
(1982) 04 OHC CK 0016
In the Orissa High Court
Case No : O.J.C. No. 1015 of 1977

P. Soma Sundar Rao

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-04-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 311(2)
Police Service (Appointment by Promotion) Regulations, 1955 — Regulation 5(5)

Citation : (1982) 54 CLT 257

Hon'ble Judges : R.C. Patnaik, J;N.K. Das, J

Bench : Division Bench

Advocate : P. Palit, J. Patnaik and R. Mohapatra, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Patnaik, J.—The Petitioner, a member of the Orissa Education Service, has filed this writ application questioning the order of reversion dated 6-10-1977 (Annexure-11) and for quashing of certain adverse entries for the year 1-17-73 communicated to him by letter dated 6-5-1974. He has further prayed for issue of a writ directing the opposite parties to regularise his appointment in the post of Reader with effect from 16-4-1971.

2. The Petitioner has stated that he joined Class II of the Orissa Education Service on 22-12-1949 and was posted as a lecturer in Botany. Confirmation in the said post came on 1-6-1955. He was promoted to the post of Reader on ad hoc basis by notification of the Government dated 1-1-1970 and he joined the post on 7-1-1970. While serving at Sambalpur in May, 1970 he was transferred to Bolangir. As he had certain personal difficulties relating to the members of his family including his ill health, he made representation and did not comply with the order of transfer. A proceeding, therefore, was initiated by the Government which ultimately was dropped by the Government in May, 1971 by charge-sheet dated 30-12-1970 as would be evident from the letter of the Director of Public

Instruction (Higher Education), Orissa, to the Principal, Rajendra College, Bolangir (Annexure-5).

3. The Petitioner has alleged that during the pendency of the disciplinary proceeding Government made reference to the Orissa Public Service Commission for regularisation of appointment in the posts of Reader. The Petitioner has asserted that though his case was forwarded to the Commission, it was also stated that a disciplinary proceeding was pending against him and the Commission on that score kept his case out of consideration and by notification dated 16-4-1971, services of other ad hoc appointees in the post of Reader were regularised. The Petitioner has stated that pendency of a disciplinary proceeding could not have effected regularisation of his appointment in the post of Reader. From time to time also services of ad hoc appointee's were regularised but not that of the Petitioner and though the list submitted by the Government to the Commission contained the name of the Petitioner, the Commission till June, 1977 did not recommend the appointment of the Petitioner in the post of Reader on regular basis. In 1974, while continuing in the post of Reader, he received a communication from the Government conveying the adverse view taken in regard to his performance for the year 1972-73. He made representation to the Government against the adverse entries as aforesaid; but the same was rejected by the Government. In June, 1977 he was reverted from the post of Reader in Class I of the Orissa Education Service to the post of Lecturer in Class II by notification dated 6-6-1977 (Annexure-H).

4. The grievance of the Petitioner is that he was discriminated against and the reversion in the facts and circumstances amounted to a reduction in rank. He has impugned the reversion on ground of infringement of Articles 14 and 16(1) of the Constitution of India.

5. The opposite parties have controverted most of the allegations. It has been said in the counter affidavit that the Commission was not intimated about the pendency of the disciplinary proceeding. It is stated that the service records of all concerned persons including the Petitioner were sent to the Commission for their selection and recommendation. The Commission, upon consideration of the said materials, did not consider the Petitioner suitable to continue in the post of Reader and accordingly, they did not recommend his case. On a subsequent occasion, the Government also made a further reference to the Commission and again the Commission did not recommend the case of the Petitioner. Finding that persons junior to the Petitioner had been recommended by the Commission and the said recommendation was accepted which amounted to supersession of the Petitioner by his juniors, the Government requested the Commission to reconsider the case of the Petitioner; but the Commission still held to the position. There were also further reference of cases of 10 persons including the Petitioner. The Commission on that occasion also recommended the cases of nine others for appointment to the post of Reader but not that of the Petitioner. Repeated refusal by the Commission to recommend the case of the Petitioner for

appointment in the post Reader indicated that the Petitioner was not suitable for appointment in the post of Reader. The Government, therefore, had to revert the Petitioner to his former post. In the facts and circumstances narrated above, the allegation of hostile discrimination is misconceived and unwarranted. No extraneous material placed before the Commission nor any relevant material kept out of consideration.

6. The Petitioner drew our attention to certain authorities, a few of which we would notice in our judgment. Reliance was placed on *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, . Belliappa was appointed as a temporary junior compositor in the Government Branch Press, Mercara. In 1966, a disciplinary proceeding was started against him and he was called upon to show cause. On January 3, 1967 his services were terminated. He alleged that certain persons appointed as temporary junior compositors subsequent to his appointment had been retained and continuing in service while a discriminatory treatment had been meted out to him. So, he alleged that his termination was violative of Article 16 of the Constitution, His writ application having been allowed, the employer moved the Supreme Court. It was contended that the termination of the services of temporary servants in accordance with the terms and conditions of the service did not attract Articles 14 and 16(1). In that context the Supreme Court observed:

...It is true that the competent authority had the discretion under the conditions of service governing the employee concerned to terminate the latter's employment without notice But, such discretion has to be exercised in accordance with reason and fair play and not capriciously. Bereft of rationality and fairness, discretion degenerates into arbitrariness which is the very antithesis of the rule of law on which our democratic polity is founded. Arbitrary invocation or enforcement of a service condition terminating the service of a temporary employee may itself constitute denial of equal protection and offend the equality clause in Articles 14 and 16(1)....

