

Chander Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-10-1972

Reported in : 1972WLN8

Judge : Kan Singh, J.

Appeal No. : S.B. Civil First Appeal No. 97 of 1968

Appellant : Chander Singh

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

Kan Singh, J.

1. This is a plaintiff's appeal brought against the judgment & decree of the learned Additional District Judge No. 2, Jaipur City, dated 22-7-68 dismissing the plaintiff's suit for arrears of salary amounting to Rs. 12760 65 based on the ground that the order of his reversion dated 28-12-61 was unconstitutional having been passed in contravention of Article 311(2) of the Constitution.

2. The plaintiff who was in the Judicial Service of the former Jodhpur State came to be appointed as a Senior Civil and Additional Sessions Judge in the State of Rajasthan after it was formed. By order Ex. A/1 dated 25-1-68 he was while

working as Civil and Additional Sessions Judge, Sikar, appointed as officiating District and Sessions Judge, Ganganagar. By the impugned order Ex A/2 he was reverted and posted as Civil and Additional Sessional Judge, Dholpur. The plaintiff challenged the validity of the order of his reversion on the ground that it was passed in breach of the principles of natural justice in as much as he was not afforded any opportunity to show cause against it vide Article 311(2) of the Constitution. The plaintiff averred that due to his reversion he had been deprived of the higher emoluments as well as of the higher grade, attached to the cadre of District and Sessions Judges namely, Rs. 800.50.1000.50.1800; his salary as District Judge being Rs. 950/- According to the plaintiff, the order of reversion was bad also for the reason that persons junior to him in the cadre of Civil and Additional Sessions Judges were promoted as District and Sessions Judges on the plaintiff's reversion. The plaintiff claimed Rs. 12760.65 arrears of salary being the difference between the emoluments that were allowed to him as Civil and Additional Sessions Judge on his reversion and what he would have drawn as District and Sessions Judge, if he were not reverted.

3. The suit was contested by the State of Rajasthan. It was denied that the reversion of the plaintiff was in contravention of Article 311(2) of the Constitution. It was submitted that the plaintiff was afforded a chance to officiate as District and Sessions Judge, but he was not found fit for that higher post and consequently he was reverted to his substantive post. The defendant-State averred that the work of the plaintiff was inspected by the then Chief Justice on 4-9-61 and as he was not satisfied about his work, the learned Chief Justice on his return from tour expressed his strong desire to revert the plaintiff to his substantive post. Further, according to the defendant State, a few decisions given by the plaintiff were noticed by the High Court and they were found to be below the mark. As the Chief Justice thought that the plaintiff had not been able to give a good account of the opportunity afforded to him and he was found to be unfit to bear the responsibility of the senior Judicial post of the District and Sessions Judge, he was ordered to be reverted to his substantive post of Civil and Additional Sessions Judge. Thus, according to the defendant-State the order of the plaintiff's reversion was made not by way of punishment, but as a matter of course on inspection of his work.

4. A number of issues were framed by the learned Additional District Judge, but the main issue was whether the plaintiff's reversion from the post of the officiating District and Sessions Judge to his substantive post of Civil and Additional Sessions Judge was in contravention of Article 311 of the Constitution. The defendant placed on record the inspection note made by the then Chief Justice Shri Sarjoo Prasad on 4-9 61 (Ex A/(SIC)), the minute recorded by Shri J.S. Ranwat who succeeded Shri Sarjoo Prasad (Ex A/4), the order appointing the plaintiff as officiating District and Sessions Judge, Ganganagar (Ex A/1) and the impugned order of the plaintiff's reversion dated 28.12 61 (Ex. A/2). On perusal of these documents the learned Additional District Judge observed that it was quite clear that the plaintiff was given a chance to officiate as District and Sessions Judge at Ganganagar, but it was found that he did not give a good account of the opportunity afforded to him and he had proved himself unfit to bear the responsibility of the Office of the District and Sessions Judge and it was for this reason that the plaintiff was reverted to his substantive post of a Civil and Additional Sessions Judge. In the light of these documents the learned Additional District Judge then considered the question whether the impugned order can be said to have been passed in contravention of Article 311(2) of the Constitution. The learned Judge referred to a number of cases, such as, P.L. Dhingra v. Union of India : (1958)ILLJ544SC , State of Uttar Pradesh v. Kaushiliya : [1964]4SCR1002 , State of Bombay v. F.A. Abraham : (1963)ILLJ422SC , Ishwar Chandra v. State : (1966)ILLJ105Ori and Bhartendra Nath v. I.T. Commissioner West Bengal : AIR1958 Cal559 , and came to the conclusion that Article 311 was not contravened in the present case and consequently the plaintiff was not entitled to any relief. The learned Additional District Judge also observed that as the plaintiff had not sought the relief of declaration about the invalidity of the impugned order but had only claimed the relief of arrears of salary, no such relief regarding arrears of salary could be allowed to him for that additional reason as well. In the result, the learned Additional District Judge dismissed the plaintiff's suit and left the parties to bear their own costs.

