

State of U.P. Vs. Ansar Husain

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Court : Allahabad

Decided On : Nov-12-1963

Reported in : AIR1964All346; [1964(8)FLR156]

Judge : V. Bhargava and ;G.C. Mathur, JJ.

Acts : [Constitution of India, 1950](#) - Article 309; Civil Services (Classification Control and Appeal) Rules - Rule 55(3); Uttar Pradesh Subsidiary Rules - Rule 14(4)

Appeal No. : Special Appeal No. 129 of 1963

Appellant : State of U.P.

Respondent : Ansar Husain

Advocate for Def. : S.C. Khare, Adv.

Advocate for Pet/Ap. : H.N. Seth, Junior Standing Counsel

Disposition : Appeal dismissed

Judgement :

Bhargava, J.

1. This special appeal has been filed by the State of Uttar Pradesh against an order of a learned Single Judge allowing a petition under Article 226 of the

Constitution filed by the respondent Ansar Husain and quashing an order made by the appellant reverting the respondent from the post of Sales Tax Officer to his substantive post as an assistant in the office of the U. P. Public Service Commission. Admittedly the respondent was holding the permanent post of an assistant in the office of the Commission. The Sales Tax Department was started as a temporary department and, in the year 1948, the respondent was appointed as an officiating Assistant Sales tax Officer. Soon after he was appointed as an officiating Sales Tax Officer. Subsequently the department was made permanent, so that the post of Assistant Sales Tax Officers became permanent. Thereupon a Government order dated the 5th of June, 1957, was issued stating that the Government had decided that seven Assistant Sales Tax Officers should be placed under trial and observation for a period of two years, viz., 1957-58 and 1958-59 and thereafter their cases for confirmation would be considered. The respondent was one of those seven officers. A further direction was given that the officers concerned may be informed of this and it should be impressed upon them that, if they wished to be retained in the department, they should show considerable improvement.

The contents of this Government Order were incorporated in a D. O. letter dated the 12th of June, 1957 addressed by the Commissioner of Sales Tax, U. P. to the respondent. Thereafter the respondent continued to work as an Assistant Sales Tax Officer and later became Officiating Sales Tax Officer, so that he started holding a higher post in that officiating capacity. Then by a notification dated the 25th of April, 1959, the respondent, described as an Officiating Sales Tax Officer, Deoria, was reverted to his substantive post in the office of the U. P. Public Service Commission. The respondent filed an appeal against that order of reversion which was dismissed by the order dated the 22nd of May, 1959. He thereupon moved a petition under Article 226 of the Constitution for the quashing of these two orders, The learned Single Judge allowed the petition on the ground that his order of reversion had been made without complying with the requirements of Sub-rule (3) of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules. This appeal has been filed by the State of Uttar Pradesh on the ground that Sub-rule (3) of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, of which benefit has been given to the

respondent by the learned Single Judge, was not applicable to him at all. The benefit of that rule was given on the ground that the respondent was a probationer and the point raised in this appeal is that he was not a probationer. That is the only point that, in these circumstances, fell for decision in this special appeal.

2. The word 'probationer', as used in Sub-rule (3) of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, has not been defined in those rules, nor has it been defined in the Fundamental Rules which mainly govern the conditions of service of the various Government servants. Learned counsel for the appellant has, however, drawn our attention to a Subsidiary Rule framed by the Governor of Uttar Pradesh in which the word 'probationer' has been defined. That definition is as follows:

'14 (4). Probationer means a government servant employed on probation in or against substantive vacancy in the cadre of a department.'

In the absence of any definition in the Civil Services (Classification, Control and Appeal) Rules and in the Fundamental Rules, it appears to us that the word 'probationer' can best be interpreted only with reference to the definition contained in these Subsidiary Rules because these Subsidiary Rules are only meant to supplement those other rules. Even this definition is, however, couched in such language that it does not convey the precise meaning of the word 'probationer'. In the definition itself, it is again stated that a probationer is a person who is employed on probation, so that the expression 'on probation' has to be interpreted by the Court as the other ingredients mentioned in the definition admittedly exist in the case of the respondent. When the respondent was appointed as an Assistant Sales Tax Officer by the Government Order dated the 5th of June, 1957, there admittedly was a substantive vacancy in the cadre of the department in the posts of Assistant Sales Tax Officers and the respondent was appointed in one of such vacancies. In the appointment order, however, it was not stated that he is being appointed on probation. The learned Single Judge, however, held that the order of appointment of the respondent amounted to appointment on probation, and we think he was quite right in arriving at this decision.

3. When dealing with this question, we tried to examine the incidents or conditions of service applicable to the respondent under this appointment order and the incidents and conditions of service which are ordinarily applicable to a probationer. The respondent, under that order, was placed under trial and observation. This was to be for a fixed period of two years, and the Government order in addition laid down that thereafter his case for confirmation was to be considered. It appears to us that, even in the case of a probationer, these very conditions must exist. When any person is appointed on probation, he is placed under trial and observation and that is done for a specified period. Usually that period is, of two years. Further, on the expiry of that period, he is to be considered for confirmation in the post on which he is appointed on probation. That can be done because a substantive vacancy exists. Thus all the incidents of the appointment of the respondent were identical with the incidents of appointment of a probationer. Learned Junior Standing Counsel, appearing on behalf of the appellant when asked, admitted that he was unable to point out any distinctive feature between the case of the respondent and that of any other probationer. In fact, he admitted that, so far as he could envisage, all the conditions applicable to the case of the respondent are applicable in the case of any probationer and no additional conditions exist in the case of probationer, in this case, therefore, though the respondent was not described as a probationer and though it was not mentioned that he was being appointed on probation, the terms of his appointment make it clear that he was appointed on probation, so that he became a probationer.

4. We agree with the learned Single Judge that the meaning given to the word 'probationer' in the Audit Instruction relating to Rule 9 (6) (a) (j) of the Fundamental Rules cannot be relied upon 39 that Audit Instruction has no statutory force. In addition, there is the circumstance that the Audit Instruction itself indicates that in that Instruction the word 'probationer' was being interpreted merely for the purpose of Fundamental Rule 9 (6) (a) (i), so that the meaning given there was a meaning attributed for that limited purpose and was not intended to define the word 'probationer' as used in other rules like the Civil Services (Classification, Control and Appeal) Rules. In these circumstances, the learned Single Judge was right in holding that the respondent was a probationer in the post of Assistant Sales Tax Officer. His reversion to his permanent post in the U. P. Public Service Commission

in violation of the provisions of Sub-rule (3) of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, was invalid. The learned Single Judge., therefore, rightly allowed the writ petition.

The appeal has no force and is dismissed with costs.

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