

(1959) 09 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 141 of 1959

Girdhari Lal

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 24-09-1959

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(1), 311(2)
Pepsu Civil Services (Temporary Service) Rules, 1955 — Rule 5

Citation : AIR 1960 P&H 244

Hon'ble Judges : I.D. Dua, J

Bench : Single Bench

Judgement

1. This petition under Art. 226 of the Constitution has been filed by Girdhari Lal son of Pt. Ram Nath on the allegations that he held a permanent appointment as a Patwari in the erstwhile Kapurthala State and on the formation of the State of Pepsu he was absorbed and integrated as a Qanungo in the Revenue Department of the new State. On 20-7-1952, vide notification No. 45-F-52/42 dated 8-7-1952 the petitioner was appointed an Assistant Consolidation Officer; he has been discharging his duties honestly and diligently to the entire satisfaction of his superiors, with the result that in the seniority list of Assistant Consolidation Officers he stands at No. 18. Unfortunately he was suspected to be connected with Hamira Scandal and was on that account reduced from the post of Assistant Consolidation Officer to that of Qanungo under the orders of the Government, communicated to him as per communication No. E-1/132-35 dated 8-9-1958.

The reversion of the petitioner is alleged to have been ordered as a measure of punishment carrying penal consequences. The petitioner goes on to state that he was never afforded an opportunity of showing cause, against the orders of reduction in rank, as is contemplated by the provisions of Art. 311 of the Constitution. His appointment according to the allegations in the petition, as Assistant Consolidation Officer was to continue in the normal course till the continuance of the Department of Consolidation of Holdings; he has, however, been reverted whereas junior-most persons have been permitted to continue in

the rank of such consolidation officers. Had the reversion been in the normal course for administrative reasons, the petitioner submits, he would have been given one month's notice or one month's pay in lieu thereof, in accordance with the provisions of the Civil Services (Temporary Service) Rules, but since his reversion has been ordered as a measure of punishment, one month's pay due to him under the above rules has been forfeited.

This reversion affects the petitioner's future right of promotion, and having been ordered without serving him with any charge-sheet, as required by the mandatory provisions of rule 7 of the Civil Services (Punishment and Appeal) Rules 1952, it is illegal and contrary to law. The petition further proceeds that subsequently the petitioner was suspended from service on 20-9-1958 by the order of the Deputy Commissioner, Kapurthala. This order of suspension is also assailed as not having been passed in accordance with law and as not emanating from competent authority. Before passing the order of suspension it was obligatory on the competent authority to hold a preliminary enquiry as contemplated by para 3 of appendix 5 of Pepsu Service Regulations which govern the petitioner's conditions of service; no such preliminary enquiry having been held the order of suspension is illegal and void.

It is further alleged that on 22-9-1958 the petitioner submitted an application through the Tehsildar for the supply of charge-sheet to him; on the following day he submitted another application for being supplied with a copy of the order of the Government which has been referred to in the order of suspension served upon him: on 30-9-1958 the petitioner also applied to the Tehsildar for permission to have an interview with the Deputy Commissioner which was allowed on 1-10-1958, the actual interview taking place on 7-10-1958; the Deputy Commissioner, according to the petitioner's allegations, orally informed him that he had been reverted and suspended in connection with Hamira Scandal. The sequence of events, according to the petitioner, clearly shows that he has been punished in anticipation of the alleged charge having been established against him; such procedure is pleaded to be contrary to the rules governing the petitioner's conditions of service as also violative of the provisions of Art. 311 of the Constitution.

On 4-10-1958, the petition applied to the Director of Consolidation of Holdings, Punjab State, through the Tehsildar for being supplied with a copy of the order of the Government reverting him from the rank of Assistant Consolidation Officer; this application was forwarded to the Deputy Commissioner on 9-10-1958 and was returned to the petitioner on 28-10-1958 for depositing the advance money, which was deposited on 29-10-1958. Thereafter the petitioner was informed that he should approach the Director of Rehabilitation; the petitioner thereupon approached the said Director of Rehabilitation but his application was returned to him on 6-1-1959 with the remark that he should apply to the office concerned. On 9-10-1958 the petitioner applied to the Tehsildar for the payment of arrears of his pay and subsistence allowance but nothing has been paid to him since the

date of his suspension.

