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JAGDISH PRASAD SHASTRI

v.

STATE OF U.P. & ORS.

October 13, 1970

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[J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

Constitution of India, Art. 226—Writ jurisdiction—Disputed questions of fact arising in petition—Dismissal of petition on this ground not justified.

C

Constitution of India Art. 311(2)—Civil Service—Reversion—Right to show cause—Whether right exists in a case where reversion is from a post held in "officiating" capacity and not substantively.

Evidence—Document admitted by Division Bench in appeal—Refusal to consider its effect on the ground that it was not produced at earlier stage, not justified.

D

The appellant was employed in the Department of Panchayat Raj, U.P. On January 7, 1959 the appellant was placed at the top of the list of Panchayat Secretaries fit for promotion to the post of Panchayat Inspector. On June 22, 1960 the appellant was promoted to the post of Panchayat Inspector. The order did not specify whether the appointment was officiating or substantive. On August 20, 1960, the District Panchayat Raj Officer passed an order reverting the appellant to the post of Panchayat Secretary; the order was however rescinded by the Director of Panchayat Raj who re-instated the appellant to the post of Panchayat Inspector making the appointment 'officiating'. In January 1961 there was a complaint against the appellant in connection with a panchayat election and an enquiry was instituted against the appellant by the Director of Panchayat Raj. On February 24, 1961, the District Panchayat Raj Officer reverted the appellant to the post of Panchayat Secretary. Before this order was made no opportunity was given to the appellant to explain his conduct. The appellant moved a petition in the High Court of Allahabad for a writ quashing the orders dated August 20, 1960 and February 24, 1961. In the petition it was urged that the appellant had been reduced in rank and penalised without an opportunity to show cause, that Art. 311 of the Constitution had been contravened, and that the impugned order was *mala fide* and was made because of enmity between the relatives of the Director of Panchayat Raj and the family of the appellant. The petition was dismissed by the Single Judge. The Division Bench dismissed the appeal. By special leave the present appeal was filed. The questions that fell for consideration were : (i) whether the High Court was right in declining, on the ground that the plea raised disputed questions of fact, to investigate the appellant's claim that by order dated June 22, 1960 he was appointed Panchayat Inspector in a permanent capacity; (ii) whether the appellant was entitled to the protection of Art. 311(2) (iii) whether the High Court was right in not taking into consideration the letter of the Director of Panchayat Raj recommending the appellant's dismissal after admitting the same on the record at the appellate stage.

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HELD : (i) If disputed questions of fact arise in a writ petition, and the High Court is of the view that those may not appropriately be tried in petition for a high prerogative writ, the High Court has jurisdiction to refuse to try those questions and to relegate the party applying to his

normal remedy to obtain redress in a suit. The order of the High Court rejecting the petition on the ground that disputed questions of fact fell to be determined was plainly illegal on the peculiar facts of the present case.

[587 D]

(ii) If by the order dated June 22, 1960 the appellant was promoted substantively the impugned order dated February 24, 1961, was liable to be struck down as violative of the guarantee of Art. 311 of the Constitution. The High Court did not reach any conclusion on that question. The order dated December 13, 1960 posting the appellant as an officiating Inspector could not deprive the appellant of the protection of the guarantee under Art. 311(2). [587 E-G]

An order of reversion made due to exigencies of the service in consequence of which an officer who was temporarily appointed or appointed in an officiating capacity may not be challenged. But the order passed maliciously or on collateral considerations or which involves penal consequences, or denied to the civil servant the guarantee of the Constitution or of the rules governing his employment is always open to the challenge by appropriate proceedings. [588 G-H]

(iii) The letter by which the appellant was reverted to the post of Panchayat Secretary and his name was also ordered to be struck off the list of those Panchayat Secretaries maintained for promotion to the post of Panchayat Inspector, had a two fold significance (a) it rendered some support to the plea of *mala fides*; and (b) it lent support to the claim of the appellant that it involved evil consequences. Refusal by the High Court to consider the letter after admitting it on the record was open to serious objection. The High Court had refused on grounds which were not relevant to consider an important piece of evidence in support of the case of the appellant, and had thereby denied the appellant a fair trial.

[587 H; 588 D]

The direction that the appellant's name be struck off the list of Panchayat Secretaries eligible for promotion to the post of Panchayat Inspector involved very serious consequences to the appellant. Before such an order could be made it was obligatory upon the appropriate authority to give an opportunity to the appellant to explain his conduct which merited punishment. Admittedly no such opportunity was given to the appellant. [588 B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1988 of 1966.

Appeal by special leave from the judgment and decree dated April 19, 1965 of the Allahabad High Court in Special Appeal No. 138 of 1961.