5. Shri Chander Singh has argued his own case and I should say he has presented it fairly and with clarity. He has reiterated what he had contended in the court below. He has submitted that the only source for appointment of District and

Sessions Judges in Rajasthan was the cadre of Civil and Additional Sessions Judge. Therefore, a Civil and Additional Sessions Judge if he was senior and was otherwise fit was entitled to be promoted as District and Sessions Judge. The relevant rules, maintains Shri Chander Singh, did not contemplate any officiating appointment of a Civil and Additional Sessions Judge as a District and Sessions Judge. According to Shri Chander Singh, the fitness of an officer in the cadre of Civil and Additional Sessions Judge is necessarily looked into when he is afforded the opportunity to enter the higher cadre of District and Sessions Judge. From this premise Shri Chander Singh argues that once he was appointed to officiate as District and Sessions Judge, he could not have been reverted except as a measure of disciplinary action in accordance with the rules. Consequently, according to him, his reversion from the post of a District and Sessions Judge necessarily visited him with evil consequences which attracted Article 311(2) of the Constitution. Shri Chander Singh proceeded to submit that the outward form of the impugned order may look innocuous, but in judging its validity the Court has to look to the surrounding circumstances as well. Shri Chander Singh strongly relied on P.C. Wadhwa v. Union of India AIR 1966 Section 423 and submitted that as he was holding a cadre post to which promotion could be made only on the basis of seniority and fitness and not in disregard of seniority, his reversion was in the nature of punishment on account of the evil consequences that flowed from the order. He also cited State of Bihar v. S.B. Mishra : (1970)ILLJ440SC and a few other cases, such as, Ishwar Chandra v. State : (1966)ILLJ105Ori , Bhikshuk v. State of Bihar : (1970)ILLJ592Pat , State of Bombay v. F.A. Abraham : (1963)ILLJ422SC , P.L. Dingra v. Union of India : (1958)ILLJ544SC , Divisional Personnel Officer, Southern Rly., Mysore v. Raghavendrchar : (1967)ILLJ401SC and Ranjit Singh v. Commandant .

6. The learned Additional Government Advocate, on the other hand, supported the judgment of the learned Additional District Judge. In addition to the cases referred to by the learned Additional District Judge, the learned. Additional Government Advocate referred me to Union of India v. R.S. Dhaba 1969 S.L.R 442, Ram Gopal v. State of Madhya Pradesh 1969 S.L.Rule 429 and N. Subramaniam v. D.P. Officer, S., N. Rly. 1970 S.L.R. 154.

7. The leading case is Dhingra's case : (1958)ILLJ544SC . It is this case which has been commented upon from time to time and in doing so some elucidation and even additions to the principles laid down in that case have been made. In Dhingra's case their Lordships laid down the test as to when reduction in rank is or is not by way of punishment. The following observations may be quoted:

A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the Government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance 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. The use of the expression 'terminate' or 'discharge' is not conclusive. In spite of the use of such innocuous expression, the court has to apply the two tests mentioned above namely, (1) whether the servant has a right to the post or the rank or (2) whether he has been visited with evil consequences of the kind herein before referred to. If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from his service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311, which give protection to Government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful

and in violation of the constitutional right of the servant.

