
(2014) 11 KL CK 0225
In the High Court Of Kerala
Case No : W.A. No. 624 of 2010

Spices Board and Others

APPELLANT

Vs

Nagaraj, A.N. and Others

RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Citation : (2015) 1 ILR 77

Hon'ble Judges : Ashok Bhushan, Acting C.J.; A.M. Shaffique, J

Bench : Division Bench

Advocate : O.V. Radhakrishnan, Senior Advocate, K. Radhamani Amma and Antony Mukkath, S.C, Advocates for the Appellant; S. Ramesh and T. Naveen, Advocates for the Respondent

Judgement

Ashok Bhushan, Actg. C.J.

1. Heard learned counsel for the appellants and learned counsel for the respondents.

2. This Writ Appeal has been filed against the judgment dated 22nd December, 2009 passed in W.P. (C) No. 32956/2004 by which order, the writ petition filed by the respondent (petitioner in the writ petition) was disposed of modifying Exts. P-11 and P-13. The petitioner's reduction to the post of Senior Field Officer is set aside and observed that his reduction can be only to the post of Assistant Director (Development). The respondents were directed to workout the consequential benefits that are due to the petitioner on that basis. The Board is in appeal against the said judgment.

3. The brief facts necessary for deciding the appeal are that the 1st respondent, who shall be hereinafter referred to as the petitioner, was entered into the service of the Board as Junior Field Officer. He was promoted as Field Officer, Senior Field Officer, Assistant Director (Development) and Deputy Director (Development). While working at Gauhati, a show cause notice was issued proposing punishment of compulsory retirement. The disciplinary authority, by

Ext. P-11 order, imposed punishment of reduction to the post of Senior Field Officer and debarring promotion permanently. He filed an appeal. The appeal was disposed of by which the order debarring him permanently from promotion was modified and was confined to five years only. Challenging the said order, the writ petition was filed.

4. The learned Single Judge, interpreting Rule 7 of the Spices Board Service (Classification, Control and Appeal) Regulations, 1992, held that he could not have been reduced to the post of Senior Field Officer and he could have been reduced only to the next lower post of Assistant Director (Development). The learned Single Judge, while taking the aforesaid view, has placed reliance on two judgments of the Apex Court and one judgment of this Court, which shall be hereinafter referred to.

5. Sri O.V. Radhakrishnan, the learned senior counsel appearing for the appellants submits that the judgment which has been relied on by the learned Single Judge did not lay down any such proposition of law that while awarding punishment of reduction in rank, reduction can only be made only to the next lower grade. He submits that Regulation 7, sub-regulation (vi) also does not contain any such limitation. He submits that taking a lenient view of the matter, the petitioner was reduced to the post of Senior Field Officer, which order needs no interference in exercise of writ jurisdiction.

6. We have heard the learned counsel for the parties and perused the records.

7. The only issue which has been raised in the appeal is as to whether Regulation 7, sub-regulation (vi) of 1992 Regulations can be interpreted in a manner to confine the reduction only to the next lower grade or lower post as has been held by the learned Single Judge. Before we consider the issue, it is necessary to quote the aforesaid Regulation 1992, which is to the following effect:

"(vi) Reduction to a lower time-scale of pay, grade or post which shall ordinarily be a bar to the promotion of the Board's employee to the time-scale of pay, grade or post from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post from which the Board's employee was reduced and his seniority and pay on such restoration to that grade or post."

A bare reading of the Regulation does not indicate that the words "reduction to lower time-scale of pay, grade or post" can be read to mean reduction to lower time-scale of pay, grade or post immediately below the post held by him. Accepting the interpretation that the rule contains any restriction to the effect that reduction is to be only on the next lower grade, we have to read some additional words in the Regulation. It is well-settled that statutory rule has to be read as it is and neither any word can be added or substituted for interpretation of a statute. It is relevant to note that Regulation 7(vi) is also a major penalty. It is useful to note the major penalty as contemplated under Rule 7. Sub-rule (v) is relevant, which reads as under:

"7. Penalties.--The following penalties may, for good and sufficient reasons, and as hereinafter provided, be imposed on a Board's employee, namely:

* * * *

Major penalties

(v) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Board's employee will earn increments, of pay during the period of such reduction, and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

(vi) reduction to a lower time-scale of pay, grade or post which shall ordinarily be a bar to the promotion of the Board's employee to the time-scale of pay, grade or post from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post from which the Board's employee was reduced and his seniority and pay on such restoration to that grade or post;

* * * *"

8. A perusal of Rule 7(v) indicates that the said penalty contemplates reduction to a lower stage in the time-scale of pay for a specified period and 7(vi) contemplates reduction to lower time-scale of pay, grade or post, which shall be a bar to the promotion. The major penalty as contemplated under Regulation 7(vi) cannot be read to mean that reduction confines only to the next lower time-scale, grade or post.

