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(2013) 08 MP CK 0375

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7429 of 2003

Shankar Mukund Khare — APPELLANT

Vs

State of Madhya Pradesh and Others — RESPONDENT

Date of Decision : 29-08-2013

Acts Referred:
Constitution of India, 1950 — Article 311

Citation : (2013) 08 MP CK 0375

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Alok Katare, for the Appellant; Praveen Newaskar, Deputy Government Advocate for State, for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—This petition is directed against the punishment order dated 23.9.2002, whereby the petitioner is reverted from the post of Inspector to the post of Sub-Inspector. Shri Alok Katare, learned counsel for the petitioner advanced singular contention to assail this order. He submits that the petitioner was promoted on the post of Inspector by the Director General of Police (DGP). A specific pleading is there in Ground (C) of the petition (page 7). It is contended that the reversion order is passed by an inferior authority, i.e., Deputy Inspector General of Police (DIG), Gwalior Range. By relying on Article 311 of the Constitution, it is the case of the petitioner that he could not have been reduced in rank by an authority who is inferior in rank than his appointing authority on the post of Inspector.

2. Shri Praveen Newaskar, learned Deputy Government Advocate opposed the said contention by submitting that as per Police Regulation 223, DIG is competent to inflict all the punishments mentioned in Regulation 214 and 215 on non-gazetted police employees. He relied on various paragraphs of the return to submit that as per Police Regulation, DIG is competent to impose the punishment. It is further contended that the petitioner was promoted on the post

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of Inspector and was not appointed on the said post. Thus, it is contended that Article 311 provides a shield to the petitioner only to the extent that he cannot be reverted from a post by an inferior authority than the appointing authority to which he was appointed.

3. I have heard learned counsel for the parties and perused the record.

4. It is apt to quote Article 311 of the Constitution as under:-

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a Stat.--(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

5. I deem it proper to first deal with the second submission of Shri Newaskar regarding the question whether the protection under Article 311 is available only on appointment or it is available on promotion also.

6. In the opinion of this Court, promotion is also an appointment on a higher post. In other words, an employee is appointed on a higher post by way of promotion. In Service Jurisprudence, the appointments are made by various modes, like direct recruitment, promotion, transfer from any other post etc. The Apex Court in Director, General Rice Research Institution, Cuttack and Another Vs. Khetra Mohan Das, opined that promotion is also a mode of appointment. The relevant findings read as under:-

Promotion, as is generally understood, means the appointment of a person of any category or grade of a service or a class of service to a higher category or grade of such service or class. (Para 6).

7. Thus, I am unable to agree with the contention of Shri Newaskar that protection under Article 311 is not available on the promotional post. If this argument is accepted, it will lead to absurdity. For example, if an employee is appointed on the post of LDC by an inferior authority and later on he was promoted as UDC, Office Superintendent and then Superintendent, if Government''s argument is accepted, he can be removed or reverted from the post of Superintendent by an authority who has appointed him as LDC. This argument is without any basis and runs contrary to the object, purpose and scheme of Article 311 of the Constitution.

8. Second question is regarding competence of the officer, who has reverted the petitioner. In the opinion of this Court, the DIG, in normal circumstances, may be competent to inflict the punishments mentioned in the Police Regulations on certain employees but in the present case it cannot be forgotten that the petitioner was actually promoted on the post of Inspector by DGP. The petitioner''s specific pleading in Ground (C) is not denied by the respondents that he was promoted by DGP. Thus, in the facts and circumstances of the present case, he cannot be reverted by an inferior officer otherwise it will run contrary to

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the mandate of Article 311 of the Constitution. No enabling provision of Police Regulation can prevail over a constitutional provision like Article 311. It is apt to quote the extract of the judgment of this Court reported in Chhatrapal Singh Thakur Vs. Assistant Commissioner of Coal-mines Provident Fund and Others, as under:-

The petitioner was appointed by Coal-mines Provident Fund Commissioner on 14-6-1983. So his services could be terminated by that authority. The power was delegated to Coal-mines Regional Provident Fund Commissioner and Coal-Mines Provident Fund Assistant Commissioner by order dated 20-10-1983. Therefore, it is patently clear that services of the petitioner have been terminated by authority subordinate to appointing authority. The petitioner is a member of civil service of the Union, holder of a civil post under it. Protection of Article 311 of the Constitution of India is available to him. Therefore, his services could not be terminated by authority subordinate to the authority which appointed him. Constitutional protection available to civil servants under Article 311 can not be eroded or annihilated by any rule or regulation providing mode which runs counter to it.

9. In the light of aforesaid, in my opinion, the action of the respondents in reverting the petitioner by an inferior authority is bad in law and violates the provision available to the petitioner under Article 311 of the Constitution. Resultantly, petition is allowed. The impugned order (Annexure A/9) is set aside. However, liberty is reserved to the respondents to pass appropriate punishment order against the petitioner in accordance with law and by the competent authority. No costs.

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