On 14-10-1958 the petitioner applied to the Tehsildar stating that he had not been supplied with a charge-sheet or a copy of the order of the Government. On 16-10-1958 he sent a telegram to the Deputy Commissioner and to the Tehsildar repeating his grievance and on 18-11-1958 he submitted an application even to the Commissioner, Patiala Division, bringing to his notice all the facts of his case. On 23-12-1958 the Deputy Commissioner informed the petitioner that the charge sheet and subsistence allowance would be given to him after the receipt of the reply from the Director of Consolidation of Holdings, Punjab, Jullundur, but up till the date of the present writ petition, which is dated 14-2-1959, the petitioner alleges that no charge-sheet has been given to him; nor has he been paid any subsistence allowance payable under the rules. It is in the end prayed that an appropriate writ may be issued quashing the illegal orders of reduction in rank passed against the petitioner as also quashing the order of his suspension.

(2) This petition is resisted on behalf of the Director of Consolidation of Holdings on a number of grounds. A preliminary objection is raised that the petitioner should have exhausted other remedies open to him and also that the provisions of Art. 311 of the Constitution have not been contravened. On the merits, it is pleaded that the petitioner was appointed Assistant Consolidation Officer only in an officiating capacity and having not been found up to the mark after trial, he was reverted to his substantive rank for administrative reasons. It is expressly asserted that no punishment has been inflicted on the petitioner and that his reversion to his substantive rank does not attract the provisions of Art. 311 of the Constitution; have not been contravened. On the merits it is pleaded that the petitioner was appointed Assistant Consolidation Officer only in an officiating capacity and having not been found up to the mark after trial, he was reverted to his substantive rank for administrative reasons. It is expressly asserted that no punishment has been inflicted on the petitioner and that his reversion to his substantive rank does not attract the provisions of Art. 311 of the Constitution; no show-cause notice was thus necessary under the law.

In so far as the question of supply of the copy is concerned, it is pleaded that the petitioner had been directed to apply to the Director of Consolidation of Holdings and not to the Director of Rehabilitation. In the end it is alleged that the case of the petitioner is still under examination and therefore the question of supplying him with a charge-sheet at this stage does not arise; it is also stated that the petitioner himself had refused to receive payment of subsistence allowance. In the concluding para it is contended that the petitioner can file a civil suit and indeed he should do so because the facts are in dispute.

(3) Mr. Bhandari on behalf of the petitioner submitted that a copy of the order of the Government reverting and suspending the petitioner would clearly show that these orders had been passed on account of Hamira Scandal. It does appear that the communication from the Under Secretary to Government, Punjab, Forests and Game Preservation Departments, through the Director of Consolidation of

Holdings, Punjab, which was shown to me by the counsel for the respondent, does suggest that it was as a result of some complaints by the Anti-Corruption Department that the Government decided to suspend and revert some officials, including the petitioner, to their substantive appointments.

It may, however, be stated at this stage, that it is admitted by the counsel that the order of suspension has also since been withdrawn and the grievance which the petitioner has now is only with respect to the order of reversion. Both the counsel for the petitioner as well as for the respondent have placed their reliance on the decision of the Supreme Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, Mr. Bhandari, the learned counsel for the petitioner, has submitted that Paras 27 and 28 of this judgment at page 49 of the report his contention. The learned counsel for the respondent has also submitted with equal confidence that these Paras support his contention. The following observations have indeed been relied upon by both sides:

"A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the Government servant has 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, his reduction from an officiating higher rank to this substantive lower 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 expressions, the Court has to apply the two tests mentioned above, namely, (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 here in 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 service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Art. 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."

