PETITIONER:
STATE OF PUNJAB

Vs.

RESPONDENT:
KISHAN DASS

DATE OF JUDGMENT19/01/1971

BENCH:
SHELAT, J.M.
BENCH:
SHELAT, J.M.
VAIDYIALINGAM, C.A.

CITATION:
1971 AIR 766 1971 SCR (3) 389
1971 SCC (1) 319
CITATOR INFO :
E 1984 SC 885 (23)

ACT:
Constitution of India. Art. 311-Forfeiture of past service-If amounts to reduction in rank.

HEADNOTE:
Pursuant to certain charges against the respondent, a police constable, his entire service with permanent effect were forfeited, which meant reducing his salary to the starting point in the time scale for constables. An appeal by him before the Deputy Inspector General having failed, be filed a suit. The trial court decreed the suit holding that the order amounted to reduction in rank, therefore, Art. 311(2) of the Constitution was attracted and as no show cause notice was served before the order was passed, the order was vitiated and was bad. The decree was affirmed by the first appellate court and thereafter in second appeal by the High Court. Allowing the appeal by the State, this Court,
HELD : The expression "reduction in rank" in Art. 311(2) has to be construed according to the well-established meaning it has acquired, as in 'the case of the other two expressions, namely, 'dismissal' and 'removal' in that Article, under the various service rules and under the provisions in that regard in the Constitution Acts of 1915 and 1935. The expression "reduction in rank" in the Article, therefore, means reduction from a higher to a lower rank or post when imposed as a penalty. Therefore, an order forfeiting the past service which has earned a Government servant increments in the post or rank he holds, howsoever adverse it is to him, affecting his seniority within the rank to which he belongs or his future chances or promotion, does not attract the Article. His remedy, therefore, .is confined to the rules of service governing his post. [397 E]
High Court, Calcutta v. Amal Kumar Roy, [1963] 1 S.C.R. 437 and Shitla S. Shrivastava v. North Eastern Rly. [1963] 3 S.C.R. 61, followed.
Parshotam Lal Dhingra v. Union of India, [1958] S.C.R. 828. disapproved.
Rupnarain Singh, State of Orissa, A.I.R. 1959, Orissa 167, P. C. Wadhwa v. Union of India, [1964] 4 S.C.R. 598 and Dubesh Chandra Das v. Union of India, A.I.R. 1970 S.C.

77, distinguished.
Shri Madhav Laxman Vaikunthe v. State of Mysore' [1962] 1 S.C.R. 886 and Afzalur Rahman v. Emperor, A.I.R. 1943 F.C. 18, referred to.

JUDGMENT:
CIVIL APPELLATE JURISDICTION : Civil Appeal No. 359 of 1967.
Appeal by special leave from the judgment and order dated July 29, 1966 of the Punjab High Court in Civil Misc. No. 1144-C of 1966 in Regular Second Appeal No. 340 of 1966.
V. C. Mahajan, for the appellant.
A. N. Nag, for the respondent.
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The Judgment of the Court was delivered by
Shelat, J. The respondent was at all material times a constable in the Punjab Police Service and was posted at Ambala. In November 1960, he was served with a charge sheet attributing to him arrogance towards his superior officers and indiscipline. A departmental enquiry was admittedly held in accordance with the procedure laid down therefor in the Punjab Police Rules, 1934. The said charges having been held to have been proved, an order followed forfeiting his entire service with permanent effect. This meant bringing down his salary to Rs. 45/- per month, which would be the salary payable to a constable at the staring point of his service. An appeal by him before the Deputy Inspector-General having failed, he tiled a suit in the Court of Sub-Judge,, Ambala.
The suit was on the basis that- the said order amounted to reduction in rank, that therefore, Art. 311(2) of the Constitution was attracted and that no show cause notice against the action proposed against him having been served upon him before the said order was passed, the order was vitiated and was bad. The Trial Court accepted this contention and decreed the suit. An Appeal by the appellant-State failed as the District Judge, relying on Rupnarain Singh v. State of Orissa(1) held that the said order amounted to reduction in rank and the respondent was therefore entitled to the procedural safeguards laid down in Art. 311(2). A second appeal by the State before the High Court was summarily rejected. Hence this appeal founded on special leave granted by this Court.
The only question arising in this appeal, the facts not being in dispute, is whether the order forfeiting-the respondent's service, which meant reducing his salary to the starting point in the time scale for constables, amounted to reduction in rank within the, meaning of Art. 311(2). The respondent being a constable., there was no question of his being reduced from a higher post or rank to a lower post or rank. The order, nonetheless, reduced the emoluments received by him as it deprived him of the increments earned by him as a result of the approved service, he had put in, having been forfeited. It also affected his seniority, and therefore, chances of promotion. The question is, whether for that reason the order is tantamount to reduction in rank attracting, Art. 311(2).
Rule 1.13 of he Punjab Police Service Rules (hereinafter referred to as the Rules) provides that a gazetted police officer', means a police officer appointed under s. 4 of Act V of 1861.
(1) A.T.R. 1959 Orissa 107.
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and includes the Inspector General, Deputy Inspectors-