G. N. Dikshit for the appellant.

S. C. Manchanda and *O. P. Rana*, for the respondents.

The Judgment of the Court was delivered by

Shah, J. The appellant was appointed Panchayat Secretary in the Department of Panchayat Raj of the State of U.P. He was eligible for promotion to the post of Panchayat Inspector. On January 7, 1959 the appellant was placed at the top of the list of Panchayat Secretaries fit for promotion to the post of Panchayat

- A** Inspector. On June 22, 1960 the appellant was promoted to the post of Panchayat Inspector. The order did not specify whether this appointment was officiating or substantive. On August 20, 1960, the District Panchayat Raj Officer, Meerut, passed an order reverting the appellant to the post of Panchayat Secretary. But on protest raised by the appellant, the Director of Panchayat Raj
- B** rescinded that order and re-instated the appellant to the post of Panchayat Inspector making the appointment "officiating".

- On January 22, 1961, election was held for the office of *Pradhan* of the Simbhawali Panchayat. A complaint was made by one of the defeated candidates to the Director of Panchayat Raj that the appellant and other officers had tampered with the seal of the ballot box and had cancelled certain ballot papers.
- C** An inquiry was instituted against the appellant by the Director of Panchayat Raj. On February 24, 1961, the District of Panchayat Raj Officer, Meerut, reverted the appellant to the post of Panchayat Secretary, and directed that the name of the appellant "be struck off from the list of Panchayat Secretaries maintained
- D** for appointment of officiating Panchayat Inspectors". Before this order was made no opportunity was given to the appellant to explain his conduct.

- The appellant moved a petition in the High Court of Allahabad on March 9, 1961, for a writ quashing the orders dated August 20, 1960 and February 24, 1961. He claimed that he could not be reduced in rank without giving him an opportunity of showing cause since the reduction in rank of the appellant amounted to imposing a penalty and entailed evil consequences, that the appellant was not reverted under the order of a competent officer; that the order violated the service rules and the guarantee of Art. 311 under the Constitution of India; that the order was
- E** made because of enmity between the family of the appellant and the relatives of the Director of Panchayat Raj; and that the appellant had reason to believe that on account of "strained relations" the Director of Panchayat Raj passed an order without giving him even an opportunity of being heard.
- F**

- G** The petition was dismissed *in limine* by order of Dwivedi, J. The learned Judge held that there was no evidence on the record to show that the appellant was permanently appointed to the post of Panchayat Inspector by order dated June 22, 1960, and that in reverting the appellant to the post of Panchayat Secretary by order dated August 20, 1960 without an enquiry the guarantee under Art. 311 of the Constitution was not violated, and that
- H** since the appellant was appointed by order dated December 13, 1960 to officiate as Panchayat Inspector the order was not in contravention of Art. 311(2) of the Constitution. The learned

Judge did not consider whether the order was made maliciously or on collateral considerations.

Against that order the appellant preferred a special appeal to a Division Bench of the High Court. By order of the High Court the record of the Director of Panchayat Raj and the letter addressed by him to the District Magistrate, Meerut, were called for and admitted in evidence. The letter was issued under the signature of Bhagwant Singh, Director, Panchayat Raj, U.P., intimating the District Magistrate that the appellant "be reverted to his original post of Panchayat Secretary and his name be struck off from the list of those Panchayat Secretaries maintained for the appointments of officiating Panchayat Inspectors. For this no further communication is necessary". The appellant relied upon this letter and contended in support of his plea that the order was made because of enmity and ill-will against him.

The High Court observed that there was controversy whether by the order dated June 22, 1960 the appellant was appointed in a permanent capacity as Panchayat Inspector; that the burden of proving that the appellant had been appointed in a permanent capacity lay upon him and in view of the controversy between the parties it could not "be held that he occupied the post in a permanent capacity"; that since by the order dated February 24, 1961, the appellant was appointed only "officiating Inspector" the appellant was not occupying the post of Panchayat Inspector in a "permanent capacity," and in the absence of any material on the record a finding on the point whether "the appellant was holding a substantive post of Panchayat Inspector could not be recorded with any amount of certainty", and "the Court must proceed on the assumption that the appellant was only officiating as a Panchayat Inspector" After referring to the counter-affidavit filed on behalf of the State (presumably in the appeal) the Court observed that the "appellant had been given an officiating chance in a local arrangement and the reversion took place because the person holding the post of Panchayat Inspector in a substantive capacity had joined", that in the petition and the affidavit filed in support of it the circumstances in which the appellant was reverted were not explained and therefore "even though there was no material to show that the appellant was reverted actually on the ground that the person for whom he was officiating had joined, the possibility that he was reverted on that ground had not been excluded by the averments made in the petition and the affidavit filed in support of it". In the view of the High Court the appellant could not rely upon the letter of the Director of Panchayat Raj, for, it "was brought on record at the appellate stage" and not at the trial before the Single Judge and no explanation was furnished by counsel for the appellant

- A** why the letter was not called for or produced earlier. The letter contained a direction to the effect that the name of the appellant be removed from the list of persons eligible for promotion to the post of Panchayat Inspector, but that, in the view of the High Court, by itself did not support the appellant's submission that the appellant was entitled to the protection of Art. 311(2) of the Constitution of India, for, it was not proved that the appellant was legally entitled to have his name recorded in the list of persons eligible for promotion to the post of Panchayat Inspector. The appellant has appealed to this Court with special leave.

