

PETITIONER:
K.GOPAUL

Vs.

RESPONDENT:
UNION OF INDIA AND OTHERS

DATE OF JUDGMENT:
12/04/1967

BENCH:
BHARGAVA, VISHISHTHA
BENCH:
BHARGAVA, VISHISHTHA
WANCHOO, K.N. (CJ)
MITTER, G.K.

CITATION:
1967 AIR 1864 1967 SCR (3) 627

ACT:

Constitution of India-Articles 14, 311-Appellant occupying post of inspector General of Registration, Madras-Post included In I.A.S. Cadre-Appellant transferred to another post not as head of department-Whether reduction in rank-Central Govt. including a post in one State in I.A.S. Cadre and not in another-Whether discrimination.

HEADNOTE:

The appellant was holding and had been confirmed in the post of Inspector General of Registration (I.G.R.), Madras, when, on November- 11, 1963, the post of I.G.R. was included in the cadre of the Indian Administrative Service (I.A.S.). On January 25, 1964, a Government order was issued posting a member of the I.A.S. who was holding the post of a 'Deputy Secretary, as I.G.R., Madras, vice the appellant. On January 30, 1964 by another order, the appellant was posted to act temporarily as Accommodation Controller. Madras and the person whom he replaced was posted as Director of Fisheries, Madras. The appellant's appointment was made on the same grade pay which he was then drawing plus certain special allowances. The appellant moved a petition under Art. 226 of the Constitution challenging the two orders of January 25 and January 30, 1964.

While the petition before the High Court was pending, by another order dated June 6, 1964 the temporary post of Accommodation Controller which earlier existed in the cadre of Deputy Secretary (Non I.A.S.), was kept in abeyance with effect from February 6, 1964 and a new temporary post of Accommodation Controller, Madras, was sanctioned in the same grade as that of the appellant and it was directed that the appellant be deemed to have acted in that post from February 6, 1964 to April 14, 1964. The appellant then moved another writ petition challenging this order. A single Bench of the High Court dismissed the two petitions. While the appeals were pending before a Division Bench, the Court was informed through a letter from the Government to its counsel that when the post of I.G.R. was included in the I.A.S. service cadre, the Government had decided that in order to protect the 'rights of the appellant, a supernumerary post of I.G.R. should be created with effect from November 11, 1963.

Taking notice of this letter the High Court dismissed the appeals holding that all the rights of the appellants in respect of pension and gratuity had been protected and there had been no removal from service or reduction in rank in the case of the appellant. By orders dated October 6, 1966, and February 10, 1967, the supernumerary post of I.G.I. was sanctioned up to such time as the appellant was confirmed in another post.

In the appeal before this Court it was contended on behalf of the appellant (i) that by transferring him and posting him as Accommodation Controller he had been reduced in rank without complying with the provisions of Art. 311 of the Constitution; the I.G.R. was declared head of 3 Department while the Accommodation Controller was not head of a department; the post of Accommodation Controller was held by an officer who, on relief by the appellant, was promoted to the post created in the grade of a Deputy Secretary and from this it must be inferred that

628

the post of Accommodation Controller was lower in rank than the post of a Deputy Secretary, whereas the post of I.G.R. was a rank higher than that of a Deputy Secretary; (ii) that while the appellant was holding the post of I.G.R. he had a lien on a permanent post, but, when he was sent to the post of Accommodation Controller, the appellant was left without a lien on any permanent post and that would necessarily deprive him of his rights to pension and gratuity which would amount to his removal from service as a punishment; and (iii) that the post of I.G.R. had been placed in the cadre of I.A.S. in the State of Madras only and in no other State and, as a consequence, the appellant lost his appointment to that post due to the unequal treatment.

