Mohammad Ali Vs. State of Mysore

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Court : Karnataka

Decided On : Oct-31-1967

Reported in : (1969)IILLJ165Kant; (1967)2MysLJ582

Judge : B. Venkataswami and ;M. Santhosh, JJ.

Acts : Government of India Act, 1935 - Sections 240(3); Constitution of India - Articles 226, 311 and 311(2); Mysore Civil Services (Classification, Control and Appeal) Rules, 1957 - Rule 8; Mysore Secretariat Services Recruitment Rules, 1957; Mysore Civil Services (General Recruitment) Rules, 1957 - Rule 18(2)

Appeal No. : Writ Petition No. 2135 of 1965

Appellant : Mohammad Ali

Respondent : State of Mysore

Judgement :
ORDER

Per Santhosh, J.

1. In this petition under Art. 226 of the Constitution of India, the petitioner prays that Government order dated 30 September, 1965 (annexure D), reverting him from the post of an assistant to that of junior assistant, be quashed. The petitioner joined service in 1947 as III grade clerk in the erstwhile State of Hyderabad. After

the reorganization of States, the petitioner was allotted to the new State of Mysore. The post of III grade clerk of Hyderabad had been equated with that of the junior assistant in the Mysore Government Secretariat. On 22 September, 1962 the petitioner was promoted as officiating assistant and posted in charge of the Historical Records Section. By the impugned order dated 30 September, 1965 (annexure D), the petitioner was reverted as junior assistant on the ground that he was incompetent, inefficient and was wanting in knowledge of English and Kannada and not fit for being continued as assistant any longer.

2. Sri Datar, learned counsel appearing on behalf of the petitioner, has contended that the impugned order of reversion of the petitioner amounts to reduction in rank and as such Art. 311 of the Constitution is attracted. He also argues that under the

3. Mysore Secretariat Services Recruitment Rules of 1957, 50 per cent of the posts of

4. assistants are to be recruited by promotion from the cadre of junior assistants. The said rules do not prescribe in the case of promotees that they should have passed any Kannada test. He also contends that in the case of persons promoted in the posts of assistants, the rules do not provide for any period of probation. When a person is appointed by promotion to the post of an assistant. It is not open to treat him as a probationer. Under sub-rule (2) of rule 18 of the

5. Mysore Civil Services (General Recruitment) Rules, 1957, all appointments by

6. promotion shall be on officiating basis for such period as may be provided for under the rules specially made for the purpose. The order of promotion of the petitioner states that he is promoted on trial for a period of one year subject to review at the end of the year. The petitioner has continued in the post of assistant for more than three years. Sri Datar, therefore, contends that the reversion of the petitioner clearly amounts to punishment and is illegal and deserves to be quashed.

7. Sri U. L. Narayana Rao, learned counsel appearing on behalf of the respondent State of Mysore, has argued that the Government was competent to pass the

order of reversion as the petitioner was only officiating in the post of assistant and had no right to that post. As the petitioner was promoted as officiating assistant purely on trial, subject to his work being satisfactory, and on review as his work was found to be unsatisfactory, he was reverted. He argues, in a case like this no question of reduction in rank of the petitioner arises and Art. 311 of the Constitution is not attracted. Sri Narayana Rao has relied on Clause (iv) of explanation to rule 8 of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957, which states that reversion to a lower service, grade or post of a Government servant officiating in a higher post on the ground that he is considered, after trial, to be unsuitable for such higher post, shall not amount to a penalty within the meaning of this rule.

8. The first contention of Sri Datar is that the impugned order expressly casts a stigma on the petitioner and his reversion amounts to a punishment and therefore, Art. 311 of the Constitution is attracted. Sri Datar has strongly relied on Jagadish Mitter v. Union of India [1964 - I L.L.J. 418]. In the said case, their lordships were considering the question of discharge of a temporary Government servant. The order of discharge in that case read as follows (at p. 427) :

'Sri Jagadish Mitter, a temporary second division clerk of this office, having been found undesirable to be retained in Government service, is hereby served with a month's notice of discharge with effect from 1 November, 1949.'

9. At p. 428 of the said order, Gajendragadkar, C.J. speaking for the Bench, observed as follows :

'. . . No doubt the order purports to be one of discharge and as such can be referred to the power of the authority to terminate the temporary appointment with one month's notice. But it seems to us that when the order refers to the fact that the appellant was found undesirable to be retained in Government service, it expressly cast a stigma on the appellant and in that sense, must be held to be an order of dismissal and not a mere order of discharge . . . It is obvious that to say that it is undesirable to continue a temporary servant is very much different from saying that it is unnecessary to continue him. In the first case, a stigma attaches to the servant, while in the second case, termination of service is due to the

consideration that a temporary servant need not be continued, and in that sense, no stigma attaches to him. It seems that anyone who reads the order in a reasonable way, would naturally conclude that the appellant was found to be undesirable, and that must necessarily import an element of punishment which is the basis of the order and is its integral part. When an authority wants to terminate the services of a temporary servant, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it would be idle to suggest that the order is a simple order of discharge. The test in such cases must be : Does the order cast aspersion or attach stigma to the officer when it purports to discharge him If the answer to this question is in the affirmative, then notwithstanding the form of the order the termination of service must be held, in substance, to amount to dismissal. That being so, we are satisfied that the High Court was in error in coming to the conclusion that the appellant had not been dismissed, but had been merely discharged. It is conceded that, if the impugned order is construed as one of dismissal, the appellant has been denied the protection guaranteed to temporary servants under S. 240(3) of the Government of India Act, 1935, or Art. 311(2) of the Constitution, and so, the order cannot be sustained.'

