

(1960) 12 MP CK 0046
In the Madhya Pradesh High Court
Case No : M.P. No. 65 of 1958

Gopal Vishnu Pitre

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 17-12-1960

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (1961) JLJ 454

Hon'ble Judges : Shivdayal, J;K.L. Pandey, J;A.H. Khan, J

Bench : Full Bench

Advocate : P.L. Inamdar, for the Appellant; S.T. Mungre, Government Advocate for State, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Khan, J.—This is an application under Article 226 of the Constitution of India, challenging the order of the Madhya Bharat Government on 27-12-56.

2. The facts giving rise to this petition in short are that during the integration in Education Department, the petitioner was fixed as a Head Clerk in the office of the Director of Education, Against this order, the petitioner made a representation to Government and the Madhya Bharat Government by its order dated 28-10-56, ordered him to be made the Office Superintendent. Thereupon the Director of Education submitted to Government that in integrating the petitioner on the post of Office Superintendent, the claims of Sarvate have been over-looked. The Government seems to have reviewed its order and on 31-10-56 cancelled its previous order of 28-10-1956 and appointed Sarvate on the post of Office Superintendent, a post which he was already holding. At the time of reviewing its order, the Government gave no opportunity to the petitioner to be heard. The contention sought to be raised in this petition are two:-

(1) The impugned order was passed by the Government without giving him an opportunity.

(2) That the order amounts to reduction in post and attracts the application of Art. 311 of the Constitution.

3. I shall first deal with the second point first.

It would be evident from what has been stated above that the matter arises out of integration proceedings. It goes without saying that proceedings in integration are administrative in nature. I am afraid that this Court will not interfere with purely administrative orders.

4. Every integration necessarily involves a reorganisation of the various services in the several integrating States. Their Lordships of the Supreme Court in *Rajvi Amar Singh Vs. The State of Rajasthan*, have observed that "it is well established that when one State is absorbed in another, those who elect to serve in the new State serve on such terms and conditions as the new State may choose". The integration proceedings constitute an administrative act, in which the Government resorts to a process of "pick and choose". It is the discretion of the Government to retain any one on any post. In the words of the Supreme Court (*supra*). "it is nothing more (though on a more exalted scale) than an application of the principle that underlies the law of Master and Servant." From the very nature of things, the task integration is an onerous one; it is a matter of common knowledge that in the process of integration some are kicked upstairs, some are jerked down and some have no place either upstairs or downstairs. But integration being essentially an administrative affair, it would not be proper for High Court to interfere.

5. As to the attraction of Art. 311 of the constitution to this case, in integration, which is another name for "pick and choose", it is the suitability of a servant that is the main consideration. No blemish attaches to those, who are not absorbed or who are fixed on posts other than those they held. It is, therefore, obvious that in intention, there is no question of reduction in rank by way of punishment. In the Words of their Lordships of the Supreme Court *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , if termination (or for the matter of that reduction in rank) of service is brought about otherwise than by way of punishment, then a Government servant cannot claim the protection of Article 311.

6. Now I turn to examine the first point, namely, that before the review of his case, no notice was given to the petitioner prior to the cancellation of an order in his favour. It may be observed that the Government would have been well advised to observed the principles of natural justice even in passing administrative orders and give an opportunity to the petitioner to be heard. But the impugned order, arising out of integration is administration in nature; it does not call for the exercise of our extraordinary

7. For reasons stated above, the petition is dismissed without any order as to costs.

Shivdayal J.-8. The petitioner originally belonged to the services of the Madhya

Bharat in 1948 a general question of integration arose. The new State was not bound to absorb all the Government servants of the integrating State. However, they were all taken on by the new State on a probationary basis. The Departmental Integrated the petitioner as Head Clerk vide orders contained in the Director of Education letter No. 59-3 (1) 55 Integration, issued on December 27, 1955] aggrieved by this the petitioner preferred an appeal.

9. The Rajpramukh of Madhya Bharat by an order dated October 28, 1956, allowed the petitioner's appeal in these words:-

"On examining the case of Shri Pitre on merits and also from other aspects, the Government have decided that Shri Pitre was not integrated on the post on which he should have been, viz., that of Office Superintendent in the office of the Director of Education. The Government have therefore been pleased to allow Shri Pitre's appeal and accord sanction to-

(i) the confirmation of Shri Pitre on the post of Office Superintendent in the Education Department.

