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Court : Allahabad

Decided On : May-13-1968

Reported in : (1969)ILLJ1All

Judge : Satish Chandra, J.

Appellant : Rampal Singh

Respondent : Deputy Inspector General of Police (P.A.C.) and anr.

Judgement :

Satish Chandra, J.

1. The petitioner challenges the validity of an order passed by the Deputy Inspector-General of Police on 25 July 1967 reverting him. The petitioner after completing the training course was posted as sub-inspector of police in 1955. On 20 July 1960, he was promoted to officiate on the post of reserve inspector and was posted as Company Commander at P.A.C., Agra. On certain charges of misconduct, the petitioner was reverted to his substantive post of sub-inspector for a period of one year from 1 March 1966. On the expiry of the year, the petitioner was again promoted to officiate as reserve inspector with effect from 1 March 1967. Then on 25 July 1967, the impugned order was passed reverting him to his substantive rank. The order states:

Officiating Company Commander Ram-pal Singh of XXVIII Bn., P.A.C., Chunar (Mirzapur), is hereby reverted to his substantive rank of reserve sub-inspector on grounds of general unsuitability with effect from 1 August 1967 and is transferred to XIV Bn, P.A.C., Kanpur, as reserve sub-inspector.

2. Learned counsel urged only one point in support of this petition. He submitted that the order in express terms casts a stigma on the petitioner by stating that he was generally unsuitable. In law, the order amounts to reduction in rank. No opportunity to show cause was afforded to the petitioner. The order is thus void for contravention of Article 311(2) of the Constitution.

3. The question is whether the statement of general unsuitability in the order casts a stigma and hence to be treated as per se an order by way of punishment. In this case, the authorities did not hold any formal enquiry on charges of misconduct, etc., of any kind against the petitioner. No informal enquiry also appears to have been held with the participation of the petitioner. The impugned order of reversion does not appear to have been passed owing to any specific charges against the petitioner, the petitioner was officiating. He had no right to that post, He has been reverted to his substantive post without involving forfeiture of his earned or accrued rights. Under the circumstances, the order of reversion could not be characterized as having been passed by way of punishment unless the statement therein that the petitioner was generally unsuitable is held to amount to casting a stigma or aspersion on the petitioner's integrity or character.

4. In Jagdish Mitter v. Union of India 1964-I L.L.J. 418 the order stated that Jagdish Mitter has been found undesirable to be retained in Government service. The Supreme Court held that this statement expressly cast a stigma on the Government servant and in that sense must be held to be an order of dismissal, and, not an order of discharge. The Court did not accept the submission that the order meant that the authorities thought that it was unnecessary to continue him in service, in which case, no stigma attaches to the servant, because the order is passed on the footing that the service need not be continued without casting aspersion on him. Undesirability does affect a person's integrity.

5. In *State of Bihar v. Gopi Kishore Prasad* 1960-I L.L.J. 577 the services of a Sub-Deputy Collector were terminated. The order stated the considerations which showed why Government treated him as corrupt and, therefore, unsuitable for the post. It was held that the order expressly casts a stigma on the officer. There the order did not contain itself by saying that the officer was unsuitable. It went on to assign reasons by stating that he was corrupt. That clearly affected his character as well as integrity. If the order had simply stated that the officer was unsuitable for the post, the result of the decision may well have been different.

6. In *State of Uttar Pradesh v. Madan Mohan Nagar* 1967-II L.L.J. 63 the order stated that the officer had outlived his utility. The Supreme Court construed that statement as casting a stigma on the officer.

7. In *State of Orissa and Anr. v. Ram Narayan Das* 1961-I L.L.J. 552, a sub-inspector of police on probation was discharged from service by an order which stated the adverse comments made against his conduct and further stated that, therefore, it was no good retaining him further in service. The Supreme Court held that the order could not be considered to be by way of punishment and so one of dismissal. The rules required the authorities to hold an enquiry to judge the competence of a probationer. The result of the enquiry had to be communicated to the petitioner when he was discharged. In other words, the statements made in the order of discharge had to be made because of the requirements of the rules. In this situation, the Supreme Court found that the statements made in the order followed the enquiry held to find out his competence and not an enquiry into certain charges of misconduct held in order to punish the officer. The order was held to be one of discharge and not dismissal even though it made statements which were adverse to the officer's conduct. Thus though the order assigned reasons for the conclusion that it was no good retaining him in service; but since the enquiry was not held to punish, the order was not treated as one of dismissal. The case of *Ram Narayan Das* 1961-I L.L.J. 552 (vide supra) stands in contrast with that of *Gopi Kishore Prasad* 1960-I L.L.J. 577 mentioned above. In the case of *Gopi Kishore Prasad* 1960-I L.L.J. 577 (vide supra), the enquiry was held into specific charges on his conduct with a view to inflict punishment, coupled with a specific statement in the order which cast a stigma. In *Ram Narayan Das*

case 1981-I L.L.J. 552 (vide supra) though the order made statements which prima facie would amount to attaching stigma, but since the statements had to be made as a consequence of the enquiry required by the rules to find the competence of the officer on probation, they were not treated as importing an element of punishment.

