

(1970) 01 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Second Appeal No. 45 of 1969

The Union of India (UOI) and Another

APPELLANT

Vs

Laxmilal

RESPONDENT

Date of Decision : 07-01-1970

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1970) WLN 33

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

C.M. Lodha, J.—This is a second appeal by the defendants Union of India and the General Manager, Western Railway from the judgment and decree by the Additional District Judge, Udaipur dated 4-10-1968 whereby the learned Additional District Judge upheld the judgment and decree of the trial court dated 4-6-1965.

2. The facts giving rise to this appeal may be stated as below. The plaintiff-respondent Laxmilal was appointed as a clerk Grade I in the Ex-Mewar State Railway in the pay scale 60-130 and was confirmed on 3-4-1950. After integration of the erstwhile Mewar State Railway the plaintiff was transferred from the office of Assistant Traffic Superintendent Udaipur to the Railway Training School at Udaipur on 1-6-1953 and was promoted to officiate as Clerk Grade II with effect from 22-2-1954. He was confirmed in Grade II with effect from 1-4-1956. On 6-8-1957 he was promoted to officiate as Sub-Head Clerk in the Railway Training School at Udaipur as Clerk Grade III but was reverted to his substantive post as Clerk Grade II on 2-11-57 by an order dated 1-11-1957, on the ground that one Shri Prabhulal Barot was senior to the plaintiff. Aggrieved by the order of reversion dated 1-11-1957 the plaintiff made a representation before the Senior Deputy General Manager, Western Railway, Bombay, which was accepted and the plaintiff was posted as Officiating Sub-Head Clerk Grade III in

the Establishment Section, Udaipur. On 17-1-1961 the plaintiff was again transferred from Railway Training School, Udaipur to Udaipur Himmatnagar Project. It was, however, found that there was no vacancy of Head Clerk Grade III at Himmatnagar Project and consequently the plaintiff was transferred back to the Railway Training School, Udaipur as Officiating Head Clerk Grade III. However, the plaintiff received on 7-2-1961 an order from the Divisional Personnel Officer, Ajmer dated 6th February, 1961 whereby he was reverted to his substantive post-Clerk Grade II and posted as Leave Clerk in the Railway Training School, Udaipur. In spite of the order of reversion the plaintiff continued as Officiating Head Clerk and Sub-Head Clerk in Grade III upto 23-4-1961 as the persons appointed in these posts had proceeded on leave. The plaintiff's contention is that the order of his reversion dated 6-2-1961, a copy of which has been placed on the record, and marked Ex. A. 15, is ultra-vires, void and illegal in as much as it amounted to reduction in rank and the reduction had been ordered without following the procedure prescribed under Article 311 of the Constitution. It was, therefore, prayed that the order of reversion dated 6-2-1961 (Ex. A. 15) be declared void and it may further be declared that the plaintiff is entitled to remain in the post of Officiating Head Clerk-Grade III and an injunction be issued against the defendants to provide the plaintiff the upper grade and to fix him up in such a way as if no order of reversion had been passed against him. He also claimed a decree for Rs.1400/- as arrears of pay. The plaintiff's claim was opposed by the defendants.

3. During the course of trial the plaintiff examined himself, but no witness was produced on behalf of the defendants. However, both the parties produced a large number of documents in support of their respective cases. The learned Civil Judge, Udaipur granted a declaration in favour of the plaintiff that the impugned order of reversion dated 6-2-1961 was null and void and further held that the plaintiff is entitled to remain in the Officiating Post of Clerk Grade III and also to the pay scale and seniority which he enjoyed before reversion. He further issued an injunction against the defendants to provide the plaintiff in Grade III and fix him in the scale of seniority to which he would have been entitled but for the order of reversion. A decree for the Rs. 378/- was also passed in favour of the plaintiff, though the rest of the claim for arrears of salary was dismissed.

4. Dissatisfied with the judgment and decree of the trial court the defendants filed an appeal in the Court of District Judge, Udaipur which was transferred to the Court of Additional District Judge, Udaipur, who as already stated above confirmed the judgment and decree of the trial court and dismissed the appeal.

