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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.787 of 1986

Union of India ..... Defendant-Appellant

Versus

Shri Hari Om Agarwal .... Plaintiff-Respondent.

Hon.S.Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, A.M.)

An appeal No.25 of 1974 Union of India Versus Hari Om Agarwal has been received on transfer from the Court of District Judge, Lucknow under Section 29 of the Administrative Tribunals Act XIII of 1985. The appeal is against the order of the Munsif South Lucknow dated 17.11.73 decreeing the suit for reliefs A & C that the order of reversion dated 10.11.65 is illegal, void and inoperative and the plaintiff continues to be in service as Assistant Inspector of Works and the posting order dated 7.6.65 and its Corrigendum dated 24.6.65 in so far it sought to place the plaintiff on probation for a period of six months was illegal. The grounds of the appeal are that the learned Munsif erred in holding that Nirmaljeet Singh was not a necessary party in this case, that

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the ruling quoted in AIR 1968 Allahabad.276 fully applied to the facts of the case and not making him a party was fatal to the suit, that the learned Munsif has erred in holding that the plaintiff could not be placed on probation after selection and that selection itself amounted to his permanent posting after confirmation, that there is ample oral and documentary evidence on record to establish that the plaintiff had been reverted to his substantive post from 7.5.65, that there was an error in the judgement that the plaintiff completed six months before the impugned orders and so he could not be reverted, that the reversion did not cast a stigma on the plaintiff and did not amount to punishment as held by the learned Munsif etc. A prayer has therefore been made that the order and decree passed by the learned Munsif on 17.11.73 be set aside and the plaintiff's suit be dismissed with costs throughout.

2. The plaintiff-respondent's case is that he was appointed as Works Supervisor in the R.D.S.O. Lucknow on 2.3.62 and was confirmed in the said post w.e.f. 2.3.63. He was promoted in a leave vacancy by an order dated 9.2.65 as Inspector of Works for a period of three months pending appointment of a duly selected candidate. A selection for filling existing vacancies of A.I.O.W. was held on 7.5.1965 and the plaintiff was still working as A.I.O.W. having been promoted

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by a staff notice on 1.6.65 on being declared suitable for the post of A.I.O.W. He worked on this post till 10.11.65 when he was reverted to the post of Works Supervisor on a superfluous plea that he had been found unsuitable for the post of A.I.O.W. during the probationary period of six months. He therefore claimed that the impugned order of reversion was illegal and was passed in violation of the principles of natural justice. There is no rule in the R.D.S.O. which lays down for placing a selected candidate on probation. Though his name was not removed from the panel during the currency of the panel instead of promoting him one Nirmaljeet Singh was promoted to officiate as A.I.O.W. on 2.8.66 on the basis of a selection illegally held on 15.7.66. The plaintiff, therefore, filed the suit praying for a declaration that the order of reversion dated 10.11.1965 was illegal, void and inoperative and that a declaration be made that the plaintiff be deemed to have been promoted as A.I.O.W. w.e.f. 30.7.66 and also to grant a declaration that the posting order issued on 7.6.65 and its Corrigendum dated 24.6.65 seeking to place him on probation for a period of six months be also declared as illegal and contrary to rules.

3. The Appellant-Defendant's case is that the plaintiff-respondent was promoted to officiate as A.I.O.W. on adhoc basis on the basis of

representation made by him on 20.1.1965 though he did not have the requisite minimum service. He was subsequently selected as A.I.O.W. and was promoted as a selected candidate from 12.5.65 on a probation of six months. His work was not found upto the mark and when the encouragement given to him, ~~to~~ failed to bring about any improvement he was reverted on the basis of unsatisfactory work. The provisions of Article 311 of the Constitution are not attracted in his case. As far as promotion of Nirmaljeet Singh is concerned a selection was held on 15.7.66 but this was found to be irregular and was cancelled and he was continued on adhoc basis for carrying on day to day work in absence of any other persons being available to fill the post. Shri Agarwal the plaintiff being the senior most could not be promoted as he had been reverted for unsatisfactory work. According to the appellant-defendant, the suit was misconceived and was liable to be dismissed.

4. The Trial Court had framed proper issues. On the issue where the impugned order of reversion was illegal and void the learned Munsif held that the plaintiff had completed more than six months and therefore he could not be reverted on 10.11.65. He had taken into account the fact that he was put to officiate for three months which period

was expiring on 7.5.65 but no reversion order was issued and therefore the plaintiff was deemed to have completed his probation period and worked beyond that. According to the learned Munsif a stigma is cast on the plaintiff and the reversion was by way of punishment and therefore the plaintiff's reversion could not be sustained. He, therefore, decided that the impugned order dated 10.11.65 was illegal and void and the defendant was not competent to fix him on a probation period unilateraly. He however did not grant him relief that he should be deemed to have been promoted as A.I.O.W. w.e.f. 30.7.66.