9. Now, we come to the decisions which have been relied on by the learned Single Judge in his judgment.

10. The judgment of this Court in Sreekantan Nair v. Hindustan Latex Ltd. 2001 (1) K.L.T. 447, was a case where the employee was recruited directly as Driver Grade IV and he was holding the post of Driver Grade V at the time when penalty was imposed. The penalty imposed was reduction to a lower grade/post, i.e., to the post of Driver Grade III. In the above context, following was the observation made by the learned Single Judge in paragraphs 4 and 6:

"4. Reduction can only to a lower grade/post. It cannot be to any lower grade/post. It is widely understood in service law while imposing penalty of reduction in rank, that it shall be to the next post below. On that ground, the penalty imposed on the petitioner as per Ext. P-14 is not in consonance with the penalty permissible in terms of the service rules. The permissible penalty is to reduce him to the next lower grade. So the penalty now imposed as per Ext. P-14 is extremely arbitrary and unreasonable and not permissible by law. The authority which passed Ext. P-14 does not have jurisdiction to impose such a penalty."

* * * *

"6. There is another aspect as well. Penalty of reduction to a lower post cannot

be made to a post to lower than the one to which the delinquent was directly recruited. Admittedly, the petitioner was directly recruited as Driver Grade IV. Now he is working as Driver Grade V. He is reduced to Driver Grade III. In *Nyadar Singh Vs. Union of India (UOI) and Others*, , it has been made clear that the penalty of reduction to a lower post/rank cannot be to a post lower than to which he was originally recruited. Ext. P-14 is bad on that reason as well."

11. The said case was a case where the employee was reduced to a grade which he never held. The present is a case where, admittedly, the petitioner was initially appointed as Field Officer and earned promotions as (i) Field Officer, (ii) Senior Field Officer, (iii) Assistant Director (Development) and (iv) Deputy Director (Development). Although, in paragraph 4 of the judgment, the learned Single Judge has observed that "it is widely understood in service law while imposing penalty of reduction in rank, it shall be to the next post below", the above observation of the learned Single Judge is a general observation, which cannot be read as laying down any law. More so, service of each discipline has to be given effect to and in the present case, we are concerned with Regulation 7(vi) which has to be interpreted. Hence, the said judgment was distinguishable and does not apply to the facts of the present case.

12. Now, we come to the judgment of the Apex Court reported in *Nyadar Singh Vs. Union of India (UOI) and Others*, . In the said case, the Apex Court was considering the Central Civil Services (Classification, Appeal and Control) Rules, 1965. Rule 11(vi) which fell for consideration as quoted in paragraph 5 of the judgment is as follows:

"11. The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant namely:

Minor penalties: Omitted as irrelevant here.

Major penalties:

(v) * * * *

(vi) reduction to a lower time-scale of pay, grade, post or Service which shall ordinarily be a bar to the promotion of the Government servant to the time-scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of the restoration to that grade, or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;"

13. The Supreme Court noticed that there are divergent views of the High Court on the issue as to whether reduction to a lower time scale or grade or post means reduction to next lower grade or can be any other lower grade. The Apex Court, after considering the concept of reduction in rank and other relevant aspects, laid down in paragraph 10:

"10. As to whether a person initially recruited to a higher time-scale, grade or

service or post can be reduced by way of punishment, to a post in a lower time-scale, grade, service or post which he never held before, the statutory language authorising the imposition of penalty does not, it is true, by itself impose any limitations. The question is whether the interpretative factors, relevant to the provision, import any such limitation. On a consideration of the relevant factors to which we will presently refer we must hold that they do. Though the idea of reduction may not be fully equivalent with "reversion", there are certain assumptions basic to service law which bring in the limitations of the latter on the former. The penalty of reduction in rank of a Government servant initially recruited to a higher time-scale, grade, service or post to a lower time-scale, grade, service or post virtually amounts to his removal from the higher post and the substitution of his recruitment to lower post, affecting the policy of recruitment itself.

