

G. Samuel Vs. State of Kerala

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Court : Kerala

Decided On : Dec-01-1959

Reported in : AIR1960Ker231

Judge : S. Velu Pillai, J.

Acts : [Constitution of India](#) - Article 311(2)

Appeal No. : O.P. No. 904 of 1959

Appellant : G. Samuel

Respondent : State of Kerala

Advocate for Def. : Govt. Pleader for 1st Respondent and; N. Sundara Iyer,;

Advocate for Pet/Ap. : T.S. Krishnamurthi Iyer and; G. Rajasekhara Menon,
Advs.

Disposition : Petition dismissed

Judgement :

ORDER

S. Velu Pillai, J.

1. The petitioner had been the Head Clerk, Government Central Press, Trivandrum, and was provisionally promoted as Manager in the office of the

Superintendent of Government Presses, Trivandrum by an order, Ext. P-1, of the first respondent, the State of Kerala, dated 18-4-1959. In the integration of the services, upon the formation of the State of Kerala, the first respondent approved on 29-7-1959, Ext. R-3 which is 'a preliminary integrated gradation list of the former Travancore-Cochin personnel, and the staff allotted from Madras in the ministerial line of the department of Printing as On 1-11-1956, prepared in accordance with the general principles and the orders regarding equation of posts contained in the Government orders,' Ext. P-2 dated 29-12-1956 and others; but Ext. R-3 was not final, and permitted appeals to be preferred by those who were aggrieved by it.

According to Ext. R-3, the petitioner's rank was fixed as the 5th, while that of the 2nd respondent, an officer allotted from Madras, was fixed as the 3rd in the substantive post. The second respondent had already made a representation on 20-4-1959, that is, within two days of Ext. P-1, that he, and not the petitioner had the legitimate claim for promotion; now that the relative ranks had been fixed by Ext. R-3, though provisionally, the first respondent by order Ext. P-6 dated 6-8-1959, reverted the petitioner, and appointed the second respondent as the Manager in the office of the Superintendent of Government Presses, Trivandrum.

This original petition was therefore filed by the petitioner to quash Ext. P-6, on the ground, that the reversion of the petitioner was a reduction in-rank by way of punishment, and was made in violation of the guarantee provided by Article 311(2) of the Constitution; the contentions of his -- learned counsel in this respect were two-fold, first, that though the petitioner's appointment as Manager on promotion was provisional, he had a right to hold, that post until the integration of services was finalised, and secondly, that granting that he had no such right, his reversion to the 5th rank in his substantive post, which was lower than the rank which he had previously held in it, amounted in law to a reduction in rank by way of punishment.

The learned counsel relied, for both these contentions, only on the principles formulated by the Supreme Court in the majority judgment in *Purshotam Lal Dhingra, v. Union of India*, AIR 1958 SC 66; it is therefore necessary to examine

what this case has decided. Broadly speaking, Dhingra's case AIR 1958 SC 36 has affirmed the view already held, that not every reduction in rank, but a reduction in rank by way of punishment only, can attract the operation of Article 311(2), and to ascertain this, it has formulated two tests, first, whether the Government servant has a right to hold the post in which his service was terminated, and second, whether the termination of service carried with it penal or evil consequences. This may be examined more closely,

2. As pointed out by the learned Chief Justice, who delivered the majority judgment in Dhingra's case, AIR 1958 SC 36 an appointment to a permanent post may be made in three ways, substantively Or on probation or trial, whether for a fixed period or not, or on an officiating basis. The petitioner's promotion, having been ordered provisionally, falls under the third category, and the questions involved in this petition have to be decided in relation to that category. The learned Chief Justice observed thus, at page 42 of the report:

'It is therefore quite clear, that appointment to a permanent post in a Government service, either on probation or on an officiating basis, is, from the very nature of such employment, itself of a transitory character and, in the absence of any special contract or specific rule regulating the conditions of the service, the implied term of such appointment,, under the ordinary law of master and servant, is that it is terminable at any time. In short, in the case of an appointment to a permanent post in a Government service on probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post, and consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time.'

It follows that an appointment to a post on an officiating basis can give to the servant so appointed, no right to that post, and his service in that post can be terminated, unless it has ripened into a quasi-permanent service under the service rules; it was not contended, that the service of the petitioner as Manager had become quasi-permanent, by virtue of any service rule applicable to it. It is also true, as held in Dhingra's case AIR 1958 SC 36, that an appointment for a fixed or specified period, gives to the person appointed, a right to hold the post for the

entire period for which he is appointed. But Ext. P-1 did not fix or specify any period for which the petitioner was appointed Manager; the stipulation that it was provisional, as I understand, is an indication to the contrary. I see no force in the argument of his learned counsel, that there is anything in Ext. P-1 or in Ext. P-2, referred to above, particularly in Clause (9) of Ext. P-2 on which reliance was placed, which prescribed at least by implication, or even remotely suggested, that the petitioner is to hold the post to which he was promoted, till the finalisation of the process of integration or services, by the body constituted for the purpose. If so, the petitioner has no right to hold the officiating post, and the first test fails.

