
(1984) 10 AHC CK 0037
In the Allahabad High Court
Case No : Second Appeal No. 239 of 1972

Umesh Narain Singh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 11-10-1984

Acts Referred:

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

Citation : (1984) AWC 353 Supp

Hon'ble Judges : M. Wahajuddin, J

Bench : Single Bench

Advocate : Rajendra Kumar, for the Appellant; Lalji Sinha, for the Respondent

Final Decision : Dismissed

Judgement

M. Wahajuddin, J.—This is Plaintiff's second appeal. The Plaintiff brought a suit for a declaration that he is entitled to the pay scale of Rs. 150-240 per month on his substantive post and also claimed Rs. 1200 as a difference of his salary withheld by the Defendant Union of India. The Additional Munsif decreed the suit for a declaration that the Plaintiff is entitled to continue in the post of the Claims Tracer in the scale of 140-240 but the claim for 140-240 but the claim for recovery or arrears was dismissed. The first appellate court on appeal set aside afore said decree in favour of the Plaintiff and dismissed the suit with costs.

2. The Plaintiff's stand is that he was selected as Booking Clerk by the railway service commission, Allahabad, in the grade 60-150 P.S. in 1956 and was posted as temporary ticket Collector at Samastipur with effect from 30.10.1956, and was posted as temporary Ticket Collector at Samastipur with effect from 30.10.1956. Subsequently he held the post of Commercial Clerk at Gorakhpur till 29.10.1958 and the Plaintiff's stand is that he was then promoted to the post of Claims Tracer on 30.10.1958 and he was posted at Gorakhpur and worked in N.P. Cell to the satisfaction of the authorities and was transferred to Railway Training School, Muzaffarpur N.E.R. to work as Commercial Instructor in the same grade and he worked there, from 12.3.1959 to 26.10.1961 and he then

proceeded on earned leave for a month and reported for duty on 26.11.1961, but received an order of his transfer and posting as Coaching clerk in Varanasi district in the scale of 110-200 in lower grade on 8.12.1961, which amounted to reduction in rank and punishment without notice and enquiry, and the provisions of Article 311(2) of the Constitution have been infringed and this reduction in rank is illegal and avoid. It was also maintained that the order contravened the standing orders of the Railway Board on this aspect. The stand as per argument here is that after officiating for 12 months he was to be confirmed in that grade unless it was deferred for further six months further on ground of any inefficiency or warning to improve which is not the case.

3. In the light of the arguments urged before me, the first point that arise for consideration is as to whether the Appellant is governed by any standing order of the Railway Board and by which the order he would ordinarily be governed. It is noteworthy that he Railway Board modifying its earlier Circular letter issued on 1.2.1960 provided that there is No. need to prescribe any period during which a final assessment must necessarily be made of the performance of each railway servant officiating in higher grade and accordingly the instructions contained in Railway Board's D.O. Letter dated 21.5.1956 and 7.6.1958 may be treated as modified. It would further appear that this D.O. letter was superseded by a subsequent letter dated 30th June 1965 and the position in D.O. letter as prevailing on 21.5.56 was restored. The first appellate court rightly held that the Munsif has wrongly applied this D.O. letter of 1965 when it was not in existence at the time of Plaintiff's reversion to his substantive post. It is noteworthy that the impugned order was served upon the Plaintiff on 8.12.1961. Learned Counsel for the Appellant urged that even in such situation the case will not be governed by D.O. letter dated 1.2.1960 because the Plaintiff started as officiating on the post of Claim Tracer in higher grade from 30.10.1958 and before 1.12.1960 when the aforesaid D.O. letter was issued. His one year's period was completed and when neither the confirmation was erred on any inefficiency or warning for further six months under the earlier D.O. letter of 1956 he would be treated as confirmed on the post of higher grade.