HELD: Dismissing the appeal :

(i) The mere fact that the post of Accommodation Controller to which the appellant had been transferred was not designated the post of a head of department did not necessarily involve any 'reduction in rank. It is well known that a Government service, there may be senior posts, the holders of which are not declared heads of department while persons holding comparatively junior posts may be declared as such. Furthermore, there was no reduction in rank of the appellant for it was clear, on the facts, that the Post of I.G.R. was not higher in rank but lower than that of a Deputy Secretary. In fact the post was equated with that of an Assistant Secretary. [631H-632B, G]

(ii) The mere transfer of the appellant to the post of Accommodation Controller did not have the effect of his removal from his service; although it was true that when the order of his transfer was initially passed on January 30, 1964 no provision was made for his retaining a lien on any permanent post, this position was eventually corrected when a supernumerary post of I.G.R. was created from November 11, 1963 and it was laid down that it would exist until such time as the appellant was confirmed in another post. It could not be said that this supernumery post was a temporary post within the meaning of Rule 9(30); it was a permanent post within Rule 9(22) of the Fundamental Rules of the Madras Government for it had been created for an indefinite period and was to continue in existence as long as the appellant held it and was not confirmed in any other post. [633B-C; 634F-F]

(iii) Under Rule 4(1) of the Indian Administrative Service (Cadre) Rules, 1954, framed under the All India Service Act 61 of 1951, the strength and composition of the cadre of the I.A.S. constituted for a State are to be

determined by Regulations made by the Central Government in consultation with the State Governments. Depending on the conditions in each State, the Government may consider it desirable that a particular post should be placed on the Cadre of the I.A.S. in one State but not in another. The order of the Central Government cannot therefore be held to be void on the ground of discrimination. [634G-H: 635B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2426 and 2430 of 1966.

Appeals by special leave from the judgment and order dated October 14, 1965 of the Madras High Court in Writ Appeals Nos. 41 and 42 of 1965.

N. S. Somasundaram, E. C. Agarwal, Champat Rai and P. C. Agarwala, for the appellant (in both the appeals).

629

R. H. Dhebar for S. P. Nayyar, for respondent No. 1 (in both the appeals).

G. Ramanujam and A. V. Rangan, for respondents Nos. 2 and 3 (in both the appeals).

The Judgment of the Court was delivered by

Bhargava, J. The appellant, K. Gopaul, was appointed to the Madras Registration Service as a direct recruit and commenced his service on posting as a District Registrar in January, 1939. Under the latest Rules governing the Madras Registration Service, the Service consists of two Classes. Class I has only one post in it, viz., Inspector-General of Registration. In Class II, there are two categories; category 1 consists of posts of Inspectors of Registration Offices, and category 2 of posts of District Registrars. Under these Rules, the appellant was promoted as Inspector-General of Registration (hereinafter referred to as "I.G.R.") in the post in Class I on 8th June, 1956, and was confirmed in that post by the Government Order dated 9th November, 1957, with effect from 9th June, 1956. While he was still holding this post, the post of I.G.R. was included in the cadre of the Indian Administrative Service with effect from 11th November, 1963. On 25th January, 1964, a Government Order was issued posting one O.H. Dias of the Indian Administrative Service, who was holding a post of Deputy Secretary to Government, Revenue Department, as I.G.R., Madras, vice the appellant. That Government Order contained a note that orders regarding the posting of the appellant will be issued separately from the Home Department. Then, on 30th January, 1964, a Government Order was issued posting the appellant to act temporarily as Accommodation Controller, Madras, vice one M. Sargunam. That Order further laid down that the appellant, as Accommodation Controller, will continue to draw his grade pay in the scale of Rs. 1,200-100/2-1,400 and in addition, he will draw a special pay Rs. 100 per month and also a conveyance allowance of Rs. 75 per month if a car is maintained or Rs. 62/50P per month, if no car is maintained. On receiving this Order, the appellant moved a petition under Art. 226 of the Constitution in the High Court of Madras, seeking the quashing of the Order of the Government of India placing the post of I.G.R., Madras, in the Cadre of the Indian Administrative Service with effect from 11th November, 1963, as well as the Order of the Madras Government dated 30th January, 1964, transferring the appellant to the post of Accommodation Controller, Madras. In pursuance of the Government Order made on (the 5th

January, 1964, a notification was published in the Gazette Dated 5th February, 1964. In this notification, the posting of O. H. Dias as I.G.R., Madras, in place of the appellant, was notified. In addition, it was laid down that the cadre post of Direc-

630

tor of Fisheries, Madras, was to be kept temporarily in abeyance until further orders, and, instead, sanction was accorded to the creation of a temporary post of Director of Fisheries, Madras, in the grade of a Deputy Secretary to Government (non-I.A.S.) for a period of six months from the date of appointment or till the need for it ceased, whichever was earlier. The notification proceeded to lay down that M. Sargunam is posted to act as Director of Fisheries, Madras, in the newly sanctioned post. Obviously, this posting was ordered, so that the post of Accommodation Controller to which the appellant was transferred, should fall vacant and should be available for the appellant to take charge of it.

