

(1973) 02 MP CK 0002
In the Madhya Pradesh High Court
Case No : M.P. No. 57 of 1972

A.M. Rode

APPELLANT

Vs

Principal, Govt. Degree College, Chhindwara and others

RESPONDENT

Date of Decision : 23-02-1973

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (1977) ILR (MP) 400 : (1973) 18 MPLJ 666

Hon'ble Judges : P.K. Tare, C.J; Raj Krishna Tankha, J

Bench : Division Bench

Advocate : R.S. Dabir, L.S. Baghel and Ku. Rao, for the Appellant; P.C. Khare, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.K. Tankha, J.

The petitioner in the present writ petition has prayed for the issue of a writ of certiorari for the purpose of quashing the order (Annexure 3) by which his temporary service was terminated with effect from 31-1-1972 afternoon.

The facts of the case, in brief, are, as stated in the petition, that the petitioner was an employee of Satpura Mahavidyalaya at Chhindwara, established in 1959 by the Satpura Education Society. The Mahavidyalaya was taken over by the State of Madhya Pradesh (respondent No. 2) with effect from 1st July 1961. The petitioner, at the time of taking of the Mahavidyalaya by the State, was working as a lower division clerk. After the taking over, he was employed on the same post on which he was already working with effect from 1st July 1961 on a temporary basis vide order, dated 15-7-1961 (Annexure 2). The Mahavidyalaya was, after being taken over by the State Government, named as "Government Degree College, Chhindwara". The petitioner continued to serve as a lower division clerk till he was served with an order (Annexure 3), dated 24-1-1972 terminating his services with effect from 31-1-1972 afternoon. The order

mentioned that as his services were no more required, they were terminated from 31-1-1972 afternoon. The petitioner has challenged the order of termination of his services on the ground that it was politically motivated on the assumption that the petitioner was an active worker of the Rashtriya Swayam Sewak Sangh and propagated its ideology in the College. The exercise of the power of terminating the services of the petitioner was thus colourable and based on collateral considerations. It is, therefore, contended by the learned counsel for the petitioner that this Court has to look to the attending circumstances which ultimately resulted in the termination order. The order, being motivated and based on certain reports secured against the petitioner, he was entitled to protection under Article 311 of the Constitution; and since his services could not be terminated without holding a departmental enquiry, the impugned order (Annexure 3) has to be quashed.

Learned Government Advocate appearing for the respondents, on the Other hand, contended that this Court cannot go behind the order; and since the order was passed without attaching any stigma in terminating the temporary services of the petitioner which could be done it is not liable to be quashed.

Having heard the learned counsel for both parties, we are of opinion that this petition should be allowed. The sole point to be considered is whether this Court has jurisdiction to interfere with the order of termination of the temporary services of the petitioner in which no stigma was attached for the termination of his services, viz., that the order of termination was an order of termination simpliciter, and, in the circumstances, the petitioner can claim protection under Article 311 (2) of the Constitution.

It is well settled by various decisions of the Supreme Court that this Court has power to look into the entirety of circumstances preceding or attendant on the order of termination; and if there is evidence that the order of termination is not "a pure accident of service" but an order in the nature of punishment, Article 311 of the Constitution will be attracted.

In *The State of Bihar and Others Vs. Shiva Bhikshuk Mishra*, His Lordship Grover, J., while explaining the ratio of an earlier decided case *Union of India v. R. S. Dhaba* AIR 1969 S C 21 : Civil Appeal No. 882 of 1966 decided on 7th April 1969 on the point, held in para 4 of the decision--

We are unable to accede to the contention of the appellant that the ratio of the above decision is that so long as there are no express words of stigma attributed to the conduct of a Government Officer in the impugned order it cannot be held to have been made by way of punishment. The test as previously laid and which was relied on was whether the misconduct or negligence was a mere motive for the order of reversion or whether it was the very foundation of that order. In *Dhaba's* case, it was not found that the order of reversion was based on misconduct or negligence of the officer. So far as we are aware, no such rigid principle has ever been laid down by this Court 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: [see S.R. Tewari Vs. District Board Agra and Another, 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.

