
(1989) 04 MAD CK 0039
In the Madras High Court

The High Court

APPELLANT

Vs

R. Periaswamy and Another

RESPONDENT

Date of Decision : 26-04-1989

Acts Referred:

Citation : (1990) 1 LW 331 : (1989) 2 MLJ 191

Hon'ble Judges : Mohan, O.C.J.

Bench : Division Bench

Judgement

Mohan, Officiating C.J.

1. The Registrar, High Court, Madras, is the appellant in this case.
2. The short facts leading to the writ appeal are as under:

The first respondent is a Law Graduate. He was working as an Assistant in Tamil Nadu Electricity Board. In the year 1979 he was selected to act temporarily as Judicial Second Class Magistrate, by an interview conducted by two of the Judges of this Court. The Government of Tamil Nadu passed, G.O. Ms. No. 810. Home (Courts -I) Department, dated 25th March, 1986 to the following effect:

Under Rule 13(1)(e) of the Tamil Nadu State Magisterial Service Rules, the Governor of Tamil Nadu hereby terminates the temporary service of Thiru R.Periaswamy as Temporary Judicial Second Class Magistrate in the Judicial Department in the Tamil Nadu State Magisterial Service and direct that he be reverted to the parent department.

2. The Registrar, High Court, Madras is requested to revert Thiru R. Periaswamy to his parent department viz, Tamil Nadu Electricity Board, Salem.

Pursuant to this, the appellant passed Notification No. 10/85 (R.O.C. No. 2456/85 Rule 1) dated 3-4-1986 reverting the first respondent to his parent department with effect from the date of service of the notification. It was under these circumstances, the first respondent herein preferred Writ Petition No. 4825

of 1986 to quash G.O.Ms No. 810 Home (Courts-I) Department, dated 25-3-1986 and the consequential notification is issued by the appellant i.e., Notification No. 10/86, dated 3-4-1986.

3. In challenging the Government Order and the Notification, the principal contention raised before the learned single Judge was that in so far as the service of the first respondent has come to be terminated from the Judicial department which is punitive in character and when such a punitive order had come to be passed without an enquiry thereof, it would be violative of Article 311(2) of the Constitution and it is opposed to the principles of natural justice.

4. This contention has come to be accepted by the learned single Judge, stating that the respondent No. 1 had been singled out for this hostile treatment since there were juniors who have been retained in Service and therefore, there is a violation of Articles 14 and 16(1) of the Constitution. In holding so, the learned Judge relied on *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, .

5. The next contention which found favour with the single Judge was, though the order of reversion to the parent department was innocuous in appearances, in fact it was not so because the file produced before him showed that the reason for reversion to the parent was he (first respondent herein) had made certain unsavoury remarks against the High Court, and therefore, it would be punitive in character. For this conclusion, the learned Judge relied on *Jarnail Singh and Others Vs. State of Punjab and Others*, . Accordingly the orders were quashed and the writ petition was allowed. Thus, aggrieved by the order of the learned single Judge, the appeal has come to be preferred.

6. The learned Government Pleader vehemently contends that the learned Judge has not appreciated the scope of the order which was impugned before him, that this is nothing more than reversion of a temporary Magistrate to his parent department and so long as the first respondent holds or held a lien over the parent department, he cannot be considered to be a regular member of the Judicial Department. It was argued, where therefore, the authority viz., the Government and the Registrar have found that he is not fit to be continued as a Magistrate and revert him to the parent Department, it cannot be termed as a punishment. Nor again, could it ever be claimed to be discriminatory in nature merely because his juniors are retained in service. First of all, there is no question of juniority and seniority in such cases. It will depend upon the merits of each case whether such a Magistrate who has a lien in the parent department could be continued in the Judicial Department. Where on merits it has come to be found, may be on complaints, that he is not fit to be continued in the Judicial Department, nothing prevents the authority from reverting him. To such a case, Article 311 of the Constitution cannot apply. This squarely falls under Rule 13(1) (e) of the Tamil Nadu State Magisterial Service Rules. Therefore, if under the scope of that rule, a temporary employee could be reverted without assigning any reason, that order will have to be upheld. It is purely the discretion of the

authorities. As a matter of fact, a very similar point was raised before a learned single learned Judge of this Court in Writ Petition Nos. 259 and 308 of 1985 where, on a detailed consideration, the learned Judge had come to the conclusion that such an order is unassailable. As a matter of fact, that order of the learned single Judge was confirmed by a Division Bench while it dismissed the Writ Appeal Nos. 138 and 139 of 1985 in limine.

