

A.K. Jain Vs. State of U. P. and Others

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Court : Allahabad

Decided On : Nov-15-1999

Reported in : 2000(2)AWC1439

Judge : R.H. Zaidi and ;Kamal Kishore, JJ.

Acts : [Constitution of India](#) - Articles 14, 16, 226 and 311(2); Civil Services (Classification, Control and Appeal) Rules, 1930 - Rule 55

Appeal No. : Writ Petition No. 2072 (S/B) of 1982

Appellant : A.K. Jain

Respondent : State of U. P. and Others

Advocate for Def. : C. S. C.

Advocate for Pet/Ap. : Rajesh Nath and ;Pankaj Nath, Advs.

Judgement :

R.H. Zaidi, J.

1. By means of this petition filed under Article 226 of the [Constitution of India](#), petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 24.2.1982 passed by U. P. Public Services Tribunal-IV, Lucknow dismissing the claim petition filed by petitioners as well as order dated

13.8.1975 whereby petitioner was reverted from the post of Assistant Engineer to his substantive post of Junior Engineer and the order dated 22.4.1976 whereby the representation filed by the petitioner against the order of reversion was rejected by respondent No. 2.

2. In brief the facts of the case giving rise to the present petition, are that in the year 1952 petitioner was appointed as Overseer (Junior Engineer) in the Public Works Department. At the time of appointment, petitioner possessed diploma in Civil Engineering. Subsequently, in the year 1956, he also passed AMIE examination which was equivalent to a degree in the Civil Engineering. Services of the petitioner were made permanent in the year 1961 and he was thereafter promoted to the post of Assistant Engineer on ad hoc basis vide order dated 12.6.1970, and was posted at Rudra Prayag. In the year 1972-73 petitioner was awarded adverse entry, against which he filed a representation/appeal which was dismissed by State Government on 12.6.1974. Subsequently, another representation was filed by the petitioner against the said entry which was rejected by the State Government. Even in the years 1973-74 and 1974-75 the petitioner was awarded adverse entries. The representations filed against the said remarks were also turned down. Subsequently, the petitioner was reverted from the post of Assistant Engineer (Civil) to which he was holding on ad hoc basis, to his substantive post vide order dated 13.8.1975. Challenging the validity of said order petitioner filed a claim petition before respondent No. 3.

3. Claim petition filed by the petitioner was contested by respondent Nos. 1 and 2. It was contended that work of the petitioner as Assistant Engineer was not found satisfactory, therefore, he was sent back to his substantive post of Junior Engineer. Tribunal after perusing the material on record came to the conclusion that order of reversion was not passed by way of punishment : but the same was passed in the terms and conditions of the order of appointment/promotion and that the competent authority did not commit any error of law and jurisdiction in reverting him from the post of Assistant Engineer to the substantive post of Junior Engineer. It was also held that the competent authority did not commit any error of law and jurisdiction in reaching the conclusion that the work of the petitioner was not satisfactory. The claim petition filed by the petitioner was dismissed by judgment

and order dated 24.2.1982, hence the present petition.

4. Learned counsel for the petitioner vehemently urged that the Impugned order of reversion was passed by way of punishment without affording the petitioner an opportunity of hearing, that about 200 officers who were junior to him, were retained in service and the petitioner was reverted to the post of Junior Engineer wholly arbitrary, the order was, thus, passed in violation of Article 16 of the [Constitution of India](#). Therefore, the impugned orders were liable to be quashed.

5. On the other hand, learned counsel appearing for the contesting respondent Nos. 1 and 2 supported the validity of the impugned orders. It was urged that the petitioner was never promoted to the post of Assistant Engineer on regular basis. He was promoted to the said post on ad hoc basis. The petitioner has earned adverse remarks in the years 1972-73, 1973-74 and 1974-75 as his work as Assistant Engineer was not satisfactory, he was, therefore, rightly sent back to his substantive post of Junior Engineer. Impugned order of reversion, therefore, cannot be termed as an order of punishment. The same has been passed in the terms and conditions of order of appointment/promotion. It was urged that Public Services Tribunal rightly rejected the claim petition filed by the petitioner and the present petition was also liable to be dismissed.

