. GROVER, AND A. N. RAY, JJ.]

*Civil Servant—Holding temporary post—Reversion to substantive post
—When amounts to punishment and violation of Art. 311, Constitution.*

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The appellant was repatriated from the temporary post of Controller of Food Grains Department to his parent department of Excise and Prohibition. His record of service showed that he was chosen to go on deputation twice in 1942 and in 1957 and that he was chosen for his experience. The record also showed that he was promoted from time to time. While holding the post of Controller, the Director of Civil Supplies asked him about certain charges of receiving money and gifts at the time of the marriage of his daughter and that he forced his peons to do menial work at the marriage. The Secretary to the Government virtually threatened to repatriate him to his parent department, and the Minister visited the office of the appellant and said there were complaints against him. The appellant asked for an inquiry and the police conducted an inquiry. The investigation indicated that the appellant was totally free from blame or taint. At the time of the passing of the order of reversion the appellant protested and asked the Government to wait for the completion of the investigation but the Government did not accede to the request.

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On the question whether there was violation of the provisions in Art. 311 of the Constitution,

HELD: The facts and circumstances bring out in bold relief that the order of reversion was in the nature of punishment and was passed without complying with the provisions of the Constitution. [123H]

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The post which the appellant was holding was a temporary one, but the appellant was reverted neither because the temporary post was abolished nor because he was unsuitable to continue nor because the parent department of the appellant wanted him back. A Government servant holding a temporary post and having a lien on his substantive post may be sent back to the substantive post in *ordinary routine administration* or because of *exigencies of service*. Such a person may have been drawing a salary higher than that of his substantive post but when he is reverted to the parent department the loss of salary cannot be said to have any penal consequences. The matter has to be viewed as one of substance and all relevant factors have to be considered in ascertaining whether the order is a genuine one of *accident of service* in which a person sent from the substantive post to a temporary post has to go back to the parent post without any aspersion against his character or integrity, or whether the order amounts to a reduction in rank by way of punishment. [123C-G]

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Parshotam Lal Dhingra v. Union of India [1958] S.C.R. 828; *Sukhbans Singh v. State of Punjab*, [1963] 1 S.C.R. 416 and *Appar Apar Singh v. The State of Punjab*, C.A. No. 25/67 dt. 3-12-1970, followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 381 of 1967. A

Appeal from the Judgment and order dated June 30, 1966, July 4, 1966 and July 5, 1966 of the Bombay High Court in Appeal No. 111 of 1963.

R. K. Garg, S. C. Agarwala, D. P. Singh, V. J. Francis and R. K. Jain, for the Appellant. B

V. S. Desai and S. P. Nayyar, for the respondent.

The Judgment of the Court was delivered by

Ray, J.—This is an appeal by special leave from the judgment dated 30 June, 1966 and 4 and 5 July, 1966 of the High Court at Bombay reversing the judgment of the learned Single Judge dated 29 October, 1963. C

The only question in this appeal is whether the order of the Government of Bombay dated 8 May, 1962 “repatriating” the appellant from the temporary post of Controller of Foodgrains Department, Bombay to his parent Department of Excise and Prohibition amounted to a reduction in rank in violation of the provisions contained in Article 311 of the Constitution. D

