

(1969) 09 DEL CK 0010
In the Delhi High Court

Hira Singh

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 29-09-1969

Acts Referred:

Citation : (1970) 6 DLT 402 : (1970) LabIC 593

Hon'ble Judges : S.I. Rangarajan, J

Bench : Single Bench

Advocate : R.K. Punshi, Ramesh Chand and R.M. Mehta, for the Appellant;

Judgement

S. Rangarajan, J.

(1) The petitioner, who has acquired considerable proficiency in social science, was originally appointed as a Superintendent of the District Jail in Uttar Pradesh by that State Government. Prior to his appointment, in the year 1962 he had taken a Doctorate in social work. In 1963 he was selected for attending the Philadelphia International Programmed for Youth Leaders and Social Workers; at Philadelphia he also acquired professional experience in the prisons there. On his return to India he was confirmed in the post of whole time Superintendent of District Jail with effect from 1-3-1965.

(2) In October 1964 the Department of Social Security, Government of India, requested the State Governments to suggest of suitable officers having experience in the field of prison administration, juvenile delinquency control and other correctional procedures for consideration for one post of Director and two Assistant Directors in the Central Bureau of Correctional Services. The petitioner's name was recommended by the State of Uttar Pradesh and the Government of India selected him for appointment on deputation. He joined on 8th October 1965.

(3) Since there was no regular Director in the Central Bureau of of Correctional Services up to 15th July 1967 the petitioner was working and manning the said Bureau as the Senior Assistant Director. He also Held charge of the duties of

Director from 15-5-1967 to 15-7-1967 when Dr. (Virs.) Jyotsna H. Shah (second respondent in this petition was appointed. He was the only Assistant Director who was looking after the duties of two Assistant Directors for about a year.

(4) In 1966 the petitioner was deputed by the Government of India, under the Colombo Plan, for advanced professional training in the field of correctional work at the United Nations, Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders, Tokyo (Japan).

(5) After the petitioner had done such work the Government of India, by its letter dated 26.9 1967, requested the Uttar Pradesh Government to give its consent to his appointment as Assistant Director in the said Bureau on a regular and permanent basis. The Government of Uttar Pradesh also by its letter dated 4-1-1968 gave its consent for such appointment. On 1-3-1969 (annexure 1) the Government of India offered to the petitioner an appointment as Assistant Director (Class Ii, Gazetted) on the following among others, terms: -

"THE appointment is permanent but you will be on probation for a period of one year from the date of appointment which may be extended or curtailed at the discretion of the competent authority. Failure to complete the period of probation to the satisfaction of the competent authority will render you liable to reversion to your substantive post on which may be retaining a lien."

(6) On the same day (as per annexure R-3 of the return) the petitioner accepted the offer on the terms and conditions mentioned.

(7) It is convenient at this stage to note that even prior to the offer of appointment to the petitioner a note had been made by the Minister of State on 28-2-1968 to the following effect:-

"It may not be correct to say now that the department wants to treat his probation period as over. The probation period may be reduced to one year in view of the officer's previous experience."

(8) On 14-10-1968 (vide annexure Ii to the petition) the petitioner made a representation to the Department of Social Welfare that he had been working on deputation from 8-10-1965 and that after serving for more than two years against the same post his services were transferred, on a regular basis to the Government of India. He also referred to his other credentials and requested that the Government may treat his appointment, as on substantive basis, retrospectively from the date of his transfer i, e. 1-3-1968, but no orders seem to have been passed on his said representation.

