(1963) 04 SC CK 0017

Supreme Court of India

Case No: Appeal (civil) 453 of 1962

The State of Rajasthan		APPELLANT
	Vs	
Ram Saran		RESPONDENT

Date of Decision: April 10, 1963

Acts Referred:

- Police Act, 1861 - Section 12, 2
- States Reorganisation Act, 1956 - Section 115, 116, 117

Citation: AIR 1964 SC 1361 : (1965) 1 LLJ 103 : (1964) 2 SCR 982

Hon'ble Judges: B. P. Sinha, C.J; N. Rajagopala Ayyangar, J; J. C. Shah, J

Bench: Full Bench

Final Decision: Allowed

Judgement

Ayyangar, J.
The State of Rajasthan is the appellant in this appeal which has been filed pursuant to a certificate of fitness granted by the High Court of Rajasthan under Art. 133(1)(c) of the constitution and it challenges the correctness of a judgment of High Court allowing a petition under Art. 226 of the Constitution filed by the respondent.

2. The respondent, Ram Saran, was appointed a Constable in 1947 in the Ajmer district police force. Two years thereafter he was promoted to the rank of Head Constable and was confirmed in that post. On June 29, 1956 he was appointed to officiate as a Sub-Inspector. At that stage the states Reorganization Act (XXXVII of 1956), hereinafter referred to as the Act, was enacted which became operative from November 1, 1956, - referred to in the Act, as the appointed date, and by virtue of its provisions the former State of Ajmer was merged in the State of Rajasthan and under its terms again the respondent was absorbed in the Police Service of the Rajasthan State. To give effect to the provision a formal order appointing the respondent as an officiating Sub-Inspector in the Rajasthan State police force was also passed dated the same day.

3. Subsequent thereto, on April 6, 1957 the Deputy Inspector General of Police, Ajmer Range ordered the reversion of the respondent to the substantive post of Head Constable in the District Police Force. The respondent was dissatisfied with the order and the complaint was that it was not one passed in the normal course of posting since there were, on that date, officiating Sub-Inspectors in the State police force who were junior to him but who continued to hold their officiating posts and that such a reversion to his substantive post was in effect an order of supersession. He made representations to the authorities to set the matter right. When he did not succeed in his efforts, he filed, on July 22, 1959, a petition under Art. 226 of the constitution for quashing the order of reversion dated April 6, 1957, and for a direction to restore him to the rank of officiating Sub-Inspector according to his seniority. The State as well as the Inspector-General of Police and the Deputy Inspector-General of Police were impleaded as parties to the petition and the learned Judges of high Court allowed it principally on the ground that this order of reversion was in violation of the provisions of s. 115 of the Act. It is the correctness of this order that is challenged in this appeal before us.

4. In order to appreciate the contentions raised it is necessary briefly to advert to the statutory provisions on which the judgment of the High Court in the main rests. Those material in this context are Sections 115 to 117 of the Act occurring in Part X headed ''Provisions as to Services" :

115. (1). Every person who immediately before the appointed day is serving in connection with the affairs of the Union under the administrative control of the Lieutenant Governor of Chief Commissioner in any of the existing States of Ajmer, Bhopal, Coorg, Kutch and Vindhya Pradesh, or is serving in connection with the affairs of any of the existing States of Mysore, Punjab, Patiala and East Punjab States Union and Saurashtra shall, as from the that day, be deemed to have been allotted to serve in connection with the affairs of the successor State to that existing State.

(2) .....

(3) .....

(4) .....

(5) The Central Government may by order establish one or more Advisory Committees for the purpose of assisting it in regard to -

(a) the division and integration of the services among the new States and the States of Andhra Pradesh and Madras; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this section and the proper consideration of any representations made by such persons.

(6) The foregoing provisions of this section shall not apply in relation to any person to whom the provisions of section 114 apply.

(7) Nothing in this section shall be deemed to effect after the appointed day the operation of the provisions of Chapter I of part XIV of the Constitution in relation to the determination of the conditions of service of persons serving in connection with the affairs of the Union or any State :

Provided that the conditions of service applicable immediately before the appointed day to the case of any person referred to in sub-section (1) or sub-section (2) shall not be varied to his disadvantage except with the previous approval of the Central Government.

116. (1). Every person who immediately before the appointed day is holding or discharging the duties of any post or office in connection with the affairs ..... of an existing State in any area ..... shall be deemed as from that day to have been duly appointed to such post or office by the Government of, or other appropriate authority in, such State, or by the Central Government or other appropriate authority in such Part C State, as the case may be.