From the above passage it will be noticed that the two tests are: (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences of the kind referred to in the passage. It has to be further noticed that if a case satisfies either of the two tests then it must be held that the servant has been punished. Coming to Wadhwa's case; Wadhwa was substantively holding the rank of an Assistant Superintendent of Police in the junior scale of I.P.S. On 27-1-58 he was promoted to officiate in the senior time scale and was posted as Additional Superintendent of Police, Ferozepore. Because of the officiating promotion his pay came to be fixed at Rs. 600/- though his pay as Assistant Superintendent of Police was less. He earned one increment in the senior scale and was getting Rs. 640/- at the time he came to be reverted as Assistant Superintendent of Police. Before his reversion which took place on 3-11-68, he was served with a charge sheet and was called upon to submit a reply in defence. On 18-7-58 he submitted his reply which apparently did not satisfy the Government and consequently an inquiry was ordered and an officer was appointed to hold an inquiry, but before the completion of the inquiry his reversion was ordered. Two of the Hon'ble Judges S.K. Das, Acting C.J. and Ayyanagar J. negatived the contention of Wadhwa that it had a right to go automatically into the senior scale. In other words, it was held by them that he did not have the right to hold the post. Nevertheless they came to the conclusion that penal consequences ensued as a result of Wadhwa's reversion. On the other hand, the majority namely, the other three Hon'ble Judges Subba Rao, Raghubar Dayal and Mudholkar JJ. considered the rules applicable to the I.P.S. officers and reached the contrary conclusion that the whole scheme of the rules indicated that a person borne on the junior scale of pay had a right to hold a post on the senior scale of pay depending upon the availability of a post and his seniority in the junior scale of pay (vide para 33). In consequence of this the majority further held that if a person holding a post in the senior scale though in an officiating capacity is found to be unfit to hold that post, action will have to be taken against him as required by the Discipline and Appeal Rules, because his reversion to a post in the lower scale would amount to reduction in rank within the meaning of Article 311 of the Constitution as held in Dingra's case (). The majority further found that Wadhwa

was not reverted for any administrative reason like the unavailability of the post, but for a different reason. Then the majority considered the circumstances leading to the reversion. They found that the main object of the reversion was to facilitate the departmental inquiry against Wadhwa. They also took note of the ultimate order that was passed which was only of stoppage of one increment without prejudice to his future and found that in the circumstances the order of the Government was malafide.

8. A careful perusal of the case reveals two remarkable things. The first one is that in accordance with the relevant rules governing the I.P.S. cadre an officer in the junior scale of I.P.S. has a right to enter the senior scale of I.P.S provided a post is available and the officer is senior to others. It is also noteworthy that no selection is contemplated when an officer goes from the junior scale of I.P.S. Then in the circumstances of the case, namely, on account of the commencement of the inquiry against Wadhwa and his reversion prior to the completion of the inquiry their Lordships came to the conclusion that the Government order was malafide. Can we say this in the present case? I am afraid, there is no analogy in this regard between the I.P.S. cadre and the Rajasthan Higher Judicial Service regarding promotion of officers from the cadre of Civil and Additional Sessions Judges. I may read the relevant provisions of the Rules.

9. The Rajasthan Higher Judicial Service Rules were made by the Rajpramukh in exercise of his powers under Article 309 of the Constitution. They came into force on 12-5-55 when they were published in the Rajasthan Rajpatra. The word 'Rajpramukh' came to be substituted by the word 'Governor' after 1-11-56 when a Governor was appointed for the reorganised State of Rajasthan in consequence of the State Reorganisation Act, 1956. Part II of the Rules relates to the Cadre. Rule 6 laid down that the strength of the Service and of each class of posts therein shall be determined by the Governor from time to time in consultation with the Court (meaning the High Court). The permanent strength of the Service and of each class of posts therein was to be till further orders as laid down in Schedule I. Schedule I provided that there was to be 18 posts of District and Sessions Judges and 20 posts of Civil and Additional Sessions Judges. The strength given included the posts of Legal Remembrancer, Registrar High Court and Joint Legal

Rememberancer to Government. Part III was regarding recruitment to the Service which meant the Rajasthan Higher Judicial Service. There were two sources of recruitment; one was by promotion from amongst the members of the Rajasthan Judicial Service namely, Civil Judges and Munsifs, and the other sources was direct recruitment from the Bar. Under Rule 7, the appointment was to be made to the posts of Civil and Additional Sessions Judges. Rule 8 provided for appointment to the post of District and Sessions Judges and I may read that rule:

Rule 8. Appointments to the grade of District and Sessions Judge-All appointments to the grade of District and Sessions Judges shall be made by the Rajpramukh in consultation with the High Court, with due regard to seniority and fitness for such appointment, provided that in making appointments against the posts of (i) Legal Remembrancer-cum-Law and Judicial Secretary to Government, (ii) Registrar. High Court and (iii) Joint Legal Remembrancer to Government, in a temporary capacity, as may be necessary from time to time, the sole criterion shall be the fitness of an officer for such appointment.

