

(1967) 01 AHC CK 0013

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1313 of 1966

Prayag Dass Seth

APPELLANT

Vs

Secretary to Govt. U.P. and Another

RESPONDENT

Date of Decision : 16-01-1967

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1968 All 279 : (1969) 2 LLJ 481

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : R.N. Bhalla and B.P. Srivastava, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—These are petitions under Article 226 of the Constitution, They seek to quash an order dated 28-3-1966 passed by the State Government.

2. The petitioners were working as Marketing Inspectors in the Marketing Section of the Food and Civil Supplies Department of the State Government. By a notification dated 21-9-1964 the State Government promoted 31 Marketing Inspectors to the post of Senior Marketing Inspectors. The petitioners, excepting Sri S. B. Dutta (who is the petitioner in Civil Misc. Writ No. 2222 of 1966) were included among these 31. On 28-3-1966 the State Government passed another order reverting the petitioners to the post of Marketing Inspectors. By the same order eleven other Marketing Inspectors were promoted as Senior Marketing Inspectors. This order is challenged on the ground that by the earlier order of promotion the petitioners had secured a right to the post of Senior Marketing Inspectors. The impugned order is penal in nature because it makes the petitioners subordinate and junior to a large number of persons who were till then their subordinates and juniors and that because of other rules of the department, the order of reversion has the effect of depriving the petitioners from promotion to the post of Senior Marketing Inspector in future. It is alleged

that since the order was passed without affording any opportunity to the petitioners to show cause, the order violates the provisions of Article 311 of the Constitution.

3. The respondents had contested the case. They had given in detail the reasons for the reversion of the petitioners. It is stated that in April 1964, 151 temporary posts of Senior Marketing Inspectors were sanctioned by the Governor. He decided to fill 100 posts by direct recruitment and the remaining 51 by promotion from amongst the Marketing Inspectors. A list of Marketing Inspectors, who were entitled to be promoted, was drawn up on the basis of seniority subject to rejection of unfit and Subject to educational qualification being not below High School. Some Marketing Inspectors, though fairly senior, were not considered qualified for promotion because they possessed two years Diploma in agriculture, but had not passed the High School Examinations. These Inspectors made a representation that the two years Diploma in Agriculture was equivalent to High School. The department investigated and ultimately upheld the representation. It then became necessary to reshuffle the promotions of the Marketing Inspectors. The Marketing Inspectors holding two years diploma in Agriculture were promoted in accordance with their place in the seniority list, and, consequently eleven Marketing Inspectors, who were junior in these ones, had to be reverted back. The impugned order was passed in order to do justice to the valid claims of the other Inspectors. It is stated that all the eleven concerned persons have not been reverted as a measure of punishment.

4. It is further stated that three posts of Senior Marketing Inspectors were abolished by the Government Order dated 2nd December, 1965. Because of this, three Senior Marketing Inspectors had to be reverted to their original post of Marketing Inspectors. Two Regional Marketing Officers and two Assistant Food Controllers were reverted as Senior Marketing Inspectors on 30th January, 1966. Because of this, four Senior Marketing Inspectors again had to be reverted as Marketing Inspectors.

5. For these reasons seven Marketing Inspectors had to be reverted. Before orders could be finalised, two Senior Marketing Inspectors were promoted as Area Rationing Officer with the result that only five Senior Marketing Inspectors were reverted as Marketing Inspectors. These five persons were Sri P. D. Seth, Sri A. A. K. Afridi, Sri Pratap Singh, Sri Gyan Chandra Sharma and Sri Baij Nath Dubey. These five gentlemen were senior to the other eleven persons who were reverted on account of the promotion of eleven persons holding the two years diploma in Agriculture. It is urged for the respondents that the petitioners have not suffered their seniority at all. Persons who were junior to the petitioners have not been given any precedence. The order was not impelled with any motive to take away any right or privilege to which they were lawfully entitled. It is submitted that the post of Senior Marketing Inspectors is temporary and otherwise also the petitioners had no right to that post. For all these reasons Article 311 of the Constitution is not attracted.