(2). Nothing in this section shall be deemed to prevent a competent authority, after the appointed day, from passing in relation to any such person any order affecting his continuance in such post or office.

117. The Central Government may at any time before or after the appointed day give such directions to any State Government as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this part and the State Government shall comply with such directions".

5. Before proceeding to consider these provisions it would be convenient to put aside one matter and that is that it was not suggested that the order of reversion was one by way of punishment constituting a reduction in rank so as to attract Art. 311 of the constitution.

6. The grievances of the respondent as formulated before us were threefold : (1) that for the purpose of promotions and for determining reversions the seniority in the police force was not computed on the basis of a list of seniority prepared for the entire State of Rajasthan but that the same was done on a regional basis i.e., there was a separate seniority list for Ajmer and another for other areas in the State and that this had resulted in police officers like himself being superseded by others junior to them merely because they happened to be serving in particular region. In the petition there was a vague reference to the maintenance of such regional lists as violative of the equality guaranteed by Art. 14, (2) It was further contended by the respondent that the reversion from the officiating post or Sub-Inspector to the substantive one of Head Constable was "an alteration in the conditions of his service" which the State Government was not competent to effect without the sanction of the Central Government under s. 115(7) of the Act, and that, in any event, there had been a direction by the Central Government under s. 117 of

the Act which rendered the right to retain an officiating post without reversion as such a condition, (3) Even if s. 115 were insufficient by itself to constitute the right to retain an officiating post without being reverted to a substantive post as "a condition of service," still there was a guaranteed right not to be reverted except in the strict order of juniority under the provisions of the Standing Orders of the Police Force which were part of his conditions of service and that by reason of these Standing Orders the reversion was in violation of s. 115(7) of the Act.

7. We consider it would be convenient to deal with these in the reverse order, and take up first the interpretation and effect of the Standing Order on which reliance has been placed both by the learned judges of the High Court as well as by learned Counsel for the respondent before us. In regard to them there are two distinct questions : (1) their proper interpretation, (2) whether they would in law constitute a condition of service and these have to be considered separately. The Standing Order relied on is one numbered 46 issued by the Inspector General of Police, Ajmer and is dated October 20, 1949. The relevant portion of it relied on is the paragraph numbered 4(b) which reads :

An officer who has secured officiating promotion on the basis of his place on the approved list should normally be considered for promotion earlier provided that he maintains an appropriate standard. If he fails to do so he may be reverted or his confirmation postponed. He should not, however, be denied his claim to confirmation merely because although he has maintained his standard someone else promoted later is considered to have done even better."

8. It is clear from this provision that it deals not with the order in which holders of officiating posts may be reverted but with that in which they could be considered for confirmation, so that in strictness on its language the clause would not constitute the impugned reversion as one in breach of its terms. But assuming that what might be called the spirit of the rule or the reason behind it be taken into consideration and it be held that it laid down also the order in which reversions should take place, still we have next to consider whether it has any legal efficacy as service condition. This would depend upon the Standing Orders having been issued by a competent authority under the provisions of a statute which empowered that authority to prescribe "conditions of service". For undoubtedly if it were not so it would be merely an administrative instruction issued by the Inspector General of police for the guidance of his officers but could not determine service conditions fixed by statute or statutory rules by competent authorities or confer any legal rights which in the event of non-observance could be the subject of complaint in a Court. Learned Counsel for the respondent was, therefore, at pains to make out that these Standing Orders had a statutory basis. For this purpose reliance was placed upon Sections 12 and 2 of the Police Act (V of 1861) as empowering the Inspector-General of Police to issue these Standing Orders. Section 12 of the Police Act reads, to quote only the material words :

12. The Inspector-General of Police may, from time to time, subject to the approval of the State Government, frame such orders and rules as he shall deem expedient relative to the organisation, classification and distribution of the police-force, the places at which the members of the force shall reside, and the particular services to be performed by them...".

9. It is clear that the orders and rules referred to in this section have nothing to do with the determination of the service conditions of the officers recruited to the police force. The expression "organisation" cannot, in our opinion, include within its fold the conditions of service of those in the police force. Turning next to s. 2 to which our attention was drawn, the material portion is its second paragraph which reads :

Subject to the provisions of this Act the pay and all other conditions of service of members of the subordinate ranks of any police force shall be such as may be determined by the State Government".