Rule 29 occurring in Part VII provided that the scale of monthly pay admissible to a District and Sessions Judge shall be Rs. 800.50.1000 0 1300 50.1800 and the pay admissible to a Civil and Additional Sessions Judge would be Rs. 500.30.750.50 800.50.900. The question is whether Rule 8 creates a right in Civil and Additional Sessions Judge to be appointed as a District and Sessions Judge. To my mind, the rule inter alia provides that in making appointment to the posts of District and Sessions Judges due regard is to be had to seniority and fitness of an officer for such appointment though the requirement regarding seniority is waived in the case of appointment to the posts of Legal Remembrancer; Registrar and Joint Legal Remembrancer to Government or to fill up a vacancy temporarily from time to time where the sole criterion shall be the fitness of an officer for such appointment. Therefore, from a plain reading of the rule it cannot be postulated that an officer in the cadre of Civil and Additional Sessions Judges has a right as such to be promoted as District and Sessions Judge. It is true, the only source of filling up posts in the cadre of District and Sessions Judge is the lower cadre of Civil and Additional Sessions Judges, but that would not mean that a person in the lower cadre could as a matter of right or course be appointed as a District and Sessions

judge without examining the question of his fitness for holding the post. It is true, the rules do not make provision for making of officiating appointments, nonetheless they do not forbid the making of an officiating appointment in such a situation the power to make an officiating appointment would rest on the executive or constitutional powers of the Governor under Article 310 of the Constitution. In *Nandan Bhargava v. State of Rajasthan* 1966 RLW 262, it was held by a Division Bench of this Court, to which I was a party that where there is no provision in the rules for making officiating appointments, the appointment could be made by the Governor under Article 310 of the Constitution. What is noteworthy is that promotion under Rule 8 to the post of a District and Sessions Judge is made on the principle of seniority cum merit & not merely on the basis of seniority. There is nothing wrong in an officer of the cadre of Civil and Additional Sessions Judge being allowed to officiate with a view to seeing if he would prove suitable for the higher, responsibility of a District and Sessions Judge. If on such an opportunity being allowed to an officer, he is not found to be suitable then I do not think the appointing authority is precluded from reverting such an officer or that resort to disciplinary proceedings will have to be taken before ordering the reversion of the officer.

10. The Rajasthan Higher Judicial Service Rules are not analogous to the relevant rules governing the I.P.S which came to be examined in *Wadhwa's case* AIR 1966 Section 423. From the tenor of the Raj Higher Judicial Service Rules, I am unable to hold that the plaintiff-appellant who was appointed to officiate as Distt. & Sessions Judge acquired the right to hold that post. The plaintiff-appellant has very fairly submitted that he was not challenging the order of his reversion on the ground of any malafides on the part of the appointing authority. That again distinguishes *Wadhwa's case* from the present case. In *Wadhwa's case* the majority judgment shows that their Lordships came to the conclusion that the order of *Wadhwa's* reversion from the senior I.P.S. scale post to that of the junior scale post was malafide. It is true, the reversion of an officer from a higher post to a lower post may result in loss of emoluments to him, but that alone would not show that the order is bad. In para 19 their Lordships of the Supreme Court S.K. Das, Actg. C.J. and Ayyangar J. observed:

It should be made clear however that when a person is reverted to his substantive rank, the question of penal consequences in the matter of forfeiture of pay or loss of seniority must be considered in the context of his substantive rank and not with reference to his officiating rank from which he is reverted, for every reversion must necessarily mean that the pay will be reduced to the pay of the substantive rank. In the case before us the appellant has not merely suffered a loss of pay which was inevitable on reduction in rank, but he has also suffered loss of seniority as also postponement of future chances of promotion to the senior scale.

Therefore, mere reduction of emoluments would not make the order one resulting in penal consequences to the officer. The position would be different if it results in the loss of seniority or postponement of future chances of promotion to the higher post. The plaintiff had not suffered any seniority in his substantive rank, nor is there anything to show that he was not to be considered for promotion on future occasions.

