

PETITIONER:
UNION OF INDIA AND ANOTHER

Vs.

RESPONDENT:
GAJENDRA SINGH, ETC., ETC.

DATE OF JUDGMENT 07/03/1972

BENCH:
MATHEW, KUTTYIL KURIEN
BENCH:
MATHEW, KUTTYIL KURIEN
HEGDE, K.S.

CITATION:
1972 AIR 1329 1972 SCR (3) 660
1973 SCC (3) 797
CITATOR INFO :
RF 1974 SC 423 (16)
RF 1974 SC1317 (8)
R 1974 SC1898 (7)
RF 1976 SC1766 (12)
RF 1976 SC2547 (21)

ACT:
Constitution of India--Arts. 14, 16 and 311(2)--whether version amounted to reduction in rank to attract Art. 311(2)--If retention of junior in officiating capacity was violative of Arts. 14 and 16 of the (Constitution of India.

HEADNOTE:

The facts of the appeals are similar and the facts of C.A. No. 314 are as follows :

The respondent was a permanent Kanungo who was promoted to officiate as Naib Tehsildar under paragraph 37(ii) of the Standing Order No. 12, passed by the second appellant. He was reverted from the officiating post for the reason that he did not pass the departmental examination of Naib Tehsildar within the period prescribed by the Standing Order.

The respondent contended in the writ petition that he was entitled to continue in the post of Naib Tehsildar until a qualified person became available that since he was promoted under para 37(ii) of the Standing Order, passing of departmental examination was not necessary to officiate in the post of Naib Tehsildar, that junior Kanungos were retained in the posts of Naib Tehsildar by which the respondent had lost his seniority in the substantive rank of Kanungo and hence the reversion amounted to a reduction in rank within the meaning of Art. 311(2) of the Constitution and retention of juniors in the post of Naib Tehsildar was violative of Arts. 14 and 16 of the Constitution.

The Judicial Commissioner, decided the case in favour of the respondent and held that the reversion of the respondent was attended with penal consequences and since he was not given a reasonable opportunity of making representation against the order, the order was bad and the order was accordingly quashed, Allowing the appeal,

HELD : (i) Appointment to a post on an officiating basis, is, from the nature of employment, itself of a transitory

character and in the absence of any contract or specific rule regarding the condition of service to the contrary, the implied term of such an appointment is that it is terminable at any time. the Government servant so appointed acquires no right to the post. But if the order entails or provides for forfeiture of his pay or allowance etc. or stoppage or postponement of his future chances of promotion, then that circumstance would indicate that in form the Government had purported to exercise its undoubted right to terminate the employment, but in truth and reality, the termination was by way of penalty. r 863D]

Parshotam Lal Dhingra V. Union of India, [1958] S.C.R. 828, referred to.

Further, by the mere fact that some of the juniors were allowed to continue in the post of Naib Tehsildar on an officiating basis, it could

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not be, said that the respondent lost his seniority in his substantive rank of Kanungo. [863H]

(ii) Articles 14 and 16 of the Constitution are also not violated in the present case because the junior persons were retained in their officiating capacities either because they had passed the departmental examination or because they had been exempted from passing that examination. In any case, the respondent was not similarly situated with his juniors and therefore, there was no discrimination to attract the Articles. [864-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION C.A. No. 314 to, 320 of 1967. Appeals by special leave from the judgment and order dated July 23, 1966 of the Judicial Commissioner's Court at Simla in Writ Petitions Nos. 18, 19, 20, 21, 23 24 and 25 of 1965. R. N. Sachthey, for the appellants (in all the appeals). Rameshwar Nath, for the respondents (in C.As. Nos. 314, 315 and 318 of 1967).

The Judgment of the Court was delivered by

Mathew, J. These appeals, by special leave by the union of India and the Financial Commissioner of Himachal Pradesh, are from a judgment of the Judicial Commissioner, Himachal Pradesh, allowing Civil Writ petitions Nos. 18, 19, 20, 21, 23, 24 and 25 of 1965, filed by the respondents and quashing the orders passed by the financial Commissioner 2nd appellant reverting the respondents to the posts of Kanungos. As the facts in all the appeals are similar, we will deal with Civil Appeal No. 314.

The respondent was a permanent Kanungo in the Revenue Department. He was promoted on March 26, 1962, to officiate as Naib Tehsildar under para 37(ii) of Standing Order No. 12, passed by the 2nd appellant. He was reverted from the officiating post to his substantive post on June 1, 1965, for the reason that he did not pass the departmental examination of Naib Tehsildar within the period prescribed in Para 34 of the Standing Order.

