
(1962) 09 AP CK 0007
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 75 of 1961

State of Andhra Pradesh

APPELLANT

Vs

Y. Chinna Reddi

RESPONDENT

Date of Decision : 14-09-1962

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)

Citation : AIR 1963 AP 412

Hon'ble Judges : Satyanarayana Raju, J; Mohammed Mirza, J

Bench : Division Bench

Advocate : 2nd Govt. Pleader, for the Appellant; P.M. Gopal Rao, for the Respondent

Final Decision : Dismissed

Judgement

Satyanarayana Raju, J.—The State has preferred this appeal against the judgment of our learned brother, Mr. Justice Jaganmohan Reddi, issuing a writ of Certiorari quashing the proceedings of the Government, dated the 3rd December, 1960, in Memorandum No. D-35789/59-21.

2. For a proper appreciation of the contentions raised before us, it is necessary to set out the history of the service of the respondent in chronological sequence. He was appointed as an officiating clerk on July 23, 1940, by the Inspector of Salt, Kanuparti. He served in the Salt Department, though not continuously, till June 14, 1941. Thereafter his services were transferred to the Factories Department where he completed his probation on December 2, 1942. He was thereafter appointed as an acting clerk in the Taluk Office, Sattenapalli, till he was appointed as an election revenue inspector in an officiating capacity on December 19, 1945. On August 6, 1949, he was promoted as an upper division clerk in the Collector's Office, Guntur, in which capacity he was in the service of the revenue establishment of the Guntur district till December 2, 1953. In the meantime, on October, 1, 1953, the State of Andhra was ushered into existence and the respondent, among other applicants, sought a transfer to the Andhra

Secretariat service. There he was entertained as an upper division clerk in the Revenue Secretariat on and from December 7, 1953.

At the time of his transfer from the Guntur revenue establishment to the Secretariat, it would appear that the Government were not aware of the fact that he had not the requisite minimum educational qualification of a degree as required by Andhra Secretariat Service Rules. The respondent was therefore reverted to the revenue establishment of Guntur district with effect from February 9, 1955. As a result of the representations made by the respondent to the Government, they relaxed the rule of the minimum general educational qualification in favour of the respondent so as to enable him to be appointed by transfer to the Secretariat Service by G.O. Ms. No. 1207 Revenue dated 26th May, 1955. Accordingly, the respondent joined the Secretariat service on May 30, 1955. His services were regularised in the category of upper division clerk (category 2 of the Andhra Secretariat Service) with effect from May 30, 1955. (Vide G.O. No. 15 Revenue dated 28th February, 1956).

By a Memorandum dated 24th December 1956, he was declared to have satisfactorily completed the prescribed period of probation in the category of upper division clerk in the Andhra Secretariat Service, on May 29, 1956. His pay in the Revenue Secretariat was fixed at Rs. 95/- with effect from May 30, 1955, and at Rs. 100/- with effect from September 1, 1955. Subsequently he earned some increments, and his pay was fixed at Rs. 105/- with effect from September 1, 1956, in the revised scale of 100-5-120-10-200. By a memorandum dated 3-12-1960, he was reverted to the Guntur revenue establishment. Shortly thereafter, on December 26, 1960, the respondent filed the writ petition out of which this appeal arises.

3. The main ground on which the petition was resisted was that the order of reversion deprived him of the benefits of the service in the Revenue Secretariat with its higher emoluments which would amount to a reduction to a lower rank and that as he was not afforded an opportunity as required by Article 311(2) of the Constitution, read with the statutory rules, the said order should be vacated by the issue of a Writ of Certiorari.

4. In the counter affidavit filed by them, the Government contended inter alia that the respondent's transfer from the Secretariat Service, where he was only an approved probationer, to his permanent post in the district revenue establishment, was perfectly legal and valid and that the same was done on administrative grounds.

5. After an elaborate consideration of the respective contentions of the parties, the learned Judge held that as the respondent "has acquired a substantive right as an approved probationer in the secretariat service, he cannot be transferred without following the procedure laid down in Article 311(2)". In this view, he quashed the impugned order.

6. On behalf of the State, it is contended by the learned Government Pleader

that the reversion of the respondent from the secretariat service to the revenue establishment of the Guntur district does not attract the provisions of Article 311(2). It is also stated that the transfer of the respondent falls within Rule 14 of the Fundamental Rules and that there is no question of the respondent being afforded an opportunity of showing cause against the order reverting him to the revenue establishment of the Guntur district.