While the petition before the High Court was still pending, another Order was issued by the Madras Government on the 6th June, 1964, keeping the temporary post of Accommodation Controller, Madras, which earlier existed in the cadre of Deputy Secretary (non-I.A.S.), in abeyance with effect from 6th February, 1964 afternoon; and with effect from the same date, sanction was accorded to the creation of a temporary post of Accommodation Controller, Madras, in the scale of Rs. 1,200-100/2-1,400 for the period from 6-2-1964 to 14-4-1964 afternoon (both days inclusive). This scale of pay, it appears, was the scale in which the appellant was drawing his salary in the post of I.G.R. By this Order dated 6th June, 1964, it was further directed that the appellant, who was appointed as Accommodation Controller by the Order dated 30th January, 1964, should be deemed to have acted in the post sanctioned by this Order during the period from 6-2-1964 afternoon to the afternoon of 14-4-1964 (both days inclusive). It may be mentioned that after the Order of 6th June, 1964 had been passed, the appellant moved another petition in the High Court challenging that Order also. Both the petitions were decided by a common judgment by a single Judge of the High Court on 2nd December, 1964.

The appellant then filed appeals before a Division Bench of the High Court. While these appeals were pending before the Division Bench, a letter was sent on behalf of the Government of Madras to the Counsel representing the Government in the appeals on 27th August, 1965. In that letter, it was stated that, when the post of I.G.R. was included in the Indian Administrative Service Cadre of the State, the Government had decided that, in order to protect the rights of the appellant, a supernumerary post of I.G.R. in the State Service should be created with effect from 11th November, 1963, the date on which the above post was included in the Indian Administrative Service Cadre. It was added that, in the circumstances, there would not be any reduction in the pension and gratuity of the appellant consequent on the inclusion of the post of I.G.R. in the Indian Administrative

631

Service. It appears that, by this time, it was realised by the Government that the effect of the earlier Orders made in the case of the appellant was that the appellant was not holding lien on any permanent post and was only working on the temporary post of Accommodation Controller with the result that the appellant was likely to suffer in the matter of earning pension and gratuity in his service. The Bench

of the, High Court hearing the appeals took notice of this letter and dismissed the appeals on the 14th, October, 1965, holding that all the rights of the appellant in respect of pension and gratuity had been protected and that there had been no removal from service or reduction in rank in the case of the appellant. Thereupon, the appellant sought leave to appeal to this Court under Article 136 of the Constitution against the common order of the High Court dismissing the two appeals arising out of the two writ petitions. Special leave was granted and that is how these appeals have come up before us.

During the pendency of these appeals, the Madras Government, on 6th October, 1966, issued a Government Order sanctioning the creation of a supernumerary post of Additional Inspector-General G. Registration in the State Service in the scale of Rs. 1200-100/2-1400 with effect from 11th November, 1963. Later still, on 10th February, 1967, another Order was issued in supersession of the orders issued on 6th October, 1966, conveying the Government sanction to the creation of a supernumerary post of I.G.R. in the State Service not borne on the Indian Civil Administration Cadre in the scale of Rs. 1200-100/2-1400 with effect from 11-11-1963 until such time as the appellant is confirmed in another post. It is on these facts, which have now been placed before us, that we have to decide these appeals in which the appellant challenges the Orders of the Government posting him as Accommodation Controller.

On behalf of the appellant, these Orders of the Government have been challenged on three grounds. The first ground urged is that, by transferring the appellant and posting him as Accommodation Controller, he has been reduced in rank and this reduction in rank was ordered without complying with the provisions of Art 311 of the Constitution. This submission is based on the circumstance that, according to Entry 13 in Appendix II which is referred to in subsidiary definition (ii) of Rule 9 of Part 1 of the Fundamental Rules of the Madras Government, the I.G.R. has been declared to be the Head of a Department, while the Accommodation Controller is not the Head of a Department. We cannot accept the submission that the mere fact that the post of Accommodation Controller, to which the appellant has been transferred, has not been designated as the post of a Head of the Department necessarily involves any reduction in rank. In fact, it