5. Again, dissatisfied with the judgment and decree of the learned Additional District Judge, Udaipur the defendants have filed this appeal. The respondent has also filed a cross-objection in this Court with respect to that part of the suit which has been dismissed by the trial court.

6. It may be stated here that the plaintiff did not make any grievance in the first appellate court against that part of the judgment of the trial court by which a

part of his claim pertaining to the arrears of pay was dismissed. Consequently the cross-objection filed by the respondent in this Court is not maintainable.

7. At this stage it may be pertinent to mention that the trial court found that the impugned order of reversion of the plaintiff from Officiating Clerk Grade III to the substantive post of Clerk Grade II was a reduction in rank since the reversion order entailed loss of his seniority in his substantive rank as also postponing his future chances of promotion. It also came to the conclusion that no reasonable opportunity had been given to the plaintiff to show cause against the order of reversion passed against him as required by Article 311 of the Constitution and in this view of the matter, he held the order of reversion to be ultra vires, illegal and void and decreed the plaintiff's claim as mentioned above. On appeal the learned Additional District Judge, Udaipur took a different view of the matter and held that the plaintiff's reversion from the officiating post to the substantive post did not amount to reduction in rank so as to attract Article 311(2) of the Constitution. He also held that the reversion was not by way of penalty. He also found that the plaintiff had failed to make out a case of malice against the defendants. Having thus found all the aforesaid points against the plaintiff, he however, maintained the judgment and decree of the trial court on the ground that the impugned order of reversion was passed malafide and was therefore liable to be set aside. Thus in the result he upheld the judgment and decree of the trial court though on different grounds.

8. Learned counsel for the appellants has urged that the learned Additional District Judge, Udaipur committed a grave error of law in coming to the conclusion that the order was malafide even though in the earlier part of his judgment he had held that there was no motive behind the impugned order. The relevant circumstances on the basis of which the learned Additional District Judge has held the impugned order to be malafide are these.

9. There were two posts of clerk Grade II in the Railway Training School, Udaipur. One Shri H.K Maheshwari was officiating as Head Clerk in one of these posts and the plaintiff was officiating as Sub-Head Clerk in the other post. The plaintiff applied for his transfer to the Himmatnagar Project in the year 1960, and his request was accepted and he joined as clerk Grade III at Himmatnagar on 18-1-1961 but since it was found soon after taking over by the plaintiff that there was no vacancy of a clerk Grade III at Himmatnagar Project, the plaintiff was sent back to Railway Training School, Udaipur on 31-1-1961. Meanwhile one Shri Gordhanlal had been posted as Sub-Head Clerk in Udaipur Railway Training School in the vacancy caused by transfer of the plaintiff from there to Himmatnagar Project. Since Shri Maheshwari who was officiating as Head Clerk at Udaipur had been transferred to Ajmer, the plaintiff was posted as Head Clerk in his place. But unfortunately for the plaintiff the transfer of Shri Maheshwari to Ajmer was not in order and therefore Mr. Maheshwari was ordered to go back to Udaipur as Head Clerk with result that both the posts of clerk Grade III at the Railway Training School, Udaipur viz. of the Head Clerk and Sub-Head Clerk were

filled and the plaintiff was reverted to his substantive post as clerk Grade II (vide the impugned order Ex. A. 15). According to the learned Additional District Judge the order of reversion was mala fide as before transferring the plaintiff to Himmat Nagar Project, the authorities concerned should have made an enquiry whether there existed any vacancy there of Clerk Grade III and so also before transferring Shri Maheshwari to Ajmer the necessary concurrence of the authorities at Ajmer should have been taken so that the transfer may not have been cancelled on account of being not in order. On these premises the order has been found to be mala fide.