They further observed:

...If the services of a temporary Government servant are terminated in accordance with the conditions of his service on the ground of unsatisfactory conduct or his unsuitability for the job and/or for his work being unsatisfactory, or for alike reason which marks him off a class apart from other temporary servants who have been retained in services there is no question of the applicability of Article 16.

We take note of the observation of some import:

...Where a charge of unfair discrimination is levelled with specificity, or improper motives are imputed to the authority making the impugned order of termination of the service, it is the duty of the authority to dispel that charge by disclosing to the Court the reason or motive which impelled it to take the impugned action. Excepting, perhaps in cases analogous to those covered by Article 311(2),

proviso (c), the authority cannot withhold such information from the Court on the lame excuse, that the impugned order is purely administrative and not judicial having been passed in exercise of its administrative discretion under the rules governing the conditions of the service....

Reference was further made to Union of India (UOI) Vs. Mohan Lal Capoor and Others, . This case related to promotion of the members of the State Police Service to the Indian Police Service.

The decision turned on the provision contained in Regulation 5(5) of the Indian Police Service (Appointment by Promotion) Regulations, 1955. The clause required stating of reasons in a manner which would disclose how the record of each superseded officer stood in relation to records of others who were to be preferred. This decision has, therefore, no application to the present case.

In State of Maharashtra v. V.R. Saboji AIR 1980 S.C. 42 the question involved was in what circumstances termination of services of a temporary officiating government servant could be held to be a punishment. In that context, it was held:

...Even in the case of a temporary of officiating Government servant his services cannot be terminated by way of punishment casting a stigma on him in violation of the requirement of Article 311(2). This principle is beyond any dispute but the difficulty comes in the application of the said principle from case to case. If a Government servant is compulsorily retired or one who is officiating in a higher post is reverted to his parent cadre, or when the services of an officiating or temporary Government servant are dispensed with by an order of termination simpliciter, than problems arise in finding out whether it is by way of punishment. In different kinds of situation, different views have been expressed. Yet the underlying principle remains the same. One should not forget a practical and reasonable approach to the problem in such cases. Ordinarily and generally, and there may be a few exceptions, any of the three courses indicated above is taken recourse to only if there are some valid reasons for taking the action against the Government servant. If a probe in the matter is allowed to be made in all such cases than curious results are likely to follow. In a given case there may be valid reasons, may be of a serious kind, which led the authorities concerned to adopt one course or the other as the facts of a particular case demanded. If one were to say in all such cases that the action has been taken by way of punishment then the natural corollary to this would be that such action could be taken if there was no such reason in the background of the action. Then the argument advanced is that the action was wholly arbitrary, malafide and capricious and, therefore, it was violative of Article 16 of the Constitution. Where to draw the line in such cases. Ordinarily and generally the rule would be that you have to look to the order on the face of it and find whether it casts any stigma on the Government servant. In such a case there is no presumption that the order is arbitrary or mala fide unless a very strong case is made out and proved by the Government servant who challenges such an order.

This is the view of Untwalia, J. Pathak, J. in a separate judgment observed:

...where the services of a temporary Government servant or a probationer Government servant are terminated by an order which does not ex facie disclose any stigma or penal consequences against the Government servant and is merely a termination order simpliciter, there is no case ordinarily for assuming that it is anything but what it purports to be. Where, however, the order discloses on the face of it that a stigma is cast on the Government servant or that it visits him with penal consequences, then plainly the case is one of punishment. There may still be another kind of case where although the termination of services is intended by way of punishment, the order is framed as a termination simpliciter. In such a case, if the Government is able to establish by material on record that the order is infact passed by way of punishment, the innocence of the language in which the order is framed will not protect it if the procedural safeguards contemplated by Article 311(2) of the Constitution have not been satisfied....

It is difficult to say how this decision is of any help to the Petitioner.

7. Learned Additional Government Advocate appearing for the State relied on *The State of U.P. v. Ram Chandra Trivedi* AIR 1976 S.C. 1547, wherein it has been observed:

...He (Ram Chandra) was a temporary hand and had no right to the post. It is also not denied that both under the contract of service and the service rules governing the Respondent, the State had a right to terminate his services by giving him one month's notice.

The order to which exception is taken is ex facie an order of termination of service simpliciter. It does not cast any stigma on the Respondent nor does it visit him with evil consequences, nor is it founded on misconduct....

8. In view of the allegation of mala fides against the Commission and the State, the service record of the Petitioner was made available to us by the counsel for the State and on a perusal of the same we cannot say that the Commission or the Government was motivated or acted perversely in not selecting the Petitioner for promotion to Class I Service. There are enough materials to support the advice and recommendation of the Commission. We refrain from cataloguing what gleaned from the service record lest it should affect the service prospect of the Petitioner in future. We rest content with stating as aforesaid. The Petitioner was continuing in Class I Service on ad hoc basis. He had no right to the post in Class I Service. If the Commission and the Government were not satisfied on the materials available in the service record, this Court cannot sit in appeal over the conclusion of the Government unless it is shown that such conclusion or decision is the outcome of mala fides or motivated. We have already said that there are materials on the service record to support the advice of the Commission and the decision of the Government. The principles laid down in the decisions relied upon by the counsel for the Petitioner referred to above have, therefore, no application. It is a simple case where upon consideration of materials available

from the service record, the Petitioner was not found suitable by the Commission and the Government, to continue in Class I Service and in the facts and circumstances of the case this Court, acting as a watch dog where hostile discrimination is perpetrated and not as an appellate court, must decline jurisdiction In the result, the writ application fails and is dismissed. No costs.

N.K. Das, J.

9. I agree.