
(1974) 03 CAL CK 0021
In the Calcutta High Court

Golak Nath Burman

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 01-03-1974

Acts Referred:

Constitution of India, 1950 — Article 309, 311

Citation : 78 CWN 618 : (1975) 2 ILR (Cal) 1 : (1974) 2 LLJ 98

Hon'ble Judges : S.K. Datta, J;A.C. Gupta, J

Bench : Division Bench

Judgement

S.K. Datta, J.—This is an appeal against the judgment and order of Sabyasachi Mukherjee, J., discharging the rule obtained by the appellant. The appellant according to his case had been in Government service as Deputy Ranger (Forest) since September 27, 1960. As a result of competitive examination and course of training at Dehra Dun, the appellant was appointed by Office Order No. 15-S dated April 6, 1962 as a substantive permanent Forest Ranger with effect from October 10, 1961 on probation. The order is to the following effect:

They will be on probation for two years from the date of appointment.

Sd/-B.N. De, Conservator of Forests, Northern Circle, West Bengal.

2. After the expiry of the probationary period, as no order was passed regarding the petitioner, he made a representation. Thereupon by Office Order No. 6-S dated July 10, 1964, the period of two years' probation of the petitioner was extended further one year with effect from October 10, 1963 as his performances as Forest Ranger during the period of probation were not found upto the mark.

3. On February 1, 1965, the petitioner made a representation to the Divisional Forest Office, Plan Division (North), T. N. Roy and he was informed that the appropriate authority was reminded in the respect. In April, 1965 Roy's son committed a mischief by throwing stone at the guests of the petitioner in his house, which smashed window panes and caused bleeding injury to one guest. They then went to the house of T. N. Roy and protested against his son's

conduct which provoked great wrath in Mrs. Roy who threatened the petitioner's wife with dire consequence ruining the petitioner's prospects. Thereafter Roy started giving adverse confidential reports against the petitioner.

4. In spite of several representations against illegally continued probationary status, the petitioner was served with the following Office order:

Office Order No. 16 dated Calcutta, the 31st March, 1967.

Whereas the period of probation of Shri Golak Nath Burman a substantive Deputy Ranger/Forester on 10-10-61 has not been extended by the Government beyond 31-3-67 and as Sri Burman has been considered unsuitable for confirmation in the post of Forest Ranger.

Now, therefore, it is ordered that Shri Golak Nath Burman shall be reverted to his substantive post of Deputy Ranger/Forester with effect from 1st April, 1967.

Sd/- S.S. Mondal, Conservator of Forests, Soil Conservation Circle, West Bengal.

The petitioner was further informed by a separate letter that he would be relieved of his charge as Forest Ranger on Special Duty and was posted as D. R./Forester attached to Divisional Office with Head Quarters at Purulia.

5. The petitioner contended that the order was illegal as he was appointed to the post of substantive Forest Ranger. It was further contended that the reversion was by way of punishment and amounted to reduction in rank as contemplated under Article 311 and also violated the principles of natural justice in not affording an opportunity to the petitioner, as he was entitled, to show cause against the reversion. Further the order was mala fide and the real cause of his reversion was the displeasure he incurred of T. N. Roy, the Divisional Forest Officer, who was over him as superior authority at the relevant period.

6. On these allegations and contentions the petitioner moved this Court on May 3, 1967, in constitutional writ jurisdiction praying inter alia for a writ in the nature of mandamus directing the State of West Bengal and concerned officials to forbear from giving effect to the reversion order and to withdraw or cancel the same. On the said application, a rule being C.R. No. 539W of 1967 was issued by this Court, calling upon the respondents to show cause why the writ and orders prayed for should not be issued.

