
(1957) 10 MP CK 0002

In the Madhya Pradesh High Court

Case No : C. Miscellaneous C. No. 34 of 1956

Khoob Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 12-10-1957

Acts Referred:

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

Citation : (1958) JLJ 74

Hon'ble Judges : S.M. Samvatsar, J;A.H. Khan, J

Bench : Division Bench

Advocate : Patankar, for the Appellant; Mungre, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Samvatsar, J.—This is a petition under Article 226 of the Constitution of India for a writ of mandamus.

2. Facts giving rise to this petition are that the petitioner was an employee of the Gwalior State since the year 1939. On 1-1-1948 he was appointed as an Upper-division Clerk in the Gwalior State service in the grade of Rs. 40-5/2-45-E. B.-5/2-55 and was posted in Subat Office, Bhind.

3. On the merger of the Gwalior State and the formation of the State of Madhya Bharat, the petitioner was absorbed in the Madhya Bharat state service. On 14-6-1952 he was given an officiating appointment as Reader in the upper-grade in the Compensation Office. As that office was a temporary establishment created for the purpose of paying compensation to the Zamindars and Jagirdars, the petitioner made a representation to the authorities concerned but no orders were passed thereon at that time.

4. On 23-6-1952 one Sarjusan, a junior to the petitioner in service, was permanently appointed as an Upper-division Clerk. The petitioner filed an appeal to the Commissioner, Northern Division and on 8-11-1952 the Commissioner, by

his order directed the Suba, Bhind to give to the petitioner a lien on the first post that may thereafter fall vacant in the grade of upper division clerk so that his rights may not be prejudiced. By this order the Commissioner also directed that the petitioner's seniority would not be affected.

5. On 21-12-54 one Laxmanprasad, an upper division clerk retired from service and as his post was a clear vacancy, the petitioner was raised in rank and appointed in his place by the Collector, Bhind.

6. On 22-6-1955 the petitioner was sent on deputation to the Assistant Compensation Office and it was ordered that his lien would be preserved on the grade of Upper-division Clerk in the Collectorate Bhind. Copy of this order is produced along with the petition at Annexure C.

7. On 26-6-1956 the petitioner received an order from the Revenue Department informing him that in the integration of services he was permanently appointed as Lower-division Clerk. The petitioner contends that this has constituted his demotion and has challenged the validity of the order by which it was done on the ground that it was illegal and inoperative. It is alleged in the petition:-

(1) that the petitioner was a permanent servant of the Madhya Bharat State in the grade of 50-3-80 which was revised to that of 70-5-120-E.B. 6-150 and was as a result of the impugned order put on the reduced scale of 40-3-70 revised scale being 50-4-70 E. B.-4-110-5 125;

(2) that the petitioner was actually drawing Rs. 65 as an Upper-division Clerk and was entitled to draw Rs. 85, in the revised scale; that by the impugned order he was reduced in status as also in monthly salary;

(3) that the petitioner was permanently appointed in the vacancy created by the retirement" of Laxman Prasad, Upper-division Clerk, and had his lien on his post; that the Government were not justified in appointing him in the lower grade during the integration and reorganization of services;

(4) that the demotion of the petitioner was reduction in rank within the meaning of Article 311 of the Constitution and was ultra vires the Board of Revenue.

8. The petitioner had impleaded the State of Madhya Bharat, the Senior Member, Board of Revenue and the Collector Bhind, as respondents 1, 2 and 3 in this case.

9. The respondents opposed the petition and filed a return in the form of an affidavit by the Collector Bhind. It was contended in this return that all the appointments in Madhya Bharat were temporary and provisional pending final integration and from this point of view the vacancy of Laxmanprasad was itself temporary and provisional; that though the petitioner was appointed in the clear vacancy of Upper-division Cleric, his appointment was not a permanent appointment but was only of a temporary and provisional nature. It was denied that the order of the Board of Revenue had resulted in reduction of the petitioner in rank. It was also denied that Article 311 of the Constitution had any

application to the case. It was urged that the absorption of the petitioner in the present grade of Lower-division Clerk was the result of the process of integration of services in accordance with the policy of the Government; that the orders passed were not malafide and were passed by the Board of Revenue after examining the recommendations and principles laid down in the report of the integration committee, It was also, urged that the petitioner had an alternative remedy by way of a suit and the present petition was misconceived.

10. From the return filed by the respondents it is plain that they have not disputed that the Collector Bhind had in pursuance of the orders of the Commissioner, Northern Division, dated 5-11-1952, appointed the petitioner in the clear vacancy created by the retirement of Laxman Prasad, an Upper-division Clerk and that a lien was created in his favour on that post. The only point to be considered therefore is, whether he could thereafter be appointed as a Lower-division Clerk.

