
(1958) 12 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1721 of 1957

Damodar Sinha

APPELLANT

Vs

Land Reforms Commissioner, U.P. and Another

RESPONDENT

Date of Decision : 23-12-1958

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 55(3)
Constitution of India, 1950 — Article 311

Citation : AIR 1959 All 437

Hon'ble Judges : J.K. Tandon, J

Bench : Single Bench

Advocate : M.N. Shukla and Ali Raza Osmani, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

J.K. Tandon, J.—The petitioner is one Damodar Sinnha who held the post of a Naib Tahsildar since 1937. In 1950 he was selected in due course for the post of Tahsildar through the Public Service Commission. He was thereafter appointed by the Board of Revenue in the post of Tahsildar and placed on probation for a period of two years with effect from April 30, 1951. This period expired on 30-4-1953, but on 15th June 1953 he was informed that the probationary period had been extended by one year which carried it to 30-4-1954. During all this period he continued to work as Tahsildar and also earned one increment after one year of service as Tahsildar.

In July 1955, nearly 15 months after the expiry of the extended period of probation, he was served with a notice, at the instance of the Land Reforms Commissioner U. P., to the effect that his record of service as Tahsildar during the period of probation from 30-4-1951 to 30-4-1953 was unsatisfactory and that he had further deteriorated in 1954. By the same notice he was also asked to show cause why his probation should not be terminated and he be reverted to his substantive post of Naib Tahsildar. This notice has not been produced by the

petitioner but the learned Standing Counsel has produced for the Court's inspection its copy in the departmental record. It is as follows:

"Shri Damodar Sinha, Tahsildar Mahoba, As directed in letter No. 27541/3 TNT 8p/54 dated 28-12-1954 from the Land Reforms Commissioner, U. P. Section 3, Lucknow, I am to ask you that as the record of your service during the period of your probation from 1951 to 1953 though unsatisfactory your probation was extended upto 29-4-1954. Instead of making any improvement you deteriorated further in 1954. It has, therefore, been considered that your probation should be terminated as you failed to give satisfaction as Tahsildar. As required under Rule 55(3) of the Civil Services (Classification, Control and Appeal) Rules you are hereby apprised of the reasons of the terminating your probation and are also required to submit your explanation within a period of 15 days from the date of receipt of this order through the S. D. O. in triplicate. Please acknowledge receipt of this order."

2. In reply to the above notice the petitioner submitted his explanation to the Land Reforms Commissioner pointing out that he had not only passed the requisite departmental examination and was also allowed to cross efficiency bar but his work too throughout was satisfactory. He further pointed out that he had actually been recommended by the Collector Allahabad for confirmation. Having thus refuted the allegation of inefficiency, he also specifically pointed out that the notice served upon him failed to mention any instance, warning or adverse entry concerning failure of duty by him or pointed to any deterioration in his work, and that in the absence of those particulars he was not in a position to offer any explanation.

It does not appear that despite the petitioner's asking particulars of charges and adverse entries against him they were ever supplied to him. But In August 1955 his reversion to the post of Naib Tahsildar was gazetted. His probation period, too, was terminated. Against the said order terminating his probation and reverting him to the post of Naib Tahsildar, the petitioner then represented to the Land Reforms Commissioner but got no redress, Ultimately he filed the present petition impugning the legality of the order dated 27-8-1955 terminating his probation and reverting him to the post of Naib Tahsildar, Besides asking a writ in the nature of certiorari quashing the said order, he has asked a mandamus also directing the opposite parties, to confirm him as a Tahsildar.

3. The grounds urged are that under the rules applicable to his case his period of probation expired, firstly, on 30-4-1953 and, in any case, on 30-4-1954 after which it was not permissible to revert him from the post of Tahsildar. His claim also is that he was automatically confirmed with effect from the date the probationary period came to an end. The further ground urged is that there was no compliance of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules as also of Article 311 of the Constitution and that in any case an opportunity to show cause, required to be given to him, was not given.

4. The facts as stated above are not disputed. What, however, has been contended on behalf of the State is that the petitioner continued to be on probation right upto the date on which his reversion was ordered, as such he was not entitled to the benefit either of Rule 55 or of Article 311. Again, it is urged that Sub-rule (3) of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules applied to his case and that the necessary show cause notice as required by that rule was duly given to him. The right of the petitioner to challenge the impugned order is thus disputed.