10. Under this section, however, it is not the Inspector General of Police but the State Government that is empowered to frame rules regulating the conditions of service of members of the police force. It was not suggested that the Standing Orders on which reliance was placed were those made by the State Government as they purport to be only under the authority of the Inspector General of Police. A feeble argument was attempted to suggest that the State Government might have delegated their power to the Inspector General, but nothing is better settled than that a power to make rules could not be delegated without express statutory provision therefor.

11. Some point was sought to be made of the fact that these Standing Orders were issued in October, 1949, when not the Constitution but s. 243 of the Government of India Act, 1935 was in force. But the respondent gets no advantage out of this circumstance, because s. 243 referred to, enacts that the conditions of service of the subordinate ranks of various police forces in Indian "would be such as may be determined by or under the Acts relating to those forces" and we are again thrown back on the provisions of s. 2 of the Police Act by which it is the State Government, not the Inspector General of Police, that is vested with authority to frame conditions of service. We therefore consider, with great respect to the learned Judges of the High Court, that they were in error in treating Standing Order 46 as a condition of service which was violated by the order of reversion impugned by the respondent in his Writ Petition.

12. Standing Order 46 being put aside, we next turn to Sections 115 to 117 of the Act. The respondent was in the service of the Ajmer State as an officiating Sub-Inspector of Police on the appointed day i.e., November 1, 1956 and by virtue of s. 115(1) of the Act he would be deemed to have been allotted to serve in connection with the affairs of the Rajasthan State, and, in fact, as noticed earlier, there was a formal order of appointment dated November 1, 1956, by which he was appointed as an officiating Sub-Inspector of Police. We do not consider it necessary to deal with sub-s. (5) of s. 115 as, in our opinion, nothing turns on it, though it was referred to by learned Counsel for the respondent. What

is really crucial for the determination of this appeal is the proviso to sub-s. (7) by which there was a guarantee that the conditions of service applicable before the appointed day would not be varied to the disadvantage of persons in the position of the respondent except with the previous approval of the Central Government. The question arising under this proviso would be whether it is any condition of service applicable to the holder of an officiating post that he shall not be reverted to his substantive post. But before dealing with it, the effect of two other provisions viz. Sections 117 and 116(2) may be noticed. We first refer to s. 117 because if there is a direction of the Central Government in relation to a class of officers and such direction is necessary for giving effect to the provisions of this part, it is the duty of the State Government to give effect to it in such a case the question whether such a direction is strictly a condition of service or not might not fall for determination. The learned Judges of the High Court considered that there was such a direction by the Central Government and that was part of the reasoning on which they granted relief to the respondent. Learned Counsel for the respondent strenuously sought to support this argument before us.

13. The direction was claimed to be contained in a letter from the Deputy Secretary to the Government of India Ministry of Home Affairs to the Chief Secretary to the Government of Rajasthan, Jaipur dated March 27, 1957 and headed "protection of service conditions to be afforded to state service personnel." In this letter, after referring to the proviso to sub-s. (7) of s. 115 of the Act which laid down that conditions of service applicable to persons referred to in sub-s. (1) shall not be varied to their disadvantage except with the previous approval of the Central Government, there was a paragraph reading as under :

2. (ii) Officiating Pay :

When an officer had officiated continuously on a particular scale of pay or would have officiated on that scale but for his officiating appointment to a post on a higher scale or proceeding on leave or deputation for a minimum period of three years immediately before November 1, 1956, the pay on which he had so officiated should be protected as if were pay and scale drawn in a substantive capacity."

The letter divides the subject-matter dealt with in it into several parts and the above paragraph occurs under the part headed "Pay". It was not suggested on behalf of the respondent that the clause had as such any relevance to the question of reversion to a substantive post of an officer in an officiating post, or that even otherwise the respondent had qualified for the benefit of the provision contained in it as regards pay since he had not officiated as a Sub Inspector for a period of three years prior to the appointed date i.e., November 1, 1956. The argument, however, was that since officers holding merely officiating posts had been mentioned in this directive, the right to continue in that post became a service condition and that no reversion could be ordered without the sanction of the Central Government. We do not find it possible to read the direction contained in the clause extracted earlier as having any such effect. No doubt, to the extent to which it protects the pay of certain officers it might have effect under s. 117 of the Act but beyond

it, subject to the proviso to sub-s. (7) of s. 115, the powers of the State Government are not intended to be curtailed and, in fact, they are expressly saved by sub-s. (2) of s. 116 which permits a competent authority to pass in relation to such persons "any order affecting his continuance in such post or office."

