

(1962) 05 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1813 of 1961

Har Prasad Gupta

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 09-05-1962

Acts Referred:

Constitution of India, 1950 — Article 226, 233, 309, 311

Evidence Act, 1872 — Section 124

Uttar Pradesh Higher Judicial Service Rules, 1975 — Rule 19, 28, 4(3), 6

Citation : AIR 1963 All 415 : (1964) 1 LLJ 607

Hon'ble Judges : D.S. Mathur, J

Bench : Single Bench

Advocate : S.N. Misra and Prakash Gupta, for the Appellant; H.N. Seth, J.S.C., for the Respondent

Final Decision : Dismissed

Judgement

D.S. Mathur, J.—This is a petition under Article 226 of the Constitution of India by Har Prasad Gupta for the issue of a writ of certiorari to quash the order dated 13-3-1961 of the State of Uttar Pradesh (communicated to the petitioner under Annexure "L" to the affidavit) and for such other and suitable order or direction as may be just and proper. A request was also made for the issue of a writ of mandamus to direct the respondent to treat the petitioner as having been appointed as District and Sessions Judge in pursuance of Rule 6 of the Uttar Pradesh Higher Judicial Service Rules, 1953, as and from June 16, 1953, and to treat the petitioner as having been confirmed with effect from November 18, 1953, in the substantive vacancy caused on the retirement of Sri R. K. Chowdhary.

2. It may at the very outset be observed that the present petition was filed on 13-7-1961 at the time the petitioner was in service and was posted at Bareilly as District and Sessions Judge, Bareilly, but it could not be decided till his retirement. The petitioner retired from service on December 31, 1961, and is no

longer in service. This fact shall be of importance in laying down whether the present is a case where this Court may exercise its extraordinary jurisdiction under Article 226 of the Constitution of India.

3. The admitted facts of the case are that the petitioner was selected as a Munsif in the year 1928 as a result of the competitive examination held in the State and his position was above Mr. C. B. Kapoor. The petitioner was junior to late Sri R. K. Singhal. The petitioner was confirmed as munsif and later as Civil Judge retaining his original seniority. He was in due course confirmed as Civil and Sessions Judge in the Uttar Pradesh Higher Judicial Service with effect from July 7, 1951. The order of seniority remained unaffected. He was appointed Additional District and Sessions Judge of Meerut, Moradabad and Aligarh with effect from June 16, 1953, according to the petitioner, in a substantive vacancy, meaning thereby substantively; but according to the respondent, the appointment was in an officiating capacity, though on a substantive post. The respondent's version is supported by documents on record and can be accepted. If the petition is read as a whole the position taken by the petitioner cannot be properly appreciated. It is said at one place that once the petitioner was appointed a District and Sessions Judge, he was so appointed in a substantive capacity; but in the relief sought for he himself sought for confirmation from a subsequent date meaning thereby that the appointment prior to the date from which he could be confirmed was in an officiating capacity and he should be deemed to be holding the substantive rank of the District and Sessions Judge with effect from November 18, 1953, and not earlier.

4. Through the letter dated 12-1-1954 of the Registrar of the High Court of Judicature at Allahabad the petitioner was informed to keep himself in readiness and to finish the part-heard cases as he was likely to be posted as officiating District and Sessions Judge, Rampur. It may here be mentioned at the risk of repetition that in the letter the word "officiating" has been used, but the petitioner claims that his appointment was on substantive basis. The petitioner was thereafter informed that his transfer order had been cancelled and he was to continue in the same post at Meerut. In July 1954, many Civil and Sessions Judges some of whom were junior to the petitioner were confirmed as District and Sessions Judges, but the petitioner was not so confirmed. He thereupon sent a D. O. letter dated 16-8-1954 (Annexure "B" to the affidavit) to the Registrar and was informed under letter dated 7-9-1954 (Annexure "C" to the affidavit) that the question of his confirmation as District and Sessions Judge was under consideration. As Additional District and Sessions Judge, Meerut, Moradabad and Aligarh the petitioner served at Meerut and later at Aligarh. The petitioner was later informed in February 1955 that he was to revert as Civil and Sessions Judge.