5. Sub-rule (3) of Rule 55 has provided that the main rule, which is contained in Sub-rule (1) will not apply where it is proposed to terminate the employment of a probationer whether during or at the end of the period of probation, for any specific fault or on account of his unsuitability for the service.

In such cases the probationer has to be apprised of the grounds of the proposal, given an opportunity to show cause against the action to be taken against him and his explanation in this behalf if any, is to be considered before orders are passed by the competent authority. Thus according to this sub-rule though the main rule is inapplicable, it is necessary, wherever it is proposed to terminate the employment of a probationer on account of any specific fault or on account of his unsuitability firstly, to apprise him of the grounds of the proposal to revert him, secondly, to give him an opportunity to show cause against the action proposed to be taken against him and, thirdly, to consider the explanation, if any, offered by him. The petitioner's contention is that this procedure too was not followed in the present case, so that even if he was a probationer there was non-compliance of Rule 55(3) also.

6. In the view of the matter that I am taking it does not seem necessary for disposing of this petition to decide the controversy as to whether the petitioner was or was not a confirmed Tahsildar after the expiry of the period of probation. Similarly, it does not seem necessary to decide whether the probationary period had been effectively extended at any time or did it come to an end on 30-4-1953. In either view of the matter the petitioner will to my mind be able successfully to challenge the order of his reversion.

7. It is the case of the respondents themselves that the impugned order terminated the employment as probationer of the petitioner and that his case was governed by Sub-rule (3) of Rule 55. It also is not disputed that his probation was terminated because despite the extended probation he proved unsuitable for the post of Tahsildar. On these facts Sub-rule (3) of Rule 55 was attracted a circumstance which again has not been contested by the learned Standing Counsel. What he has nevertheless urged is that the petitioner was apprised of the grounds for the proposal and also given an opportunity to show cause against the action to be taken against him. He has referred in this connection firstly, to the notice given to the petitioner dated 5th January 1955 and, secondly, to certain allegations made in the counter affidavit to the effect that he had received several adverse entries from time to time. The petitioner

has not admitted that any adverse entries were communicated to him, on the contrary, he has produced a copy of a letter dated 15th May, 1953, sent by the Collector to the Land Reforms Commissioner in which the former recommended that there was nothing against the integrity of the petitioner and that he was fit for confirmation. This letter does run counter to the allegations contained in the respondents' affidavit, but how far one or the other allegation is true need again not be decided in this case. In order that the requirements of Sub-rule (3a) of Rule 55 are fulfilled attention will need to be confined to the notice given to the petitioner asking him to show cause why he should not be reverted. If this notice does not contain reference to the alleged adverse entries nor he was asked therein to show cause in respect of them, the existence of such entries elsewhere will not meet the demands of Sub-rule (3) aforesaid.

8. To revert, therefore, to the notice given to the petitioner one finds that beyond making a vague reference to the fact that his service was unsatisfactory during the first two years of probation and it "further deteriorated during 1954, no fact, much less any adverse entry or instance, was mentioned. Sub-rule (3) requires that the probationer shall be apprised of the grounds on which it is proposed to revert him. He shall be given an opportunity also to show cause against the action to be taken against him. In order that the opportunity may be an opportunity and the person called upon to show cause is in a position to do so, all those facts which reflect on the suitability of the person vis-a-vis his work should be contained in the notice. A vague reference that his work was unsatisfactory or that it further deteriorated, hardly conveyed to the person asked to show cause any material which he can explain. Though the document given to him be a notice it does not amount to an opportunity to show cause demanded by Sub-rule (3). In the present case this requirement remained completely unfulfilled on the showing of the respondents themselves. According to them there were a number of adverse entries against the petitioner. There were faults in his work. If these things were existent in his case and they had influenced the proposal to revert him to his substantive post, as according to the respondents they had, it was the clear duty of the authority issuing the notice to apprise him of those facts. The conclusion that his work was unsatisfactory or that he had deteriorated during 1954 could by no stretch of reasoning take the place of the grounds for reversion which under Sub-rule (3) it was the duty of the authority issuing the notice to apprise the petitioner of. Their absence becomes all the more damaging when it is noticed that the petitioner on service of the notice upon him made a request to the Land Reforms Commissioner to let him know the same but instead of being delivered those grounds his reversion was gazetted.

9. In view of the above discussion it is clear I that Sub-rule (3) of Rule 55 was not complied in its essential details. As such the order terminating his employment as probationer ought to be quashed and I order accordingly. The respondents are further directed not to give effect to the notification dated August 27, 1955. The petitioner will get his costs from the respondents.