(ii) This will have effect from the date on which the orders contained in the Director of Education's, letter No. 58-3/(1) 55/Integration dated 27-12-55 were made effective."

(vide 1007/IX/E/34/56, dated October 28, 1956). This order was communicated to the petitioner on October 29, 1956. But two days later, in the night of October 31, 1956, the petitioner received another Order No, 6951/ IX-E/34/56, dated October 31, 1956 informing the petitioner that the Rajpramukh had been pleased to reconsider the case and cancel the order of the 28th October. This subsequent order of the 31st October reads thus:-

"On a reconsideration of Director of Education's Report No 12107, dated 30-10-1955, the Rajpramukh is pleased to reconsider the case and cancel the previous orders sanctioned (vide Education Department's memorandum No. 1807/IX-E/34/56, dated 28-10-1956). As a result of Shri Pitre's appeal abates".

It appears that the Director of Education made a report on the 30th October whereupon the Government reconsidered the case and cancelled the previous order.

10. The precise question in this petition is whether the impugned order of the 31st October by which the petitioner is aggrieved and which admittedly prejudiced his interests was hit by Art. 311 of the Constitution and must be held to be inoperative and void inasmuch as the requirements of Art. 311 were not complied with.

11. The State Government have admitted in their return not only the factum of the order of the 28th October, but also its validity. In other words, it is not the case of the State Government that the order of the 28th October was in any way unauthorized, ineffective or not binding on the State Government.

12. The Government order of the 28th October having been accepted to be a legal, valid and operative order, the effect of that order must be examined. By virtue of that order the petitioner was confirmed on the post of Office Superintendent in the Education Department with retrospective effect from December 27, 1955. It is vital that the petitioner thus became a permanent employee of the Madhya Bharat State and absorbed as such on a substantive post with effect from the last mentioned date. As soon as the order of the 28th October was communicated to the petitioner, all the benefits of S. 311 of the Constitution accrued to him, and he could not be reduced in rank or otherwise placed in a disadvantageous position without the formalities of that Article having been complied with.

13. The material events can be seen at a glance thus:

28th October-Rajpramukh allowed Pitre's appeal.

29th October-Order communicated to Pitre

30th October-Director of Education submitted a report to Government.

31st October-Rajpramukh cancelled the order of the 28th.

31st October-Order communicated to Pitre and M. B State ceased to exist at midnight.

1st November-New State of Madhya Pradesh formed.

Thus on the eve of the formation of the State of Madhya Pradesh, consequent on the Reorganisation of States, rather on the last day when the State of Madhya Bharat was ceasing to exist, and within only 3 days that the order favourable to the petitioner had been passed and communicated, the impugned order was made in contravention of Art. 311. The petitioner calls it "break neck haste" but I am not concerned with any sentimentalism. However, it remains a fact that the effect of the order of the 31st October was undoubtedly to reduce the petitioner to a lower rank.

14. The only argument advanced by the learned Government Advocate is that all this took place in the "process of integration" and if on the 28th October, the petitioner could be ordered to be integrated as an Office Superintendent, the Government was within their right to revise and revoke that order in the process of integration and absorb the petitioner on a lower post. The argument at first sounded attractive, but on a reflection I have formed the view that it must be rejected. As soon as the order of the 28th October was passed the integration, so far as the petitioner was concerned, was complete. To put it differently, he was absorbed as a permanent Government servant on the substantive post of the Office Superintendent. That order of the Rajpramukh, it would bear repetition, has not been challenged as inoperative or ineffective. Integration is not an unending process. On the formation of the Madhya Bharat State the petitioner's service as a servant of the former Gwalior State terminated automatically, but

the petitioner was taken on by the new State on the condition that he would be absorbed, if at all, only on that post to which he would be found suitable. On his entering into the Madhya Bharat Government service, the petitioner must be deemed to have accepted that condition. But on October 28, 1956, when the Rajpramukh confirmed him on the post of the Office Superintendent, that condition terminated and the absorption of the petitioner was now unconditional. He became a full-fledged permanent Government employee on a substantive post, so as to be entitled to all the benefits of Art. 311.