11. I have carefully gone through the minute recorded by Shri J.S. Ranawat (Ex. A/4) which has preceded the impugned order Ex. 4/2. The Acting Chief Justice had remarked that the outgoing Chief Justice had inspected the plaintiff's work as District Judge, Ganganagar on 4-9-61 and he did not feel very happy about the plaintiff's work. On his return from Ganganagar the then Chief Justice expressed a strong desire to revert the plaintiff to his substantive post. The minute of Shri J.S. Ranawat further goes on to record that since then a few decisions were noticed by the Court and they were found perverse. It was for this reason that the plaintiff's reversion to his substantive post was ordered Ex. A/4 would not lead to the inference that whenever the cases of Civil and Additional Sessions Judges for appointment to the post of District and Sessions Judge would be considered, the plaintiff's case would not be considered again. Therefore, I am unable to hold that Ex. A/4 or the impugned order Ex. A/2 for that matter had resulted in the postponement of the plaintiff's chances for future promotion. The position was different in Wadhwa's case regarding this aspect. An I.P.S. Officer in the junior scale as already observed was as a matter of right entitled to get the higher scale of pay provided there were vacancies in the higher scale and he had the requisite seniority. In other words, I.P.S. cadre is one and the seniority is also continuous

The same cannot be said as between Civil and Additional Sessions Judges and the District and Sessions Judges. They constitute two independent cadres and there is nothing like a common gradation list as in the I.P.S. cadre. Promotion from the cadre of Civil and Additional Sessions Judges is no as a matter of course, but the officers are promoted with due regard to seniority and their suitability. In these circumstances I am unable to hold that the impugned order of reversion of the plaintiff on the ground that he was not found to be suitable for the post of a District and Sessions Judge was in contravention of the provisions of Article 311 of the Constitution or that a notice was required to be served on him before his reversion was ordered by the competent authority. In *State of Bihar v. S.B. Mishra* : (1970)11LLJ440SC their Lordships observed-

For applicability of Art, 311 of the Constitution it is not necessary that there should be express word of stigma attributable to the conduct of Government servant in the impugned order. There is no rigid principle that one has only to look to the order and if it does not contain any imputation of misconduct or words attaching a stigma to the character or reputation of a Government Officer it must be held to have been made in the ordinary course of administrative routine and the Court is debarred from looking at all the attendant circumstances to discover whether the order had been made by way of punishment. The form of order is not conclusive of its true nature and it might merely be a cloak or camouflage for an order founded on misconduct. It may be that an order which is innocuous on the face and does not contain any imputation of misconduct is a circumstance or a piece of evidence for finding whether it was made by way of punishment or administrative routine. But the entirety of circumstances preceding or attendant on the impugned order must be examined and the overriding test will always be whether the misconduct is a mere motive or is the very foundation of the order.

12. Now, in the present case the impugned order does not attribute any stigma to the officer, not does it say anything regarding his conduct. I have looked into all the attendant circumstances brought on record with a view to seeing whether the order could still be characterised as one passed by way of punishment. Though the form of the order is not conclusive for determination of its true nature, the fact that it does not contain any imputation of any misconduct is a circumstance or a

piece of evidence for finding whether it was made by way of punishment or in the administrative routine. Having looked at the entirety of the circumstances appearing from the inspection report Ex. A/3, the minute recorded by Shri J.S. Ranwat Ex A/4 and the impugned order Ex. A/2 itself, it cannot be held that the order of plaintiff's reversion was passed by way of punishment.

13. *Bhikshuk v. State of Bihar* : (1970)ILLJ592Pat is the very case which has gone to the Supreme Court and is subject matter of *State of Bihar v. S.B. Mishra* : (1970)ILLJ440SC .

14. In *Ishwar Chandra v. State* : (1966)ILLJ105Ori , the petitioner, who was an employee in the Labour Department of the State Government, came to be appointed as Assistant Labour Commissioner. Subsequently he was reverted to his substantive post namely, that of Head Assistant. The learned Judge came to the conclusion on the facts of that case that the order was one of reduction in rank within the meaning of Article 311 of the Constitution. The learned Judges observed in the course of their discussion that on reversion a Government servant loses the benefit of his appointment to the higher rank, but that by itself cannot indicate that the reversion was by way of punishment because he had no right to continue in the higher post or to the benefits arising from it and it was obvious that reversion of the petitioner in the case from the post temporarily held by him did not per se amount to reduction in rank; the appointment held by him being not a substantive one (vide para 24). Then the learned Judges observed further that the explanation submitted by the State for ordering the reversion of the petitioner was not satisfactory. It was submitted on behalf of the State that the petitioner was an employee on the factory side of the common directorate of Labour Commissioner-cum-Chief Secretary, but the post of Personal Assistant was made for an employee on the Labour side of a directorate and secondly that in the absence of any fresh appeal from the Public Service Commission the post of Personal Assistant being a gazetted one could not be given to the petitioner on reversion. The learned Judges did not find substance in the explanation and in the light of the circumstances of the case held that the order was punitive in nature. The fate of the case, therefore, turned on its own facts.