63 2
is well-known that in Government service, there may be senior posts, the holders of which are not declared as Heads of Department, while persons holding comparatively junior posts may be declared as such. The rank in Government service does not depend on the mere circumstance that the government servant, in the discharge of his duties, is given certain powers. In the case of the appellant, it is to be noticed that, from the very initial stage, it was laid down that, on being transferred to the post of the Accommodation Controller, he was still to continue to draw pay in the scale of Rs. 1,200-100/2-1,400 which was the scale in which he was drawing his pay while working in the post (if I.G.R. The appellant was, thus, not sent to a post carrying a lower scale of pay. This point was further urged on the basis that the post of Accommodation Controller was held by an Officer who, on relief by the appellant, was promoted to the post created in the grade of a Deputy Secretary to Government (non-I.A.S.). From this fact it was sought to be inferred that the post of Accommodation Controller was lower in rank than the post of a Deputy Secretary to Government, and it was urged that the post of I.G.R. was of a rank

higher than that of a Deputy Secretary. The argument completely fails in view of the appellant's own affidavit showing the method of recruitment to the post of I.G.R. The appellant stated that the method of recruitment for the post of I.G.R. was from two sources. One was by promotion of the Inspector of Registration Offices or District Registrars, and the other recruitment by transfer from Deputy Collectors or Assistant Secretaries to Government. The second method of appointment to the post of I.G.R. makes it clear that this post is equated with that of a Deputy Collector or Assistant Secretary to Government because persons holding those posts can be appointed as I.G.R. by mere transfer. If the post of I.G.R. had been senior to that of the Deputy Collector or Assistant Secretary to Government, the appointment could not have been made to that post by mere transfer, but would necessarily have involved promotion. The submission made on behalf of the appellant that the post of I.G.R. is higher in rank than that of a Deputy Secretary is thus clearly wrong. In fact, the post is lower in rank than that of a Deputy Secretary and is equated with that of an Assistant Secretary. It has not even been suggested anywhere that the post of Accommodation Controller is lower in rank than that of an Assistant secretary to Government or a Deputy Collector. On the other hand, the information given to us in the course of the arguments showed that, under the Rules, the Accommodation Controller works directly under the control of the Government, while the I.G.R. is subordinate to the Board of Revenue. We, consequently, find no force at all in the plea that the posting of the appellant as Accommodation Controller, when he was holding the post of I.G.R. amounted to reduction in rank.

633

The second point urged on behalf of the appellant was that, while the appellant was holding the post of I.G.R., he had a lien on a permanent post, but, when he was sent to the post of Accommodation Controller and O.H. Dias was appointed as I.G.R. after placing that post in the Cadre of the Indian Administrative Service, the appellant was left without a lien on any permanent post, and that would necessarily deprive the appellant of his rights to pension and gratuity, so that his transfer to the post of Accommodation Controller would amount to his removal from service as, it punishment. The mere transfer to the post of Accommodation Controller did not bring into effect removal of the appellant from Government service. It is, however, correct that, when the order of his transfer was initially passed on 30th January, 1964, no provision was made for his retaining lien on any permanent post, and, if that position had been maintained, the appellant would, no doubt, have lost his rights to pension and gratuity. Under Rule 361 of the Madras Pension Code, the service of an officer does not qualify for pension unless it conforms to the following three conditions :-

First.-The service must be under Government.

Second.-The employment must be substantive and permanent.

Third.-The service must be paid by Government.

On transfer of the appellant to the post of Accommodation Controller, the first and the third conditions continued to be satisfied 'but the employment of the appellant in a substantive and permanent post ceased. This second condition is further explained in Rule 368 which lays down that service does not qualify unless the officer holds a substantive office on a permanent establishment. It appears that the Madras Government, when transferring the appellant in order to appoint a member of the Indian Administrative Service as I.G.R. consequent on that post being included in

the cadre of the Indian Administrative Service, lost sight of the fact that this transfer would involve loss of lien on a permanent post by the appellant. The subsequent orders have, however, clearly rectified this error. By the Order dated 6th June, 1964, the first step was taken of keeping the earlier existing temporary post of Accommodation Controller, Madras, in abeyance with effect from 6th February, 1964, the date on which the appellant took charge of that post, and, instead, another temporary post of Accommodation Controller, Madras, was created in the scale of pay which was applicable to the post of I.G.R. Later on, while the appeals were pending in the High Court, the Government sent a letter conveying their decision to create a supernumerary post of T.G.R. in the State Service with effect from 11th November, 1963 in order to protect the rights of the appellant.