General, Assistant Inspectors-General, Superintendents, Assistant Superintendents and Deputy Superintendents. The expression "enrolled police officer" means police officers appointed under s. 7 of the said Act and includes inspectors, sergeants, sub-inspectors, asistant sub-inspectors, head constables and constables. The expression "upper subordinate" includes all enrolled police officer of and above the rank of assistant sub-inspector, and the expression "lower subordinate" includes all other enrolled police officers. There is thus a hierarchy in the Police Service of the State comprised of several posts, the post of a constable being the last rung in the ladder. Rule 13.1, which deals with promotion of police officers from one rank to another, provides that- such promotions from one rank to another and from one grade to another in the same rank shall be made by selection tampered by seniority. Cl. 3 of that rule lays down that for purposes of regulating promotion. amongst enrolled police officers, six promotion lists, A, B, C, D, E and F should be maintained. Lists A, B, C and D are meant to regulate promotion to the selection grade of constables and to the ranks of head constables and assistant sub-inspectors. List E regulates promotion to the rank of sub-inspector and List F regulates promotion to the rank of Inspector. Rule 13.5 deals with promotion of constables to selection grade and r. 13.6 provides that a list, called List A, shall be maintained by each Superintendent of Police of constables eligible under r. 13.5 for promotion to the selection grade of constables. Rule 13.7 provides for a list, called List B, divided into two parts, namely, selection grade constables considered suitable as candidates for the Lower School course at the Police Training School, and constables, selection or time-scale, considered suitable for drill and other special courses at the Police Training School. Rule 13.8 lays down that promotion to the post of head constable has to be made in accordance with principle described in sub-rules (1) and (2) of r. 13.1. Rule 13.8-A provides that infliction of any major punishment would be a bar to admission to or retention in lists A, B or C. Rule 16.1 lays down diverse punishments which can be awarded to members of the service in accordance with the provisions contained in these Rules. These punishments are : (1) dismissal, (2) reduction, (3) stoppage of increment or forfeiture of approved service for increment, (4) entry of censure, (5) confinement to, quarters for a period not exceeding 15 days, (6) extra guards. fatigue or other duty, and punishment drill for certain days. Under r. 16.1(3), a major punishment means any authorized punishment of reduction, withholding of increments, forfeiture of approved service, dismissal and every judicial conviction on a criminal charge. Rule 16.4 defines 'reduction' and provides that a police officer may be reduced (a) to a lower rank (except in the case-