7. The learned single Judge in the case in hand was not correct in relying on either *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, ; or *Jarnail Singh and Others Vs. State of Punjab and Others*, . The first of the cases relates to a different situation altogether, and not a case of reversion to parent department. As already noted, in the case of a reversion to the parent department, no question of seniority or juniority would arise. Each case has to be decided purely on its merits. Then again is *Jarnail Singh and Others Vs. State of Punjab and Others*, , it was held where an order of termination has come to be passed on misconduct, though couched in innocuous terms, Court could lift the veil and see the circumstances as well as the basis and foundation in the order complained of. Here no such thing arises. No doubt, there were complaint against the first respondent. But, instead of taking disciplinary action against these complaints, finding that the first respondent was purely a temporary Magistrate, should the authorities revert him to the parent department, no scope for invoking Article 311 of the Constitution would ever arise. Looked at from this therefore, " the order of the learned single Judge requires to be set aside.

8. In opposition to this, Mr. K.Periaswamy, in seeking to support the order of the learned Single Judge would say that the writ petitioner (first respondent herein) was appointed by way of recruitment by transfer. In other words, he was elected after an interview by two learned Judges of this Court and, therefore, this is not a case of Direct Recruitment. In the case of Direct Recruitment, if there is termination of a temporary employment, then he goes back home; and in the case of reversion to the parent department, while there is a connection of the Office of the Judicial Department. Therefore, from the point of view, namely that there has been a termination of the Judicial Office, the matter will have to be looked at. So looked at, squarely the Judgment in Writ Petition No. 11143 of 1981 would apply. As a matter of fact, under similar circumstances, a Division Bench of this Court as seen from *S.Balaiah v.The Government of Tamil Nadu, Represented by Commissioner and Secretary Home Department, Madras 1984 T.L.N.J. 233*; set aside the order looking at the attendant circumstances and finding that the basis of reversion to the parent department was misconduct. Therefore, the learned Judge's order will have to be upheld.

9. Having regard to the little confusion that had come to be created, we think it is worthwhile to state on a few fundamentals. Where a person is borrowed from one department and is asked to work in another department temporarily, if his is reverted back to the Original department, there is no question of termination of any service any) service in the proper sense of the term. In other words his

services in the transferred department have come to an end. He goes back to the parent department. That is because he has a lien in the parent department. That lien continues. So long as that lien continues, he has a right to go back to that department. In the case on hand, the first respondent was working in the Tamil Nadu Electricity Department. He was appointed, no doubt after no interview, as a temporary Magistrate. Since his services were not any longer required., he was sent back to the parent department which we consider in his original place. Merely because the impugned order says "termination of service" it cannot be contended, so urged on behalf of the first respondent, that there is a termination of service in the Judicial Department. That is so incorrect way of approaching the matter. Termination of temporary service as a Magistrate is a logical corollary to the reversion to parent department. There is no independent termination as such. Once this position is understood, it would be very clear that there is no scope at all for invoking Article 311 of the Constitution.

10. Equally, the argument based on seniority cannot be made because the personnel are drawn from the various departments. There is no question of inter se seniority. Their seniority remains as long as their lien subsists only in the parent department. Therefore, that seniority will remain unaffected notwithstanding the fact that the services have been lent or borrowed by the Judicial department. Besides, all the temporary employees stand on the same footing. They are liable to be reverted irrespective of the length of service in the Judicial department. Therefore, neither the question of seniority nor juniority would ever arise. If that be so, the second argument that there are a number of juniors who are still working in the Judicial department, while the first respondent being senior. cannot arise at all. As rightly urged by the learned Government pleader, each case of reversion will have to be individually weighed on its own merits. Here, therefore, on certain merits it was found that the first, respondent no longer should be retained, he has to go back. As a matter of fact, similar arguments were raised in Writ Petition Nos. 259 and 308 of 1985 before S.Natarajan, J., (as he then was and we find that the ruling lays down the correct law, and we say so, with respect. As was pointed out by the learned Judge, the argument about seniority was rejected in the following words:

