

T.S. Gurusiddiah Vs. the State of Mysore

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Court : Karnataka

Decided On : Nov-08-1962

Reported in : AIR1963Mys109; (1963)1MysLJ127

Judge : A.R. Somnath Iyer and ; Mir Iqbal Husain, JJ.

Acts : [Constitution of India](#) - Article 311; Mysore Civil Services (Classification, Control and Appeal) Rules, 1957 - Rule 11(10)

Appeal No. : Writ Petn. No. 892 of 1962

Appellant : T.S. Gurusiddiah

Respondent : The State of Mysore

Advocate for Def. : D.M. Chandrasekhar, High Court Govt. Pleader

Advocate for Pet/Ap. : S.K. Venkataranga Iyengar, Adv.

Judgement :

A.R. Somnath Iyer, J.

1. On August 2, 1962, the Petitioner who was holding the post of an Assistant in the Secretariat of the Government of Mysore was promoted to officiate as Superintendent in the Home Department of that Secretariat on 'a purely temporary basis.' Two days later, on August 4, 1962 that promotion was revoked by an order

which reads:

'GOVERNMENT OF MYSORE.

No. GAD 187 ASP 1962.

Mysore Government,

Secretariat, Vidhana Soudha,

Bangalore, dated 4th Aug. 1962.

Shravan Saka Era 1884.

OFFICIAL MEMORANDUM.

Reference: O. M. No. GAD 187/52 dated 2-8-1962.

In the O. M. referred to above Shri (SIC). S. Gurusiddiah, Assistant, Mysore Government Secretariat, was promoted to officiate as a Superintendent, purely on a temporary basis. It has since been brought to notice that a departmental enquiry is at present pending against the official. This fact was lost sight of at the time when his promotion orders were issued. According to Om. No. GAD (S-1) 56 SSR 59, dated 9-10-1959 he should not have been considered for promotion until the enquiry against him was completed.

The orders promoting him as a Superintendent are accordingly cancelled and he is reverted as an Assistant with effect from the afternoon of 4th August 1962.

Sd. N. P. Joshi,

Under Secretary to Government,

GAD (Administration-1)'

This order by which the promotion of the petitioner was cancelled is challenged before us on the ground that since it amounts to a reduction in rank and was made without compliance with the provisions of Article 311 of the Constitution it was

unsustainable. The submission made before us was that what was done was a demotion from the post of an officiating Superintendent to the post of an Assistant productive of a stigma besides resulting in evil consequences to the petitioner.

2. It is stated on behalf, of the petitioner that on the 28th January 1960 when the petitioner was holding the post of an Assistant in the Secretariat in the office of the Stores Purchase Committee, he was placed under suspension pending enquiry into a charge that he accepted an illegal gratification from one Inder Raj. That charge was enquired into by the Head-quarters Assistant to the Deputy Commissioner, Bangalore District, Bangalore, who was appointed for that purpose under the Civil Services (Classification, Control and Appeal) Rules 1957 by the concerned Divisional Commissioner. On December 5, 1961 this inquiring authority submitted a report in which he stated that the charge of corruption which had been made against the petitioner was not proved against him. What has been said before us by Mr. Government Pleader is that that report which was sent by the inquiring authority was under consideration before the disciplinary authority viz., the Chief Secretary to the Government of Mysore, and that by a second show cause notice issued to the petitioner under Rule 11(10) of the Mysore Civil Services (Classification, Control and Appeal) Rules that disciplinary authority who proposed to dissent from the finding of the inquiring authority called upon the petitioner to submit his representation why he should not be dismissed from his post. Mr. Government Pleader has urged before us that all that was done when the petitioner's promotion was cancelled on August 4, 1962 was to recall the order which had been made on August 2, 1962 under a mistake. In support of this submission our attention was drawn to the Official Memorandum of the Govt. of October 9, 1959 which reads:

'Promotion of Government Servants whose

Conduct is under enquiry.

O. M. No. GAD (S-1) 56 SSR 59 dated,

Bangalore, the 9th October 1959.