- The judgment of the High Court prompts three comments :
- C** (1) the appellant claimed that he was by order dated June 22, 1960, appointed substantively to the post of Panchayat Inspector and thereafter he was unlawfully reverted. Without investigating this grievance the High Court rejected the petition observing that on that plea disputed questions of fact fell to be determined. If disputed questions of fact arise in a writ petition, and the High Court is of the view that those may not appropriately be tried in
- D** a petition for a high prerogative writ, the High Court has jurisdiction to refuse to try those questions and to relegate the party applying to his normal remedy to obtain redress in a suit. The order of the High Court rejecting the petition on the ground that disputed questions of fact fell to be determined is plainly illegal;
- E** (2) that if by the first order dated June 22, 1960 the appellant was appointed substantively as Panchayat Inspector, a subsequent order cancelling that order and reverting the appellant without enquiry was illegal. If by the order dated June 22, 1960 the appellant was promoted substantively the impugned order dated February 24, 1961, was liable to be struck down as violative of the guarantee of Art. 311 of the Constitution. The High Court did not reach any conclusion on that question. The order dated
- F** December 13, 1960, posting the appellant as an officiating Inspector could not deprive the appellant of the protection of the guarantee under Art. 311(2); and (3) that the appellant pleaded in paragraphs 23 & 24 of his petition and in paragraphs 24, 25 & 26 of the affidavit in support of the petition, that in making the order the Director of Panchayat Raj was actuated by ill-will and
- G** malice. The Single Judge summarily rejected the petition without considering these averments. The High Court also did not consider the plea that the Director of Panchayat Raj had acted maliciously.

- H** The letter by which the appellant was reverted to the post of Panchayat Secretary, and his name was also ordered to be struck off the list of those Panchayat Secretaries maintained for promotion to the post of Panchayat Inspector, had a two-fold significance—(i) it rendered some support to the plea of *mala fides*;

and (ii) it lent support to the claim of the appellant that the order involved evil consequences. The High Court apparently allowed the letter to be brought on the record, but thereafter declined to consider whether it prejudicially affected the appellant. The direction that the appellant's name be struck off the list of Panchayat Secretaries eligible for promotion to the post of Panchayat Inspector involved very serious consequences to the appellant. Before such an order could be made it was obligatory upon the appropriate authority to give an opportunity to the appellant to explain his conduct which merited that punishment. Admittedly no such opportunity was given to the appellant. The order *prima facie* supported both the branches of the argument raised on behalf of the appellant that it involved penal consequences and also that the order was made not due to the exigencies of the service, but to punish the appellant because the relations between the appellant and the Director of Panchayat Raj were strained. Refusal by the High Court to consider the letter after admitting it on the record is open to serious objection. The High Court has refused on grounds which were not relevant to consider an important piece of evidence in support of the case of the appellant, and has thereby denied the appellant a fair trial. The order of the High Court suffers from serious infirmities.

We set aside the order of the High Court and of the Trial Judge and direct that the Trial Judge do issue notice to the officer, is actuated by malice, the order is liable to be set aside. to hear and decide the petition filed by the appellant.

It may be observed that according to the decisions of this Court the mere form of the order reverting an officer to his substantive post even if he is appointed temporarily or in an officiating capacity to a superior post, is not decisive. If the order is made for a collateral purpose, or if in making the order the officer is actuated by malice, the order is liable to be set aside. Again if the order involves a penalty, even if on the face of it the order does not bear any such impress, the Officer prejudiced by the making of that order is entitled to prove that he has been denied the protection of the guarantee under Art. 311 of the Constitution, or of the protection of the rules governing his appointment. An order of reversion made due to exigencies of the service in consequence of which an officer who was temporarily appointed or appointed in an officiating vacancy may not be challenged. But the order passed maliciously or on collateral considerations or which involves penal consequences, or denied to the civil servant the guarantee of the Constitution or of the rules governing his employment, is always open to challenge by appropriate proceedings.

A The appellant will be entitled to his costs in this Court and in the High Court. Costs before the Single Judge will be costs in the petition.

G.C.

Appeal allowed.