The petitioner's case in this connection is that his confirmation as District and Sessions Judge in the vacancy caused on the retirement of Sri R. K. Chowdhry on 18-11-1953 was recommended by the High Court but the said recommendation was unjustly turned down by the respondent. The respondent's version is

contained in paras 5 (a) and 5 (b) of the counter-affidavit. A privilege was claimed with regard to the recommendation of the High Court; but in para 5 (b) material particulars were given. It is clearly mentioned therein that the High Court recommended the confirmation of the petitioner as District and Sessions Judge in the above vacancy, but when the attention of the High Court was drawn towards various shortcomings of the petitioner and complaints of very serious nature against him, the High Court agreed to reconsider his case and thereafter agreed with the State Government and recommended that the petitioner be reverted to his substantive post of Civil and Sessions Judge. It was on reversion that he was to be posted as Civil and Sessions Judge, Sultanpur. On the request of the petitioner the respondent was directed to produce the necessary records for the perusal of the court. The records were made available. These records also show that the assertions contained in para 5 (b) of the counter-affidavit are correct. Further comments on this point shall be made later.

5. On receipt of the intimation that he was to revert as Civil and Sessions Judge the petitioner had an interview with the then Hon'ble the Chief Justice who directed him to submit a representation. This fact has not been admitted nor denied by the respondent. The fact, however, remains that the petitioner did make a representation with the request that he be not reverted till the representation was decided. The petitioner also desired that the reasons for his non-confirmation and reversion be communicated to him and he given an opportunity to explain them; but he was informed under letter (Annexure "E" to the affidavit) of the Registrar that there was no such rule. The petitioner then proceeded on four months' leave with effect from July 4, 1955. and it appears that he remained on leave upto the middle of January 1956.

The petitioner made another representation to His Excellency the Governor of Uttar Pradesh on 22-8-1955 wherein he made a reference to his talks with the Hon'ble the Administrative Judge, now the Chief Justice of this Court. The petitioner says that it was as a result of the representations that on return from leave he was posted as Additional District and Sessions Judge, Aligarh, and was subsequently transferred to Azamgarh as District and Sessions Judge. The respondent's case on this point is that after consideration of the representations the petitioner was allowed to work as officiating District and Sessions Judge and it was also decided to watch his work for one year, a period which was later extended. His appointment is said to be in an officiating capacity. The petitioner submitted a supplementary representation to the Chief Secretary to Government on 2-12-1958, but it was rejected and information communicated to the petitioner under D. O., Annexure "J" to the affidavit. The suggestion made by the petitioner is that the High Court throughout made a recommendation in favour of the petitioner and such was the recommendation of the Chief Secretary also, but the Hon'ble the Minister concerned withheld the confirmation and later confirmed him from a much later date. This has been denied by the respondent. For the disposal of the present petition it is not necessary to express any opinion on this allegation.

6. The petitioner was later confirmed as District and Sessions Judge with effect from 14-7-1959 even though his juniors confirmed under the same notification were confirmed from earlier dates. He thereupon preferred an appeal under Rule 56 of the Civil Services (Classification, Control and Appeal) Rules, 1930 to His Excellency the Governor of U. P. but it was treated as a representation and was dismissed under G. O. dated 13-3-1961. The order of dismissal of the appeal was communicated to the petitioner by the High Court and the said letter (Annexure L to the affidavit) was received by him on or about 16-4-1961.

7. The matters in controversy can be summarised in a few words. The petitioner is feeling dissatisfied and has asked for the necessary reliefs on account of his reversion as Civil and Sessions Judge in July 1955 and the respondent withholding the certificate that he would have continued to officiate as District and Sessions Judge had he not proceeded on leave, and also on account of his late confirmation as District and Sessions Judge with consequential loss in seniority. The petitioner's case is that he should have been confirmed as District and Sessions Judge with effect from 18-11-1953, in any case, he should have been confirmed prior to his juniors' confirmation as such under the same notification.