15. In *N. Subramaniam v. D.P. Officer* 1970 S.L.R. 154, the reversion of the petitioner was ordered after departmental enquiry and it was held that future chances of promotion were likely to be affected. It was for this reason that the reversion of the petitioner in that case was held to be bad. This case too is, therefore, distinguishable.

16. In *Bhartendra Nath v. I.T. Commissioner* : AIR1958 Cal559 , the entries in the confidential character rolls as also the servant's misconduct as an Election Officer were taken into consideration while ordering his reversion from the higher post in the Income Tax Department. It was for this reason that the order of reduction was held to be violative of Article 311 of the Constitution This case again does not afford any help to the appellant.

17. In *State of Bombay v. F.A. Abraham* : (1963)IILLJ422SC their Lordships observed as follows:

A person officiating in a post has no right to hold it for all times. He may have been given the officiating post because the permanent incumbent was not available, having gone on leave or being away for some other reasons When the permanent incumbent comes back, the person officiating is naturally reverted to his original post. This is no reduction in rank for it was the very term on which he had been given the officiating post. Again, sometimes a person is given an officiating post to test his suitability to be made permanent in it later. Here again, 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 a punishment and is not, therefore, a reduction in rank, when the reversion has not in any way affected him so far as his condition and prospect of service are concerned. He, of course, loses the benefit of the appointment to the higher rank but that by itself cannot indicate that the reversion was by way of punishment because he had no right to continue in the higher post or to the benefits arising from it.

The above passage is far from supporting the appellant rather it goes against his contention.

18. In *Ranjit Singh v. Commandant*, a Head Constable had lost two places in seniority & also lost two steps in the time scale by the forfeitures of two years of his pay permanently. Loss of seniority or loss of pay was not held to be reduction in rank within the meaning of Article 311 of the Constitution. This case too does not add weight of appellant's contention.

19. The case of *Divisional Personnel Officer, Southern Rly, Mysore v. Raghavendrchar* : (1967)ILLJ401SC also does not help to advance the case of the appellant. It was observed that where a person officiating in a post was reverted for unsatisfactory work it did not amount to reduction in rank.

20. In *Ram Gopal v. State of Madhya Pradesh* 1969 S.L.R. 429, cited by learned Additional Government Advocate, it was held that where the services of a Civil Judge were terminated by the State Government on the report of the Chief Justice of the High Court that the Judge did not enjoy good reputation and also was not an honest officer, the order was not violative of Article 311, as on the face of it the order did not cast any stigma. Even if one were to adopt the criterion laid down in the case cited by the appellant : (1970)ILLJ440SC, having looked into the relevant documents I am satisfied that no stigma was cast on the appellant while ordering his reversion.

21. In *Union of India v. R.S. Dhaba* 1969 S.L.R 442, it was observed as follows:

It is well established that a Government servant who is officiating in a post has no right to hold it for all time and the Government servant who is given an officiating post holds it on the implied term that he will have to be reverted if his work was found unsuitable. In case of this description a reversion on the ground of unsuitability is an action in accordance with the terms of which the officiating post is held and not a reduction in rank by way of punishment to which Article 311 of the Constitution could be attracted.

22. The same thing has been said by the Orissa High Court in *N. Subramaniam v. D.P. Officer*, S.N. Rly 1970 S.L.R. 154.

23. I am, therefore, satisfied that the learned Additional District Judge was right in holding that the plaintiff's reversion from the post of officiating District and Sessions Judge to that of his substantive post of Civil and Additional Sessions Judge on the ground of his unsuitability for the post of the District and Sessions Judge was not violative of Article 311(2) of the Constitution and no notice was required to be served to him before the ordering of his reversion. However, I am unable to endorse the view expressed by the learned Additional District Judge that the relief for arrears of salary could be refused merely because the plaintiff had not prayed for declaring the order of his reversion to be null and void. The whole trend of the plaint is that the arrears of salary were claimed because, according to the plaintiff, the order of his reversion was violative of Article 311 of the Constitution. However, as the decision regarding the validity of the impugned order is against the plaintiff-appellant, nothing turns on this question.

24. The appeal is thus without, any force and accordingly it is hereby dismissed, but in view of the facts and circumstances of the parties are left to bear their own costs.