6. In Writ Petitions 2083 and 2084 of 1966 one Sukhbir Singh applied for and had been impleaded as a respondent. He was one of the persons who held the Diploma in agriculture and who had been promoted by the impugned order dated 28th March, 1966. He has filed a counter affidavit stating that after this Court had passed the interim stay order in the present petitions the State Government by a general order dated 12th August, 1966 suspended the operation of the order promoting him. Thereupon the Regional Food Controller, respondent No. 2 passed an order on 2-9-1966 reverting Sukhbir Singh to the post of Marketing Inspector. He states that he will be adversely affected by the success of the present writ petitions and hence he was a necessary party to the writ petitions. He not having been impleaded, the writ petition is liable to fail in his absence. All those 11 persons who were promoted by the impugned order are in the same position. The petitioners have not seriously challenged the reason which impelled the respondents to pass the impugned order promoting 11 other Marketing Inspectors and reverting the petitioners. It is abundantly clear that the impugned order has been passed in order to regularise the position which had arisen on the acceptance of the appeal or the representation filed by those 11 Inspectors. Those eleven inspectors were senior to the various petitioners there. They were entitled to be promoted in preference to the petitioners (there being no allegation that they were thought unfit). The number of posts of Senior Marketing Inspectors which can be filled by promotion is limited. If the order reverting the present petitioners is set aside the eleven Inspectors who have been promoted will have to be reverted because they are now occupying the posts which the petitioners claim, The petitioners cannot be promoted in vacuum. They cannot get the posts of Senior Marketing Inspectors unless such posts are available and vacant. At present they are all filled by those eleven Inspectors. It is, therefore, clear that the eleven Inspectors were necessary parties to the present petitions. In their absence the petitions cannot succeed. The dispute cannot be effectively decided, in the absence of those eleven persons. One of the grievances expressed by the petitioners is that the representation of those eleven was accepted by the respondents without affording any opportunity to the petitioner to show cause. Success of this point will adversely affect them. For all these reasons, these petitions cannot succeed in the absence of those eleven persons.

7. In order to complete the judgment, I may indicate my views on the points raised on the merits. The impugned order reverts fourteen Marketing Inspectors. In the counter-affidavit it has been made clear that actually fifteen persons were reverted and the order omits to mention the name of Sri P. N. Nigam who was also reverted. Of these 15, eleven were reverted because of the acceptance of the appeal by eleven other Marketing Inspectors who held a diploma in agriculture. The eleven persons reverted for this reason are those mentioned at serial Nos. 6 to 14 of the impugned order and also Sri Nigam. The other five mentioned at serial Nos. 1 to 5 of the impugned order, were reverted because the previous incumbents of the posts of Senior Marketing Inspectors held by

these five, came back by reversion.

8. The cause of these live persons namely P. D. Seth, A. A. K. Afridi, Pratap Singh, Ghyan Chandra Sharma and Baijnath Dubey stands on a different footing. Of these P. D. Seth is the applicant in petition No. 1413, Pratap Singh in 2221, Cyan Chandra Sharma in 2084 and B. N. Dubey in 2083. Sri A. A. K. Afridi has not come to this Court. The facts stated in the counter-affidavit as to the cause for which these five were reverted has not been seriously disputed. Three posts of Senior Marketing Inspectors were abolished. When the temporary post was abolished the petitioners could not continue to retain it thereafter. Some Deputy Regional Marketing Officers and Assistant Regional Food Controllers were reverted to their pre-existing rank of Senior Marketing Inspectors. To the posts of Senior Marketing Inspectors held by these persons, the petitioners could continue to remain by promotion only so long as the posts were available. After the reversion, the vacancy disappeared with the result that the petitioners' promotion came to an end. The order putting these five persons back to their original post of Marketing Inspectors was, therefore, completely innocuous and justified.