4. The crux of the matter is whether under that D.O. (Circular) letter the case of the Plaintiff is covered and he will be taken to be confirmed in the higher grade. The D.O. in question is to effect that the performance of every railway servant officiating in a higher grade should be adjudged by the competent officer before expiry of 12 months of the total officiating service and if the performance is not satisfactory, either the Railway servant may be reverted on the grounds of unsuitability, or he be warned that his work is not quite satisfactory, but that he is being permitted to draw his increment in the expectation that his performance will improve during the next six months for which he will continue to be under observation and at the end of the extended period of six months i.e. of a total officiating service of 18 months either the person should be declared suitable for retention in the grade or should be reverted because he is unsuitable. It further provides that any person who is permitted to officiate beyond 18 months cannot

in future be reverted for unsatisfactory working without following the procedure prescribed in the Discipline and Appeal Rules. It is noteworthy that so far as the directions concerning the position of completion of 18 months service is concerned it would not be attracted because before the expiry of such period D.O. of 1st February 1960 has been circulated and will operate and there is no time limit prescribed as such. The stand of the learned Counsel for the Appellant, however, is that as on completing 12 months period the Plaintiff was neither reverted nor given any warning to improve within six months. In his case after the expiry of very 12 months--before the D.O. of 1st February 1960 came into force as the Plaintiff became entitled to retention in the higher grade as confirmed and will be deemed to have been confirmed.

5. The stand of the learned Counsel for the Respondent is that so far as D.O. letter of 1956 or any circular is concerned it does not apply to persons who are appointed purely on adhoc basis and on an express condition that the order is just interim one and for local arrangement. In support of such argument the learned Counsel for the Respondent has relied upon a number of pronouncements. Reliance was placed on the case of Pashupati Narain Sinha Vs. Union of India (UOI) and Others, . This case also related to the Railways. It has been held that where the Petitioner is temporarily put to officiate in higher grade as a stop-gap measure, No. right granted to claim in future over seniors and for higher grade unless selected. Reversion to substantive scale without stigma would not amount to reduction in rank by way of punishment and Article 311(2) would not apply. In this case the principles laid down in AIR 1959 SC 986 and AIR 1958 SC 86 were followed by the Patna High Court. The very High Court in Anr. Division Bench case, Baijnath v. Union of India reported in 1976 (2) SLR 425 held that the Circular issued in this connection and 18, months prohibiting reversion are not applicable to employees appointed temporarily and on ad hoc basis and the provisions of Article 311 of the Constitution are also not attracted and the Circular does not have any statutory character. This was also the view of the Calcutta High Court in the case of Divisional Personnel Officer v. M.P. Ranga 1978 (2) SLR 346. It has been held that eighteen months rule contained in Railway Board Circular of 1956 are required to be adopted and followed only when basis of order of reversion is unsuitability or unsatisfactory performance of work and not otherwise.

6. In Writ Petition No. 7323 of 1971, Nawal Kishore Bhatnagar v. Principal Shiv Kumar decided by this Court on 3.5. 1976 again it was held that 18 months rule contained in the Circular letter of the Railway Board will apply only to the cases of reversion for unsatisfactory work but if a Railway Servant officiating on a higher post is reverted not due to the unsatisfactory work but for other reasons the circular will not apply. I am simply quoting the ratio of the rulings relevant for the purposes of this case. There is also another decision of this Court in Writ Petition No. 5103 of 1974 as per order dated 2.11.1974 and further continued on 3.12.1975 in which also similar proposition of law has been laid down and the writ was rejected. There is again one more judgment of Division Bench in Special

Appeal No. 164 of 1976 connected with Special Appeal No. 294 of 1976 of this Court in which the implication of the Railway Board Circular of 1956 concerning officiating for 18 months was considered and it was held that this circular applies only to those employees who had been promoted to the higher post as a result of proper selection or empanelment or being declared suitable for the post by the competent authority. In this pronouncement a number of other cases are also cited. It was held in that case that as the employees had neither been selected or empanelled for the post concerned nor were they declared suitable for that post by the competent authority, notwithstanding of their officiating for 18 months or more they would not be entitled to benefit of the Railway Board's Circular of 1956 nor authorities are required to give them opportunity of being heard before reverting them. This is also the view taken in the case of a Division Bench of Lucknow Bench in Special Appeal No. 100 of 1971, *The General Manager N.E.R. and Anr. v. O.P. Saxena*, decided on 16.10. 1974. In this case reliance was placed upon the case of *Pashupati (supra)*. The entire implications were considered and it had been laid down that if any person is allowed to act on temporary capacity as a stop-gap arrangement and has not been appointed to officiate as a result of selection to that post, his reversion neither amounts to reduction in rank so as to attract Article 311(2) or the Constitution nor it attracts the applicability of the Circulars concerning continuous officiation.

