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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.1076 of 1986

Mohd. Isha and Others ..... Plaintiffs-Appellants

Versus

Union of India & Others.....Defendant-Respondents.

Hon. Ajay Johri, A.M.
Hon. G.S.Sharma, J.M.

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

This is an appeal against the judgement and decree dated 26.3.1985 passed by Vth Additional Munsif Kanpur in original Suit No. 1192 of 1978 Mohd. Isha and Others Versus Union of India & Others. This appeal has been received on transfer from the District Judge, Kanpur under Section 29 of the Administrative Tribunals Act XIII of 1985 and is numbered as appeal No. 149 of 1985. The grounds of appeal are that though the plaintiff appellants had officiated for a period of more than 18 months in a class III post, they were reverted without following the provisions of Article 311 of the Constitution inasmuch as no show cause notice was given when the plaintiff appellants were reverted. According to them this was illegal and without jurisdiction and the learned trial court misinterpreted the circular in regard to the persons who had been

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selected and who are not required to appear in a test and therefore when they are put to officiate their officiation is regular. Also no sanction of the Northern Railway HQrs. office was taken before their reversion which has rendered invalid and illegal. And finally that the Trial Court has approached the controvercy from a wrong angle while deciding the case. They have therefore prayed for the setting aside of the judgement and decree of the Trial Court and prayed for allowing of their appeal with costs.

2. The plaintiff appellants' case is that they were working in class IV category in various posts and in 1975 and 1976 they were promoted to the grade Rs. 260 - 430 as Assistant Parcel Clerk in an officiating capacity and they continued to officiate for a period of more than 18 months. According to the plaintiff appellants such employees who officiate for more than 18 months cannot be reverted without following the procedure laid down under Article 311 of the Constitution. The plaintiff appellants were not given any chargesheet or notice or hearing but they were illegally reverted.

3. The defendant respondents' case is that the plaintiff appellants were promoted purely as

a temporary local arrangements properly panelled or directly recruited persons become available and that unless the plaintiff appellants qualify through a regular selection test they could not be regularised against the officiating posts. A selection was held on 11.12.77 but the plaintiff appellants could not qualify and that they have been reverted w.e.f. 18.8.78. According to the defendant respondents the plaintiff appellants could have been reverted at any time. Their reversion is not taken as reduction in rank and therefore they have no case for continuing against the officiating post.

4. The learned Trial Court had made proper issues. On issues No. 2,3,6,7,8,9 and 10 which were connected, the learned Trial Court had discussed a number of rulings that were cited by the plaintiffs in the original suit. After discussing various citations the learned Trial Court came to the conclusion that the officiating promotion of the plaintiff appellants was a purely local, temporary arrangements and that they were likely to be reverted when properly trained and selected or direct recruits become available and therefore their reversion was in terms of the order by which they were put to officiate. The plaintiffs in that suit i.e. plaintiff appellants had also failed in the test which was arranged to regularise them.

The learned Trial Court concluded that their reversion did not attract the provisions of Article 311 of the Constitution and for such reversions no hearing or show cause notice was necessary. Since the plaintiffs could not qualify their reversion was not illegal. It is against this decision of the learned Trial Court that the plaintiffs have come in appeal.

5. We have heard the learned counsel for both sides. The learned counsel for the plaintiff appellants contended that temporary adhoc arrangements can only be made for a short time and when the plaintiff appellants were put to officiate they had been subjected to a test and therefore asking them to appear or subjecting them to a second examination was illegal and also since they have officiated for more than 18 months they had acquired a right to the post and could only be reverted by following the provisions of Article 311 of the Constitution. The learned counsel for the defendant respondents repelled these contentions by saying that all these pleadings had been taken into consideration by the Trial Court and the fact remains that the plaintiff appellants did not qualify in the suitability test and the circular regarding protection after officiating for more than 18 months applies to only qualified persons. Therefore the plaintiff appellants had no case. Nothing else was pressed before us.

6. We have perused the file of the original suit as well. We find that in their written statement the defendant respondents have in para 4 said that the plaintiffs were put to work in local adhoc basis purely temporarily as a stop-gap-arrangement after being declared suitable by the C.M.I. This evidently was a local test which was held by the defendant respondents before they could put the class IV persons against the officiating post in terms of the Divisional Personnel Officer letter dated 13.8.75 to the Supdt. Kanpur Area. This letter said that while making local arrangements question of their suitability and security money, in case they are put on cash handling, should also be kept in view. It is thus clear that there is some substance in the contention raised by the learned counsel for the plaintiff appellants that they had been subjected to a suitability test by the C.M.I. Whether such a test could be called a proper test and could entitle the plaintiff appellants for regular absorption is what is required to be seen. It is evident that C.M.I. must have determined the suitability only on the basis of his own assessment amongst the limited number of people available locally. Whether any applications were invited and all the persons eligible were considered and whether the suitability test conducted by the C.M.I. was in accordance with the instructions available on the subject has not been brought out in the plaintiff appellants' statement anywhere nor is supported by

any documents. It is the defendant respondents' case that the plaintiff appellants were put to officiate purely on local temporary arrangement basis and their officiation was subject to their passing the test which according to the averments made in para 7 of the written statement in the suit shows that the test was held on 11.12.1977 but the plaintiff appellants failed to qualify.