The learned counsel for the respondent has in support of his contention also referred me to page 39 of the above report and has contended that in the reported case also complaints against Shri Parshotam Lal Dhingra had been brought to the notice of his superior officers and the orders prejudicial to Shri Dhingra had been influenced by unfavorable reports with respect to his efficiency etc. Mr. Bhandari has on the other hand contended that in the instant case the petitioner's future chances of promotion have been postponed, if not stopped with the result that his case would clearly fall within the rule laid down by the Supreme Court. The petitioner's counsel has also placed reliance on *Union of India (UOI) Vs. Jeewan Ram*, where the order of removal passed against Jiwan Ram was held to be of a penal nature and therefore illegal and ineffective.

In that case the Supreme Court applied the principle laid down in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, and in *Khem Chand Vs. The Union of India (UOI) and Others*, It may, however, be observed that *Union of India (UOI) Vs. Jeewan Ram*, arose out of a suit filed by him against the Union of India in a Civil Court in Ajmer. On behalf of the petitioner reliance has also been placed on *Tabibuddin Ahmed v. State of Assam AIR 1958 Gau 181*, where termination of service of one Tabibuddin Ahmed, who had been holding an officiating post in the Forest Department until further orders, was held to be by way of punishment and the order of discharge from service on the ground that his past services were reported to be not good and honest was held to be invalid as being in breach of the provisions of Art. 311(2) of the Constitution. In this case also the test laid down in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, was applied. On behalf of the State my attention has been drawn to a decision by Bishan Narain J. in *Kehar Singh v. Director of Consolidation of Holdings etc.*, Civil Writ No. 511 of 1957 D/-20-5-1958 (Punj). The learned Judge considered the effect of the decision of the Supreme Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, and came to the conclusion that a person appointed as Assistant Consolidation Officer in an officiating capacity has no right to this post. In support of this conclusion the learned Judge quoted the following observation from *Parshotam Lal Dhingra Vs. Union of India (UOI)*,

"But if the servant has no right to the post as where he is appointed to a post on an officiating basis x x x x the termination of his employment does not deprive him of any right and cannot therefore by itself be a punishment."

The learned Judge then proceeded and observed that Art. 311(1) of the Constitution applies only to case where orders are by way of punishment and not to a case where on administrative grounds a person is sent back to his substantive post. The counsel for the respondent has emphasised that in *Kehar Singh's* case, C. W. No. 511 of 1957 D/- 20-5-1958 (Punj) also the Punjab State had pleaded in reply to the writ petition that there were serious allegations of misconduct against the petitioner when he was posted as Assistant Consolidation

Officer and that he was therefore reverted to his substantive post of Qanungo and was ordered to work as Qanungo as a temporary measure because his presence at Hissar was considered detrimental to a fair enquiry into the allegations of corruption against him. Placing reliance on this aspect the counsel for the respondent contends that there is no material difference between the facts of the instant case and those on which Bishan Narain J. expressed his views; merely because Kehar Singh had been ordered to work as Qanungo as a temporary measure would not on principle distinguish that case from the present one. It has also been pointed out that a Letters Patent appeal against the decision in Civil Writ No. 511 of 1957 (Punj), was dismissed in limine by the first Bench consisting of Bhandari C. J. and Gosain J. on 8-8-1957. The implication of the decision of the Supreme Court in Parshotam Lal Dhingra Vs. Union of India (UOI), also came up for consideration before a Division Bench of this Court in State of Punjab v. Madan Gopal, LPA No. 72 of 1958 (Punj), when Bhandari C. J. and Dulat J. allowed an appeal from the judgment of Bishan Narain J., in Civil Writ 71 (P) of 1956 (Punj). The Bench after quoting the following passage at page 49 of Parshotam Lal Dhingra Vs. Union of India (UOI),

"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."

proceeded that the circumstance that the action against Madan Gopal had started with a complaint of bribery did not make any particular difference as the final order terminating his service was founded on the rule governing temporary employment and that rule entitles the Government to terminate such service on one month's notice. My attention has also been invited to another unreported judgment of this Court in Gurdip Singh v. State of Punjab, L. P. A. 79 of 1954, decided by Bhandari C. J. and Mehar Singh J. on 14-7-1959: Gurdip Singh S. Surain Singh Vs. State of Punjab, In that case however, on facts it was observed by Mehar Singh J., who wrote the main judgment, that it was a clear case in which the misconduct of the appellant had not only operated as motive, but a foundation, by reason of depriving the appellant of his pay earned as increment between October 3 and 29, 1953, for the termination of his service, though ostensibly according to the terms of his service.