7. In view of the proposition of law laid down in the aforesaid pronouncements it may be desirable to at this stage refer to the appointment letters of the Plaintiff as to consider what was the nature, scope etc. of his appointment and whether he was made to officiate on any selection or on grounds of seniority or for other reasons as simply as interim measure by way of ad hoc appointment. In this connection I may refer to the appointment letter dated 24.10. 1958 by which the Plaintiff and some others were made to temporary officiate as Claims Tracer in the grade of Rs. 100-105. It was mentioned in the very order making appointments and the promotion that the above promotion is purely under local and tentative arrangement and will not give them any claim for retention on this post. It would be further found that on the Plaintiff's posting as Commercial Instructor in the scale of 200-300, it was again expressly laid down that it is purely tentative arrangement and will not give any claim for seniority over seniors or permanent retention on this post. It is thus abundantly clear that neither any selection was made as such nor the aforesaid ad hoc purely temporary officiating promotions were made on seniority basis, rather in the very reservation clause in the order dated 12.3.1959 it was expressly laid down that this promotion as a temporary measure by way of tentative arrangement will not give the Plaintiff any claim for seniority over seniors or permanent retention on the post. In fact under the law also this could not be done. If the post is a promotion or selection post naturally as per rule also which has been quoted it is a post of seniority-cum-merits. How can the Plaintiff be given a higher scale post except on a purely interim arrangement to the prejudice of other seniors without their claim being considered and without their being passed over on

consideration of merits. The Plaintiff has not come forward with a case that on ground of his seniority he got promotion as of right. The Plaintiff neither can claim seniority over others for this officiating period nor can he claim retention on this post in higher grade unless and until he is duly selected for this post which is not the case. The arrangement or and the promotion orders itself speak volumes and indicate that the arrangement was purely on local, interim and temporary basis without any right for retention in the higher grade or any claim for seniority over seniors. When that is the position the aforesaid rulings of different High Courts including this High Court which I have referred and the principles laid down in those rulings will fully apply and neither Article 311(2) of the Constitution will be attracted nor the circular letter of 1956 or any Circular letter would entitle the Plaintiff to the retention of the post in the higher grade. It is also noteworthy that it is not the case in which the Plaintiff has been reverted to his substantive post in lower grade on ground of any unsuitability or by way of punishment. The order dated 8.12.1961 is also on record and it would be found that the Plaintiff has been simply transferred and posted as Coaching Clerk in the substantive post which is not by way of any inefficiency etc. It is routine reversion to the substantive post of one who was, just as an interim as local arrangement for certain period as local arrangement etc., made to officiate in the higher grade. Learned Counsel for the Appellant relied upon two cases. The first case, State of Punjab Vs. Dharam Singh, . It is not on the point at all, because it simply lays down that where officiating appointment in a permanent post is made on probation then unless that period of probation is extended the employee will be deemed to have been confirmed on that post on the expiry of that period. In the present case there was No. appointment on any probation, on the contrary in the very letters of arrangement and posting it was made clear that the officiating posting is made purely as a temporary, makeshift, ad hoc arrangement with No. right of retention on that post. Learned Counsel for the Appellant has further relied upon the case of Sughar Singh v. State of U.P. 1970 ALJ 1083. In that case the employee held the post in substantive capacity in the temporary cadre. Obviously it was not the case where only ad hoc arrangement or interim or makeshift stop gap arrangement was made and on that consideration it was held that reversion from that post would amount to reduction in rank as to attract the application of Article 311(2) of the Constitution. This ruling thus does not apply to the fact of this case. On the contrary, I. have referred to a number of pronouncements of this very Court dealing directly with the point and directly applicable to this case, laying, down that in fact of the present case neither Article 311(2) of the Constitution is attracted nor various Circular letters of the Railway Board apply. Having come to such a conclusion and finding I fully agree with the view of the first appellate court upholding the posting of the Appellant to his substantive post as such and further holding that neither Article 311(2) of the Constitution is attracted nor the various Circular letters of the Railway Board cover the case.

8. In the result, this second appeal is dismissed. However, considering the

hardships of the Plaintiff-Appellant I would direct that parties will bear their own costs of this appeal.