9. In the case of the other petitioners who were affected by the promotion of eleven Inspectors who held the diploma in agriculture, the position is no different. Those eleven were senior to these petitioners and were entitled to preference over them. Their appeal was upheld. The order of their promotion and the consequent reversion of the petitioners was innocuous, It was not intended as a punishment. It did not visit the petitioners with any evil or penal consequences. The petitioners had not lost their seniority in their original cadre of Marketing Inspectors. "They retained their original seniority. The petitioners urge that in view of the Government Order No. M-821/XXXIX-CI-M-196/63 dated July 26, 1965, issued by the State Government to all Regional Food Controllers in Uttar Pradesh, the petitioners have lost all chances of future promotion. A copy of this order is annexure "B" to writ petition No. 2083. This is a departmental instruction. It does not appear to have statutory force. The petitioners rely upon Clause (iii) of paragraph 1 of this order where it is stated that the age limit for promotion of departmental candidates will be 40 years. Officials who started as officiating Senior marketing Inspectors before the age of 40 years will, however, be considered for promotion. Learned counsel has stated that five petitioners are above the age of 40 and will be hit by this clause. They are P. D. Seth, K. N. Sharma, Harpal Singh, Satyapal Singh and Pratap Singh of these P. D. Seth and Pratap Singh do not come under this group. They are among the other five dealt with above. The other three also do not, in my opinion, are affected by this order. The second part of this clause enables those who have officiated as Senior Marketing Inspectors to be considered for promotion. These petitioners have worked as Senior Marketing Inspectors since 1964 in virtue of the order D/-21-9-1964. Moreover, in the counter affidavits it has been asserted that this Government Order does not relate to filling of posts of Senior Marketing Inspectors by promotion. Thus the Department itself does not hold out the said

order against the present petitioners.

10. In *Mazhar Hasnain Vs. State of Uttar Pradesh and Others*, , a learned single Judge of this Court dealt with a case where one Mazhar Hasnain was appointed Munsarim by the District Judge. Another person Iqbal Hasan made a representation that he was senior to Mazhar Hasnain. The State Government upheld his claim to seniority.

11. Consequently Iqbal Hasan was appointed Mansarim in place of Mazhar Hasnain and the order indicated that Mazhar Hasnain will be entitled to promotion after Iqbal Hasan. It was held by this Court that:

"The sole question that arises is: Was the petitioner entitled to the rank? If he had been sent and another person was senior who had not been appointed, the petitioner was not entitled to the rank and in fact he was appointed by mistake, and if that mistake has been corrected, it cannot be said that any right of the petitioner; has been taken away from him. He has been placed at the place, where he should have been, if there had been a proper interpretation as has been made by the State Government".

The learned Judge continued to observe:

"If this contention of the learned counsel is accepted that once a person is transferred on promotion to another place, thereafter he cannot be reverted back on representation made by some other person, then, in that event, the right of representation will lose all its force. An appointment, where an appeal or revision is possible, is always subject to the result of such appeal or revision".

These observations are apposite to the facts of the present cases. The promotion of the present petitioners was under a mistake which was sought to be corrected because of acceptance of the representation filed by the adversely affected Inspectors. It could be said that the petitioners' promotion was subject to their representations and the petitioners were not entitled to hold the rank of Senior Marketing Inspectors.

12. For the petitioners reliance has been placed upon *Sudama Prashad Vs. Divisional Supdt. W. Rly. and Others*, . That case is distinguishable. There the person who was appointed subsequently did not have any preferential claims either under the rules or under Article 16(4) of the Constitution. It was held that the order of reversion violated Clauses (1) and (2) of Article 16 of the Constitution.

13. For the petitioner reliance has also been placed on the judgment of Hon^{ble} G. C. Mathur, J., in *Civil Misc. Writ No. 4701 of 1905, D/-2-8-1966 (All), N. S. Bhatnagar v. Union of India*. There the order of reversion was not passed to give effect to the preferential claim of another officer. That case is distinguishable.

14. In my opinion the impugned order is not reduction in rank so as to attract Article 311(2) of the Constitution.

15. In the result, the petitions fail and are dismissed. Under the circumstances, there will be no orders as to costs.