11. An employee in the Upper-division enjoys higher status and is entitled to draw a higher salary as compared to an employee in the lower division. The petitioner was on 22-6-1955 appointed as an Upper-division Clerk with a lien on a post of that grade in the Collectorate Bhind. The word "lien" has been defined in the Fundamental Rules which are rules framed by the Rajpramukh in exercise of his powers under Article 309 of the Constitution of India. "Lien" according to this definition means "the title of a Government servant to hold substantively, either immediately or on the termination of a period or periods of absence, a permanent post including a tenure post, to which he has been appointed substantively".

12. In the instant case it is not suggested that the Suba, Bhind had no power to appoint the petitioner permanently to a post in the Upper-division Clerk's grade and to give the petitioner a lien upon it. His appointment must therefore be held to be made to that post substantively. A person holding a post substantively and as a permanent incumbent, can be demoted only in accordance with the rules or in compliance with the provisions of Article 311 of the Constitution. In the present case it is conceded by the respondents that the appointment of the petitioner to a post in the Lower-division Clerk's grade was not made by way of punishment for any default or misconduct of the petitioner or to his lacking in ability to occupy that post. Article 311 of the Constitution has therefore no application to this case. As held by the Calcutta High Court in *Rabindra Nath Das vs. The General Manager Eastern Railway*, 59 Calcutta Weekly Notes 859, reduction in rank within the meaning of Article 311 involves two concepts: (i) there must be reduction in the physical sense, in other words, a Government servant must be sent down or put back to a lower post from a higher one he was holding; and (ii) such demotion or reversion must be by way of penalty.

13. Mr. Patankar, learned Counsel for the petitioner contended that the Government had no power under the Fundamental Rules to appoint the petitioner to a lower post except (i) for inefficiency or misbehaviour and (ii) On his own

written request, and that the effect of the impugned order of the Board of Revenue was to deprive the petitioner of his lien on the post of an Upper-division Clerk. The learned Counsel referred to Fundamental Rule 14-A, 14-B and 15 in support of his contention.

14. Under Fundamental Rule 14-A, a Government servant's lien on a post may in no circumstances be terminated, even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post. Fundamental Rule 14-B empowers the Government to transfer to another permanent post in the same cadre the lien of a Government servant. Rule 15 lays down that the Government may transfer a Government servant from one post to another provided that except-(i) on account of inefficiency or misbehaviour, or (ii) on his written request, a Government servant shall not be transferred substantively to, or except in a case covered by Fundamental Rule 49 appointed to officiate in, a post carrying less pay than the pay of the permanent post on which he holds a lien, or would hold a lien.

15. In the instant case it is not suggested that the transfer of the petitioner or his fixation in the Lower-division Clerk's grade was in conformity with Rule 15. What is urged by Mr. Mungre, learned Government Advocate, is that the Fundamental Rules have no application to this case as all the posts created after the formation of Madhya Bharat were temporary and provisional posts and appointments to them were also not permanent.

16. No doubt the Government by its order dated 31-8-1948 declared that "all posts now being created under the Government of Madhya Bharat are for the present purely provisional and temporary", but in the instant case it has not been suggested that the post on which the petitioner was given a lien was abolished being only, a temporary and provisional post. So long as that post remained, his lien could not be terminated otherwise than under the provisions of the Fundamental Rules and the impugned order must therefore be held to be invalid on that ground alone.

17. The order of the Collector dated 22-6-1955 is absolutely clear and unambiguous and by that order the petitioner has been substantively appointed in the grade of upper division clerk. His transfer to a lower post was not in exercise of the powers conferred by any of the provisions of the Fundamental Rules and must therefore be held to be unauthorised and illegal.

18. Mr. Mungre's main contention was that the Suba by his order could not convert a temporary post into a permanent one, nor could he appoint the petitioner substantively and permanently to any post when the integration of services was being effected. As I have already observed, the validity of the Suba's order has not been impeached on any of these grounds in the return filed by the respondents and cannot be considered at this stage.

19. Though the Government had declared initially that all the posts created in Madhya Bharat were temporary and provisional in nature, nothing prevented it

from treating some of them as permanent and giving to the civil servants a lien thereon. On this view of the matter I am of opinion that the order of the Board of Revenue dated 15-6-1956 is illegal and must be quashed.

20. I accordingly allow this petition with costs and issue a writ of mandamus to quash the order of the Board of Revenue dated 15-6-1956 in so far as it affects the petitioner. Advocate's costs shall be taxed at Rs. 50/-