8. The scope of Article 226 of the Constitution of India is now beyond controversy. The writ jurisdiction is an extraordinary one and can be exercised only in cases where any improper exercise or non-exercise of jurisdiction has caused manifest, i. e., substantial, injustice to the party. Where no injustice was caused, this Court can refuse to exercise the jurisdiction under Article 226 even though some irregularity was committed by the respondent. It will, therefore, be proper to consider in what manner the rights of the petitioner have been affected by the alleged illegal or improper orders of the respondent.

9. By his reversion as Civil and Sessions Judge and the respondent not granting the certificate that the petitioner would have continued to officiate as District and Sessions Judge had he not proceeded on leave from July 4, 1955, to the mid-day of January, 1956, the petitioner has suffered a loss in many ways. The date of increment was advanced to the extent of the period he then remained on leave, i. e., from 16th June to 25th December, every year. This naturally resulted in loss of salary throughout the service. The reversion could not agree the leave salary due for the period of that leave as leave salary depends upon the average of pay drawn during the previous 12 calendar months; but it would affect the leave salary due for the leave taken during the subsequent period of service. In other words, the petitioner has suffered a loss by his reversion as Civil and Sessions Judge during the above period of his leave; but by the late confirmation as District and Sessions Judge the petitioner has not suffered any loss. Whatever loss he has suffered is the result of his reversion as Civil and Sessions Judge during, the above period of leave. To avoid confusion one must view the two matters in issue separately, i. e., to disregard the reversion as Civil and Sessions Judge during the above period while determining the effect of late confirmation

as District and Sessions Judge. To put it differently, we should proceed with the assumption that the reversion of the petitioner as Civil and Sessions Judge was legal, and then determine if he suffered any loss by his late confirmation as District and Sessions Judge.

10. Clause (bb) was added to fundamental Rule 26 of the Financial Hand Book Col. 11 under correction slip No. 79 dated December 31, 1955, and the amendment was given retrospective effect from April 1, 1954. As a result of this amendment any period of leave on average pay upto a maximum of four months taken at a time counts for increment in the time scale applicable to the post in which a government servant was officiating at the time he proceeded on leave and would have continued to officiate but for his proceeding on leave. The period which counts for increment under this clause is, however, restricted to the period during which the government servant would have actually officiated in the post. The petitioner officiated as District and Sessions Judge after his return from leave in January 1956 and never reverted as Civil and Sessions Judge, till his confirmation as District and Sessions Judge on 14-7-1959. It is not alleged that he had at any occasion subsequent to January 1956, proceeded or leave other than leave on average pay for a period exceeding four months. He was, therefore, entitled to the benefit of F. Rule 26 (bb) and all the periods of leave would have been counted for increment. In other words, the date of increment remained unaffected since after January, 1956; and for that reason, the salary and also the leave salary were not affected by delayed confirmation as District and Sessions Judge.

11. The rules of pension are complicated and it was, therefore, considered desirable to obtain the opinion of the Accountant General, U. P., Allahabad, as to the pension admissible to the petitioner. The Junior Standing Counsel addressed the Accountant General for furnishing his opinion. The reply of the Accountant General addressed to the Junior Standing Counsel has been placed on the record and a copy thereof was supplied to the petitioner. The petitioner concedes that this report is correct and that he is entitled to the maximum pension including additional pension etc., admissible under the rules. In other words, his pension has not, in any manner, been affected by his late confirmation as District and Sessions Judge.

12. The petitioner has, of course, lost in seniority but this point can . now easily be overlook-ed. The petitioner is no longer in service, and the State Government is free to re-employ him on the old post or any other post, if it so desires, irrespective of the seniority which he may have had at the time of his retirement. At this place it may also be observed that the State Government is not bound to offer a post in the same grade to a Government servant strictly on the basis of seniority. Appointments to special posts are made irrespective of seniority and instances of such appointments are not uncommon. In other words, therefore, the loss in seniority could not, at least at present, give any cause of grievance to the petitioner. The loss in seniority can, in the circumstances, be completely

overlooked, and for this reason it is not necessary for me to express any opinion on the validity of the amendments made to Rule 20 of the U. P. Higher Judicial Service Rules.