The respondent contended in the writ petition that he was entitled to continue in the post of Naib Tehsildar until a qualified person became available, that no qualified person was available when he was reverted, that since he was promoted under para 37(ii) of the Standing Order, he could not have reverted for the reason that he did not pass the departmental examination as the passing of the departmental examination was not necessary in the case of Kanungos promoted under para 37(ii) of the Standing Order to

officiate in the post of Naib Tehsildar. He further contended that Kanungos junior to him who were promoted to offi-

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ciate in the post of Naib Tehsildar were retained in the posts of Naib Tehsildar and that has resulted in the loss of his seniority in the substantive rank of Kanungo and hence the reversion amounted to a reduction in rank within the meaning of Article 311(2) of the Constitution. So, according to the respondent, he should have been given a reasonable opportunity of making a representation against the reversion and since such an opportunity was not given, the order of reversion was bad. The respondent also contended that the retention of his juniors in the, post of Naib Tehsildar was violative of his fundamental right under Articles 14 and 16 of the Constitution.

The learned Judicial Commissioner, by his order held that para 37(ii) of the Standing Order did not confer any right on the respondent to continue to officiate in the post of Naib Tehsildar until a qualified person became available as that para only conferred a power on the appropriate authority to allow him to continue to officiate in the post till a qualified hand became available. The learned Judicial Commissioner then held that since the respondent was promoted under para 37(ii) of the Standing Order, he could not have been reverted on the score that he did not pass the departmental examination, that since the juniors of the respondent who were also promoted on an officiating basis, were allowed to continue in the post of Naib Tehsildar, the reversion had resulted in the loss of his seniority in his substantive rank. He, therefore, came to the conclusion that the order of reversion was attended with penal consequence is and that the respondent should have been given a reasonable opportunity of making representation against the order, and quashed it.

Paragraphs 34 and 37 of the Standing Order passed by the Financial Commissioner read as under:-

"34(i) Ordinarily an A class candidate should pass the Naib Tehsildar's examination within two years after completing his revenue training as prescribed in paragraphs 25 and 27 and a B Class candidate should pass the Naib Tehsildar's examination within two years of his first selection. The Commissioner may extend this period for another year for special reason to be recorded in writing.

(ii) The Financial Commissioners may further extend the period in which a candidate must pass the examination or exempt any candidate

from passing the examination in ex

ceptional

cases on the recommendation of the Commissioner."

"37(i) Officiating appointments of Naib Tehsildars are made by Commissioners in Divisions. preference

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should be given to direct tehsildar candidates who have undergone revenue training for one year under paragraph 4(i) but not completed the requisite period of service as Naib Tehsildar under paragraph 4(i)(b).

(ii) If no such Tehsildar candidate and no qualified Naib Tehsildar candidate of his list

is available for a vacant post of Naib Tehsildar, the Commissioner may appoint a Tehsildar candidate who has completed his two years service if unemployed or an unqualified Naib Tehsildar candidate or a Kanunogo to fill the vacancy until a qualified person becomes available."

We do not think that the Judicial Commissioner was justified in quashing the order of reversion for the reason that in passing the order the 2nd appellant contravened the provisions of Article 311(2).

Appointment to a post on an officiating basis is, from the nature of employment, itself of a transitory character and in the absence of any contract or specific rule regulating the conditions of service to the contrary, the implied term of such an appointment is that it is terminable at any time. The Government servant so appointed acquires no right to the post. But if the order entails or provides for forfeiture of his pay or allowance or the loss of his seniority in the substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that though in form the Government had purported to exercise its undoubted right to terminate the employment, in truth and reality, the termination was by way of penalty (see *Parshotam Lal Dhingra v. Union of India*(1)).

We do not understand how the respondent lost his seniority in his substantive rank of Kanungo by the mere fact that some of his juniors were allowed to continue in the post of Naib Tehsildar on an officiating basis. His juniors were not promoted on a regular basis. Like the respondent they were also promoted to officiate in the post of Naib Tehsildar under para 37(ii). We do not see how their retention in the posts on an officiating basis would entail loss of seniority of the respondent in his substantive rank. No provision in the Standing Order or any other rule has been brought to our notice to show that by allowing the juniors of the respondent to continue to officiate in the posts of Naib Tehsildar the respondent lost his seniority in his substantive rank. We do not, therefore, think that the order of reversion was attended with any penal consequences so as to attract the provisions of Article 311(2).

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

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The respondent, no doubt, was appointed to officiate in the post of Naib Tehsildar in pursuance of para 37(ii) of the Standing Order and that did not provide that he could be reverted for his not passing the departmental examination within any specified time but that would not, in any way vitiate the order of reversion as the respondent had no right to hold the post and the 2nd appellant had the undoubted power to revert him. The fact that the 2nd appellant give a wrong reason for reverting the respondent would not in any way affect the power which he undoubtedly possessed to revert him.

The contention of the respondent that the retention of his juniors, to officiate in the post of Naib Tehsildar violated his fundamental right under Articles 14 and 16 of the Constitution has no substance for his juniors were retained either because they had passed the departmental examination or because they had been exempted from passing that examination. The respondent was not, therefore, similarly situate with his juniors and, therefore, there was no discrimination to attract the Articles.

We, therefore, set aside the order of the judicial Commissioner and allow the appeal but, in the circumstances,

we make no order as to costs.
S.C.

Appeals allowed.

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JUDIS