In *Worthington v. Robinson* (1896) 75 LT 446, where a supervisor of Inland Revenue was reduced in rank by statutory authority, referring to the effect of reduction in rank, though in a different context, brought about by the order of the statutory authority, the Court of appeals understood the process as a dismissal from the higher post and reappointment to the lower post. Rigby, L.J. Observed:

"..... I treat what has happened as a dismissal, because, though in effect he has been reduced to a lower position, his new appointment is in fact a reappointment. If we could see any point in this action upon which there might be a possibility of his succeeding, we should be most anxious to give him the opportunity"

But action was dismissed because the civil servant was holding the office at the pleasure of the Commissioners under the Inland Revenue Regulation Act governing the situation.

There are, therefore, certain considerations of policy that might militate against such a wide meaning to be given to the power. In conceivable cases, the Government servant may not have the qualifications requisite for the post which may require and involve different, though not necessarily higher, skills and attainments. Here enter considerations of the recruitment-policy. The rule must be read in consonance with the general principles and so construed the expression "reduction" in it would not admit of a wider connotation. The power should, of course, be available to reduce a civil servant to any lower time-scale, grade, service or post from which he had subsequently earned his promotion."

14. The Apex Court further in the said judgment has held that the power to reduce in rank is to be exercised reducing the employee to a post lower than to one to which he was initially recruited, may not be valid exercise of power. Following was laid down in paragraph 11:

"11. The Second, and perhaps equally relevant, consideration is the anomaly that a pushing to its logical limits of such power might produce. In *Srinivasa Sastry*'s

case, supra, the learned Judge of the Karnataka High Court visualised these anomalies thus:

"..... Acceptance of the contentions urged for the respondents would lead to incongruous and absurd results. To illustrate, could a Doctor be reduced in rank to the post of a Compounder, or an Engineer to the post of a Fitter, or a Teacher in a High School to the post of a Peon, or a Scientific Officer to the post of a ministerial officer, in the absence of any provision in the rules for the consideration of the case of the civil servant concerned, for promotion from the latter category to the former category? It appears to me that on a fair and proper construction of Rule 11(vi) of the Rules, the condition precedent for the exercise of power under that rule by way of imposing penalty of reduction in rank to a lower post is, that the higher post from which the concerned civil servant is sought to be reduced must be a promotional post in relation to the lower post to which he is sought to be reduced" [See 1979 (3) SLR 509 at p. 516 : (1979 Lab IC NOC 122)].

The argument that the rule enables a reduction in rank to a post lower than the one to which the civil servant was initially recruited for a specified period and also enables restoration of the Government servant to the original post, with the restoration of seniority as well, and that, therefore, there is nothing anomalous about the matter, does not, in our opinion, wholly answer the problem. It is at best one of the criteria supporting a plausible view of the matter. The rule also enables an order without the stipulation of such restoration. The other implications of the effect of the reduction as a fresh induction into a lower grade, service or post not at any, time earlier held by the Government servant remain unanswered. Then again, there is an inherent anomaly of a person recruited to the higher grade or class of post being asked to work in a lower grade which in certain conceivable cases might require different qualifications. It might be contended that these anomalies could well be avoided by a judicious choice of the penalty in a given fact situation and that these considerations are more matters to be taken into account in tailoring out the penalty than those limiting the scope of the punitive power itself. But, an overall view of the balance of the relevant criteria indicates that it is reasonable to assume that the rule-making authority did not intend to clothe the disciplinary authority with the power which would produce such anomalous and unreasonable situations. The contrary view taken by the High Courts in the several decisions referred to earlier cannot be taken to have laid down the principle correctly.

The pronouncement of this Court in Hussain Sasan Saheb Kaladgi Vs. State of Maharashtra, relied upon by the appellant is one which deals with a case of "reversion". Appellant in that case who, while working as a primary teacher in the services of the District Local Board, offered himself for and was selected by direct recruitment to, the post of the Asst. Deputy Educational Inspector. But after four years he was sought to be reverted to the post of primary teacher. His suit for the declaration that the purported reversion was illegal and void was

decreed by the trial court, but was dismissed by the High Court in appeal. This Court restored the decree of the trial court. As rightly pointed out by the learned Additional Solicitor General, the case dealt with the scope and limitations of the process of "reversion" and is of no assistance in deciding the point under consideration. But this does not make any difference to the conclusion we have reached."