In K.H. Phadnis Vs. State of Maharashtra, His Lordship Ray J., held in paragraphs 16 and 17 of the judgment--

It is true that the post which the appellant held was a temporary one, but the post continued for several years. The indications were that the post was practically of a quasi-permanent character. The appellant was reverted neither because the temporary post was abolished nor because he was found unsuitable to continue. The parent department of the appellant did not want him back.

The order of reversion simpliciter will not amount to a reduction in rank or a punishment. A Government servant holding a temporary post and having lien on his substantive post may be sent back to the substantive post in ordinary routine administration or because of exigencies of service. A person holding a temporary post may draw a salary higher than that of his substantive post and when he is reverted to his parent department the loss of salary cannot be said to have any penal consequence. Therefore, though the Government has right to revert a Government servant from the temporary post to a substantive post, the matter has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order is a genuine one of "accident of service" in which a person sent from the substantive post to a temporary post has to go back to the parent post without an aspersion against his character or integrity or whether the order amounts to a reduction in rank by way of punishment. Reversion by itself will not be stigma. On the other hand, if there is evidence that the order of reversion is not "a pure accident of service" but an order in the nature of punishment, Article 311 will be attracted.

In Jagdish Prasad v. State of U. P. A I R 1971 S C 1224, 1228, His Lordship Shah J., in paragraph 10 of the judgment held--

It may be observed that according to the decisions of this Court, the mere form of the order reverting an officer to his substantive post even if he is appointed temporarily or in an officiating capacity to a superior post, is not decisive. If the order is made for a collateral purpose, or if in making the order the officer is

actuated by malice, the order is liable to be set aside. Again if the order involves a penalty, even if on the face of it the order does not bear any such impress, the Officer prejudiced by the making of that order is entitled to prove that he has been denied the protection of the guarantee under Article 311 of the Constitution, or of the protection of the rules governing his appointment. An order of reversion made due to exigencies of the service in consequence of which an officer who was temporarily appointed or appointed in an officiating vacancy may not be challenged. But the order passed maliciously or on collateral considerations or which involves penal consequences, or denied to the civil servant the guarantee of the Constitution or of the rules governing his employment, is always open to challenge by appropriate proceedings.

In the light of the above principles laid down by the Supreme Court, we shall now examine whether he had right to the post on the facts of the present case and he had been visited with the evil consequences of the kind mentioned in the above referred decisions.

It is necessary to refer to the allegations contained in paragraphs 11 to 14 of the petition and the replies thereto contained in paragraphs 9 and 10 of the return filed by the respondents:

Petition paragraphs 11 to 14:

That though the respondent No. 1 has not assigned any reason for the termination of the services of the petitioner, but the services of the petitioner have been terminated on the direction of the respondents Nos. 2 and 5 having assumed and presumed that the petitioner is responsible for propagating the R. S. S. ideology in the said College, on the basis of some police reports.

That the petitioner has reliably learnt that the D. I. G. (S. B.) Police, Bhopal vide confidential letter dated 1-2-1971 addressed to the District Magistrate/Collector, Chhindwara, that the report relating to the character and antecedents of the petitioner be verified and submitted to the respondent No. 3, as it was learnt that the petitioner was taking active part in R. S. S. between the period 1959 to 1963 and was still engaged in propagating the R. S. S. ideology in the College.

That in compliance of the letter dated 1-2-1971 by the respondent No. 3 to the respondent No. 4, the respondent No. 4 issued a secret memorandum dated 23-4-1971 to the respondent No. 1 and thereby called a report from him relating to the character and antecedents of the petitioner, specially With regard to his taking part in R. S. S. activities, and propagating the R. S. S. ideology in the College, and also about his service record.