13. The above can be summarised by laying down that, in substance, the loss or injury which the petitioner has suffered is by his reversion as Civil and Sessions Judge in July 1955, and his being treated as Civil and Sessions Judge till the expiry of his leave in January, 1956, and not by the late confirmation as District and Sessions Judge. In the circumstances, we can confine ourselves to the legality or propriety of the order of the respondent as a result of which the petitioner was so reverted as Civil and Sessions Judge for the period of leave from July 1955 to January 1956.

14. At this place it may also be observed that the High Court of Judicature at Allahabad is not a party to the present proceeding. Only the State of Uttar Pradesh was impleaded as a respondent and, consequently, any recommendation made by the High Court cannot be challenged in the present proceeding. It shall, however, be open for the petitioner to challenge only such order or decision of the State Government as is not in conformity with the recommendation of the High Court.

15. As already mentioned above, the State Government did claim privilege with regard to the recommendation of the High Court regarding the non-confirmation of the petitioner and his reversion as Civil and Sessions Judge; but in para 5 (b) of the counter-affidavit sufficient material was given to show that final orders of the State Government were in accordance with the final recommendation of the High Court. The record of the Secretariat was also made available for the perusal of the Court, but not of the petitioner. The learned Advocate for the petitioner has raised an objection to the conduct of the respondent in not allowing inspection of this record. The suggestion made is that once the order of the State Government was being challenged, it was necessary for the State Government to place all the original documents on the record and, in any case, to make them available for inspection by the other party, and when this has not been done, the Court should draw an inference adverse to the State Government by holding that the facts were as alleged by the petitioner.

Reliance was placed upon certain observations made in the case of A. Ramachandran Vs. A. Alagiriswami, Govt. Pleader High Court, Madras and Another, This decision cannot be of any help to the petitioner for the simple reason that the facts are different. In that case the affidavit filed by or on behalf of the Government was evasive without containing material facts. In the present case the substance of the recommendation was noted in para 5 (b) of the counter-affidavit. The records were also made available for the inspection of the Court so that it may be evident that the respondent is not guilty of concealment or misrepresentation of facts.

16. It cannot rightly be disputed that correspondence with regard to confirmation

or non-confirmation of a government servant is of a confidential nature about which the State Government can claim privilege. It will also not be desirable in the public interest to make such confidential documents an open secret. The State Government can thus claim privilege with regard to such documents though it must give material facts in the affidavit and make the documents available for the inspection of the Court, so that only the confidential part of the correspondence is not brought on the record and the remaining material is utilised for the decision of the case, and at the same time judgment is based on true facts.

17. The learned Advocate for the petitioner also urged that when the documents were perused by the Court, a view with regard to their contents shall be formed ex parte and such a procedure was illegal and unwarranted by the law. As the learned Advocate has raised a legal objection to the procedure adopted, it is but necessary to consider the matter in a strict legal form. If the documents cannot be utilised for verifying the correctness of allegations or counter allegations contained in the counter-affidavit, there shall be on the record the affidavits of the parties and nothing else. The writ jurisdiction is not meant to decide controversial questions of fact. Where the respondent has made an assertion in the counter affidavit and that assertion is challenged, by the petitioner, the question shall be one in controversy which cannot be decided on the basis of affidavits on record. Such a controversial question can be left open for final decision in a regular suit, and for purposes of the present proceeding this Court can assume that the counter affidavit contains true facts.

18. To put it differently, from whatever angle the matter is looked into, this Court while exercising jurisdiction under Article 226 shall have to start with the assumption that the High Court had originally recommended the confirmation of the petitioner as District and Sessions Judge in the vacancy caused on the retirement of Sri R. K. Chowdhry with effect from 18-11-1953, but the State Government did not agree with the recommendation and made a request to the High Court to reconsider the question and on reconsideration the High Court agreed with the State Government and made a fresh recommendation that the petitioner be not confirmed and instead reverted as Civil and Sessions Judge. It was on receipt of the reconsidered opinion of the High Court that the State Government directed and thereafter the High Court issued orders that the petitioner was to revert as Civil and Sessions Judge; and further, during the period of leave the petitioner was to be treated as Civil and Sessions Judge and not one who would have officiated as District and Sessions Judge had he not proceeded on leave.

