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S. P. VASUDEVA

v.

STATE OF HARYANA & ORS.

October 8, 1975

[A. ALAGIRISWAMI, P. K. GOSWAMI AND N. L. UNTWALIA, JJ.]

B

Constitution of India—Art. 311—Appointment on “ad hoc basis” against a tenure post—Reversion to the parent office on the ground of unsuitability for the post—Order of reversion not meant as a measure of punishment.

C

The appellant, an Assistant in the P.W.D. office was appointed on 10-2-72 against a tenure post of a Legal Assistant in the office of the Deputy Commissioner, Karnal on an “ad hoc” basis. Finding him unsuitable to the post, on an assessment of his work, he was reverted to his parent office on 27-4-72. The order of reversion was challenged as violative of Art. 311 of the Constitution by a Writ Petition, which was dismissed “*in limine*”.

On an appeal by special leave, the Court

HELD : (i) Whether the appointment, was “ad hoc” or temporary the appellant had no right to the post from which he was reverted. [186F]

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(ii) The order was not meant as a measure of punishment as it was passed on the ground of unsuitability to the post. [186 G]

(iii) Where an order of reversion, of a person who had no right to the post does not show “ex-facie” that he was being reverted as a measure of punishment or does not cast any stigma on him, the courts will not normally go behind that order to see, if there were any motivating factors behind that order. [187 D]

OBITER :

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The theory whether the reversion to a lower post, of a probationer in a higher post or the discharge of a probationer the temporary servant, was meant as a punishment leads to a very peculiar situation and the whole position in law is rather confusing. It is time that the whole question was considered “de novo” and it would be better for all concerned to avoid litigation if it should be held that the reversion of a probationer from a higher to a lower post or the discharge of a probationer, or the discharge from service of a temporary servant cannot be questioned except on the basis of “*mala fide*” in the making of the order. [187 F-G, 188 B-C]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 640 of 1973.

Appeal by special leave from the Judgment and Order dated the 21st July 1972 of the Punjab & Haryana High Court in Civil Writ No. 1454 of 1972.

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C. K. Daphtary, N. H. Hingorani and Mrs. K. Hingorani for the Appellant.

M. C. Bhandare, R. N. Sachthey and M. N. Shroff for Respondents Nos. 1-6 and 8-11.

The Judgment of the Court was delivered by

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ALAGIRISWAMI, J. This is an appeal against the judgment of the Punjab & Haryana High Court dismissing *in limine* the appellant’s writ petition for quashing an order reverting him from the post of Legal Assistant in the office of the Deputy Commissioner, Karnal to

his parent office. The appellant was working originally as an Assistant in the office of the Chief Engineer, P.W.D., Irrigation Branch, Haryana at Chandigarh. On 8th October 1971 the Legal Remembrancer and Secretary to Government, Legislative Department, Haryana wrote a letter to all administrative departments and Heads of Departments in the State informing them that it had been decided to fill in some posts in the Law Department by selection of qualified candidates from amongst the Government servants working in other departments and that for the present the tenure of those posts was one year only and the candidates would be appointed on an *ad hoc* basis. In pursuance of that letter the appellant applied for the post and he was appointed on 10th February 1972 as Legal Assistant on *ad hoc* basis in the office of the Deputy Commissioner, Hissar. He was transferred to the office of the Deputy Commissioner, Karnal on February 17, 1972. As already stated, he was reverted to his parent office on the 27th of April, 1972.

To the writ petition questioning his reversion he impleaded the following as parties :

1. State of Haryana through the Legal Remembrancer and Secretary to Government, Law and Legislative Department.
2. The Secretary to Government of Haryana, Local Government Department.
3. The Advocate General of Haryana.
4. The Deputy Advocate General of Haryana.
5. The District Attorney, Karnal.
6. Mr. G. L. Nanda, M.P. and Chairman, Kurukshetra Development Board.
7. The Secretary, Kurukshetra Development Board.
8. Mr. Pritam Singh Jain, Advocate.
9. Mr. H. V. Goswami, Deputy Commissioner, Karnal.
10. The Office Superintendent, Dy. Commissioner's Office, Karnal.
11. The Chief Engineer, P.W.D., Irrigation Works, Haryana, Chandigarh.

The appellant alleged in the writ petition that the order of reversion was the outcome of a conspiracy of respondents No. 2, 4, 5, 7, 8 and 10. The circumstances which led to his reversion seem to be as follows : There was a writ petition No. 707 of 1972 against the Kurukshetra Development Board of which Mr. G. L. Nanda, M.P., was the Chairman. The appellant sent a report to Mr. Nanda making insinuations against certain officers including the Secretary of the Kurukshetra Development Board. He also went and met Mr. Nanda

A in person without the directions or the permission of the Deputy Commissioner of Karnal under whom he was working. The Deputy Advocate General wrote to the Secretary of the Law Department that the appellant's work was not only perfunctory but below average. Thereupon the Secretary spoke to the Deputy Commissioner, Karnal to find out his views about the performance of the appellant and the Deputy Commissioner told him that he was dissatisfied with the work and performance of the appellant. It is on these grounds that the reversion was made.