10. I am constrained to observe that the reasoning adopted by the learned Additional District Judge for holding the order of reversion mala fide is perverse. In this connection he has relied upon *Ram Chandra Chaudhuri Vs. Secretary to Govt. of West Bengal and Others*, , and *Sukhbans Singh Vs. State of Punjab*, . It was found in the first case that the reversion was not in the ordinary course. No reason was given for the reversion. But apart from that it was further found that the work of the officer concerned had in fact had been highly appreciated by the authorities concerned, and the officer had stood first in the consolidation work. He had also been awarded the Government of Punjab Commendation Certificate, and the President of India's Sanad, Silver Medal for his excellent work, and shortly thereafter he had been reverted. Not only that, a year and a half after the reversion he received the warning from the Government. In these circumstances their Lordships held that the only reasonable inference that can be drawn from all these facts is that the Government in fact wanted to punish him for what it thought was misconduct on his part, and, therefore, reverted him. It was held that the circumstances clearly show that the action of the Government was mala fide and the reversion was by way of punishment for misconduct, without complying with the provisions of Article 311(2). In the other case of the Calcutta High Court the Government had mechanically acted upon the advice given by the Public Service Commission and reverted the petitioner from his officiating Higher post to his substantive lower post without applying its mind to the credentials and the exceptional record of the petitioner upon which they had acted for a long time and to the question whether there were any changed circumstances furnishing consideration for a contrary decision? It was held that the impugned order of reversion was invalid owing to mala fides.

11. In the present case it has been clearly mentioned in the impugned order Ex. A. 15 itself that Shri Laxmilal Khamisra (plaintiff) junior most officiating grade III is reverted to his substantive grade. In the plaint the plaintiff has alleged that the impugned order of reversion was passed against him as a result of his victimisation and malice and at another place it has been pleaded that the order of reversion was not bona fide exercise of authority but was a step taken in malice. The learned Additional District Judge has himself held that there was no malice or personal ill will of any sort against the plaintiff and the plaintiff had relied off and on whenever he made representation to the higher authorities and his grievance was found to be correct. There are absolutely no circumstances

either pleaded or proved in the present case which might raise an inference that there was lack of bonafides on the part of the railway authorities in reverting the plaintiff to his substantive post. At this stage it may also be relevant to point out that the learned counsel for the respondent also did not place much reliance on this finding and tried to justify the decree passed in favour of the plaintiff on other grounds to which I shall presently refer. But so far as the finding of the lower court that the impugned order of reversion was malafide is concerned it cannot be maintained and accordingly I overrule it.

12. Learned counsel for the respondent, however, strongly urged that the impugned order of reversion entails penal consequences, and marred the plaintiff's future chances of promotion and consequently the applicability of Article 311 of the Constitution was attracted in the present case.

13. It is well established that a person officiating in a post has no right to hold it for all times. He may have been given the officiating post because the permanent incumbent was not available. Sometimes a person is given an officiating post to test his suitability to be made permanent in it latter. But it is in no way a punishment and is not therefore a reduction in rank when the reversion has not in any way effected him so far as his condition and prospect of service are concerned. He, of course, loses benefit of appointment to the higher rank but that by itself cannot indicate that the reversion was by way of punishment because he had no right to continue in the higher post or to the benefits arising from it.

14. Learned counsel for the respondent has urged that the persons junior to him such as Shri D R. Fagna, Shri Chhitarmal Jindal, Shri B.N. Khanna and Shri P.N. Dube have been allowed to officiate as clerks in Grade III at the Railway Training School, Udaipur in the same post in which the plaintiff had been officiating where as the plaintiff had been reverted. It is contended that this reversion has marred the plaintiff's chances for future promotion and has also affected his seniority. In this connection he has referred to para No. 21 Chapter III of the Indian Establishment Manual which reads as under:

A railway servant, once promoted against a vacancy, which is nonfortuitous, should be considered as senior in that grade to all others who are subsequently promoted. The suitability of a railway servant for promotion should be judged on the date of the vacancy in the higher grades, or as close to it as possible.

15. It is urged that the plaintiff had been promoted against a vacancy of Clerk Grade III in the Railway Training School, Udaipur which was non-fortuitous, and consequently in accordance with the terms of the aforesaid paragraph he must be considered to be senior to the other clerks, who had been subsequently promoted as officiating clerks Grade III.