The appellant joined service as Sub-Inspector of Excise in the Excise and Prohibition Department of the Government of Bombay in the year 1938. He was thereafter selected for transfer to the Bombay City Police Department. In 1942 he was sent on “deputation” to the Civil Supplies Department as an Inspector. He continued to work in that department up to the month of February, 1955. By February, 1955 he had by various promotions become Rationing Officer which was a gazetted post and he was then drawing a salary of Rs. 530 p. m. in the grade of Rs. 350-20-550. In 1955 there was decontrol of foodgrains. The post was abolished. The appellant was reverted to the Excise Department. In course of time he was promoted to the post of District Inspector in the Excise Department in the grade of salary of Rs. 220-10-300. In 1957, the Government of Bombay again introduced the system of distribution of foodgrains on the basis of household cards. The appellant in view of his record of service in the Civil Supplies Department was asked to go on “deputation” in the Agriculture and Forests Department as a Sub-Inspector under the Controller of Foodgrains Distribution, Bombay. In 1960, the appellant was appointed to a temporary post of Controller of Foodgrains Distribution, Bombay in the grade of Rs. 475-25-600-50-750. In 1961 the appellant was drawing a salary of Rs. 500 p. m. as a Controller of Foodgrains Distribution. E
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A The appellant married his daughter in the month of December, 1961. The appellant's daughter, a qualified doctor, was then working as a Resident Medical Officer in the Bombay Municipal Corporation. The appellant was asked by the Director of Civil Supplies in the months of January to March, 1962 partly in writing and partly orally first whether he had forced his peons to do menial work at the marriage of his daughter, secondly, if he had taken cash and gifts from Fair Price Shop-owners; and, thirdly, whether he had forced the staff to contribute in cash for the marriage of his daughter. The appellant denied these allegations. Thereafter, the Secretary to the Government of Maharashtra, Agriculture and Forests Department told the appellant in the month of April, 1962 that there were complaints against him and that "there could be no smoke without fire", and the appellant would be "repatriated" to the Prohibition and Excise Department. The Minister of Civil Supplies in the month of April, 1962 visited the appellant's office and said that there were complaints against him. The appellant requested a thorough enquiry in connection with such complaints. Subsequent to the visit of the Minister, **D** an Inspector of Police of the Anti-corruption Branch took possession of several files of various fair price shop-keepers for scrutiny.

Thereafter, the Government of Bombay by a resolution dated 8 May, 1962 directed that the appellant who was "on deputation from the Excise and Prohibition Department should be repatriated to his parent department with immediate effect". The appellant **E** was asked to hand over charge and the appellant was posted by the Director of Excise and Prohibition in the Office of Officiating Inspector in his Department.

In the month of July, 1962 the appellant came to know that the Anti-corruption Branch of the Police submitted a report to the Government and the appellant was found to be exonerated from **F** all charges. The appellant made a representation to the Government bringing the said fact to the notice of the relevant authorities and requested for appointment to the post of Controller of Foodgrains. The Government did not send him any reply to the appellant's representation.

G The appellant contended that the resolution was in the nature of punishment by way of reduction in rank in violation of the provisions contained in Article 311 of the Constitution and made an application under Article 226 of the Constitution impeaching the order of reversion as an action of punishment taken on false reports without waiting for the investigation by the police to be complete.

H The learned Single Judge of the Bombay High Court held that the order of 8 May, 1962 was an act of punishment and reduction in rank. The Division Bench of the Bombay High Court

reversed that judgment and held that the appellant had no legal right to the post in the Department of Agriculture and Forests and therefore his reversion was not a punishment.

This Court in *Parshotam Lal Dhingra v. Union of India* (1) laid down three propositions; First, Article 311 makes no distinction between permanent and temporary members of the services or between persons holding permanent or temporary posts and affords protection to both classes of servants; secondly, if a Government servant has no right to the particular rank his reduction from an officiating higher rank to his substantive lower rank will not by itself be a punishment; and, thirdly, the mere fact that the servant has no title to the post or the rank and the Government has by contract, express or implied or under the rules governing the conditions of his service, the right to reduce him to a lower post does not mean that the order of reduction of a servant to a lower post or rank cannot in any circumstance be a punishment.

In determining whether the reduction is or is not by way of punishment it has to be found out if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, or that in truth and reality the Government has passed the order as and by way of penalty.

In applying these principles *Dhingra's*(1) case laid down two tests; first, whether the servant had right to the post or the rank, or, secondly, whether he has been visited with evil consequences of the kind mentioned in that decision.

This Court in *Sukhbans Singh v. State of Punjab*(2) in dealing with the question as to whether a probationer has any right to hold the post said that it would not be correct to say that a probationer has a right to the higher post in which he is officiating or a right to be confirmed, but a probationer could not be punished for misconduct without complying with the requirements of Article 311. The appellant in that case was recruited as Tehsildar in 1936. He was thereafter selected by the Punjab Public Service Commission and appointed as an Extra Assistant Commissioner on probation in 1945. On 20 May, 1952 he was reverted to his substantive post of Tehsildar. He asked for the grounds of reversion. He was denied the same. This Court held on the facts that the Government wanted to punish him for what it thought was misconduct and therefore reverted him. Thus, reversion by way of punishment without complying with the provisions of Article 311 cannot be sustained.