5. We have heard the learned counsel for both parties. According to the learned counsel for the appellant-defendant since the working of the plaintiff-respondent was not satisfactory reversion could not be taken as a punishment. In support of his contention he has cited State of Bombay Versus F.A. Abraham (AIR 1962 S.C. 794). In this case the Hon'ble Supreme Court had held that a person officiating im a post has no right to hold it for all times. When a permanent incumbent comes back, the person officiating is naturally reverted to his original post. Sometimes a person is given an officiating post to test his suitability to be made permanent in it later. It is an implied term

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of the officiating appointment that if he is found unsuitable he would have to go back. If, therefore, the appropriate authorities find him unsuitable for the higher rank and revert him to his original rank the action taken is in is in accordance with the terms on which the officiating post had been given. It is in no way a punishment and is therefore not a reduction in rank though he loses the benefit of the appointment to the higher post. By itself it cannot indicate that the reversion was by way of punishment.

6. In another case Union of India Versus P.S. Bhat 1981 SCC(L&S)460 the respondent was selected by direct appointment and was appointed as such on probation. While still on probation he was issued a warning to the effect that he had conducted himself in a manner not conducive to discipline by indulging himself in loose talks and using filthy language. Thereafter the impugned order reverting him to his substantive post was issued saying that he had not been found suitable for the post of Producer. The Hon'ble Supreme Court had reversed the order of the High Court who had held that the impugned order was by way of punishment. It was held by the Hon'ble Supreme Court that even if misconduct, negligence and inefficiency may be the motive or inducing factor which influences the authority to terminate the service of an employee on probation such termination cannot be termed as

penalty or punishment. The circumstances of the case had led to the formation of a reasonable plea in the minds of the authorities that the person behaving in such fashion was not a suitable person to be employed as a Producer. Even if this undesirable conduct on the part of the respondent may be considered to be the motive or the inducing factor which influenced the authorities to pass the impugned order, the said order cannot be said to be by way of punishment. The plaintiff-respondent's case is also similar. He was put to officiate and his work was not found satisfactory and therefore he was reverted. The view held by the learned Trial Court is, therefore, not wholly on sound grounds on this point and is liable to be set aside.

7. A plea has been taken by the learned counsel for the plaintiff-respondent that in the absence of rules on probation promoting the plaintiff-respondent on probation for six months was not correct. Nothing has been put before us to show that it was necessary to issue the promotion orders as being on probation. According to the Concise Oxford Dictionary the word 'probation' means 'testing of conduct or character of a person specially of candidate in a religious body etc. or for employment'. A person on probation is one appointed to a post for determination of his fitness for eventual substantive appointment.

While in this case it seems that the appellant-defendant has not used the word in its true sense and order saying that it is an officiating promotion would have served the purpose. The appellant-defendant used the word on probation in a loose way. We do not accept the plea taken by the learned counsel that since there are no rules to put persons to officiate on probation, the promotion of the plaintiff-respondent could not be on probation. The plaintiff-respondent was appointed to officiate. For all officiating promotions of duly selected persons as the plaintiff-respondent was, it is incombent on the superior authorities to watch their work and rules provide that they can be reverted if the work is unsatisfactory before they attain a Quasi permanent right to continue in the officiating appointment. We do not find anything wrong in the appellant-defendant action to revert the plaintiff-respondent to his substantive post of Works Mistry on being found unsuitable to hold the post of A.I.O.W.

8. The view taken by the learned Munsif that probation was not relevant as the plaintiff-respondent had worked for more than 9 months is also not based on sound grounds. It is not a question that since he had completed the probationary period of six months and the total period had become nearly to 9 months, the reversion after this officiating

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period would tantamount to infringement of Article 311 of the Constitution. As we have already said, it is use of wrong word at wrong place. The rules provide that a person who is put to officiate can be reverted within 18 months without following Discipline & Appeal procedure and the plaintiff-respondent was given adequate warning to improve his work which he failed to do and therefore it was for unsatisfactory work and for indulging in activities which was not expected of a Supervisor. We do not consider that this would form a case which will fall for protection under Article 311 of the Constitution.

9. On the above considerations, the decree and judgement passed by the learned Trial Court is liable to be set aside and the appeal is liable to be allowed.

10. In the result the appeal is allowed. The decree and judgement passed by the learned Trial Court in Suit No.240 of 1968 ~~is quashed~~ Suit is dismissed Parties will bear their own costs throughout.

V.C.

A.M.

Dated the 24th Feb.,1987

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