7. The rule was opposed by the respondents and an affidavit-in-opposition on behalf of the respondents Nos. 1 to 3 was affirmed on August 2, 1967 by the Divisional Forest Officer, Panchet Soil Conservation Division, Purulia denying the allegations made in the petition and disputing the contentions therein made. It was stated that confidential reports about the petitioner, copies whereof were annexed, were given from time to time by the Divisional Forest Officer concerned before and after T. N. Roy and all were against confirmation of the petitioner as Forest Ranger which was approved by appropriate authorities. Although the

petitioner did not merit confirmation, and his work during probationary period was unsatisfactory, the Government on a compassionate view extended the probationary period to enable him to have further chance of giving a better account of himself instead of sending him back to his substantive post of Deputy Ranger. It was denied that the probationary period was illegally continued and the appointment being to a higher post with a lien on his substantive post as Deputy Forester, the petitioner on being found unsuitable was reverted to his substantive post. The petitioner was not entitled in law to any hearing before such order was passed. An affidavit-in-opposition was also affirmed on August 2, 1967 by T. N. Roy who was the respondent 4, wherein he denied the alleged incident of stone throwing leading to the bleeding injury in a friend of the petitioner whose name was not disclosed and the alleged threats by the wife of the dependent to the petitioner's wife. The alleged incident could have no bearing on the confidential reports submitted by him relating the petitioner, as such reports were based on consideration of merit.

8. The petitioner in his affidavit-in-reply to the affidavit-in-opposition of the respondents 1 to 3 reiterated the allegations made in the petition.

9. The learned Judge, on hearing the parties, came to the finding that the petitioner's appointment was not a fresh appointment as such, being one on probation. The order would be invalid if the petitioner could be said to have been confirmed either by operation of the rules or by an order to that effect. It was held that the petitioner did not become permanent by operation of the rules. The observation in the order that the petitioner was not found suitable for confirmation was not a stigma and his reversion would not amount to any punishment attracting Article 311. Further Rule 55-B of Civil Services (Classification, Control and Appeal) Rules, 1930, which applies to termination of service, had also no application as reversion of a probationer to his original post does not amount termination of service. In view of averments, it was held, the allegations of mala fide could not be sustained. The rule on the above findings was accordingly discharged. The appeal before us is against this decision.

10. At the hearing of the appeal, an affidavit was filed on behalf of the respondents disclosing some documents and the position appearing therefrom as also from the documents disclosed, is as follows:

* * * *

We have set out the relevant facts in details for examining the allegations of mala fide made against the respondents in passing the impugned order.

***We hold accordingly that there was no mala fides in the passing of the impugned order.

11. Mr. Chatterjee next contended that the probationary period could not be extended retrospectively and on the expiry of the probationary period originally provided, the petitioner became automatically confirmed in the post of Forest

Ranger. Reliance was placed on the decision in *State of Punjab Vs. Dharam Singh*, , in which the Supreme Court was considering Punjab Educational Service (Provincialised Cadre) Class III Rules (1961), Proviso to Rule 6(3) provided that the total period of probation including extensions if any shall not exceed three years and it was held that in case of an employee governed by the above rules where no express order of confirmation was passed, the employee must be deemed to have been confirmed to the post.

12. Mr. P. K. Sen Gupta, learned Government Advocate, contended on the other hand on reference to the relevant rules, that an employee cannot be confirmed in the post except by an express order of confirmation. He referred to the decision in *Shri Kedar Nath Bahl Vs. The State of Punjab and Others*, , in which it was observed:

Where a person is appointed as a probationer in any post and a period of probation is specified it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf. Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period, or there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. At the end of the period of probation an order confirming the officer is required to be passed and if no such order is passed and he is not reverted to his substantive post, the result is that he continues as probationer.

13. In light of above authorities we have to examine if there would be an automatic confirmation under the relevant rules on the expiry of the probationary period. There is no dispute that the relevant rules governing subordinate services is contained in the Rules published under Notification No. 779 T. F. dated June 14, 1926. The relevant rules are:

1. For the purpose of these rules

...(2) Probation means a Government servant appointed on probation. A Government so appointed (and continuing in service) remains a probation until he is confirmed.

3. For special reasons (which should be recorded) the appointing authority may extend a probationer's prescribed period of probation by a further period not exceeding half the prescribed period A period of probation may not be further extended without the special orders of the Governments obtained on a recommendation made by the appointing authority.