19. The power of appointment, and posting and promotion of District Judges vest in the Governor of the State but such power has to be exercised in consultation with the High Court. The words "in consultation" are of importance and if the law is construed strictly it is open for the Governor of the State to differ from the High Court and not accept its recommendation. The constitutional provision

simply is that the High Court shall be consulted before any District Judge is appointed, posted or promoted by the Governor of the State. It is a different thing that the Governor of the State may, by convention or otherwise, not differ and pass an order in consonance with the recommendation of the High Court, for the simple reason that the High Court knows more about its officers than the Governor of the State. But any convention or practice cannot take the place of law nor of the Constitution. In other words, therefore, the Governor of the State had the power not to accept the original recommendation of the High Court and to pass an order not in conformity with the recommendation of the High Court; but in the present case the Governor did not act in such a manner and referred the matter to the High Court for reconsideration and later passed orders on the basis of the reconsidered recommendation of the High Court. The eventual order passed was with the concurrence of the High Court and as such the order cannot be considered to be illegal, all the more, when the recommendation of the High Court cannot be challenged in the present proceeding. On merits, therefore, the order of reversion as Civil and Sessions Judge cannot be successfully challenged by the petitioner.

20. I shall now comment upon the other objections raised by or on behalf of the petitioner while challenging the legality of the above order. It is said that Rule 6 of the U. P. Higher Judicial Service Rules contemplates a substantive appointment as District and Sessions Judge, and consequently when a District and Sessions Judge is reverted as Civil and Sessions Judge, he is, in the eye of law, reduced in rank and no such reduction is permissible unless compliance of Article 311 of the Constitution of India is made. It is also said that even otherwise the reversion amounted to reduction in rank and compliance of Article 311 of the Constitution was necessary. The order of reversion was also challenged on the ground that it is arbitrary and discriminatory and, consequently, hit by Article 16 of the Constitution of India.

21. "The Service" contemplated by the U. P. Higher Judicial Service Rules is the "U. P. Higher Judicial Service" and "members of the Service" are those who are appointed in a substantive capacity under the provisions of the rules, to a post in the cadre of the Service. The word "cadre" has been defined in Fundamental Rule 9(4) of the Financial Hand Book, Vol. II, as the strength of a service or a part of a service sanctioned as a separate unit. There can, therefore, be a cadre for the whole of the service or cadre for separate units of the service. The two units of the U. P. Higher Judicial Service are detailed in Appendix "A", There is, therefore, one cadre of District and Sessions Judges and the other of Civil and Sessions Judges. The posts included in the two cadres are of District and Sessions Judge and of Civil and Sessions Judges. Grade is correlated to cadre or to post in the cadre; and appointment to the grade shall mean appointment to the cadre or to a post in the cadre.

22. The petitioner was appointed substantively as Civil and Sessions Judge with effect from July 7, 1951, and from that day became a member of the Service,

though he held the rank of & Civil and Sessions Judge. As the Service is the same, he would continue to be a member of the Service on promotion as District and Sessions Judge. Rule 19 of the U. P. Higher Judicial Service Rules governs the appointment of Civil and Sessions Judges, and the rule contemplates appointment in a substantive, temporary or officiating vacancy. It was on the basis of this rule that it was contended that no District and Sessions Judge could be appointed on a temporary or officiating basis and once he was appointed he would be deemed to have been appointed substantively. No such inference can be drawn on consideration of various rules contained in the U. P. Higher Judicial Service Rules.