7. In the affidavit filed by him in support of the writ petition, the respondent has enumerated a host of grievance)

which are not really relevant for the purpose of the present petition. His services in the revenue secretariat were regularised with effect from May 30, 1955. Among the several grievances which he set forth in his affidavit, is the one that his services ought to have been regularised from the date of his original entry in the Secretariat service, that is, from December 7, 1953, and not from the date of his re-entry, that is, May 30, 1955, and a good portion of his affidavit is devoted to this aspect. As has been already noted by reason of his not possessing the required qualification of a degree, the respondent was reverted to the district establishment on February 9, 1955, and the relevant rule was relaxed in his favour in G.O. Ms. No. 1207 dated 26th May, 1955. The regularisation of his services as and from May 30, 1955, has become final, and it is futile for the respondent to content that his services should have been regularised earlier and not with effect from May 30, 1955.

8. The real point in controversy in the present petition, however, is whether the respondent having been declared to have satisfactorily completed his period of probation in the secretariat service, the order of the Government reverting him to the district establishment be it noted, not by reason of the want of a vacancy -- without following the procedure under Article 311(2) of the Constitution, is legal.

9. The impugned memorandum does not mention any reason. All that it says is that the respondent was reverted back to the Guntur Revenue establishment with immediate effect from 3-12-1960. The learned Government Pleader has contended that the respondent is a permanent upper division clerk of the revenue establishment of Guntur district and that his post in the secretariat service is only temporary, which gives him no vested right, and that his reversion to his parent department does not attract any penal consequences and therefore the provisions of Art. 311(2) do not apply.

10. At the outset, it is necessary to mention that before the revision of the pay scales, the grade of an upper division clerk in the revenue establishment of the district was Rs. 80-110, while the grade of an upper division clerk in the secretariat was Rs. 90-5-125-10-175. After the revision of the pay scales, the post of upper division clerk in the district service is borne in the grade of Rs. 90-150, while the post of upper division clerk in the secretariat service is borne in the grade of Rs. 100-200.

11. As already mentioned the respondent's pay was fixed at Rs. 105A with effect from September 1, 1956, in the revised scale of Rs. 100-5-120-10-200. That the post of upper division clerk in the secretariat service carries with it higher emoluments than the post of upper division clerk in the revenue establishment of the district is indeed common ground. The learned Government pleader, however, says that so long as the respondent is a permanent member of the revenue establishment in the district of Guntur, his transfer from the Secretariat service to his parent department is within the discretion of the Government and that the fact that when reverted, he loses the benefit of the higher emoluments, attached to the post in the secretariat service, would not attract the provisions of Article 311(2).

12. That the services of the respondent were regularised with effect from May 30, 1955, has already been noted. What is more, he was declared to be an approved probationer in the post of upper division clerk in the secretariat service by the following order, dated 24th December 1956.--

"Declared to have satisfactorily completed the prescribed period of probation in the category of upper division clerk of the Andhra Secretariat Service on the afternoon of 30th May 1956."

An approved probationer is defined in Sub-rule (3) of Rule 1 of the Andhra State and Subordinate Service Rules as follows;

"Approved probationer" in service, class or category means a member of that service, class or category who has satisfactorily completed his probation and awaits appointment as a full member of such service, class or category."

13. We may read in juxtaposition the definition of probationer in Sub-rule (12) of the same rule

"Probationer" in a service means a member of that service who has not completed his probation".

14. The other definition relevant to the present context is "Discharge of a probationer" which means,

"in case the probationer is a full member or an approved probationer of another service, class or category reverting him to such service, class or category and in any other case, dispensing with his services."

15. The only other rule to which we may refer is Rule 15 of the Fundamental Rules, on which, in fact, the argument of the learned Government Pleader rests. It reads as follows.

"(a) A local Government may transfer a Government servant from one post to another; provided that, except--

(1) on account of inefficiency or mis-behaviour or

(2) on his written request,

a Government servant shall not be transferred substantively to, or, except in a case covered by Rule 49, appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien, or would hold a lien had his lien not been suspended under Rule 14.