such an argument can be accepted only if one closes his eyes to the realities of the case. However spread out the branches may be, they go with the trunk of the tree. Similarly, however longer Government Employee may have served temporarily in another department, his permanent place is in his parent department, and no such, a return to that Department can neither be resisted nor decried. This position is too fundamental in nature and does not really call for exposition with reference to rules and regulations. But, even so, it would not be put of place, if reference in mode to certain provisions in the Tamil Nadu Magisterial Service Rules, the Tamil Nadu State Judicial Service Rules and the Tamil Nadu Civil Services (Classification Control and Appeal) Rules, Rule 13(e) of the Tamil Nadu Magisterial Service Rules and Rule 11(3)(ii) of the Tamil Nadu State Judicial Service Rules lay down that a person appointed temporarily shall

not be regarded on a probationer in such category or be entitled by reason only of such appointment to any preferential claim to future appointment to such category. The Rules further lay down that the service of a person appointed under any of the said clauses shall be liable to be terminated by the appointing authority at any time without notice and without assigning any reason. These rules clearly reveal the impersonance of the temporary appointments and their vulnerability to instantaneous termination. The Civil Services (Classification, Control and Appeal) Rules specifically mention that "reversion of a Government servant, appointed on probation but in other service, grade or post to his permanent service, grade or post during or at the end of the period of probation, in accordance with the terms of his appointment or the rules and order governing such probation" will not amount to a penalty within the meaning of Rule 8. Another important rule to be noted in Rule 16 of the same Rules. That Rule provides that the power to impose penalty of compulsory retirement, or removal or dismissal, shall lie only with the lending Authority and no other Authority and if the borrowing Authority considers that the punishment of compulsory retirement, removal or dismissal should be imposed, it should complete the enquiry and revert the person concerned to the lending Authority, for such action as that Authority may consider necessary. This Rule points out beyond doubts that the roots of a permanent employee are in his parent Department and his temporary services elsewhere cannot make him a member of that service or claim permanency of employment in the temporary post. On account of all these facts, there can be no room for contending that an order of temporary appointment confers rights of permanency or any order of reversion to the permanent service constitution a punishment or penalty.

We are in entire agreement with the observations of the learned Judge. Even with respect to monetary loss, the learned Judge held in paragraph 17 that:

If, by fortuitous circumstances, a Government employee is temporarily appointed to another post in a different Department carrying better emoluments, such appointment will not entitle him to seek endless continuance in the temporary post, merely on the ground that an order of reversion will take him back to his old level of pay. The benefits of a windfall cannot be claimed everlastingly. The submission made appealingly that a reversion to the present Department will affect the emoluments of an employee, conveniently overlooks the other side of the picture, viz., that only because of emergencies or unexpected situations, a Government employee on a lesser scale of pay got an unsuspected benefit of a higher scale of pay by reason of a temporary appointment in another Department.

We find, on a careful reading of the Judgment, that it meets all the contentions raised by the first respondent before us. The learned Judge had given nine valid reasons to reject those contentions, and such one of them is fully consonance with the law relating to services.