Such termination of service was held by the learned Judge to be accompanied by a penalty or punishment causing a monetary loss to him and therefore apparently falling within the dicta of the Supreme Court in Parshotam Lal Dhingra Vs. Union of India (UOI), and Union of India (UOI) Vs. Jeewan Ram, These two unreported cases are, it may be stated, cases of termination of service. Gurdip Singh S. Surain Singh Vs. State of Punjab, in my opinion, proceeds on its own facts inasmuch as the increment actually earned by him was lost to him by the impugned order; primarily influenced by this consideration the learned Judges were of the view that the case fell within the tests laid down in the two Supreme Court decisions. In Madan Gopal's case, LPA No. 72 of 1958 (Punj), however, the

temporary employment was terminated by giving one month's notice and this was construed as not entailing any penal consequences within the purview of the Supreme Court dicta in the two cases mentioned above.

(4) After considering the arguments advanced at the Bar in my view, the reversion of the petitioner in the instant case is not by way of punishment or penalty and the impugned order does not visit him with any penal consequences as envisaged in the two Supreme Court decisions, because it neither entails, nor 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. His seniority in his substantive rank remains the same and nothing has been said at the Bar to convince me that it has, in any way, been adversely affected. His future chances of promotion have also not been stopped or postponed by this reversion. If he behaves well in his substantive rank, nothing substantial has been said at the Bar to show or even to suggest that he would not get his promotion in due course in future on account of the order of reversion. It is true that he has been reduced from the post of Assistant Consolidation Officer but, as observed above, he was appointed to this post only in an officiating capacity and he has acquired no right to continue to hold this office. Merely because the impugned order of reversion from the officiating post may be considered to have been influenced by certain complaints received against the petitioner does not by itself bring his case within the purview of Art. 311.

The counsel of the petitioner has failed to show that his client has been visited with any evil or penal consequences as a result of the reversion in question. It may be argued that the order of reversion suggests a stigma on the petitioner but, in my opinion, it would attract the provisions of Art. 311 of the Constitution only if the petitioner had a right to continue in the officiating post. It is not contended that the petitioner possessed any such right. This reversion thus does not operate as a forfeiture of any right possessed by the petitioner, with the result that it can, by no means, be described as reduction in rank by way of punishment. I am, therefore, clearly of the view that no evil or penal consequences flow from the order of reversion so as to cloth the petitioner with a right to invoke the aid of the provisions of Art. 311 of the Constitution which in the circumstances are clearly inapplicable to his case. this provision not being applicable to the petitioner, he can obviously make no grievance on account of non-compliance with it.

(5) Mr. Bhandari during the course of arguments also made a passing reference to rule 5 of the Pepsu Civil Services (Temporary Service) Rules, 1955, which lays down that the service of a temporary Government servant who is not in quasi-permanent Government service shall be liable to termination at any time by notice in writing either by the Government servant to the appointing authority or by the appointing authority to the Government servant. It has, however, not been shown how this rule stands in the way of reversion of the petitioner to his

substantive post. This rule, if any thing, further fortifies the contention of the respondent that the petitioner had no right to the officiating post and that reversion from such an officiating post cannot be described as reduction in rank by way of punishment. In any case if the petitioner's grievance is that he is entitled to salary for the period of notice, then in my view, the present writ petition is hardly an appropriate proceeding for obtaining this relief and it would be a sound exercise of discretion to refuse a writ for redress of such a grievance.

(6) For the reasons given above, this writ petition fails and is hereby dismissed. In the peculiar circumstances, however, there will be no order as to costs.

BD/D.H.Z.

(7) Petition dismissed.