

(1964) 01 AHC CK 0013
Allahabad High Court
Case No: Special Appeal No. 341 of 1958

Shambhoo Ji
Srivastava

APPELLANT

Vs

State of Uttar Pradesh
and Another

RESPONDENT

Date of Decision: Jan. 10, 1964

Acts Referred:

- Constitution of India, 1950 - Article 311

Citation: AIR 1964 All 528 : (1964) 8 FLR 291

Hon'ble Judges: V. Bhargava, J; G.C. Mathur, J

Bench: Division Bench

Advocate: K.K. Bajpai, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

V. Bhargava, J.

This special appeal is directed against an order of a learned single Judge of this Court dismissing a petition filed by the appellant challenging the validity of an order passed by respondent No. 1 directing the reversion of the appellant from the Post of Panchayat Inspector to the post of a clerk to the Collectorate.

2. The facts on the basis of which the appellant came up to this Court are not disputed. The appellant was holding a permanent post as a clerk in the Collectorate. Then a selection took place for appointment to the post of Panchayat Inspector and the appellant was selected for that post and was appointed to it on the 10th June, 1949. While he was holding this post of Panchayat Inspector, the appellant wanted to improve his educational qualifications and consequently with the permission of the District Magistrate of Orai, where he was posted, he joined B.A. Classes in a college. On the 12th December, 1958 respondent No. 2 served on the appellant a charge-sheet asking him to explain why he should not be properly punished

because he had drawn travelling allowances on dates when he was actually present in the college according to the college attendance register. The appellant submitted his explanation through the District Magistrate and denied the charges. His case was that he had correctly drawn the travelling allowances because he had actually performed the journeys and that he had been wrongly marked as present in the College either on the basis of proxy or because there was mistaken marking of attendance. Subsequent to this explanation, respondent No. 2 passed the order dated the 19th May, 1954, removing him from the post of Panchayat Inspector. The appellant then filed an appeal to the State Government.

3. The State Government, respondent No. 1, by an order dated the 12th March, 1956, communicated their decision on the appeal of the appellant. The decision was that the order of removal passed by the Joint Director, Panchayat Raj Department, U.P, was ultra vires as the appellant was holding a lien on a permanent post in the Collectorate while he was working against a temporary post of Panchayat Inspector. Consequently, the respondent No. 1 modified the order of respondent No. 2. The order made was that the order of removal be modified into that of reversion. This was the order which was challenged by the writ petition before the learned Single Judge on the ground that this order amounted to reduction in rank and it had been made without complying with the requirements of Article 311 of the Constitution.

Before the learned single Judge there was no controversy that the opportunity to show cause required by Article 311 of the Constitution had not been given to the appellant; but the contention was that no such opportunity need have been given because the order made against the appellant did not amount to a punishment of any of the types mentioned in Article 311. It was urged that the appellant had been only reverted to his permanent post from a post which he was holding temporarily so that the order did not entail any loss of emoluments or privileges in respect of which a right might have become vested in the appellant. It was also urged that this order of reversion did not visit the appellant with any penal consequences such as forfeiture of his pay or allowances or the loss of his seniority in his substantive post or stoppage or postponement of his future chances of promotion. These submissions made on behalf of the respondents were accepted by the learned Single Judge and consequently the writ petition was dismissed.

4. In this case, after hearing learned counsel for the parties, we are unable to agree with the view of the learned Single Judge that the provisions of Article 311 were not attracted at all to the case of the appellant. The appellant was no doubt holding a permanent post of a clerk in the Collectorate and was reverted to that post as a result of the final order which was impugned by him in the writ petition. This order did not affect his permanent status in the Government service; the question that arises for consideration is whether the appellant was reduced in rank and, if so, whether this was done by way of punishment. The facts admitted by the parties show that the appellant was appointed to the post of Panchayat Inspector as a

result of selection. The use of the word "selection" itself implies that he was being appointed to a post which was better than that held by him at the time when he was selected for the other post. There is the further fact that in this case the appellant in his affidavit stated that he was drawing a higher salary in the post of Panchayat Inspector while his salary in his permanent post was lower. There is also the circumstance that the nature of duties in the two posts was different, in the post of Panchayat Inspector the appellant's duties were in the nature of an officer of the executive while in his permanent post he was only entrusted with clerical and ministerial work. In all these circumstances, we think that the reversion of the appellant from the post of Panchayat Inspector to that of a clerk in the Collectorate did amount to reduction in rank. The result of his reversion was that he subsequently got lower pay, the nature of his duties was altered to duties which are carried on normally by Government servants of a lower status and he was deprived of the benefits which it must be deemed impelled him to apply for selection in order to get the appointment as Panchayat Inspector even though he was earlier holding the permanent post of a clerk.