11. The very ruling that is cited on behalf of the first respondent viz.,

M. Renold Princely v. Government of Tamil Nadu (1982) 2 L.L.J. 342, and B. Baluiah v. The Government of Tamil Nadu, represented by Commissioner and Secretary, Home Department, Madras 1984 T.L.N.J. 233 had come to be dealt with by the learned Judge (S. Natarajan, J. we had pointed out therein in the course of his judgment as to how this was clearly distinguishable on facts. In the first of the case, before the order of reversion was passed, disciplinary proceedings had been taken and the Magistrate was called upon to offer his explanation, in respect of two charges. Therefore that was a case of allegation of misconduct. In the other case viz, S. Baluiah v. The Government of Tamil Nadu 1984 T.L.N.J. 233 the learned Judge found that the impugned order had been passed on the footing that the Magistrate was guilty of misconduct alleged against him and since the basis of the order was knocked down by the report given by the handwriting expert, the order could not be sustained. Moreover, the Bench also took into consideration the fact that the Magistrate had levelled serious charges of bias against the Chief Judicial Magistrate and these charges have not been countered by the Chief Judicial Magistrate by means of a counter affidavit. The Bench accepted the case of the Magistrate because, in its opinion, there was clear means between the impugned order the allegation of misconduct of the Magistrate and therefore, the alleged misconduct was the real foundation for the order of termination. It is therefore obvious that the decision of the Bench is confined to the facts of that case. "Therefore, these two cases do not help the first respondent as a matter of fact this ruling was confirmed by a Division Bench in Writ Appeal Nos. 138 and 139 of 1985. It is unfortunate that the attention of the learned Single Judge who disposed of the Writ Petition in the instant case, was not drawn to this ruling. The Manager, Government Branch Press and Another Vs. D.B. Belliappa, was also considered by S. Natarajan, J., (as he then was) in W.P. No. 259 and 308 of 1985 and he has clearly pointed out the distinction. No doubt, in an ordinary case where there is cessation of relationship of employer and employee, the nature of the order is not conclusive. Courts are entitled to go behind the order, lift the veil and find out the true basis of the order. In the instant case, we have been endeavouring to find out the true basis, but no such situation arises. It is a mere innocuous order of reversion to the parent department.

12. Now we come to Writ Petition No. 11145 of 1981 first and foremost we would like to point out that this Judgment is pending a Writ Appeal No. 1375 of 1986. Even otherwise, we find difficulty in accepting the view of the learned single Judge. We stop with that, since writ appeal is pending against the very judgment. Now we will usefully refer to the judgment in Lalpat Nat Mago v. Governor of Harayana and Ors. AIR 1971 P & H. 113. In paragraph 15 it is stated thus:

Apart from the question whether the State Government could validly exercise powers exercisable by the Governor under the Memorandum and Articles of Association of the Corporation, there is yet another approach to the matter. The petitioner was on deputation to foreign service with the Corporation. He could at

any time be recalled by the State Government and the impugned order Annexures "C and "H" of the so-called reversion from the post of a Managing Director and simultaneous cancellation of his nomination as Director to all intents and purposes amounted only to a recall of the petitioner from foreign service back to his parent department. It has been held by a Full Bench of this Court, in *Mohan Singh v. State of Punjab* 1970 S.L.R. 291 : AIR 1970 Punj 322 that a Government servant sent on deputation under Rule 10(2) of the Punjab Civil Services Rules Vol.I, Part I, does not get an indefeasible right to insist that he could not be recalled and that the Government retains full and effective control over its employee. The mere fact that the officer on deputation was getting more emoluments and enjoying higher status could not stand in the way of the Government exercising its control over its employee and recalling him to the parent department even though the period of deputation had been specified and recall causes loss in emoluments to the officer. The case of the petitioner is fully covered by the Full Bench decision and he can have no legitimate grievance against his recall to the parent department. It makes no difference if the State Government in exercising the power duly vested in it by law quotes a wrong provision inasmuch as it purports to Act under the Articles though it could have exercised the same power without reference to them. What has to be seen is whether the State Government had the jurisdiction to withdraw the petitioner from foreign service and this Jurisdiction is unchallengeable.

These weighty observations fully support the stand taken by the appellant in this case. Therefore, where there is a mere order of reversion, even though the reason for reversion may be unfitness or any other cause, that can have no bearing because the first respondent merely come back to the parent department, the rightful place as stated above by us. On that score as to the reason for reversion, the order cannot be held to be punitive in character.

13. In the result, we find no difficulty whatever in allowing the writ appeal. Accordingly the order of the learned single Judge is set aside and the writ appeal stands allowed. However, the first respondent being a civil servant, we are not inclined to award costs.