6. We have considered submissions made by learned counsel for the parties and also perused the record.

7. The petitioner was appointed as Overseer (now called as Junior Engineer) in the Public Works Department. His services were made permanent in the year 1961. It was by order dated 12.6.1970 that several Overseers/Computerers Including the petitioner, were promoted to the post of Assistant Engineer for a period of one year on ad hoc basis, on the conditions that the said promotions were liable to be terminated on regular appointments being made on the said posts by Public Service Commission or for any other reason without any notice and that the said appointees were not entitled to claim any benefit on the basis of said appointment through any Court or the Tribunal as is evident from order dated 12.6.1970 (Annexure-5). The petitioner was never appointed as Assistant Engineer on permanent basis, after following procedure under the law, he,

therefore, had no right to hold that post. Legally an ad hoc appointee or promotee is entitled to continue to hold the post till a candidate is appointed on the said post on regular basis. Under the terms and conditions of order of appointment, services of such employees are also terminable at any time without any notice. Learned counsel for the petitioner contended that number of persons who were junior to the petitioner, were retained on the post of Assistant Engineer in service but services of the petitioner who was senior to several persons, was reverted to his substantive post wholly illegally. It may be noted that such a plea was not taken by the petitioner before the U. P. Public Services Tribunal in the claim petition filed by him, therefore, there arose no occasion for producing any evidence to that effect. Before the Tribunal, only it was contended that there was no sufficient material before the competent authority to come to the conclusion that the work of the petitioner was not satisfactory. The Tribunal after perusing the evidence produced by the parties came to the conclusion that there was sufficient material which could justify conclusion of the competent authority that work of the petitioner as Assistant Engineer was not satisfactory. At this stage, therefore, the petitioner cannot be permitted to contend that number of persons who were juniors to the petitioner were retained in service.

8. In *Ronendra Chandra Banerjee v. Union of India and another*, AIR 1963 SC 1552, while dealing with the case of probationer, it was ruled by the Supreme Court that a Government servant who is on probation can be discharged during the period of probation and such discharge would not amount to dismissal or removal within the meaning of Article 311(2) of the Constitution and would not attract the protection of the said Article, where the services of a probationer are terminated in accordance with the rules and not by way of punishment. A probationer has no right to the post held by him and under the terms of his appointment he is liable to be discharged at any time during the period of his probation subject to the rule governing such cases. In cases of termination simpliciter, Rules 55 and 55 (b) of Civil Services (Classification, Control and Appeal) Rules, 1930, have got no application.

9. In *Union of India and another v. Gajendra Singh etc.*, (1973) 3 SCC 797, the Apex Court was pleased to rule that appointment to a post on an officiating basis

is, from the nature of employment, itself of a transitory character and in the absence of any contract or specific rule regulating the conditions of service to the contrary, the implied term of such an appointment is that it is terminable at any time. The Government servant so appointed acquires no right to the post. In para 8 of the said judgment, it was also held as under :

'We do not understand how the respondent lost his seniority in his substantive rank of Kanungo by the mere fact that some of his juniors were allowed to continue in the post of Naib Tehsildar on an officiating basis. His Juniors were not promoted on a regular basis. Like the respondent they were also promoted to officiate in the post of Naib Tehsildar under Para 37 (ii). We do not see how their retention in the posts on an officiating basis would entail loss of seniority of the respondent in his substantive rank. No provision in the standing order or any other rule has been brought to our notice to show that by allowing the juniors of the respondents to continue to officiate in the posts of Naib Tehsildar the respondent lost his seniority in his substantive rank. We do not, therefore, think that the order of reversion was attended with any penal consequences so as to attract the provisions of Article 311(2).'

10. Similarly in *Champak Lal Chimanlal Shah v. Union of India*, AIR 1964 SC 1854, and in *Oil and Natural Gas Commission v. Dr. M.D.S. Iskender Ali*, 1080 (3) SCC 428, it was ruled that termination of services on the ground of unsuitability for the post, does not attract Article 311(2) of the [Constitution of India](#).