(b) Nothing contained in Clause (a) of this rule or in Clause (13) of Rule 9 shall operate to prevent the retransfer of a Government servant to the post on which he would hold a lien, had it not been suspended in accordance with the provisions of Clause (a) of Rule 4."

Rule 14 states that until a Government servant is appointed substantively to another post, his lien on a permanent post continues.

16. It is contended by the learned Government Pleader that so long as the respondent has a lien on his post in the district revenue establishment of Guntur, it is open to the Government to transfer him without resorting to the procedure envisaged by Article 311(2) of the Constitution.

17. The rulings under the Fundamental Rules u/s 2-A are part and parcel of the Fundamental Rules under ruling (1) the Statutory Service Rules must be taken to embody and indicate fully all the provisions governing the services concerned. As laid down in the Subordinate Services General Rule 3 of Part 1, the fundamental Rule will govern a service only in the matter of leave, leave salary, pension and other such conditions of service, as have not been provided for in the Service Rules. Under Rule 40 of the Andhra State and Subordinate Services Rules, a member of a service or class of service may be required to serve in any post borne on the cadre of such service or class. The learned Judge held that in view of the specific Rule 40, in the State Services Rules, which provides for a transfer, Rule 15 of the Fundamental Rules is not applicable. We are in agreement with the view taken by him.

18. There was much debate and discussion before us as to what the position of an approved probationer is, in other words, whether the fact that he is declared to have satisfactorily completed his probation would give him a vested right to continue in that post unless his services are terminated or he is reverted in accordance with the procedure held down by Article 311(2). That there is essential distinction between a person serving in a temporary capacity, a probationer and an approved probationer cannot be disputed. An approved probationer is a member of the service who has satisfactorily completed his probation and awaits appointment as a full member of that service. Before a probationer is declared to be an approved probationer, he has to prove his worth, his suitability for the higher post in which he is working. If his work is found not to be satisfactory, he will be liable to be reverted to his original post even without assigning any reason.

19. The rights of a temporary incumbent vis a vis a probationer and an approved probationer were considered by their Lordships of the Supreme Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, where it has been laid down that

Article 311(2) makes no distinction between the two classes, permanent and temporary (officiating, provisional and on probation included) both of which, therefore, are within its protections. At p. 236 (01 SCJ) ; (at pp. 49-50 of AIR) their Lordships pointed out:

"A reduction in rank likewise maybe by way of punishment or it may be an innocuous thing. If the Government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty. The use of the expression "termination" or "discharge" is not conclusive. In spite of the use of such innocuous expressions, the Court has to apply the two tests mentioned above, namely (1) whether the servant had a right to the post or the rank (2) whether he has been visited with evil consequences of the kind herein before referred to? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311(2), which give protection to Government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant."

20. In the present case, the respondent was declared to have satisfactorily completed his probation. He was therefore an approved probationer within the meaning of Rule 2(3) of the State Services Rules. He was awaiting appointment as a full member of the service in which he was declared as an approved probationer, under Rule 40 of the Rules, therefore, he can only be transferred to serve in a post borne on the same cadre or class. This is subject to certain exceptions, such as, that the Government servant can be reverted for want of a vacancy. Such is not the case here. It was at no time stated that the respondent was being reverted to his post in the district revenue establishment on the ground of want of a vacancy in the secretariat service. While it is no doubt true

trial an approved probationer does not eo instanti acquire the status of a permanent member of the service, the fact does remain that he awaits appointment as a full member of the service, Their Lordships of the Supreme Court in the Parshotam Lal Dhingra Vs. Union of India (UOI), have held that the real test would be to find out whether the Government servant suffers loss in emoluments and chances of promotion, that test has been satisfied in this case. It is, no doubt, true that no reasons were given in the order reverting the respondent but the only reasonable inference which could be drawn from the sequence of events mentioned above, is that the order of reversion, though innocuous in its apparent tenor, does really amount to a reduction in rank. Though it had the garb of an order of transfer from the secretariat service to his parent department, there can be no doubt that it visits the respondent with penal consequences, if so much is conceded -- we have no doubt that that the reasonable inference to be drawn from all the material circumstances of the case -- the order of reversion not having been made in conformity with the provisions of Article 311(2) of the Constitution, was bad in law and was rightly held to be so by the learned Judge.

21. For all the above reasons, we hold that the order under appeal must be affirmed. In the result, the appeal fails and is dismissed with costs. Advocate's fee Rs. 100/-.