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of sergents and of constables on the time-scale), (b) from the selection grade of a rank to the time scale of the same rank, (c) if in a graded rank to a lower position in the seniority list of his grade or to a lower grade in his rank. Rule 16.5 provides that the increment of a police officer on a time scale may be withheld as a punishment. Cl. (2) of that rule provides that approved service for increment may be forfeited, either temporarily or permanently, and such forfeiture may entail either the deferment of an increment or increments or a reduction in pay. It further provides that the order must state whether the forfeiture of approved service is to be permanent, or, if not, the period for which

it has been forfeited. Thus, under rules 16.4 and 16.5 the two punishments of reduction and forfeiture of service are two distinct punishments. Rule 16.24 lays down the procedure to be followed in departmental enquiries. Cl. (ix) of that rule clearly provides that it is only in the case of an order of dismissal or reduction in rank that a second show cause notice against the, proposed action against a police officer has to be served before an order is passed against him. Such a second show cause notice is, therefore, not required to be served in the case of other major or minor punishments. There is no dispute that in the present case the procedure laid down in these Rules and applicable to the respondent was followed.

The contention, however, was that though the Rules distinguish the two punishments of reduction and forfeiture of service and treat them as distinct, there were certain decisions of this Court which have held that for an order to amount to reduction in rank within the meaning of Art. 311(2) it was necessary that it must actually reduce a government servant from a higher to a lower post or rank, and that even if the order affected adversely his seniority or chances of promotion within the rank or cadre to which he belongs, it would still constitute reduction in rank.

Parshotam Lal Dhingra v. Union of India(1) was one such case on which counsel leaned heavily. But the question there was whether the reversion of the the appellant from Class 11 service, wherein he was at the relevant time officiating, to Class III service to which he permanently belonged, amounted to punishment, and therefore, attracted Art. 311(2). The decision laid down the principle that reduction in rank would be punishment if it carried with it penal consequences and that the two tests to be applied were (1) whether the servant had the right to the post or Tank, and (2) whether evil consequences, such as forfeiture of pay or allowances, loss of seniority in his substantive rank, stoppage

(1) (1958) S.C.R. 828.

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or post-ponement of future chances of promotion followed as a result of reduction in rank. The appellant in that case was holding an officiating post and had therefore no right under the Railway Code to continue in it. The Court held that since under the general law such appointment was terminable at any time on reasonable notice, the reduction could not operate as a forfeiture of any right, and therefore, the order could not be said to have visited him with any evil consequences. Consequently, it did not amount to reduction in rank by way of punishment. The decision also laid down that the words "dismissal", "removal" and "reduction in rank" used in Art. 311(2) were words of art, having technical meanings, they having been adopted from service rules prevailing earlier, such as Classification Rules of 1920 and 1930, and having therefore acquired well-known meanings. Under those rules, dismissal, removal and reduction in rank were major punishments providing special procedural protection. On examination of the history of the service rules, s. 96B(i) of the Government of India Act, 1915, and s. 240 of the 1935 Act, the Court held that "both at the date of the commencement of the 1935 Act and of our Constitution the words "dismissed", "removed" and "reduced in rank", as used in the service rules, were-- well-understood as signifying or denoting the three major punishments which could be inflicted on Government servants". The decision concluded that "the principle is that when a servant has right to a post or to a rank either under the terms of the contract of employment, express or implied, or

under the rules governing the conditions of his service, the termination of the service of such a servant or the reduction to a lower post is by itself and prima facie a punishment, for if operates as a forfeiture of his right to hold post or that rank and to get the emoluments and other benefits attached thereto". The passage in the judgment emphasised before us was :

> "A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the Government servant has a right to a particular rank, than the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however, he has no right to the particular rank, his reduction from an officiating higher rank to his substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is
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> or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences."

According to this decision, reduction in rank within the meaning of Art. 311(2) means reduction from a higher to a lower rank or post in the hierarchy of the service to which a government servant seeking protection of that article belongs and' not reduction in the same rank, e.g., losing places in seniority in the rank to which he belongs.

Shri Madhav Laxman Vaikunthe v. The State of Mysore(1) another decision relied on by counsel, was a case of a Mamlatdar, officiating as a District Deputy Collector. His reversion from the officiating post to his permanent post was held to be punishment attracting Art. 311 (2). This was a clear case of reduction in rank as the reversion brought down the appellant from a higher to a lower post. It did not merely affect his seniority or the stage at which he was in the time-scale to which he belonged in the hierarchy of service.

