
(2001) 03 KL CK 0007
In the High Court Of Kerala
Case No : O.P. No. 36170 of 2000

Sivasankaran Nair

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 09-03-2001

Acts Referred:

Constitution of India, 1950 — Article 16, 311
Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 — Rule 15
Kerala National Savings Service Special Rules, 2008 — Rule 3, 9

Citation : (2001) 03 KL CK 0007

Hon'ble Judges : R. Bhaskaran, J

Bench : Single Bench

Advocate : Latha Prabhakaran and A.A. Abdul Hassan, for the Appellant; C.T. Ravikumar, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

R. Bhaskaran, J.—Petitioner was working as Functional Literary Project Officer at Thrissur-While so, he was appointed as Assistant Director, National Savings by Ext. P-I order dated 2nd November 1993. He was later transferred to Idukki District and then to Thiruvananthapuram. While working as Assistant Director in Thiruvananthapuram, he was given charge of Joint Director from 24th September 1998 to 11th February 2000. In those places where the Petitioner worked, he had obtained great achievements in reaching far above the target in the matter of promoting the National Savings Scheme.

2. Thereafter, the Petitioner was transferred to Thrissur and he joined duty on 1st July 2000. Subsequently, it is stated that a show cause notice was issued. According to Petitioner, the show cause notice was not served on him. Thereafter, first Respondent issued another notice stating that the charge memo could not be served on the Petitioner for want of proper address and the Director of National Savings was directed to serve the memo of charges to the Petitioner at the present address. Ext. P-4 is the communication from the Principal Secretary

(Finance) to the Director of National Savings. According to Petitioner, when the earlier memo of charges was issued, he had availed of two days' casual leave and gone to Idukki and since he could not join duty, he had informed the Director over telephone of his necessity for availing commuted leave and cancelling the casual leave. After getting Ext. P-4, Petitioner submitted Ext. P-5 representation. After the expiry of the commuted leave, Petitioner reported for duty on 1st August 2000, but he was not permitted to rejoin duty. Thereafter, Petitioner submitted Exts. P-6 and P-7 representations.

3. This Original Petition was filed at a time when the Petitioner apprehended that he was attempted to be sent back to the original office where he was working in 1993 so as to enable somebody to be appointed in his place. After filing of the Original Petition, Petitioner was served with Ext. P-8 order dated 22nd December 2000. By Ext. P-8, Petitioner was reverted to his parent Department with immediate effect. The reason stated for such reversion is that the explanation furnished to the show cause notice was not satisfactory and the Director of National Savings has reported that the Petitioner is totally misfit to the National Savings Department. According to Petitioner, Ext. P-8 is passed without conducting any enquiry and the reversion causes serious prejudice to the Petitioner. The reasoning that the Petitioner was not performing well is against the truth and the appreciation given to the Petitioner from the concerned superior officers and no official records were looked into before passing Ext. P-8 order. Subsequently, Petitioner has also produced Exts. P-9 and P-10. Ext. P-9 is the Kerala National Savings Service Special Rules. It is stated in the affidavit filed along with the petition that the post of National Savings Officer mentioned in Ext. P-9 was re-designated as Assistant Director of National Savings. As per Rule 3, one of the modes of appointment is by transfer from among General Extension Officers in the Development Department. A ratio is also fixed in that respect. It is only in the absence of candidates for appointment by transfer, fresh appointments by direct recruitment is allowed. This is produced by the Petitioner to show that though Ext. P-1 showed the provision as Rule 9 (a) (i) of the Kerala State and Subordinate Service Rules, it was not a temporary appointment as contemplated under the rule as the Petitioner was working ever since 1993 as Assistant Director of National Savings and he has been transferred to various places. It is also stated that the appointment was made following the procedure prescribed under the Special Rules and in all cases where the appointment orders were given quoting Rule 9 (a) (i) of the General Rules, they were given promotion as Deputy Directors, Joint Directors and Directors of National Savings. Specific instances are also pointed out in the affidavit filed on 22nd January 2001. Petitioner has also produced Ext. P-10 in which promotions were given to persons similarly situated. It is also stated in the affidavit that the scale of pay of Assistant Directors of National Savings is Rs. 7200-11400 and if Ext. P-8 is implemented, Petitioner will have to work on the scale of pay of Rs. 6500-10550.