(9) It is averred by the petitioner that the second respondent became unfavorably inclined towards the petitioner for various reasons, one of which was that she did not like the petitioner's continued nominations on the Committee which was set up by the Ministry of Home Affairs to examine the problem of collecting the juvenile statistic ;the petitioner was Member-Secretary of that Committee, the second respondent also being a member, and the Chairman of

the Committee highly appreciated the petitioner's work. Yet another of the petitioner allegation is that after his name was recommended by Shri Kailash Chandra, then Commissioner for Social Welfare, and being approved by the Minister for Social Welfare for being sent as a Member of team experts to Geneva, the second respondent got the Minister of State to reverse the decision of sending the petitioner and got herself nominated on the said term. The most serious allegation of the petitioner is that he was even pressurized by the second respondent's husband in not making common cause with some others intriguing against the second respondent. With reference to this matter be sent a representation (as per annexure III) on 18.1-1969 to the Minister of Social Welfare. It is further averred by the petitioner that he brought this to the notice of the Minister for Social Welfare when he visited the Bureau along with Shri Kailash Chandra. The second respondent in her counter-affidavit (paragraph 10) admitted that the petitioner made allegations before the Minister of threats and harassment by her husband and herself and that she denied those charges; she added that the Minister warned the petitioner not to indulge in indiscipline behavior

(10) The petitioner has made several other allegations, of a self laudatory nature, which it is not necessary for the purpose of this petition to set out. The more important allegations are concerning the fact of second respondent making adverse remarks against the work and conduct of the petitioner for the period 15-7-1967 to December 1967. He alleged that the second respondent delayed writing the same till as late as 1969: his remarks were rejected by the reviewing officer Shri Kailash Chandra who graded his work as "outstanding". It is further averred that the second respondent did not submit her remarks on the confidential report of the petitioner for the year 1968 also till end of February 1969 in spite of being repeatedly asked by Shri Kailash Chandra, who was the head of the Department and authority higher than the second respondent to do so. No further reference to the adverse remarks of the petitioner need be made in view of the admission in the affidavit of Shri P. I. Vaidyanathan, Additional Secretary in the Government of India in the Department of Social Welfare paragraph 31 to the effect that no adverse remarks contained in the confidential reports on the petitioner, was ever communicated to the petitioner.

(11) What led to the filing of the present petition was the letter written by the second respondent conveying the decision of the Department to revert him to this parent office with immediate effect since his performance during the probationary period had not been found satisfactory (annexure Vi dated 9-4-1969). The petitioner prays for the said order of reversion to be quashed.

(12) There does not appear to be much force in the contention of the petitioner that he had been appointed permanently in his present post and that having spent already more than two years in the same post prior to the said appointment there was no need for any probation and that he had in fact been appointed permanently. There is no more support for this portion, whatever the

moral justification for such a contention may be, than the word permanent" having been employed in the offer of appointment as per annexure-1, noticed already. Even though the word permanent was used it had still been stated in the same offer that he would be on probation for one year which maybe extended or curtailed at the discretion of the authorities and that failure to complete the probation to the satisfaction of the competent authority will render him liable to reversion on his substantive post on which he may be retaining a lien. In view of the petitioner having accepted the above terms and condition,, it will be futile to contend that he was appointed permanently and that the condition concerning the probation should be ignored. There is still less force in the contention of the petitioner that in the rules, which were framed for this Department on 29-1-1968, the period of probation has been said to be two years and his having already spent two years in the same post prior to the appointment would render the department powerless to insist on any further probation. These rules were made only on 29-1-1968 and could not and does not cover anything that happened previously. The appointment was offered, subsequent to these rules, in pursuance of those rules. They provided for two years probation. The mere fact that he had already spent two years as a deputationist prior to the said rules could not derive the power on the part of the Government of India to impose a period of probation.

(13) The next contention on behalf of the petitioner was that in any case since the Government of India had relaxed for the reasons set forth in writing in the Minister's note, referred to above the period of probation from two years to one year, the Department must be deemed to have deprived itself of the power to enlarge the period of probation beyond a year. It may be noticed that the period of the years probation was over on "8-2-1969 and the impugned order of reversion was in April 1969. The contention, again, loses its force because the offer of appointment (annexure 1) specifically referred to the authority of the Department to extend or curtail the period of probation and had brought to the notice of the petitioner before he accepted the offer, that he was liable to reversion if he did not complete the period of probation to the satisfaction of the competent authority. It is sufficient for this purpose to refer to the decision of the Supreme Court in the State of Punjab v. Dharam Singh. The legal position was summarized in paragraph 3 of the judgment as follows:-