3. It cannot be doubted, that a termination of service in a post may take place otherwise than by way of punishment, but Article 311(2) of the Constitution is not attracted to it. As observed by the learned Chief Justice in *Khem Chand v. Union of India*, AIR 1958 SC 300, the expressions 'dismissed', 'removed' and 'reduced in rank' occurring in Article 311 are technical words taken from the service rules, where they are used to denote the three major categories of punishment, these alone being considered by the makers of the Constitution to be entitled to the special protection under Clause (2) of that Article.

If a Government servant is appointed to a post on probation, or on officiating basis, the service in that post being liable to be terminated, such termination of service does not per se amount to punishment, as a termination of service in the case of a servant who has a right to hold the post. But this is not to say, that there can be no termination of officiating service by way of punishment, for, as observed in *Dhingra's case* AIR 1958 SC 36 at paragraph 27,

'..... Government may take the view, that a simple termination of service is not enough, and that the conduct of the servant has been, such, that he deserves a punishment entailing penal consequences. In such a case the Government may choose to proceed against the servant on the basis of his misconduct, negligence, inefficiency or the like and inflict on him the punishment of dismissal, removal or reduction carrying with it the penal consequences. In such a case the servant will be entitled to the protection of Article 311(2).'

The real test, as formulated, is to find out, whether the order for the reduction in rank visits the Government servant with any penal consequences, such as the forfeiture of his pay and allowances in the substantive post or the loss of his seniority, or the stoppage or postponement of his future chances of promotion. As pointed out by the learned Chief Justice, these features 'may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth' and reality the Government has terminated the employment as and by way of penalty.'

4. As I understand Dhingra's case, AIR 1958 SC 36 the penal consequences envisaged by His Lordship are those which are so closely and directly connected with the order for reduction in rank as to form part of it, and not those, which attach themselves to the post to which he is reduced as a result of the operation of the prevailing rules of service or other conditions. Granting that the petitioner had before his promotion to the higher post, held a higher rank in his substantive post than that which he is now privileged to hold, and others have been assigned higher ranks over him on integration of services, it would be too unrealistic to say, that the reduction in his rank in the substantive post itself, was the direct consequence of his termination of service in the post in which he was officiating. The contention of the learned counsel for the petitioner, that the termination of his service in the officiating, post which he had held, has entailed penal consequences, by a further reduction in the rank in his substantive post, is not well-founded.

5. After Dhingra's case AIR ,1058 SC 36 was-decided by the Supreme Court, some of the High Courts in India, had occasion to interpret and apply the principles laid down by it. Devasahayarn v. Madras State, AIR 1959 Mad 1, decided by the Madras High Court, in my opinion, furnishes 'a close parallel to the present case. There, the appellant, Devasahayam, lost his seniority which had accrued to him under certain rules of the Madras Police Service in the year 1950, by a supersession or! the rules, by a later order of Government and' Article 311(2), was invoked. Rajamanmr C. J., in delivering the judgment of the Court observed, that a mere loss of seniority resulting from a readjustment and refixing of seniority inter

se would not amount to a reduction in rank within Article 311(2). The learned Chief Justice appears to have anticipated a case like the present, when he made the following remarks :

'If for instance as a consequence of the reorganisation of the States certain officers who had been serving in an adjoining State are allotted to a particular State and such officers are placed above the officers already serving in a particular cadre in that) State, thus affecting their seniority and chances of promotion it cannot be said that there has been a reduction in rank so as to attract the operation of Article 311(2) of the Constitution. Indeed it will be-ridiculous to follow the procedure laid down in that provision.'

The Calcutta High Court applied the principles in Dhingra's case AIR 1958 SC 36 in two cases, Ranjit Kumar Chakravarty v. State, AIR 1958 Gal 551, and Dhajadhari Dutta v. Union of India, AIR 1958 Cat 548. In the latter, when dealing with penal consequences, the Court observed, that the future right of promotion that must be affected is something: which must not be indirect or remote, but must arise directly out of the order of reversion. In Jai Shanker v. State of U. P., AIR 1958 All 741, decided by a-Full Bench of the Allahabad High Court, the question referred was, whether reversion from a temporary or officiating post to a substantive post amounts to reduction in rank, irrespective of the fact whether it was for his fault Or not.

The principles in Dhingra's case AIR 1958 SC 36 were interpreted and applied and the Full Bench' answered, that a reversion from a temporary or officiating higher grade to a substantive post in a lower grade is not a reduction in rank, even though it is ordered on account of unsatisfactory work or conduct of the servant, provided it is ordered in the exercise of the power of the Government, reverting him under the contract, express or implied, or under the rules of service. But it has to be noted that there was no case before the Court of a reduction to a lower rank in the substantive post, on account of the rules of service as in this case.

It may also be pointed out, that this Court hasl consistently taken the view, that rules relating to scr-vice integration are not justiciable, Raghava V. Stateof Travancore-Cochin, 1957 Ker LT 693: (AIR 1958 Kerala 79), Mary v. State of

Travancore-Cochin, 1957 Ker LT 938; (AIR 1958 Kerala 85), KrishnaFiliat v. State of Travancore-Cochin, ILR 1956 Trav-Co 1339; K. Mohammed v. State of Kerala, 1957 Ker LT 608: (AIR 1958 Kerala 1) (FB).

6. It therefore follows, that the reduction of the petitioner in rank, was not by way of punishment and that Article 311(2) is not attracted. The petition is dismissed, but without costs.

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