4. When a probationer is about to complete the period probation prescribed under Rule 2 the appointing authority shall record an order either confirming him with effect from the date of his completion of the prescribed period of probation or extending his period of probation or discharging him. Similarly when a probationer is about to complete an extended period of probation, the appointing

authority shall record an order either confirming him with effect from the date of his completion of the extended period of probation or discharging him, unless he has meantime received orders of Government sanctioning a further extension of the period of probation:

Provided that, if he has not on the date of expiry of the extended period of probation received the orders of Government on a recommendation under Rule 3, the appointing authority shall defer his order until those orders are received; the probationer meantime being permitted to continue in service.

Note 1-The term "discharge" in his chapter includes, in the case of probationer appointed by promotion from another service or post, reversion to that service or post.

Note 2 -A recommendation that a period of probation should be extended by Government should be submitted in such time as to enable the orders of Government to reach the appointing authority before the date of expiry of the subsisting extended period of probation.

14. On March 19, 1953, the Governor under powers conferred by the proviso to Art- 309 of the Constitution and other powers framed the Service (Training and Examination) Rules, West Bengal, which are the general rules governing, inter alia, the West Bengal General Service and Sub-ordinate Services and thus govern the service of the petitioner. Rule 16 provides as follows:

Rule 16. All existing rules and order to the training and probation of officers of the West Bengal Provincial, General and Subordinate Services in so far as they are not inconsistent with these rules, are hereby confirmed.

15. Rules 1(II), 3, 4 with notes of 1953 Rules are almost the same as Rules 1(2) and 3, 4 with notes of 1926 Rules.

16. Rule 6 of 1953 Rules (as amended by Notification 467F dated 12-8-64) is as follows:

Rule 6. An order discharging a probationer shall not indicate any grounds for the discharge but should be simple order of discharge.

17. On an interpretation of both sets of the rules, it appears to us that there is no provision therein for automatic confirmation of the probationer after expiry of the probationary period. On the contrary Rule 1(II) in either set of rules provide that a Government servant remains a probationer until he is confirmed. In view of the express provision that a probation remains a probationer until confirmed, the decision in Dharam Singh's case (supra) has no application to this case while the principle laid down in Kedar Nath's case (supra) is attracted and the petitioner in absence of an order of confirmation continued to be a probationer until the impugned order takes effect reverting him to his substantive post. Accordingly the petitioner's objection that there could be no extension of probationary period with retrospective effect cannot be sustained. It is much to

be desired that the necessary approval and orders for extension of periods of probation should be made before the expiry of the probationary period, as provided in the Rules, though failure to observe the same strictly according to Rules will not render the confirmation of probationer as a matter of course on expiry of probationary period without an express order of confirmation.

18. Mr. Chatterjee next contended that Rule 55B of the Civil Services (Classification, Control and Appeal) Rules, the petitioner was entitled to be apprised of the grounds of proposed action and given an opportunity to show cause against it before the order of reversion is passed. Rule 55B of the Civil Services (Classification, Control and Appeal) Rules, 1930 is as follows:

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, the probationer shall be apprised of the grounds of such proposal and given an opportunity to show cause against it, before orders are passed by the authority competent to terminate the employment.

19. The petitioner was never apprised of the proposal to revert him and Mr. Chatterjee contends was thus deprived of the opportunity to show cause against it,

Rule 41 of the Rules provides as follows;

The power to make rules regulating the conditions of service the pay and allowances and the pensions of a provincial service in any Governor's province is hereby delegated to the Local Government.

Rule 7 again preserves the operation of rule inter alia of provincial services which were in operation, on the date these 1930 Rules were made except in so far as they may be inconsistent with these Rules. The Service (Training and Examination) Rules, West Bengal, as we have seen, have been framed on March 19, 1953 under powers conferred by the proviso to Article 309 of the Constitution and this has an overriding effect unless protected by Rule 16. In view of the Rule 6 as amended it is no longer possible to hold that Rule 55B of Civil Services (Classification, Appeal and Control) Rules, 1930 has any application to probationers or employees of the Government of West Bengal who are governed by the West Bengal Rules, 1953. It is held accordingly that the petitioner was not entitled to be apprised of any ground of his unsuitability for the service before the impugned order was passed, even if such order is accepted as an order of termination of service. We are further of the opinion that the impugned order is not an order of termination of service, as held by the trial Court. On the contrary the order provides that the probationary period was not to be extended beyond March 31, 1967 and in view of his lien to his substantive post of Deputy Ranger Forester he was sent back to his substantive post.