4. A Statement is filed on behalf of the first Respondent. It is stated in the Statement that the appointment was only provisional appointment. It is, further

stated that the Petitioner's application for availing casual leave was for two days and he did not turn up for duty from 18th July 2000 which created serious inconvenience in organising the works related to deposit mobilisation. Based on the report received from the District Collector, Thrissur and Joint Director, National Savings, Thrissur, Government issued Ext. P-3 memo to the Petitioner. Ext. P-3 memo was returned unserved and Ext. P-4 memo was issued. Petitioner submitted his explanation and the explanation was considered and he was directed to be reverted to his parent Department. It is further stated that the Petitioner has no right to continue as Assistant Director based on his appointment under Rule 9 (a) (i) of the Kerala State and Subordinate Service Rules.

5. Having considered the rival contentions, I do not think that it is possible to accept the contention of the Respondents that the Petitioner was appointed as a provisional hand under Rule 9 (a) (i) of the General Rules though the provision quoted in the order of appointment is Rule 9 (a) (i) of the Rules. As is evident from Ext. P-9, appointment by transfer from General Extension Officers in the Development Department is one of the methods of appointment under the Special Rules. Though it is stated in Ext. P-1 appointment order that the appointment is ordered in the absence of select list for appointment to the post of Assistant Director and the appointment is not likely to be regularised, Petitioner has continued to function as Assistant . Director of National Savings for more than seven years. There is no case for the Respondents that the procedure prescribed under Rule 9 (a) (i) in replacing the temporary appointments has been followed in the case of Petitioner. Apart from that, the Respondents have also issued a show cause notice to the Petitioner and his explanation was asked for. Therefore, the only question to be considered is whether the reversion order now made as is done in Ext. P-8 without conducting any enquiry and without even giving the Petitioner an opportunity of being heard, can be sustained at all.

6. In K.H. Phadnis Vs. State of Maharashtra, the Appellant was appointed in 1960 to a temporary post of Controller of Food Grains Distribution, Bombay. His parent Department was Excise and Prohibition Department. There was some complaint against the functioning of the Appellant and without any enquiry, the Appellant was directed to be repatriated to his parent Department in 1962. The Appellant had contended that the direction of the Government amounted to a reduction in rank and was an act of punishment. The Supreme Court has held as follows:

The order of reversion simpliciter will not amount to a reduction in rank or a punishment. A Government servant holding a temporary post and having lien on his substantive post may be sent back to the substantive post in ordinary routine administration or because of exigencies of service. A person holding a temporary post may draw a salary higher than that of his substantive post and when he is reverted to his parent department the loss of salary cannot be said to have any penal consequence. Therefore, though the Government has right to revert a Government servant from the temporary post to a substantive post, the matter

has to be viewed as one of substance and all relevant factors are to be considered in ascertaining whether the order is a genuine one of "accident of service" in which a person sent from the substantive post to a temporary post has to go back to the parent post without an aspersion against his character or integrity or whether the order amounts to a 1 reduction in rank by way of punishment. Reversion by itself will not be a stigma. On the other hand, if there is evidence that the order of reversion is not "a, pure accident of service" but an order in the nature of punishment, Article 311 will be attracted.

In *The Regional Manager and Another Vs. Pawan Kumar Dubey*, the Petitioner who was officiating as Senior Station-in-Charge was reverted to his substantive post of Junior Station-in-Charge while allowing his juniors to still officiate as Senior Station-in-Charge. The High Court held that the reversion could be held to amount to an unjustified stigma which could not be said to be devoid of an element of punishment. It was held that even an apparently inoffensive order may fail to pass the tests imposed by Articles 16 and 311 of the Constitution. In *State of U.P. and Others Vs. Sughar Singh*, also the reversion to a substantive post while retaining 200 others who are juniors to the Petitioner on the basis of an adverse entry in his character roll was held to be a punishment. Reduction to a lower rank or to a lower grade is a major punishment under Kerala Civil Services (Classification, Control and Appeal) Rules and the same cannot be done without an enquiry under Rule 15 of the Rules.

7. In the light of the above discussion, the contention of the Respondents that the Petitioner is only a temporary" appointee under Rule 9 (a) (i) of the Kerala State and Subordinate Services Rules and he has no right to challenge the order of reversion, is not correct. Petitioner has been allowed to continue in the higher post from 1993 onwards and his juniors are still continuing in the same post. Therefore, the order of reversion without any enquiry and without even giving the Petitioner an opportunity to explain his case, is illegal. Therefore, I quash Ext. P-8 order and direct the Petitioner to be reinstated in service as Assistant Director, National Savings. It is, however, made clear that this order will not stand in the way of the Respondents conducting a formal enquiry and passing appropriate orders after the enquiry. Petitioner should be reinstated in service as Assistant Director, National Savings within two weeks from the date of receipt of a copy of this Judgment.

The Original Petition is allowed as above.