634

A supernumerary post of Additional Inspector-General of Registration was in fact created by the Order dated 6th October, 1966, with effect from 11-11-1963. That Order was later superseded by the Order dated 10th February, 1967, which conveyed Government's sanction to the creation of a supernumeraries post of I.G.R. in the State Service not borne on the Indian Civil Administrative Cadre in the scale of pay which the appellant was drawing when he was holding the post of I.G.R. which was placed in the cadre of the Indian Administrative Service. This supernumerary post was created with effect from 11-11-1963 and it was laid down that it would exist until such time as the appellant was confirmed in another post. The appellant was thus provided a lien on this supernumerary post of I.G.R., in the State Service. On behalf of the appellant, it was urged that the supernumerary post of I.G.R. is a temporary post, and the fact that the Government has placed his lien on this post does not protect his rights to pension. On behalf of the Government, the reply is that the supernumerary post of I.G.R. is a permanent post and not a temporary post. In Rule 9(22) of the Fundamental Rules of the Madras Government, a permanent post is defined to mean a post carrying a definite rate of pay sanctioned without limit of time-, while, under Rule 9(30), a temporary post is defined to mean a post carrying a definite rate of pay sanctioned for a limited time. The supernumerary post of I.G.R. created by the Order of the Government dated 10th February, 1967, is not for a limited time. The post has been created for an indefinite period and is to continue in existence as long as the appellant holds that post and is not confirmed in any other permanent post. This supernumerary post of I.G.R. is, thus, clearly covered by the definition of permanent post, so that the appellant now holds lien on a permanent post and, consequently, satisfies the second condition for qualifying for pension laid down in Rule 361 of the Madras Pension Code, mentioned above. There is, therefore, no force in the submission- that the Orders made by the Government have resulted in any punishment being inflicted on the appellant by prejudicing his rights to pension and gratuity.

The last point urged by learned counsel was that the post of I.G.R. has been placed in the cadre of the Indian Administrative Service in the State of Madras only and in no other State and, as a consequence, the appellant lost his appointment to that post due to the unequal treatment meted out by the Government of India. Under Rule 4(1) of the Indian Administrative Service (Cadre) Rules, 1954, framed under the All India Services Act 61 of 1951, the strength

and composition of the Cadre of the Indian Administrative Service constituted for a State are to be determined by regulations made by the Central Government in consultation with the State Government concern-

635

ed. Rule 4(2) lays down that the Central Government shall, at the interval of every three years, re-examine the strength and composition of each such cadre in consultation with the State Government concerned. It was as a result of re-examination in the year 1963 that the Central Government declared the post of I.G.R. as well as a number of other posts as cadre posts of the Indian Administrative Service in consultation with the Madras Government. When such re-examination takes place, the circumstances and conditions existing in a particular State have to be taken into account. It is not necessary that similar posts in all States in India must all be placed in the same cadre. Depending on the conditions brought to the notice of the Central Government, the Government may consider it desirable that a particular post in one State should be placed on the Cadre of the Indian Administrative Service, whereas, in another State, it may not be considered advisable to do so. On behalf of the appellant, Volume 11 of the Hand Book of Rules and Regulations for the All India Services was brought to our notice. The edition corrected up to 1st September, 1962 showed the posts in the various States placed on the Cadre of the Indian Administrative Service. These Rules certainly do not show that the post of I.G.R. is any State was in the cadre of the Indian Administrative Service in that year; but a comparison of the various lists shows that there are some posts which, in some of the States, are borne on the Cadre of the Indian Administrative Service, where as they are not included in that Cadre in other States. Clearly, there can be no uniformity between different States in the matter of determining the strength and the composition of the Cadre of the Indian Administrative Service in all the States. The submission that we should hold the order of the Union Government as void on the ground of discrimination between different States has, therefore, no force and must be rejected. The appeal, consequently, fails and is dismissed, but, in the circumstances of the case, we direct parties to bear their own costs.

R.K.P.S.
dismissed.

636

Appeal