The decision in point really is The High Court Calcutta v. Amal Kumar Roy(2) where the respondent, a Munsif, was ex-cluded by the High Court from consideration for the post of a Subordinate Judge for a year thereby depriving him eight places in the cadre of Subordinate Judges when he was appointed an Additional Subordinate Judge. The respondent's contention was ,that such an exclusion amounted to withholding of promotion or reduction in rank. The first part of the contention was rejected on the ground that he had no right to promotion and the second on the ground that deprivation, of eight places in seniority in the same rank did not constitute reduction in rank. This decision was followed in Shitla S. Srivastava v. North Eastern Railway(1) where it was held that the removal of the appellant's name from a provisional panel of persons for consideration for higher posts did not attract Art. 311 (2) as it did not amount to reduction in rank. The Court held that the expression "rank" in Art. 311(2) had reference to a person's classification and not his particular place in the same

cadre in the heirarchy of the service to which he belongs. It is thus clear that reduction in rank within the meaning of Art. 311(2), as the expression itself suggests, means reduction from a higher to a lower rank or post and not merely losing places in the rank or cadre to which the Government servant belongs, and consequently, his seniority within such cadre or rank.

(1) [1962] 1 S.C.R. 886.
(3) [1966]3 S..C.R. 61.
(2) [1963]1 S.C.R.437.

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This would be so, even if as a result of the Government's action. he loses a higher salary or his chances of promotion to a higher post are reduced. For such action, the remedy would be under the rules governing, the service and not under Art. 311(2) as such action does not amount to reduction in rank as understood for the purposes of Art. 311 (2).

Counsel for the respondent, however, argued that there were other decisions which have held otherwise and assisted him. P. C. Wadhwa v. Union of India(1) was one such decision which, he thought, assisted him. In that case, the appellant was officiating in the senior time-scale and was posted at Ferozepore as an Additional Superintendent of Police. In July 1958, he was reverted to his substantive post. The reason for the reversion was that he was tried as a Superintendent of Police and was found to be immature. The record showed that the reversion was not due to the return of the permanent incumbent from leave or deputation or for any other administrative reason and other officers junior to him continued in the senior time-scale while he was reverted. The record also revealed that an enquiry was not resorted to only for the reason that it would take a long time. His contention in these circumstances was that his reversion amounted to reduction in rank. That was accepted because it would seem from the facts that the reversion was from senior time-scale to junior time-scale of the service. Though both the posts were cadre posts in the Police Service, the reversion was from the post of the Additional Superintendent of Police to one of Assistant Superintendent of Police, the former obviously being a post higher than the latter. Although both the posts were in the same cadre, promotion from the junior to the senior time-scale was by seniority. It is clear, therefore, that appointment of one in the junior time-scale to a post in the senior time-scale was promotion, and therefore, appointment to a higher post. Such is not, however, the position, in the instant case.

Dubesh Chandra Das v. Union of India (2) was another decision relied upon by Mr. Nag. The appellant there was the Chief Secretary of Assam and a member of the Indian Civil Service. He was appointed a Secretary in the Union Government, a tenurepost, the tenure period of which was to expire in July 1969. In September 1966, he was asked to choose between reversion to the service of his parent State or compulsory retirement. He, complained against the order by a writ petition contending that the order was a stigma and amounted to reduction in rank, which, therefore, could not be passed without undergoing the procedure laid down in Art. 311(2). His appointment as the Secre-

(1) [1964]4S.C.R.598.
(2) A.I.R. 1070 S.C. 77.

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tary at the Centre was not by way of deputation but was by way of appointment to a tenure post. This Court held, on an

examination of the rules, that cadres for the Indian Administrative Services were to be found in the States only, that there were no cadres in the Government of India, that a few of them were, however, intended to serve at the Centre and when they did so, they enjoyed better emoluments and better status. Such an appointment, the Court held, meant promotion to a higher post. In the circumstances, the -order amounted to the appellant's reduction from a higher to a lesser rank. This, again, was a case where the government servant was reverted from a post higher than the post of the Chief Secretary, Assam, and not a reduction in the same time-scale post or deprivation of places in the same time-scale post thereby adversely affecting his seniority therein or chances of promotion.