"This Court has consistently held that when a first appointment or promotion is made on probation for a specific period and the employee is allowed to continue in the post after the expiry of the period without any specific order of confirmation, he should be deemed to continue in his post as a probationer only, in the absence of any indication to the contrary in the original order of appointment or promotion or the service rules. In such a case, an express order of confirmation is necessary to give the employee a substantive right to the post, and from the mere fact that he is allowed to continue in the post after the expiry of the specified period of probation it is not possible to hold that he should be deemed to have been confirmed. This view was taken in Sukhbans Singh v. State

of Punjab 1963 1 S. C. C. 416 G.S. Ramaswamy and Others Vs. Inspector-general of Police, Mysore, Accountant General Mad Pradesh. Gwalior v. Beni Prasad Bhatnagar, Civil Appeal No. 548 of 1962 decided on 23-1-1964 (SC) D. A. Lyull v. Chief Conservator of Forests, U. P., Civil Appeal N). 1963, D24-2-1965 (SC) and State of Uttar Pradesh Vs. Akbar Ali Khan, . The reason for this conclusion is that where on "he completion of the specified period of probation the employee is allowed to continue in the post without an order of confirmation, the only possible vi;w to take in the absence of anything to the contrary in the original order of appointment or promotion or the service rules, is that the initial period of probation has been extended by necessary implication. In all these cases, the conditions of service of the employee permitted extention of the probationary period for an indefinite time and there was no service rule forbidding its extension beyond a certain maximum period."

In that case the rules specifically provided for the total period of probation, including extensions, not exceeding three years. In the present case, however, as already noticed, the specific condition was that the period of probation could be extended or curtailed. In the face of this specific provision the contention that the petitioner could not be reverted after the completion of the period of one year"s probation has no force whatever.

(14) Another contention was that in any case since without any inquiry and even without informing the petitioner of any so called adverse remarks, he was reverted to his original post (of lesser stature and emoluments) casting a stigma on him by staling that his work during the period of probation was not satisfactory the petitioner is entitled to request that the said order be quashed as being opposed to the principles of natural justice. It has been held be the Supreme Court in the State of Punjab and another v. Sukh Raj Bahadur that "an order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Article 3rd of the Constitution. This was the fourth proposition, out of five, which Mr. Justice Mitter adumbrated on a conspectus" of the various cases discussed in that decision. In the present case the order of reversion was not unexceptional in form. It clearly cast a stigma on the petitioner. It was not the result of an inquiry launched to find out his fitness. Even in terms of proposition number three enunciated by Mr Justice Mitter, the order visits the public servant with evil consequences and hence must be considered to be one by way of punishment. It is no answer to the charge of the petitioner to be told that in the copy which the Government of India sent to the State of Uttar Pradesh concerning his reversion there is no reference made to his work being unsatisfactory during the period of his probation To a social scientist, of the stature of the petitioner it is certainly an irreparable blow to his prestige and his professional competence to be told, especially without giving him a chance of even knowing how his work was considered unsatisfaction, that his work was unsatisfactory and hence he was being reverted to his original post. His Lordship Mr. Justice Shah pointed out in

State of Orissa v Dr (Miss) Bina pani Dei and others" that any order which visilsa person with civil consequences, even though administrative in character ,must be one made in conformity with the principles of natural justice. The line between administrative and quasi judicial acts in itself becoming thinner as pointed out by Mr. Justice Hegoe in A. K. Kraipok and others v. Union of india It was also pointed out by the Supreme Court in Babesh Chandra Dass v. Union of India that reverting an officer to a lower post with a stigma amounted to a punishment by way of reduction in rank Even discretionary orders, it was pointed out by the Supreme Court in S.G.Jaisinghuni v Union of India and others have in a system governed by rule of law must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable. The observations of Douglas J. in United State v. Wunder lich to the following effect were quoted:-