23. Rule 4 (3) gives the power to the Governor to leave unfilled or hold in abeyance, any post without thereby entitling any person to compensation. Any substantive vacancy can thus be left unfilled and when, the post is unfilled, it means that no one is appointed in a substantive capacity. However, for carrying on the work, it is open for the Governor to appoint temporary or officiating District and Sessions Judges. If Rule 4 (3) is given a proper meaning, it shall have to be held that the Governor can make officiating appointment against a substantive vacancy. Further, Rule 28 provides that except as provided in these rules, the pay, allowances, pensions, leave and other conditions of service, shall be regulated by rules made under Article 309 of the Constitution, and pending the issue of such rules, by the rules made applicable by Government notification No. A-5822/X-303, dated November 14, 1930. and No. G-698/X-534 (44), dated July 16, 1937., and continued in force under Article 313 of the Constitution of India.

The Preface of the Financial Hand Book, Vol. II, Revised Edition 1941-42 (Reprint) makes it clear that the rules contained therein were made applicable under Notification No. A-5822/X-303, dated November 14, 1930. In other words, therefore, Members of the U. P. Higher Judicial Service shall be governed by the rules contained in the Financial Hand Book, unless, of course, such rules are repugnant to the rules contained in the U. P. Higher Judicial Service Rules. Fundamental Rule 9 (19) of the Financial Hand Book clearly provides that the government may appoint a government servant to officiate in a vacant post on which no other government servant holds a lien. Officiating appointment in a substantive vacancy is thus permissible. In other words, it is open to the State Government not to confirm any one in a substantive vacancy but to make an appointment in an officiating capacity.

24. Rule 6 of the U. P. Higher Judicial Service Rules, if considered in the above light and also if considered by itself, will make it clear that an appointment to the grade of District and Sessions Judge is not necessarily made in a substantive capacity. Rule 6 also applies to Legal Remembrancer. Deputy Legal Remembrancer and Registrar of the High Court -- posts which are included in the cadre of District and Sessions Judges. Rule 6 by itself lays down that appointment to these three posts can be made in a temporary capacity.

Appointment in a substantive vacancy in a temporary capacity is none other than an officiating appointment in a substantive vacancy.

25. If Rule 6 is given a contrary meaning, namely, that once an appointment is made as District and Sessions Judge, the appointment is in a substantive capacity and the person cannot be reverted without the compliance of Article 311 of the Constitution, it will lead to absurdity. Instances of permanent District and Sessions Judges going on leave are not uncommon. If no appointment in an officiating or temporary capacity can be made, the post shall have to be left unfilled for the period of leave, otherwise, an officer appointed in an officiating capacity shall also become a substantive District and Sessions Judge. Further, no one can be deemed to have been confirmed on a post or in a grade or in the cadre of a service unless an order of confirmation is passed. Without any order of confirmation appointment made in an officiating capacity shall continue as such and the holder thereof cannot be deemed to have any right to continue on that post.

26. The scope of Article 311 was considered by the Supreme Court in numerous cases, the important one being Parshotam Lal Dhingra Vs. Union of India (UOI), The law was summarised in para 29 of the report as below :

"Applying the principles discussed above it is quite clear that the petitioner before us was appointed to the higher post on an officiating basis, that is to say, he was appointed to officiate in that post which according to the Indian Railway Code, Rule 2003 (19) corresponding to F. R. 9, (19) means that he was appointed only to perform the duties of that post. He had no right to continue in that post and under the general law the implied term of such appointment was that it was terminable at any time on reasonable notice by the Government and, therefore his reduction did not operate as a forfeiture of any right and could not be described as reduction in rank by way of punishment. Nor did this reduction under Note 1 to Rule 1702 amount to his . dismissal or removal. Further, it is quite clear from the orders passed by the General Manager that it did not entail the forfeiture of his chances of future promotion or affect his seniority in his substantive post."

27. A reference may also be made to a few other observations of their Lordships of the Supreme Court. It was observed in Para 26, that one test for determining whether the termination of the service of a government servant was by way of punishment was to ascertain whether the servant, but for such termination, had the right to hold the post. A person holding a post in an officiating capacity has no right to hold the post. In para 27 it was made clear that the services of a temporary or officiating employee could be terminated on account of misconduct, negligence, inefficiency or other disqualification, without holding any departmental enquiry, though it is open for the Government to take further steps and pass the order of dismissal or removal after holding an enquiry as contemplated by Article 311. Similarly, it was observed at page 49 Column 2 (para 28) that the real test for determining whether the reduction in such cases

was or was not by way of punishment was to find out if the order for the reduction also visited the servant with any penal consequences. Instances of penal consequences were dealt with thereafter which could be forfeiture of pay or allowances, or the loss of seniority in the substantive rank or the stoppage or postponement of future chances of promotion.