15. The argument of the learned Government Advocate that the report which the Director of Education made to the Government on the 30th October was in continuation of and connected with the Government order of the 28th October, has no weight. In spite of sufficient opportunity having been given, and in spite of having been pointedly asked, to produce the rule or regulation under which the Director of Education made that report and the Government reviewed their order of the 28th October, the learned Government Advocate has not been able to place before us any such rule or regulation. All that he contends is that the Government could in exercise of their sovereign power review and revoke the earlier order. If I may say so, this is divesting from the main issue. If I am right in conclusion, as I think I am, that the effect of the order of the 28th October was that the petitioner was absorbed on a substantive post in the permanent service of the State unconditionally, he could by no subsequent order--by no process and by no means--be directed to hold a lower post without fulfilling the requirements of Art. 311. It does not matter whether the order reducing him in rank was passed after two years or two months or two days.

16. On behalf of the State reliance is placed on the decisions of the Supreme Court in *Rajvi Amar Singh Vs. The State of Rajasthan*, , and *P.L. Dhingra Vs. Union of India*, AIR 1958 SC 35. The first case is cited for the proposition that when one State is merged in another, those who elect to serve in the new State and are taken on by it shall serve on such terms and conditions as the new State may choose to impose. I am unable to appreciate what support the learned Government Advocate can derive from this authority on the question under consideration.

17. *Dhingra's* case is relied on in support of the argument that a Government servant cannot claim the protection of Art. 311 unless the reduction is by way of punishment, and since in the case in hand the order of the 31st October was not passed because of any blemish it was not by way of penalty. In my opinion, effect cannot be given to this argument when the following observations of Lordship S. R. Das, C. J., who delivered the judgment of the majority in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, are borne in mind:-

"Shortly put the principle is that when a servant has right to a post or to a rank either under the terms of the contract, of employment express or implied or under the rules governing the conditions of his service the termination, of the service of such a servant or his reduction to a lower post is by itself and prima

facie a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto..One test for determining whether the termination of the service of a Government servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post. If he had a right to the post, the termination of his Service will by itself be a punishment and he will be entitled to the protection of Art. 311"

As applying these diets, as soon as the petitioner was appointed on the substantive post of Office Superintendent under a valid and effectual order of the Government, he acquired a title to that post and but for the Government order of the 31st October he had the right to hold it. Reduction in grade by the impugned order was itself a punishment and he is entitled to protection of Art. 311.

18. It is an admitted fact that the Madhya Bharat Government did not comply with the imperative requirements of Art. 311 before making the impugned order of the 31st October. No notice or opportunity was given him. As such it must be held void and in-effective and must be quashed.

19. I would, therefore, allow the petition and order a mandamus to be issued to the State Government directing it to treat the order of October 31, 1956, as void and inoperative and to give effect to its necessary consequences. The petitioner shall get Rs. 100 by way of costs.

Pandey J. -20. The main question is whether Article 311 (2) of the Constitution applies to the facts of this case. The petitioner was an employee of the erstwhile Gwalior State which merged on 15th April 1948. The process of integration of services of the various princely States, including Gwalior State, constituting the new State of Madhya Bharat continued right up to 1st November 1956 when, in pursuance of the provisions of the States Reorganisation Act, 1956, the new State of Madhya Pradesh came into existence. By an order of the Director of Education, dated 27th December 1955, the petitioner, who was treated to have been a clerk on 15th April 1948 was directed to be integrated as a Head Clerk. Being aggrieved by that order, the petitioner filed an appeal claiming that, on 15th April, 1948, he was working as a Camp Clerk and was not a mere clerk in the office of the Director of Education. The Government of Madhya Bharat, by their order dated 28th October 1956 accepted the appeal accorded sanction to confirmation of the petitioner on the post of Office Superintendent in the Education Department and reverted one R. V. Servate who was in consequence, directed to be integrated as a Head Clerk. On 30th, October 1956, the Director of Education submitted a report in which he pointed out that the order dated 28th October 1956 proceeded on a misconception because it omitted to consider several material facts. Thereupon, by the impugned order dated 31st October 1956, the order dated 28th October 1956 was reconsidered and set aside and the petitioner's appeal was dismissed. The petitioner again represented but the Government of the new State of Madhya Pradesh declined to re-open the case.

21. So far as the merits of the case are concerned, the petitioner has not produced any order showing that he was substantively appointed to the post of a Camp Clerk at any time prior to 15th April 1948. Materials placed on record appear to be contra-indicative. In any event, this is a disputed question of fact which cannot be investigated in these proceedings.