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C In his counter affidavit the Secretary of the Law Department stated that the appellant had been reverted on account of his poor performance as Legal Assistant and denied the allegation of conspiracy made by the appellant. The Advocate General filed a counter affidavit denying that the appellant had brought to his notice the damaging portion of the counter-affidavit filed on behalf of Mr. Nanda in writ petition No. 707 of 1972. Mr. Lamba, Deputy Advocate General denied that the impugned order was made on the basis of his personal grudge against the appellant. The main allegation which the appellant made in respect of the counter-affidavit filed by Mr. Nanda was that the counsel for the Board, that is, Mr. P. S. Jain, and the Secretary of the Board had colluded to the detriment of the Board in submitting the counter-affidavit. The Deputy Advocate General in his counter affidavit has quoted a portion of the counter-affidavit prepared by the appellant in that writ petition which undoubtedly shows the appellant's poor knowledge of law. The Deputy Advocate General seems to have felt that the appellant was unnecessarily running to Mr. G. L. Nanda and without rhyme or reason criticising the counter-affidavit and making allegations against Mr. P. S. Jain, counsel for the Board and the Secretary of the Board, and that he was acting beyond the scope of his activities as a Legal Assistant in the office of the Deputy Commissioner, Karnal and was over-reaching the Deputy Commissioner.

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F The appellant was appointed on an *ad hoc* basis. It may not be a correct use of the phrase '*ad hoc*' because he was not appointed for special or particular purpose, so that it could be said that till that purpose was over he could not be discharged. The phrase seems to have been used in the sense of 'temporary'. Whether the appointment of the appellant was *ad hoc* or temporary it is clear that he had no right to the post from which he was reverted. The allegation of conspiracy or grudge has clearly not been made out nor was it pressed before us. What was urged was that even temporary Government servants are entitled to the protection of Article 311 if the order of reversion was passed against them as a measure of punishment. We are satisfied that in this case the order was not meant as a measure of punishment. It was passed on the ground that the appellant was unsuitable for the post. We have already referred to the fact that the counter-affidavit prepared by the appellant showed a very poor knowledge of law on the part of the appellant. We agree with the contention of the Deputy Advocate General in his counter-affidavit that the

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appellant was unnecessarily running to Mr. G. L. Nanda and was over-reaching the Deputy Commissioner. The appellant was only an Assistant to the Deputy Commissioner and he had no business to go and see Mr. Nanda without either the Deputy Commissioner's instructions or his permission. The Deputy Advocate General states that the appellant made reckless allegations against the Secretary of the Kurukshetra Development Board and its advocate Mr. Jain because after checking up with the records he did not find anything wrong with the counter-affidavit already prepared in the writ petition No. 707. The Deputy Advocate General took the view that the appellant's work was not only perfunctory but below average. The Deputy Commissioner also was dissatisfied with the appellant's work and performance. The appellant's reckless allegation of a conspiracy amongst respondents No. 2, 4, 5, 7, 8 and 10 throws a flood of light on his mentality. We are not surprised that the authorities concerned did not consider the appellant fit and proper person to be continued in service.

We may in this connection point out that where an order of reversion, as in the present case, of a person who had no right to the post, does not show *ex facie* that he was being reverted as a measure of punishment or does not cast any stigma on him, the Courts will not normally go behind that order to see if there were any motivating factors behind that order. Certain cases of this Court have taken that view. Certain other cases have taken the view that it is open to the Court to go behind the order and find out if it was intended as a measure of punishment and if so whether the formalities necessary have not been followed. In cases where enquiries have been held before orders of reversion of a probationer to his former lower post or discharge of a probationer or discharge from service of a temporary servant were passed, certain decisions have taken the view that where the enquiry was held in order to find out the suitability of the official concerned the order would not be vitiated. In certain other cases it has been held that the enquiry was held with a view to punish and as the enquiry did not satisfy the requirements of Article 311 the punishment was bad. It appears to us that this theory as to whether the reversion to a lower post of a probationer in a higher post, or the discharge of a probationer, or the discharge from service of a temporary servant was meant as a punishment leads to a very peculiar situation. After all, if such an order gives no reasons the Court will not normally interfere because *ex facie* there is nothing to show that the order was intended as a punishment. But if the superior official dealing with that case, in order to satisfy himself whether the official concerned could be continued in service, makes enquiries or holds enquiries there is the risk of its being held that the enquiry was really intended for the purpose of punishment. Thus a *bona fide* attempt to decide whether the official concerned should be continued leads to this risk. There could be no greater punishment than discharge from service and it makes little difference to the Government servant whether he is simply discharged or discharged after an enquiry to find out his suitability. Therefore, if a

- A simple discharge from service is upheld but a discharge after the superior official concerned satisfies himself about the official's fitness to be continued further in service is not upheld on the ground that the order was intended as a punishment it is a curious situation. After all no Government servant, a probationer or temporary, will be discharged or reverted, arbitrarily, without any rhyme or reason. If the reason is to be fathomed in all cases of discharge or reversion, it will be difficult to distinguish as to which action is discharge or reversion *simpliciter* and which is by way of punishment. The whole position in law is rather confusing. We think it is time that the whole question was considered *de novo* and it would be better for all concerned and avoid a lot of avoidable litigation if it should be held that the reversion of a probationer from a higher to a lower post, or the discharge of a probationer, or the discharge from service of a temporary servant cannot be questioned except on the basis of *mala fides* in the making of the order. This Court will not be burdened with a lot of work of a kind about which the feeling of almost all the Judges has been that it is better that they do not come to this Court.

The appeal is dismissed without costs.

S.R.

Appeal dismissed.