The ratio of the decision by the Apex Court in paragraph 10 clearly lays down that Rule 11(vi) does not, itself, impose any limitation. However, it was further held that power should, of course, be available to reduce a civil servant to any lower time-scale, grade, service or post from which he had subsequently earned his promotion. The present is not a case where the writ petitioner has been reduced to a post which he never held. The ratio of the judgment of the Apex Court that there is no limitation in the Rule applies with full force to the facts of the present case.

15. The next case is *Ram Prakash Agnihotri v. District Judge, U.P. & others* 1991 Supp (1) S.C.C. 190. In the said case, the petitioner was appointed as Stenographer Grade II. He was punished and reduced to the rank of Clerk/Typist. In that context, following was laid down in paragraph 2 of the judgment:

"2. The petitioner was appointed as a Stenographer Grade II in 1962 and by 1978 he was confirmed as Stenographer Grade I. A departmental enquiry was held against him for remaining absent without leave and in that departmental enquiry he was found guilty and was reduced to the rank of Clerk/Typist. His grievance is that he could have been reduced to the next lower rank in the hierarchy and not to the post of Clerk/Typist which is outside the hierarchy. We had issued notice on the limited question as to why he should not be reverted to the post of Stenographer Grade II instead of being reverted to the post of Clerk/Typist. We have heard counsel for both the sides on this limited question and we think that the grievance of the petitioner in this behalf is fully justified. We, therefore, substitute the order of his reversion to the post of Clerk/Typist to that of Stenographer Grade II with effect from the date on which he was so reverted. He will be entitled to all consequential benefits flowing from this order. The rule is made accordingly with no order as to costs."

There cannot be any quarrel that the proposition as laid down by the Apex Court in *Nyadar Singh's* case (*supra*) that a person cannot be reduced to a lower grade which was never held by him. The judgment of the Apex Court in *Ram Prakash Agnihotri's* case (*supra*) is clearly distinguishable since in the said case, the employee was reduced to a lower post which he never held.

16. Learned counsel for the respondent has submitted that Regulation 7(vi) of 1992 Regulations does not contemplate reduction to any lower post than the post immediately held by the employee. He submits that the reduction to a lower time scale of pay is always in the scale of pay, which was held by the employee. He has further placed reliance on a judgment of the Apex Court in *South Bengal*

State Transport Corporation Vs. Ashok Kumar Ghosh and Others, . A perusal of Regulation 7(vi) of the 1992 Regulations indicate that the major punishment under sub-regulation contemplates the following categories:

- (A) Reduction to lower time scale of pay;
- (B) Reduction to lower grade;
- (C) Reduction to lower post.

All the three punishments, which are indicated in the said Regulations take a different colour and effect. Reduction to a lower time scale of pay is a reduction in the time scale of pay, which is held by the employee on the same post. Reduction to a lower grade may also be reduction in grade. But, the third punishment, which contemplates reduction to lower post, cannot be read as reduction to immediate lower post. The contention which has been pressed by learned counsel for the respondent is that the reduction to lower post means reduction to immediate lower post. The judgment in Ashok Kumar Ghosh's case (supra), which was relied on was a case where a conductor was punished and reverted to the status of daily-rated conductor. The said punishment was challenged in the said case. Regulation 38 was a Regulation, which held the field. In Regulation 36 "penalty" was provided. Regulation 36 has been quoted in paragraph 18 of the judgment, which is to the following effect:

18. Regulation 36 provides for the penalties which can be imposed on the delinquent employee. Regulation 36 reads as follows:

"36. Penalties.-- The following penalties may, for good or sufficient reasons and as hereinafter provided, be imposed on an employee, namely--

- (i) censure;
- (ii) withholding of increments or promotions;
- (iii) recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of orders;
- (iv) reduction to a lower stage in time scale of pay for a specified period with further direction as to whether or not the employee will earn increments of pay during the period of such reduction will or will not have the effect of postponing the future increments of his pay;
- (v) reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the employee to the time scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of the restoration to the grade or post of service from which the employee was reduced and his seniority and pay on such restoration to that grade, post or service;
- (vi) compulsory retirement;

(vii) removal from service which shall not be a disqualification for future employment;

(viii) dismissal from service which shall ordinarily be a disqualification for future employment."

