

(1975) 01 SC CK 0039

In the Supreme Court Of India

Case No : Civil Appeal No. 2066 of 1972

Veerappa Rachappa Saboji

APPELLANT

Vs

B.P. Dalal and Another

RESPONDENT

Date of Decision : 29-01-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1975 SC 773 : (1975) 1 SCC 373 : (1975) 1 SLJ 256 : (1975) 7 UJ 188

Hon'ble Judges : P. N. Bhagwati, J;N. L. Untwalia, J;A. C. Gupta, J

Bench : Full Bench

Advocate : V.M. Tarkunde, for the Appellant; M.C. Bhandare, M.N. Shroff, for the Respondent

Final Decision : Allowed

Judgement

P.N. Bhagwati, J.—The appellant is a law graduate having obtained LL.B. Degree from the University of Bombay in October, 1949. He started practice as pleader at Jamkhandi in Bijapur District and after practising for over nine years he applied for the post of Civil Judge (Junior Division) and Judicial Magistrate in the, Bombay Judicial Service, Class II. He was interviewed by the Bombay Public Service Commission and on being selected on the basis of merit, he was appointed as Civil Judge (Junior Division) and Judicial Magistrate by an order of, the Government of Maharashtra dated 31-10-60. The appointment was initially on probation for a period of two years and it was provided that after the period of probation was over, his service would be liable to be terminated on one month's notice so long as his appointment was temporary.' Pursuant to the order of appointment, the appellant worked as Civil Judge (Junior Division) and Judicial Magistrate and after watching his performance during the period of probation the Govt. of Maharashtra by a Resolution dt. 19th April, 1963 directed that he should be treated as having satisfactorily completed his probationary period from 6th December, 1962 afternoon and thereafter he should continue on an officiating

basis as Civil Judge (Junior Division) and Judicial Magistrate. The appellant accordingly continued to officiate as Civil Judge (Junior Division) and Judicial Magistrate. It appears that a substantive vacancy in a permanent post of Civil Judge (Junior Division) and Judicial Magistrate arose sometime in 1968 in which the appellant could have been confirmed but the Government of Maharashtra, instead of confirming him in that post, passed an order dated 15th December, 1971, terminating his service with effect from 1st February 1972. The first respondent, who is Secretary to the Government of Maharashtra, Law and Judiciary Department, by a letter of the same date intimated to the appellant that his appointment being still temporary, his service was liable to be terminated on one month's notice and the Government had accordingly decided to terminate his service with effect from 1st February, 1972 and enclosed a copy of the order of termination. The appellant thereupon filed a petition in the High Court of Bombay under Article 226 of the Constitution challenging the validity of the order of termination.

2. There were three grounds on which the order of termination was assailed as invalid in the petition. The first ground rested on Rule 4(2)(iv) of the Bombay Judicial Service Recruitment Rules, 1956. That rule provided that unless otherwise expressly directed, every person appointed as Civil Judge (Junior Division) and Judicial Magistrate shall be on probation for a period of two years and on the expiration of such period, he may be confirmed, if (a) there is a vacancy and (b) his work is found satisfactory. The argument of the appellant was that on a proper construction of this rule every Civil Judge (Junior Division) and Judicial Magistrate, appointed on probation, for a period of two years, was entitled to be confirmed if on the expiration of such period of probation his work was found satisfactory and there was a vacancy in which he could be confirmed. Here in the present case, said the appellant, the Government Resolution dated 19th April, 1963 showed that on the expiration of the period of probation, his work was found satisfactory and sometime in 1968 a vacancy did arise in which he could be confirmed and, therefore, under this Rule, he was entitled to be confirmed in such vacancy and he had a right to the post of Civil Judge (Junior Division) and Judicial Magistrate. The Government could not take away this right to the post by terminating the service of the appellant in the manner it did. The termination of the service of the appellant was in the circumstances tantamount to dismissal and since the procedural requirement of Article 311(2) was admittedly not complied with by the Government before passing the order of termination, it was void and inoperative. The second ground of challenge was that in the circumstances in which the order of termination was passed by the Government, it was not an order of termination simpliciter but it was by way of punishment and it could not be passed without complying with the procedural requirement of Article 311(2). Lastly, it was urged and that was the third ground of challenge--that the order of termination was in any event violative of Articles 14 and 16 of the Constitution, since Civil Judges (Junior Division) and Judicial Magistrates, Junior to the appellant, were retained in service, while the service of

the appellant was terminated. These were the three main grounds taken in the petition for challenging the validity of the order of termination.

3. When the petition came up for admission before a Division Bench of the High Court the Division Bench summarily rejected it without even issuing a notice to the respondents. The Division Bench however gave liberty to the appellant to file a suit for vindicating his rights. The appellant being aggrieved by the summary rejection of his petition, applied to the High Court for leave to appeal to this Court, but the application was refused. Hence the appellant preferred the present appeal by special leave obtained from this Court.

4. We do not think the High Court was right in rejecting the petition of the appellant in limine. The grounds of challenge taken by the appellant in the petition could not be said to be frivolous so as to merit summary rejection. They did require consideration, and particularly the first ground raised an issue of some importance depending on the true construction of Rule 4(2)(iv) of the Bombay Judicial Service Recruitment Rules, 1956. The High Court ought, therefore, to have admitted the petition and issued a rule so that the grounds of challenge set out in the petition could be examined on merits. No disputed questions of fact appeared to arise in the petition and in any event until a return was filed by the respondents, it could not be said whether the controversy between the parties would involve any disputed questions of fact. There was, therefore, no point in refusing to entertain the petition on merits and referring the appellant to a suit. We must, in the circumstances, set aside the order of summary rejection passed by the High Court and remand the petition to the High Court with a direction to admit it and to issue a rule to the respondents.

5. We accordingly allow the appeal, set aside the order passed by the High Court summarily rejecting the petition and remand the petition to the High Court with a direction that the petition shall be admitted and a rule shall be issued upon it and it shall thereafter be disposed of according to law. There will be no order as to costs of the appeal.