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

(2) [1963] 1 S. C. R. 416

A In the recent unreported decision in *Appar Apar Singh v. The State of Punjab & Ors.*⁽¹⁾ the question for consideration was whether an order reverting the appellant in that case from a post in Class I service in which he was officiating to his substantive post in Class II amounted to reduction in rank. The appellant was employed in the Punjab Education Service Class II. He was promoted to Class I on an officiating post as Principal of the Government College, Muktsar. He had trouble with the members of the staff. The appellant as Principal of the College in reading the annual report made certain aspersions against some members of the teaching staff. Thereafter, an enquiry was made pursuant to the demand of some of the parents of the students.

B Two Deputy Directors made an enquiry. At that enquiry the appellant was neither given copies of statements recorded nor was he allowed to cross-examine the witnesses. The State contended that it was a preliminary confidential enquiry into the affairs of the College and that the appellant had no right to continue in Class I appointment where he was only officiating. The High Court held that the order of reversion was not by way of punishment but only because the person reverted was not found suitable to hold the post and an enquiry was only to find out the state of affairs of the normal functioning of the College. This Court held that the enquiry by the Deputy Directors was to investigate allegations against the Principal and the Deputy Directors recommended exemplary punishment. Therefore the order amounted to reduction in rank and as no enquiry regarding disciplinary proceedings was held, the order was in violation of the provisions of Article 311.

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The most pre-eminent features which accentuate the order of reversion to be in the nature of punishment in the present case are these: The appellant was faced with certain charges of receiving money and gifts at the time of the marriage of his daughter. The appellant denied the allegations. The Secretary to the Government virtually threatened to repatriate the appellant to his parent department. The Minister visited the office of the appellant. The Police conducted an enquiry. The appellant himself had asked for an enquiry. At the time of the passing of the order of reversion the appellant not only protested but also asked the Government to wait for the completion of the investigation. The Government did not accede to that request. Subsequently, the investigation indicated that the appellant was totally free from blame or taint.

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H The entire service record of the appellant showed that the appellant was chosen to go on "deputation" twice once in 1942 and

(1) Civil Appeal No. 25 of 1967 decided on 3-12-1970

again in 1957. From 1942 to 1955 he was in the Food Department and he was promoted from time to time. Between 1942 and 1955 the appellant rose from the post of Permit Officer to that of Rationing Officer at the salary of Rs. 530 p. m. In 1955 the post was abolished. The appellant was reverted to his parent department. In his parent department the appellant was also promoted to the post of Inspector and thereafter District Inspector in the grade of Rs. 220-10-300. In 1957, the appellant was again sent on deputation to the Food Department. The appellant was chosen for his experience. Again, he received a promotion and increment in salary.

It is true that the post which the appellant held was a temporary one, but the post continued for several years. The indications were that the post was practically of a quasi-permanent character. The appellant was reverted neither because the temporary post was abolished nor because he was found unsuitable to continue. The parent department of the appellant did not want him back.

The order of reversion *simpliciter* will not amount to a reduction in rank or a punishment. A Government servant holding a temporary post and having lien on his substantive post may be sent back to the substantive post in ordinary routine administration or because of exigencies of service. A person holding a temporary post may draw a salary higher than that of his substantive post and when he is reverted to his parent department the loss of salary cannot be said to have any penal consequence. Therefore though the Government has right to revert a Government servant from the temporary post to a substantive post, the matter has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order is a genuine one of "accident of service" in which a person sent from the substantive post to a temporary post has to go back to the parent post without an aspersion against his character or integrity or whether the order amounts to a reduction in rank by way of punishment. Reversion by itself will not be a stigma. On the other hand, if there is evidence that the order of reversion is not "a pure accident of service" but an order in the nature of punishment, Article 311 will be attracted.

In the present case, the facts and circumstances to which reference has already been made bring out in bold relief that the order of reversion was in the nature of punishment. The order was not in compliance with the provisions of the Constitution.

A For these reasons, we are of opinion that the learned Single Judge was correct in his judgment. The appeal is allowed. The Bench decision of the Bombay High Court is set aside and the judgment of the learned Single Judge is restored. The appellant will be entitled to costs in this Court.

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V.P.S.

Appeal allowed.