7. We have also seen the letter issued by the Area Supdt. Kanpur under which local arrangements for filling of the vacancies of Asstt. Parcel Clerks etc. was made. These are placed at page 16Ga, 17Ga, 18Ga and 19Ga of the Suit file. These letters say that staff who have been declared suitable for the post of Asstt. Parcel Clerk may be utilized against the existing vacancies purely on local temporary arrangement. They may be told that they will be replaced after staff borne on the panel are ready for posting. It is thus clear that the suitability which was declared by the Area Supdt. Kanpur was for a purely local officiating arrangement and had nothing to do with the empanelment of the staff for regular promotion to class III posts. We do not think that the plaintiff appellants had any right for being considered for regular absorption even though they worked for more than 18 months in the local adhoc temporary officiating capacity without their qualifying through a regular selection test. The protection that is available for 18 months officiating when a person cannot be reverted without

following disciplinary and appeal procedure applies only to duly selected persons. The plaintiff appellants were not duly selected and therefore this protection was not available to them. It is not the question that they had passed the test once and therefore they should not have been subjected to a regular selection test. What they had passed was a purely local selection done by the Inspector of the area to choose persons who could be put in the officiating capacity pending arrival of duly selected hands or his own selection. The letter issued by the Area Supdt. on 19.12.75 which we have quoted above makes it clear that this was a purely local officiating arrangement and did not qualify the plaintiff appellants for a regular promotion.

8. The learned counsel for the plaintiff appellants has relied on a letter issued by the Railway Board in 1965. on the subject of reversion on grounds of general unsuitability of staff officiating in a higher grade or post. This letter says that the Board have reconsidered the matter and felt that it would not be correct to effect such reversion after prolonged officiating periods. They have therefore decided again that in future any person who is promoted to officiate beyond 18 months cannot be reverted for unsatisfactory work without following the procedure prescribed in the Discipline

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and Appeal Rules. This letter was published as No.P/R/Con/D&A/PartVIII dated 1.7.66 as well as under letter No.E/D&A(65RG6-24) dated 9.6.1965. The reference under which these instructions were issued is not very clear. It is obvious that the plaintiff appellants were not reverted for unsatisfactory work. They were promoted adhoc, temporary on an officiating basis subject to their passing the departmental selection test. They had failed in the test and therefore they were replaced by duly empanelled and selected hands and were reverted to their substantive post in the class IV category.

9. We have already noticed and commented on the fact that the plaintiff appellants were posted to the higher grade post on a purely adhoc basis. They have therefore no benefit of seniority, promotion or other advantages and when they appeared for the selection test they failed and were not empanelled. In other words they were not selected properly to hold the post on a regular basis and the Railway Board's letter ~~already referred~~ deals with reversion of employees promoted after due selection within a period of 18 months without following the Discipline & Appeal Rules on the basis of general unsuitability. The plaintiff appellants' case is not covered by this letter.

10. An employee who had no eligibility and who has not taken a prescribed test or selection and has

been promoted as a stop gap arrangement when he is reverted he cannot take advantage of the rule forbidding reversion of those who have officiated beyond 18 months. A stop gap adhoc appointment does not confer any right on the holder of the post and his reversion does not amount to the reduction in rank. The alleged order was not by way of punishment and if it was not passed by way of punishment, Article 311 is not attracted and such reduction would not normally be justiceable. The order entails no forfeiture of his pay or allowances or loss of seniority or stoppage or postponement of his future chances of promotion and therefore it cannot attract the provisions of Article 311 of the Constitution.

11. The learned counsel for the plaintiff appellants has also referred to a printed serial of the Northern Railway Sl. No. 3892 which lays down that an employee who once officiates against a non fortuitous vacancy in his turn on the panel shall not be required to appear again for fresh selection. Even this letter is not applicable to the plaintiff appellants. They were not on the panel and they have not undergone proper selection for being empanelled. We therefore do not find

any merit in the prayer made by the plaintiff appellants for reconsideration of the judgement given by the learned Trial Court.

12. In the result the appeal is dismissed and the judgement and decree of the trial court in (Original Suit No. 1192 of 1978) are upheld. Parties will bear their own costs throughout.

Member (A)

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Member (J)

Dated the 21st July, 1987

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