The decision of the High Court of Orissa in Rupnarain Singh v. Orissa(1) would apparently assist the respondent, for, the impugned order there was similar to the one in the instant case. That order directed that the petitioner, who was then serving as a forester, be reduced to the lowest scale of Rs. 50,1- in the, scale of pay of Rs. 50-2-70 fixed for the foresters. The High Court upheld' the contentions of the petitioner, viz., (1) that the order was punishment, and (2) that it amounted to reduction in rank within the meaning of S. 240(3) of the 1935 Act and Art. 311(2). These conclusions were reached on two premises. 'The first was that r. 2 of the Bihar and Orissa Subordinate Services Discipline and Appeal Rules in cl. (iii) provided, amongst others, the punishment of "reduction to a lower post or time scale or to a lower stage in the time-scale". Following the decision in Afzalur Rahman v. Emperor(2) where the Court had observed that in construing s. 240 of the 1935 Act, the long standing service practice based on statutory rules in force long before the passing of the 1935 Act, and which were continued in force by that Act. should be considered, the High Court held that the expression "reduction in rank" in s. 240(3) must also include reduction to a lower stage in the time-:scale as r. 2 (iii) had treated reduction to a lower post and "reduction to a lower stage in the time-scale" as one kind of punishment. Such a reasoning does not apply to the present case because r. 16.1 of the Punjab Police Rules makes a 'clear distinction between "reduction" and stoppage of increment ,or forfeiture of approved service for increment, the two being distinct and separate punishments permissible under that rule. The second premise upon which the High Court reached the said conclusions rested on the observations in Dhingra's case(1), wherein this Court laid down the criterion to judge whether an order is a

(1) A.I.R. 1959 orissa 167 P.C. (2) A.I.R. 1943 F.C. 18.
(3) [1958] S.C.R. 828.
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punishment or not by observing that it would be punishment if the: order entailed or provided for forfeiture of pay or allowances or loss of seniority in his substantive rank or stoppage or postponement of his future chances of promotion. The passage relied on the High Court laid down determinents for treating an order as. one of punishment and not a test for reduction in rank. As already stated, in Dhingra's case(1) the impugned order was held to be one of reduction in rank because the appellant there was reduced from Class 11 to Class III service, i.e., from a higher to a lower post, the time-scales of the two posts being different. The reduction of rank was held not to be a punishment because the appellant was not entitled to the better post wherein he

was merely officiating and therefore did not visit him with any evil consequences. The observations relied on by the High Court thus related to the question whether the impugned order was one of punishment and not for deciding whether it amounted to a reduction in rank and were, therefore, not apposite. The basis for the, second premise of the High Court, therefore, was not correct and therefore cannot help the respondent.

The aforesaid analysis of the decisions leads us to the conclusion that the expression "reduction in rank" in Art. 311 (2) has to be construed according to the well-established meaning it has acquired, as in the case of the other two expressions, namely, dismissal' and 'removal' in that article, under the various service rules, and the provisions in that regard in the Constitution Acts of 1915 and 1935. The expression "reduction in rank" in the article, therefore, means reduction from a higher to a lower rank or post when imposed as a penalty. Therefore, an order forfeiting the past service which has earned a government servant increments in the post or rank he holds, however adverse it is to him, affecting his seniority within the rank to which he belongs or his future chances of promotion does not attract the article. His remedy, therefore, is confined to the rules of service governing his post. In our view, neither Parshotam Lal Dhingra's case(1) nor Rupnarain Singh's case(2) assisted the respondent, as the first does not lay down what he contended and the second was not correctly decided.

The result is that the State's appeal succeeds and must be allowed. Consequently, the respondent's suit has to be dismissed. In the circumstances of the case, however, there will be no order as to costs.

Y.P. Appeal allowed.

(1) [1958] S.C.R. 828 (2) [1958] S.C.R. 828
(3) A.I.R. 1959 Orissa 167 P.C.
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