The Apex Court in paragraph 20 of the said judgment has held that it is well-settled that while an employee can be reverted to a lower post or service, he cannot be reverted to a post lower than the post in which he entered service. Further it was held that the reversion to a lower post or service does not permit reversion to a post outside the cadre. There cannot be any dispute to the above proposition. The Apex Court has relied on the judgment of the Apex Court in Nyadar Singh's case (supra). Paragraphs 19 and 20 of the said judgment are quoted as below:

19. The third view of the matter which while holding such a reduction is permissible, but subject to the post to which the Government Servant is reduced being one from which promotion to the post from which reduction is effected is permissible, is to be found in Srinivasa Sastry's case where Rama Jois, J. of the Karnataka High Court held: (SLR p. 515, para 9)

"...It is no doubt true that normally penalty of "reduction in rank" is imposed only so as to bring down a civil servant to a lower time scale, grade, service or post, held earlier by him before promotion and not below the post, grade, service, or time scale to which a civil servant was directly recruited, and it appears, that it is also reasonable to do so. The learned counsel, however, could not substantiate the point with reference to the rule which empowered the Disciplinary Authority to impose the penalty of reduction in rank as it does not make any such differentiation...."

20. This is also the view taken by the Tribunal in the first of the appeals now before us. The Tribunal held:

"12. In the light of the aforesaid discussion we find that Rule 11(vi) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, on its true construction permits reduction in rank in the case of a direct recruit if the post to which he is reduced is in the line of promotion i.e. is a feeder service...."

But as against this judicial opinion in Srinivasa Sastry's case, the learned Judge, as author, (see Services under the State: Indian Law Institute, page 220) expressed the view:

"Therefore, it is reasonable to take the view that a civil servant earns promotion by exhibiting his merit and ability and suffers reduction in rank instead of removal or dismissal for misconduct or inefficiency during his service in the higher post unless he is unworthy of being retained in the service and that the words "reduction in rank" are used in Article 311 in this sense. It appears that the punishment by way of reduction in rank can be inflicted only against a civil servant who held a lower post and who has been promoted to the higher post;"

The above case was a case where an employee was reverted to a post outside the cadre. It was laid down that although the power can be exercised to revert to any lower post, that power should be exercised only for reduction to a post, which was held by the employee. The propositions laid down by the Apex Court in the above case are the same, which were laid down in Nyadar Singh's case (Supra). The said judgment in no manner help the appellants. Learned counsel for the respondent writ petitioner further contended that the punishment, which was imposed on the petitioner was modified by the appellate authority by order dated 9-9-2004 as reduction to the lower rank. Paragraph 10 of the order of the appellate authority is to the following effect:

"10. After careful consideration of the case and the fact that Shri Nagaraj will have about 10 years of service left with the Spices Board, I hold that while reduction to the rank of Senior Field Officer is not a harsh penalty in the circumstances of the case, the debarment of the appellant for promotion in the remaining period of service is somewhat excessive. Accordingly, I order that the debarment shall apply only for a period of 5 years from the date of reduction in rank of Shri Nagaraj while reduction to the post of senior Field Officer should stand."

17. A perusal of the order quoted above indicates that the appellate authority, affirming the punishment of the petitioner to reduction to the rank of Senior Field Officer, held that it is not a harsh punishment. The punishment was modified to the effect that debarment of the appellant for promotion was held to be excessive and was limited only for the period of five years. The punishment of reduction to the rank of Senior Field Officer was maintained.

18. In view of the aforesaid position, we are of the view that the learned Single Judge has not correctly interpreted the scope of Regulation 7(vi) of the 1992 Regulations and the view taken by the learned Single Judge that an employee, in exercise of power under Regulation 7(vi), cannot be reverted to the next lower post is not a correct interpretation and is not in accordance with the law laid down by the Apex Court.

In the result, we allow the Writ Appeal setting aside the judgment of the learned Single Judge dated 22-12-2009 and dismiss the Writ Petition.

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