Government has under consideration the question whether a Government servant whose conduct is under enquiry should be considered for promotion if his seniority and previous record of service apart from the case under enquiry justify it. It is now directed that a Government servant on whom charge sheet has been served after a prima facie case has been established against him should not be considered for promotion till the enquiry is completed. In case the Government servant is exonerated in the enquiry held against him and if his record of service is otherwise satisfactory as would entitle him for promotion, he should be promoted immediately after completion of the departmental enquiry, his seniority and rank remaining the same as would have been the case if there had been no departmental enquiry instituted against him. The Secretariat Departments and Heads of Departments are requested to follow these instructions carefully in future.'

It has been mentioned to us that the promotion of the petitioner which was made on August 2, 1962 was made by the Chief Secretary who had the competence to make that promotion and what is stated in the order by which that promotion was cancelled was that it was inadvertently made in forgetfulness of the departmental enquiry pending against the petitioner. The question is whether the revocation of the promotion of the petitioner in those circumstances is what amounts to a reduction in rank within the meaning of that expression occurring in Article 311 of the Constitution. If it does amount to such reduction in rank it is obvious that the impugned order is what cannot be supported as it does against the Constitution.

3. Now the argument that the petitioner was reduced in rank rests upon the submission that the petitioner was subjected to a stigma by reason of his demotion and that such demotion also resulted in evil consequences.

4. If we can come to the conclusion that the petitioner was sent down to the post of an Assistant by the process of some punitive action which was intended to be taken against him, there would be very little difficulty in thinking that such demotion was really what exposed the petitioner to a stigma besides generating evil consequences to him. But it seems to me difficult to hold that any stigma or any

evil consequence flowed from the revocation of the petitioner's promotion. All that the revoking order said was that the Official Memorandum of October 9, 1959 stood in the way of the petitioner being considered for promotion to the post of a Superintendent so long as the disciplinary proceedings against him were still pending and that when the petitioner was temporarily promoted on August 2, 1962, the fact that such disciplinary proceedings were pending against him escaped the attention of the promoting authority. I cannot imagine any reason why we should think that a demotion made in those circumstances either produced a stigma or an evil consequence. The disciplinary proceedings in which there was a charge of misconduct against the petitioner are still pending and although Mr. Venkataranga Iyengar asked us to hold that that proceeding must be deemed to have come to an end when the inquiring authority made his report on December 5, 1961 it is clear that that enquiry does not attain such completion until the disciplinary authority who is the Chief Secretary in this case agrees with the findings of the inquiring authority and exonerates the petitioner from the charge of misconduct. So long as the disciplinary authority intended to proceed under Rule 11(10) of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957 as it is clear he intended to do, it cannot be said that the disciplinary proceeding against the petitioner had come to an end.

5. In that situation if on August 4, 1962 the authority who promoted the petitioner realised that a promotion which should not have been made as directed by the administrative instructions issued by the Government on October 9, 1959 and hastened to correct the mistake committed by him and cancelled the promotion, how the cancellation of that promotion results in a stigma or an evil consequence is difficult to understand. If the petitioner is exonerated in the departmental enquiry which is still continuing against him, it is clear that normally there would be no longer any impediment to his promotion to the post of a Superintendent without loss of seniority or rank. It is I think not right to think that a stigma attached to a person if his promotion which was stated to have been made under a mistake was revoked. Further, since the petitioner's promotion was a purely temporary promotion it would be impossible to hold that any evil consequence has befallen him by reason of the cancellation of that promotion on the ground of mistake.

6. I do not find it possible to subscribe to the view that once a civil servant is promoted to a higher post, that promotion even if it was made under a mistake is in no circumstance liable to cancellation or revocation. In what cases the power of revocation or cancellation is available in such cases is a question which cannot be answered by any formula of universal application but must depend upon the facts and circumstances of each case.

7. In a case like this where all that was done by the promoting authority was to recall the promotion made under a mistake by reason of his having overlooked the pending disciplinary proceedings and that mistake was corrected almost immediately after it was committed, I am not prepared to say that the revocation of the promotion was not permissible.

8. This writ petition is accordingly dismissed. But in the circumstances, there will be no order as to costs.

9. Mr. Venkataranga Iyengar asks us to say that it would be open to the petitioner to challenge that part of the disciplinary proceeding which the disciplinary authority is now continuing after the submission of the report by the inquiring authority and the punishment if one is imposed on him. It is obvious that that challenge is open to him at the appropriate stage.

Mir Iqbal Husain, J.

10. I agree.

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