5. It is also to be noticed that the order of reversion was clearly made by way of punishment. Initially the respondent No. 2 imposed the punishment of removal from the post of Panchayat Inspector and all that the respondent No. 1 purported to do in appeal was to modify that order and convert the final order of punishment from removal to reversion. The order of respondent No. 1 clearly mentions that the order passed by respondent No. 2 was being modified to the extent of substituting reversion for removal. Consequently, it was not a case where the appellant was sent back to his permanent post in the ordinary course because for some reason or the other the appropriate authorities considered it advisable to send him back to his original post; but he was in fact reverted by way of punishment. The State Government, in mentioning that the order under appeal was modified and in restricting the modification merely to the punishment awarded, clearly adopted the findings recorded by respondent No. 2 that the appellant was guilty of the charges levelled against him and that he deserved to be punished for them. It was by way of punishment that he was reverted.

The very fact that the reversion was by way of punishment implies that the appellant was placed in a more disadvantageous position than that originally held by him and that disadvantage clearly was that he was sent from a better and superior post to a worse and inferior post.

5a. Learned counsel appearing on behalf of the respondents urged before us that we should not hold in this case that the effect of the order impugned was reduction of rank of the appellant because there can be no comparison at all between the post of a Panchayat Inspector and the post of a clerk in the Collectorate and it cannot be held that the latter is a lower post than the former or even that there is any reduction in status as a result of the order. We do not think that this submission has

much force. As we have indicated earlier, the effect of the order of reversion was that the appellant's emoluments went down and in fact it was conceded before us that he had been sent from the post of Panchayat Inspector which carried a higher time scale to the post of a clerk in the Collectorate which carried a lower scale of pay. The order which had the effect of his ceasing to hold a post in the higher scale of pay and having subsequently to hold a post in a lower scale of pay must be held to result in reduction of rank when that is (sic) the order is made by way of punishment.

6. Further, it appears to us that even if we were to accept the submission of the learned counsel that there can be no comparison between the two posts of the Panchayat Inspector and the clerk in the Collectorate and that it is not possible at all to hold that one post is higher than the other in any respect, the appellant is still entitled to the benefit of Article 311 of the Constitution on an alternative ground. In case it is held that the two posts are not comparable at all, the appointment of the appellant as Panchayat Inspector, even though on a temporary basis, must be held to be a new appointment to a post entirely different from the post already held by him permanently. Under the rules of service, of course, he could still continue to hold a lien on his permanent post while this new temporary appointment was given to him and could be accepted by him. The effect of the order of reversion in such a case would be to terminate his new appointment to the post of Panchayat Inspector with the result that on termination of that appointment he would automatically go back to his permanent post. In fact, it appears to us that the original order made by respondent No. 2 did precisely have this very effect. The only order made by the Joint Director was that of removal of the appellant from the post of Panchayat Inspector. He had not removed the appellant altogether from Government service. On removal from the post of Panchayat Inspector, the appellant was automatically entitled to go back to his permanent post which was in no way affected by the order of the Joint Director. Consequently, it appears that all that the State Government did by its order was to clarify the legal position and in fact the order of the State Government did not amount at all to modification of the order of the Joint Director. Even after the order of the State Government, the appointment of the appellant on the post of Panchayat Inspector came to an end so that there was termination of that appointment followed by the appellant's rejoining his earlier permanent post of a clerk in the Collectorate. This is precisely what he would have done even if full effect had been given to the order of the Joint Director.

Consequently, if the two posts are considered as non comparable posts, the appointment of the appellant to the post of Panchayat Inspector has to be treated as a new temporary appointment and that temporary appointment was terminated by the order of the Joint Director first and later it was confirmed by the State Government by the Order now impugned. The order of termination of appointment on that post was clearly by way of punishment and it has already been held by the Supreme Court that, even if a temporary appointment is terminated by way of

punishment, the provisions of Article 311 of the Constitution are attracted and the authority passing the order of termination of the appointment has to comply with the requirements of that Article by giving an opportunity to show cause against the proposed punishment. In this case admittedly no such opportunity was given to the appellant so that even on this basis the appellant would be entitled to the relief claimed by him. In either case, the order which had the effect of his ceasing to hold the post of Panchayat Inspector was invalid and was liable to be quashed on this ground

7. The appeal is consequently allowed, the order of the learned single Judge, is set aside and the orders of respondent no. 1 communicated by the G. O. dated the 12th March 1956 and of respondent No. 2 dated the 19th March 1954 are quashed. The appellant will be entitled to the costs of these proceedings from the respondents in this special appeal as well as in the writ petition.