16. In reply to the aforesaid contention the learned counsel for the appellants submits that the plaintiff had not set up this case in the plaint, nor the case has been fought out on that basis. It is seriously challenged that neither Goverdhan

Lal nor Sarva Shri Chhitarmal Jindal, S.N. Khanna, Munshilal Chaturvedi, P. N Dube and D.R. Fagna were junior to the plaintiff On the other hand, it has been urged that the plaintiff was the junior most clerk in substantive grade II at the time the impugned order of reversion was passed, and for that very reason he was reverted to the substantive post clerk Grade II.

17. I have carefully gone through the plaint and find that no such ground has been taken in it nor any relief has been claimed by the plaintiff on the ground that he being senior to the above mentioned clerks in Grade II should have been allowed to continue as officiating clerk Grade III. It is true that in the judgment of the trial court there is mention of an admission by the counsel for the defendants that the aforesaid clerks except Goverdhanlal were junior to the plaintiff and were officiating in Grade III. Mr. Bhojraj Jain appearing for the appellants has however urged that no such admission had been made before the trial court. It is further urged that there is nothing on the record to show that the plaintiff had officiated as clerk Grade III against a nonfortuitous vacancy Be that as it may, the only ground on which the plaintiff was reverted from the officiating clerk Grade III to substantive grade II was that he was the junior most officiating clerk and if the plaintiff wanted to get the impugned order struck down on the ground that he was not the junior most officiating clerk, it was his bounden duty to have specifically pleaded in the plaint that the statement contained in the impugned order that he was junior most officiating clerk Grade III was wrong and he should have further pleaded that the other persons who were junior to him had been allowed to officiate as clerk Grade III, whereas he had been unlawfully discriminated and reverted on erroneous premises. It is trite that no party can succeed on a case not set up by it. I called upon the learned counsel for the respondent to point out the relevant averments in the plaint in this connection, and all that he was able to invite my attention to in this connection were paras No. 8(ii) and 8(iv) which read as under:

8(ii) The order of reversion likewise has affected his status as clerk, forfeiture of pay, loss of seniority and stoppage of and postponement of future chances of promotion,

(iv) Thus, it is obvious that the order of reversion was not bonafide exercise of authority but was a step taken in malice.

The aforesaid allegations in my view do not at all deal with the question whether the other persons junior to the plaintiff were allowed to officiate on the post of Clerk Grade III. In absence of any specific allegation, naturally neither any issue was struck on this point, nor the defendants had any opportunity to meet the plaintiff's claim on that basis. The finding of the trial court in this connection has been based on an alleged admission by the learned counsel for the defendants that certain clerks who were junior to him were officiating in Grade III. This admission is not recorded anywhere else in the file and it is not clear from this statement in the judgment as to at what point of time those clerks were officiating in Grade III. For aught I know if this case had been specifically

pleaded in the plaint the defendants would have had an opportunity to raise whatever defences they might possibly have in this connection. Moreover, the alleged admission made on behalf of the defendants in the trial court was not relied upon before the first appellate court and on the other hand has been seriously challenged before this Court. Moreover the mere fact that a junior person in a certain grade is allowed to officiate in a higher post does not necessarily give rise to the plaintiff's right to get the order of reversion quashed unless it is further shown that the reversion was against any provision of law or was motivated by some malice or ulterior consideration. It has been found by the learned Additional District Judge that there was no malice in the minds of the authorities concerned at the time of reverting the plaintiff to his substantive grade. It further appears that on all appropriate occasions the plaintiff's claim for officiating as clerk Grade III has been fully considered and has been allowed to work in that officiating grade. As already observed above, the reversion of an officer from an officiating post to the substantive post always means some financial loss as well as loss in the matter of seniority but that cannot be a ground for holding that the reversion was by way of punishment.

18. I, therefore, agree with the learned Additional District Judge that the reversion of the plaintiff from officiating clerk Grade III to his substantive post as clerk Grade II was not a reduction in rank so as to attract Article 311(2) of the Constitution.

19. The result is that I allow this appeal, set aside the judgment and decree of the court below and dismiss the plaintiff's suit. But in the circumstances of the cases, I leave the parties to bear their own costs throughout. As already mentioned above the cross objection is not maintainable, but that apart since the defendants' appeal has been allowed on merits it automatically fails and is hereby dismissed. There will be however no order as to costs.