20. Mr. Chatterjee has further contended that the impugned order is by way of

punishment, attaching a stigma on the petitioner as his being found unsuitable for the post. In *Ranendra Chandra Banerjee Vs. Union of India (UOI)*, , it was held that the procedure provided Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930 deals with cases of removal, dismissal or reduction in rank which are specifically covered by Article 311(2) of the Constitution and the procedure prescribed therein is meant for these three major punishments. That procedure, it was held, not applicable under Rule 55B which deals with discharge of a probationer which is not a punishment at all. It is obvious that the petitioner had no right to the post or rank of Forest Ranger and the order not extending his probationary period did not visit him with any evil consequences in his substantive post. In *Jagdish Mitter Vs. The Union of India (UOI)*, , the Court observed:

...It is obvious that temporary servants or probationers are generally discharged because they are not found to be competent or suitable for the post they hold...before discharging a temporary service the authority may have to examine the question about suitability of the said servant to be continued and acting bona fide in that behalf the authority may also give a chance to the servant to explain, if complaints are made against him, or his competence or suitability is disputed on some grounds arising from discharge of his work. There is no element of punitive proceedings in such an enquiry, the idea in holding such an enquiry is not to punish the temporary servant but just to decide whether he deserves to be continued in service or not.

21. It was held that it could not be said that the temporary servant whose case was under consideration in such state of affairs could invoke the protection of Article 311. In *State of Uttar Pradesh Vs. Akbar Ali Khan*, , it was held that the enquiry proceeding against the incumbent was merely proceeding held for the purpose of determining his probation and the order passed could not be punitive. Again in *State of Punjab and Another Vs. Shri Sukh Raj Bahadur*, , it was laid down that the services of a temporary servant or a probationer can be terminated under rules of his employment and such termination without more would not attract the operation of Article 311. Further an order of termination of service in unexceptional form proceeded by an enquiry launched by the superior authorities only to ascertain whether public servant should be retained in service does not attract the operation of Article 311 of the Constitution but a full scale departmental enquiry envisaged under Article 311, with an Enquiry Officer, charge-sheet, explanation and order of termination of service will attract the operation of the said Article,

22. In the present case, there was even no such enquiry for determining probation and performance of the petitioner in extended periods of probation. Ultimately the appointing authority did not consider it fit to extend the probationary period on the ground of the petitioner's being found not suitable for the post. This is a far cry from dismissal or termination of the service of the petitioner on ground of inefficiency or misconduct which will attract the operation

of Article 311. Mr. Chatterjee's further contention is that the finding that the petitioner was unsuitable for the post amounted to a stigma. The appointment as probationer in the nature of things postulates the testing of performance of probationer by the appointing authority. When this order of reversal is not by way of punishment, it is not possible to hold that there is any stigma in the order which involved no deprivation of the right of the petitioner to hold any office or visited him with any penal consequences in future career or loss of pay or allowances.

23. The last contention of Mr. Chatterjee is that the order of reversion is bad in law as the petitioner's appointment to the post of Forest Ranger was a fresh appointment and reversion to the post of Deputy Ranger Forester would mean a reduction to a lower post. It is difficult to appreciate this contention, as taken to its logical conclusion it may not be in the interest of the petitioner. It is obvious that his lien to substantive post of Deputy Ranger Forester was not extinguished but continued to be in existence. The probationary period not having extended and there being no confirmation, the petitioner automatically came back to his substantive post which is the meaning and implication of "reversion" in the impugned order, as otherwise he would be out of Government employment altogether.

24. For the above reasons and as all contentions on behalf of the petitioner-appellant fail, this appeal is dismissed and all interim orders are vacated. In the circumstances, there will be no order for costs..

A.C. Gupta, J.

25. I agree.