"LAW has reached its finest moments when it has freed man from the unlimited discretion of some ruler. Where discretion is absolute, man has always suffered. Discretion means sound discretion guided by law; by rule, not by humour. 15. It was admitted by Shri Rustom Mehta who appeared for the Union of India in answer to a specific question by me that no report concerning the probation of the petitioner was drawn up and that there were only entries made in the Character Roll, no adverse entry even there having been communicated to the petitioner. The necessity for writing such reports concerning an officer"s probation, in addition to entries being made in his Character Roll, is well known; the instructions of the Ministry of Home Affairs in this regard have been stated in Volume Ii of the Compilation of the Fundamental and Supplementary Rules (3rd Edition) by S. Lakhi Singh Chaudhri on pages 12 to 14. The Home Ministry had specifically laid down in 1959 (page 14) that separate from of report on the probationers should be devised as distinct from the usual confidential reports as both the reports are intended to serve different purposes. The confidential reports ought to be considered only when the occasions for such consideration arise. The probation reports which have obviously to be written up promptly and without delay have to be sent to the supervising authority for concentrating on the special needs of probation and to decide whether the work and conduct of the officer during the period of probation is such as to warrant his further retention in service or not. I am wholly unable to understand how without even any probation report being drawn up concerning the petitioner his work during the period of probation was stated to be unsatisfactory I find that the impugned order reverting the petitioner to his original post, which, admittedly carries lesser emoluments and a lesser rank. coupled with a stigma on his work during the aerial of probation is one which deserves to be quashed The said order is quashed accordingly."

(16) I have only to state that the petitioner had relied upon a considerable amount of material which was claimed to be confidential and hence in respect of them privilege was claimed by Shri P. P. 1. Vaidyanathan. additional Secretary in

the Ministry of Social Welfare. The petitioner cannot rely upon extracts, which he claims to have made from official sources not open to him with reference to these matters I am afraid the privilege claimed by Shri Vaidyanathan has to be upheld in terms of the decision of the Supreme Court in the State of Punjab v. Sodhi Sukhdev Singh When privilege is claimed, as it was in this case concerning the official nothings etc; the Court has to determine the character or class of the document if it comes to the conclusion that the document does not relate to affairs of State then it should reject the claim for privilege and direct its production. If it comes to the conclusion that the document relates to affairs of State it should leave it to the head of the Department to decide whether he should permit its production or not The privilege claimed in this case falls within the latter category In this area, Therefore, it is for the head of the Department to decide whether disclosure will injure the Public interest. It is not for the Court in such a situation to assess whether it will injure the public interest if disclosure is made. The learned counsel for the petitioner referred me to the latest decision of the House of Lords in Conway v. Rimmer and another. 1968 AC 910 The House of Lords decided, disapproved the dicta of Lord Simon L C. in Duncan v. Cammell, Laird & Co Ltd." (Which was followed by the Supreme Court in the aforesaid case) and held that the last word on this question was with the Court and not with the Minister. But this is not the law of India. In these circumstances I uphold the privilege claimed by Mr. P. P. 1. Vaidyanathan with reference to the various official nothings on files. But the question of producing those documents and privilege is really academic in this case because the ultimate order of reversion was passed by the second respondent but by her official superior, In this view there is no nexus between the alleged male fides on the part of the second respondent and the order of reversion. This aspect of the matter, Therefore, need not detain us.

(17) In view of the aforesaid discussion the writ petition is accepted to this extent that the order reverting the petitioner to his original post in Uttar Pradesh State is quashed as being violative of the rules of natural justice: there was no inquiry into his fitness for the post, the confidential reports said to contain adverse entries were not even shown to have been made promptly and without delay, in any case, they were not admittedly communicated to the petitioner; the probation reports themselves, concerning the petitioner, were admittedly not drawn up and the order reverting him, which was communicated to the petitioner, was not even "unexceptional in form". There will be no order as to costs in this petition.