11. In *Dr. Mrs. Sumati P. Shere v. Union of India and others*. (1989) 3 SCC 311, Hon'ble Supreme Court has taken slightly different view and was pleased to observe that in the cases of termination on the ground of unsuitability, it was not necessary to conduct any regular enquiry but it would be proper and necessary that he should be told in advance that his work and performance were not up to the mark. In the said case, no adverse entries were awarded to the employee nor he was told in advance that work and performance were not up to the mark and on the said ground, the order of termination was set aside with the observation that he would not claim status of a regular employee. In the instant case, as stated above, adverse entries were awarded to the petitioner consecutively for three

years, which were also communicated to him, therefore, on the basis of the said decision, he cannot claim any advantage.

12. In *State of U. P. v. Kaushal Kishore Shukla*, 1991 (1) SCC 691, Apex Court was pleased to rule that in the cases of termination of services of ad hoc or temporary Government servant, principle of last come first go was inapplicable where termination of services of a senior is affected for unsuitability on assessment of work in terms of contract of service and service rules while retaining junior, it was ruled that there was no violation of Articles 14 and 16 in such a situation. It was further ruled that services of an ad hoc or temporary Government servant, in terms of contract and rules, affected on assessment of suitability on the basis of adverse entries, was valid and was not punitive so as to attract the provisions of Article 311(2) of the [Constitution of India](#).

13. In *State of Rajasthan and another v. Roop Chand Shah and others*, 1995 Supp (4) SCC 460, while dealing with the case of an employee who was officiating on promotional post and was reverted to his substantive post on being found unsuitable by the Screening Committee, it was ruled that there was no question of hearing him on his suitability by the Screening Committee. The order of termination was held valid.

14. In *State of U. P. and others v. Krishna Kumar Sharma*, (1997) 11 SCC 437, termination of services of a temporary fireman constable on the ground that his performance was not satisfactory was held not punitive and that compliance of Article 311(2) of the [Constitution of India](#), was not necessary. Unsatisfactory work or conduct was held to be valid ground for termination of temporary services. Similarly, in *Punjab State Electricity Board and another v. Baldev Singh*, (1998) 5 SCC 450, while dealing with the case of an employee on ad hoc promotion, it was ruled that show cause notice was not necessary as he had not acquired any right to hold the said post and the reversion was not punitive.

15. In the instant case, as stated above, petitioner's work was not found satisfactory. The said satisfaction was based on assessment of entries awarded to the petitioner for the years 1972-73. 1973-74 and 1974-75 he was, therefore, reverted to his substantive post of Junior Engineer from the post of Assistant

Engineer, which he was holding on ad hoc basis. Even if his juniors were retained in service, although said fact was not established from the material on the record, the order of reversion to substantive post, cannot be said to be discriminatory and punitive in any manner as his right to hold the substantive post was not in any manner affected by the order of reversion.

16. In the counter-affidavit, it has also been stated that regular selection of promoted ad hoc Assistant Engineers against the vacancies reserved for them for the years 1970-71 to 1979-80 was held by Public Service Commission in the year 1980 and the result of the same was also declared vide Government Order dated 26.11.1980, on the basis of which regularly selected candidates have been promoted and were permitted to hold the post of Assistant Engineers. The petitioner was not one of them, therefore, he has got no right to claim his promotion to the post of Assistant Engineer.

17. As stated above, the petitioner was promoted to the post of Assistant Engineer only on ad hoc basis, that too for a limited time and conditionally he was liable to be reverted to his substantive post at any time without notice. The competent authority, therefore, did not commit any error of law or jurisdiction in passing the order against the petitioner as his work was not found satisfactory. The said order cannot be said to be an order of punishment as the order of reversion is an innocuous order. No stigma has been cast upon career of the petitioner by the said order and his right to continue on his substantive post was not in any manner affected. Further, the writ petition was filed in the year 1982, the petitioner of his own has shown his age at that time as 57 years. The petitioner on attaining the age of retirement must have 'retired from service long back. Since the order of reversion was passed in the year 1975 and thereafter, he never worked as Assistant Engineer, in the present petition also no interim order was granted in favour of the petitioner, therefore, he was not entitled to any relief.

18. In view of the aforesaid discussion, no case for interference under Article 226 of the [Constitution of India](#), is made out.

19. The writ petition fails and is dismissed but without any order as to costs.