22. Shiv Dayal J. differing from Khan J. took the view that Rajvi Amar Singh vs. The State of Rajasthan (1958 S. C. R. 1013) had no application to this case. In my view, it does apply because the petitioner can claim to serve only on such terms and conditions as the new State of Madhya Bharat chose to give him. By the final order dated 31st October 1956, he was integrated as Head Clerk and he is, therefore, disentitled to claim a higher post. But it is claimed that he was previously integrated as Head Clerk and he is, therefore, disentitled to claim a higher post of Office Superintendent and was also confirmed on that post, which could not be taken away from him in disregard of the protection afforded to him by Article of the Constitution. To this, there are, as I will show in a moment three answers.

24. By the order dated 28th October 1956, the Government of Madhya Bharat were pleased to "accord sanction to the confirmation of Shri Pitre on the post of Office Superintendent in the Education Department." This was merely a sanction accorded for the petitioner's confirmation and was not, by itself, the order of confirmation, which was to be passed in due course by the Director of Education. It would further appear that before the order of confirmation pursuant to the aforesaid sanction was passed, the sanction itself was revoked. That being so, the petitioner is disentitled to claim that he was confirmed as Office Superintendent

25. Shivdayal J. took the view that once a servant of a State is confirmed on a post, he cannot be reduced in rank without affording to him the protection of Article 311 (2) because, in such a case, the reduction itself amounts to a punishment. He relied upon the following observations of the Supreme Court in Parshotam Lal Dhingra Vs. Union of India (UOI), at p. 860):-

"Shortly put, the principle is that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied or under the rules governing the conditions of his service, the termination of the service of such a servant or his reduction to a lower post is by itself and prima facie a punishment, for it operates as a forfeiture of his right to hold that post or that rank and to get the emoluments and other benefits attached thereto----one test for determining whether the termination of the service of a Government servant is by way of punishment is to ascertain whether the servant, but for such termination, had the right to hold the post. If he had a right to the post as in the three cases herein-before mentioned, the termination of his service will by itself be a punishment and he will be entitled to the protection of Article 311."

In my opinion, reduction of a servant of a State from a post on which he was

previously confirmed is only a test for ascertaining whether he was or was not reduced in rank as a measure of punishment. It is not of universal application. In Dhingra's case, the Supreme Court observed at page 844 as follows:-

"The cases cited before, us also indicate that the preponderance of view is that only a dismissal or removal or reduction in rank by way of penalty attracts the operation of Art. 311 (2), but that a termination of service brought about otherwise than by way of punishment e. g., by the exercise of the right under the terms of employment or under the relevant rules regulating the conditions of service which form part of the terms of employment does not"

Therefore, it has to be considered with due regard to the facts and circumstances of each case whether the reduction in rank was by way of punishment. Supposing a servant of the State confirmed by mistake or on a post which does not exist, or on a temporary post, it is obvious that, when that order of confirmation is subsequently revoked, there can be no question of punishment. Again, when there are rival claimants for confirmation to only one post which is available and the junior incumbent is confirmed, there can be no question of punishment if, upon a representation being made to the higher authorities, his confirmation is revoked and the senior incumbent is confirmed. It will be seen that these are normal incidents of service and in orders, such as these, there is no element of punishment because the revocation is not due to any fault or deficiency of the incumbent effected. In my view, orders passed in the course of integration proceedings are not different. In this case, the petitioner was integrated on the post of a Head Clerk because, on the crucial date (15th April 1948) it was found and accepted by the authorities concerned that he was substantively employed on the post of a Clerk and not on the post of a Camp Clerk. No question of punishment was involved when the general principles of integration were applied to the petitioner on the facts thus found.

26. It would appear from Ex. D. 7 that R. V. Sarvate had been confirmed on a post of Office Superintendent. When the petitioner's appeal was allowed on 28th October 1956, R. V. Sarvate was reverted to the post of Head Clerk. If the petitioner could not be reverted because he claims that he had been confirmed, R. V. Sarvate also could not be reverted without affording to him the protection available under Article 311. If so, there was no vacancy and the order dated 28th October 1956 sanctioning the petitioner's confirmation could not be validly passed. It was in these circumstances that the Director of Education reported on 30th October 1956 that the order sanctioning the petitioner's confirmation proceeded upon a misconception and that order was in consequence reviewed by the order impugned in these proceedings. I am of the opinion that, in the circumstances of this case, there is no ground for interference.

27. Since the whole case has been referred to me, I hold agreeing with Khan J. that this petition must fail. Accordingly it is dismissed without any order about costs. The outstanding amount of security shall be refunded.