10. Applying the said principle to the instant case, there cannot be any doubt whatsoever that the impugned order casts a stigma on the petitioner. As already mentioned, the order says that the petitioner was found incompetent, inefficient, grossly deficient and unsuitable for the post of an assistant. If the respondent had passed a simple order of reversion without stigmatizing or casting aspersions on the petitioner, the argument could have been advanced that it was only a case of reversion, coming within the explanation to rule 8 of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957. As stated by the Supreme Court, since it is shown that the order purports to cast aspersions on the petitioner, it would be idle to suggest that it is a simple order of reversion and not one of reduction in rank.

11. Sri Datar has also relied on State of Uttar Pradesh v. Madan Mohan Nagar [1967 - II L.L.J. 63]. In that case, the order of compulsory retirement passed

against the Government servant stated that the employee was retired as he had outlived his utility. It was held by the Supreme Court that the order casts a stigma and amounts to punishment and is one of 'removal' and Art. 311 is attracted. At p. 65 of the order, their lordships have observed as follows :

'. . . In the present case there is not only no question of implication but a clear statement appears on the face of the order that the respondent had outlived his utility; in other words, it is stated that he was incapacitated from holding the post of Director, State Museum, Lucknow. The order clearly attaches a stigma to him and any person who reads the order would immediately consider that there is something wrong with him or his capacity to work.'

12. Then again, at pp. 65-66 their lordships have observed as follows :

'It seems to us that the same test must apply in the case of compulsory retirement, namely : Does the order of compulsory retirement cast an aspersion or attach a stigma to the officer when it purports to to retire him compulsory In the present case there is no doubt that the order does cast a stigma on the respondent.'

13. In Wadhwa (P. C.) v. Union of India and Another [1964 - I L.L.J. 395], a member of the Indian Police Service who was officiating as Superintendent of Police was reverted as Assistant Superintendent of Police on the ground of unsatisfactory conduct. The question for consideration before their lordships was whether the order of reversion amounted to reduction in rank within the meaning of Art. 311(2) of the Constitution. No details of the unsatisfactory conduct were specified and the appellant was not asked for any explanation. Their lordships held that the order of reversion made against the appellant was in effect a 'reduction in rank' within the meaning of Art. 311(2) of the Constitution, and inasmuch as he was given no opportunity of showing cause against the said order of reversion, there was violation of Art. 311.

14. Sri Narayana Rao, learned counsel for the respondent, has strongly relied on Divisional Personnel Officer, Southern Railway, Mysore v. Raghavendrachar (S.) [1967 - I L.L.J. 401] wherein it is stated that when a person officiating in a post is reverted for unsatisfactory work, it cannot be said that the reversion would amount

to a reduction in rank. The Government has a right to consider the suitability of the person to hold the position to which he had been appointed to officiate and it is entitled for that purpose to make inquiries about his suitability. In the said case, it may be pointed out, the order merely stated that S. Raghavendrachar is reverted. The order did not cast any stigma on Raghavendrachar. Similarly, in State of Bombay v. Abraham (F. A.) [1963 - II L.L.J. 422], the other decision relied on by Sri Narayana Rao, there was no stigma or aspersion cast in the order. The order merely stated that

'F. A. Abraham, Deputy Superintendent of Police, is reverted to the rank of Inspector.'

15. We are, therefore, of opinion that the decisions cited by the learned counsel for the respondent have no application to the facts of the instant case.

16. As already pointed out, the impugned order casts a stigma on the petitioner and states that he is incompetent, inefficient and found grossly deficient to hold the post of an assistant. In our opinion, the principles laid down by their lordships of the Supreme Court in the abovementioned cases of Jagadish Mitter [1964 - I L.L.J. 418] (vide supra), Madhan Mohan Nagar [1967 - II L.L.J. 63] (vide supra) and Wadhwa (P.C.) [1964 - I L.L.J. 395] (vide supra) apply to the instant case, and that the impugned order amounts to a reduction in rank of the petitioner and Art. 311(2) of the Constitution of India is attracted. As no reasonable opportunity to show cause as contemplated by Art. 311(2) of the Constitution had been given to the petitioner before the impugned order was passed, the same cannot be supported and has to be set aside.

17. In view of the conclusion arrived at by us that the impugned order is bad, it is unnecessary for us to consider the other contentions urged by Sri Datar in this case.

18. In the result, we quash the impugned order No. GAD 27 ASA 64 dated 30 September, 1965, passed by the respondent. The respondent will pay the costs of the petitioner. Advocate's fee Rs. 100.