8. In Jagdish Mitter case 1961-I L.L.J. 418 cited above, the Supreme Court specifically observed if an enquiry was held to judge the suitability of a probationer and the services of the petitioner were terminated by a simple order of discharge, it would not amount to punishment or to an order of dismissal. Same principle would apply to the case of reversion from an officiating position to substantive rank. If an enquiry is held to find the suitability of the incumbent and as a result he is reverted on the finding that he was not found suitable, no stigma would attach and no punishment would be implied provided the order was a simple order of discharge. It may be noticed that in the case of Gopi Kishore Prasad 1960-I L.L.J. 577 (vide supra), the statement that the officer was corrupt and not the mere statement that he was unsuitable for the post was held to cast a stigma. In Ram Narayan Das case 1951-I L.L.J. 552 (vide supra), the statement in the order of adverse comments on the probationer's conduct and not the conclusion that it was no good retaining him further in service was held to prima facie attach a stigma. The question, therefore, arises. Would a statement that the officer was generally unsuitable for the post by itself attach any stigma so as to per se import an element of punishment ?

9. The case of State of Bombay v. F. A. Abraham 1963-II L.L.J. 422 relied on by Sri Gopi Nath, the learned Junior Standing Counsel, is material and relevant on this aspect of the case. The Supreme Court held that they were unable to agree with the observation in M.A. Waheed case A.T.R. 1954 Nag. 229 that when a person officiating in a post is reverted for unsatisfactory work, that reversion amounts to a reduction in rank. When a person is given an officiating post, to test his suitability to be made permanent in it later, it is an implied term of the officiating appointment that if he is found unsuitable, he would have to go back. If, therefore, the appropriate authorities find him unsuitable for the higher rank and then revert him back to his original lower rank, the action taken is in accordance with the

terms on which the officiating post had been given. It is in no way punishment, and is not, therefore, a reduction in rank. So, if an officiating hand is reverted on the ground that he was found unsuitable, no punishment is implied in such an action. In that case, however, the order did not specifically say that the officer had been found unsuitable. But the Court found that that was the reason for his reversion. So, if the finding of unsuitability does not vitiate an order of reversion, would the incorporation of that finding in the order make any material difference in the eye of law I think not. The mere statement in the order that the officer was generally unsuitable for the post would not attach a stigma either on the character or integrity of the officer.

10. Similarly, in *Sukhbans Singh (S.) v. State of Punjab* 1963-I L.L.J. 671 at 676 the Supreme Court's observations show that a reversion because of unsuitability for the higher post is in the ordinary course or in the bona fide exercise of Government's power.

11. In *Dalip Singh v. State of Punjab* A.I.R. 1967 S.C.1305, (sic) the order expressly mentioned administrative reasons as a ground. The order was held to be valid and not amounting to imposing punishment.

12. In *Chhail Behari Verma v. State of Uttar Pradesh* Civil Miscellaneous Writ No. 343 of 1967 decided on 12 February 1968, I held that compulsory retirement on grounds of public interest does not cast any stigma. The statement that an officer was generally unsuitable would be more akin to a statement that his retention was not conducive to public interest or that it was not feasible for administrative reasons rather than to say that the officer had outlived his utility, that he was found undesirable or that he was a corrupt officer. These latter statements are really assigning reasons for holding an officer unsuitable. They go to affect the integrity and character of the officer. That is why they have been held to cast a stigma. But a mere statement of unsuitability without assigning any further reason would, in my opinion, not attach a stigma on the officer. Such a statement could not per se import an element of punishment. Such a statement in the order would not change its legal character. In the present case, the order was passed on the basis of a Government Order No. 2022 II-B-125/1955, dated 4 October 1958, which stated;

The legal position in this respect is that an officiating employee can always be reverted to his substantive post without assigning any reason and without any departmental proceeding on the grounds of inefficiency and/or general unsuitability. Such a reversion will be treated as a reversion in a normal course and not a punishment so as to attract the provisions of Article 311 of the Constitution.

13. In view of this, the order of reversion of the petitioner stating that he was being reverted on grounds of general unsuitability, no punishment was granted or be deemed imposed. The order was an innocuous order of reversion in exercise of relevant powers and did not amount to reduction in rank.

14. In the result, the petition fails and is accordingly dismissed, but without any order as to costs.

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