14. The contention that survives is merely whether the right to hold an officiating post is a legal right and whether it could be stated to be a condition of service that such an officer shall not be reverted except for proper reasons. In our opinion, the matter is concluded by the decision of this Court in 277976 . There, as here, an officer who was appointed to officiate in Class II Service as an Assistant Superintendent, Railway Telegraphs was reverted to his substantive Class III appointment. No doubt, the question there considered was whether on the facts of that case, this order of reversion was passed as a punishment so as to attract the constitutional protection guaranteed by Art. 311(2), but this Court had also to consider whether an officer appointed to an officiating post had any legal right to continue in that post. As to that Das, C.J. speaking for the majority observed :

The petitioner before us was appointed to a higher post on an officiating basis.... He had no right to continue in that post and under the general law the implied term of such appointment was that it was terminable at any time on reasonable notice by Government and therefore his reduction did not operate as a forfeiture of any right and cannot be described as reduction in rank by way of punishment."

(Vide also the judgment of this Court in State of Bombay v. F. A. Abraham [Civil Appeal 59 of 1961 (Not yet reported) decided on December 12, 1961.]).

15. If he had no legal right to continue in that post it would rather appear that it was one of the conditions of his service that he could, for administrative reasons, be reverted to his substantive appointment. It therefore appears to us that there is no basis for argument that mere reversion to a substantive post is a breach of the conditions of service. That is why we said that the proviso to sub-s. (7) of s. 115 on which stress is laid by the High Court really affords no assistance to the respondent. The above was, in general, the reasoning upon which the learned Judges of the High Court allowed the petition. We consider that they were in error in so doing and the appeal has accordingly to be allowed.

16. It is necessary, now, to mention the first of the points we have set out earlier which learned Counsel for the respondent strenuously pressed upon us. He submitted that the respondent had alleged in his petition a violation of Art. 14 of the Constitution, in that the selection of officers for promotion was determined not on the basis of the seniority of the officers considering the State as a whole but regionwise and this was the gravamen of the charge in this respect made in the petition. In this connection he drew our attention to the terms of s. 2 of the Police Act 5 of 1861 which reads :

2. The entire police-establishment under a State Government shall, for the purposes of this Act, be deemed to be one police-force, and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner as shall from time to time be ordered by the State Government.

. . . . . .

17. He also pointed out that in the counter-affidavit filed by the State this splitting up of the State into regions and the determination of seniority and promotion on a recognise, as distinguished from Statewise basis, was defended as dictated by administrative considerations. The learned Judges, in their judgment have made a passing reference to this feature of the case and seem to express the opinion that the system of regionwise promotion was productive of inequality and hardship. The difficulty in the way of the respondent, however, is that the plea raised in regard to this matter is of the vaguest character and appears to be designed as affording some support for the main allegations and contentions we have dealt with, and not as an independent and distinct ground for impugning the constitutional validity of the scheme of promotion. In consequence of this state of the pleadings the facts and details necessary for sustaining or repelling this contention were not brought into the record, so that admittedly the point could not be decided on the record as it stands. Realising this learned Counsel for the respondent urged that the matter should be admitted to the High Court for a consideration of this issue about the breach of Art. 14 of the Constitution and the constitutional validity of the regionwise seniority lists prepared for promotion, reversion etc. allowing liberty to the parties to lead further evidence on the matter. Having considered the suggestion carefully we have arrived at the conclusion that on the pleadings, as they stand, this question could not be determined satisfactorily. If the issue as to discrimination and a violation of Art. 14 has to be satisfactorily investigated and decided both the parties would have to file amended pleadings in order to focus attention on several details, with the result that this would virtually amount to the filing of a new petition. We consider therefore that if the respondent is so advised he should be at liberty to challenge the order now impugned on these other grounds and that for that purpose it would really be in his interest that he should be permitted to file a fresh petition making necessary allegations and setting forth the requisite facts when the State also would have an opportunity to make its answers to such a plea. It is in the light of this consideration that we have refrained from remanding the case to the High Court for the consideration of this point.

18. The result is that the appeal is allowed and the order of the High Court set aside and the Writ Petition of the respondent dismissed. We have to add that this would be without prejudice to his right to file a fresh petition in regard to the matter we have indicated earlier. In the circumstances of this case there would be no order as to costs.

19. Appeal allowed.