That the respondent No. 1 vide secret memo dated 6-5-1971 sent a reply to the secret memo of the respondent No. 4, wherein he stated that the petitioner neither takes any active part in the R. S. S. activities nor propagates R. S. S. ideology in the College. Further there is no report against the petitioner about his working in the College, from either the teaching staff or the students. The

working of the petitioner is satisfactory throughout his service in the College. The respondent No. 1 specifically mentioned that the petitioner was most reliable and dependable person. He is honest, truthful and hardworking. It was further stated that the petitioner was sent for four months training of Accounts, which was conducted by Director of Treasury, Madhya Pradesh, Bhopal from 4th May 1971. It was further stated that the petitioner is fit for Government service.

Return paragraphs 9 and 10--

In reply to para 11, 12 and 13: It is denied that the services of the petitioner were terminated on the direction of the respondent Nos. 2 or 5 on the alleged ground that he was responsible for propagating the R. S. S. ideology in the said college. However, it is submitted that the services of the petitioner were terminated in public interest. The report relating to the character and antecedents of the petitioner were verified under the rules as required but the details of the antecedents cannot be disclosed in public interest.

In reply to para 14 : As regards his service records, submissions made in this paragraph are admitted except that he was fit to continue in Government service.

At this stage, it would be better to reproduce the impugned order (Annexure 3) for proper appreciation, which reads as under:

We may also mention here that the confidential file relating to the character and antecedents of the petitioner referred to in paragraph 9 of the return was placed before us for inspection by the Government Advocate. On perusal of the said record we found nothing in it against the petitioner. On the other, the report of the Principal of the Mahavidyalaya was in favour of the petitioner, which he had submitted to the Government vide memorandum dated 6-5-1971.

We asked the Government Advocate to tell us the "public interest" on which count the petitioner's services were terminated; but he could not reply.

The order of termination does not in express words attach any stigma to the character or conduct of the petitioner; but in the return it is admitted that the termination of the petitioner's services was done in "public interest" and the report relating to the character and antecedents of the petitioner was verified as required by the rules. In reply to the assertions of the petitioner in paragraph 14 of the petition, the respondents in their return did not deny them but rather admitted them. They only denied that the petitioner was fit to continue in service, which statement is most surprising on the face of no specific denial of the petitioner's assertion that his working in the College was satisfactory throughout his service for 10-11 years and the Principal of the College in his report mentioned that the petitioner was most reliable and dependable person. The Principal further mentioned that the petitioner was honest, truthful and hard-working. We have perused the confidential file of the petitioner and found that the Principal's report is to that effect. It is also admitted that the post on which the petitioner was working still exists.

The petitioner's record of service for nearly 11 years was unblemished. It is clear that the foundation for termination of his services was his alleged association with the Rashtriya Swayam Sewak Sangh based on the report of the Deputy Inspector-General of Police, Bhopal, dated 1-2-1971 addressed to the District Magistrate or Collector, Chhindwara, relating to the character and antecedents of the petitioner as it was learnt that he was taking active part in the said Sangh between the period 1959-1963 and was still engaged in propagating its ideology in the College. This fact, though alleged in the petition, is not specifically denied in the return; but it did weigh with the respondents as finds expression in paragraph 9 of their return.

Therefore, in the present case, the facts and circumstances to which reference has been made clearly indicate that action was taken against the petitioner on consideration of report and a finding about his character and antecedents, which would attract the provisions of Article 311 (2) of the Constitution. No doubt, the adverse order does not disclose its punitive nature; but the substance of the matter definitely determines the character and nature of the order. In the circumstances, the termination of the petitioner's service was not in the usual course of administration but as a measure of punitive action against him. This could not be done without framing charges against him and giving him opportunity to explain the charges and also to show cause why the proposed punishment should not be awarded. As the result of the order, the petitioner has been visited with penal consequences in the loss of his service. We hold that the termination order (Annexure 3) is illegal as having been passed without complying with the provisions of the Constitution.

For the reasons stated above, the petition is allowed with costs and the order dated 24-1-1972 (Annexure 3) is hereby quashed. It is further ordered that the petitioner shall be reinstated to his post and for the period from the date of termination of his services to the date of his re-instatement he shall be treated as in service. Counsel's fee Rs. 200, if certified.