28. Coming to the instant case there was no forfeiture of pay or allowances which were due or payable for the period of the officiating appointment. There was loss of seniority in the grade, but not in the substantive rank. There was also no stoppage or postponement of future chances of promotion, as admittedly the petitioner was again appointed to officiate as District and Sessions Judge in the month of January, 1956, and was later confirmed as such. *Parshotam Lal Dhingra Vs. Union of India (UOI)*, is thus clearly against the petitioner and his reversion to his substantive post as Civil and Sessions Judge cannot be deemed to amount to reduction in rank.

29. The case of *Shri Madhav Laxman Vaikunthe Vs. The State of Mysore*, relied upon by the petitioner, can also be of no help to him. Therein as a result of the reversion the position of the government servant in the selection grade of the substantive post was affected and the question of promotion to the higher grade could not be considered for a period of three years. The loss in seniority in the Selection grade and also nonpromotion to the higher grade for a specified period were the direct result of the order of reversion and these two were, in the eye of law, penal consequences as contemplated by AIR 1953 SC 36. It was for this reason that their Lordships of the Supreme Court allowed the appeal by holding that the appellant had been reduced in rank. On the other hand, in the instant case the seniority of the petitioner in the grade of Civil and Sessions Judge was not affected. There is no selection grade of Civil and Sessions Judge. Further, his promotion to the higher grade could be considered soon after the reversion, and in fact was considered and he was again appointed officiating District and Sessions Judge in January 1956.

30. The order of reversion is also not against the provisions of the Civil Services (Classification, Control and Appeal) Rules, as it has been clearly provided in Rule 55 that provisions contained therein shall not apply to reversion to a lower post of a person who is officiating in a higher post.

31. The reversion to the post of Civil and Sessions Judge did not, therefore, amount to reduction in rank and Article 311 of the Constitution was inapplicable. Consequently, it was not necessary for the State Government to hold an enquiry before reverting the petitioner, nor was it necessary to acquaint the petitioner of the grounds on which he was being reverted to his substantive post.

32. The order of reversion cannot be said to be arbitrary as the State Government passed the order on the basis of the revised recommendation of the High Court. Further, there is nothing on the record to show that the Hon'ble Minister was acting mala fide. He would, therefore, have formed an opinion in

good faith on consideration of the factors brought to his notice. The order cannot, on similar grounds be said to be discriminatory. Further, the petitioner was not the victim of discrimination as his claims were later considered and he was in the end confirmed as District and Sessions Judge. It is of significance .that he was not reverted as Civil and Sessions Judge except for a short period of about six months. If the State Government or the Hon''ble Minister were displeased with the petitioner such a leniency would not have been shown. I, therefore, find no reason to regard the order of reversion to be arbitrary or discriminatory, and to be hit by Article 16 of the Constitution of India.

33. The petitioner was informed in February 1955 that he was to revert as Civil and Sessions Judge and he was not reverted as Civil and Sessions Judge till he proceeded on leave in July 1955. Therefore, the reversion to the substantive post was after a reasonable notice, in case any notice was necessary.

34. To sum up, the order of reversion to the substantive grade of Civil and Sessions Judge in July 1955, is not illegal nor does it contravene the provisions of Articles 311 and 16 of the Constitution of India. Even if we assume that the respondent did not have the power to delay the confirmation of the petitioner, no injustice was done to him and consequently, this Court can refuse to exercise its jurisdiction under Article 226 of the Constitution of India. It is for this reason that this Court has not considered the legality of the subsequent orders or steps taken by the State Government. When the order of reversion is legal, the impugned order whereby the supplementary representation of the petitioner was rejected cannot be quashed.

35. The petition is hereby dismissed. Costs on parties.