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NARESH CHANDRA SAHA

v.

UNION TERRITORY OF TRIPURA & ORS.

October 6, 1969

B

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

Civil Servant—Reposting in officiating post held at the time of dismissal after order of dismissal set aside—Subsequent reversion to substantive post—Legality.

Practice and Procedure—Petition filed in High Court challenging order passed 7 years before—If could be entertained.

C

The appellant, who was a junior officer in the State service, was appointed as an officiating senior officer on May 10, 1954. On May 12, 1954, an order was passed reverting him to the post of junior officer. On the ground that he refused to obey the order of reversion, on May 6, 1957 he was suspended, and ultimately dismissed. The orders of the suspension and dismissal were set aside by the Court of Judicial Commissioner. By order dated November 7, 1960, he was reinstated in the post of the senior officer which he was holding on the date of his suspension, with effect from the afternoon of May 7, 1957. By the same order, he was reverted to his substantive post of junior officer with retrospective effect from June, 7, 1957, as another officer was already occupying the post. The appellant, thereupon, challenged both the orders dated May 12, 1954, and November 7, 1960, but the Judicial Commissioner dismissed the petition.

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In appeal to this Court,

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HELD : (1) The order dated November 7, 1960 reverting the appellant to his substantive post did not entail forfeiture of the appellant's pay or allowances, or loss of seniority in his substantive rank, or stoppage or postponement of his future chances of promotion. The appellant could not claim the salary of the senior post from the date of suspension or dismissal till date of reinstatement, because, the appropriate authority, when reinstating the appellant could revert him, as from an earlier date, to his substantive post from the officiating post, provided the order was not passed *mala fide*. [641 H; 642 B-C]

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

(2) There is nothing to show that any retrospective operation was given to the order dated May 12, 1954. In any event, the Judicial Commissioner was justified in refusing to entertain any contention as to its validity seven years after the order was passed. [640 H]

G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2203 of 1966.

Appeal by special leave from the judgment and order dated November 8, 1965 of the Judicial Commissioner's Court, Tripura in Writ Petition No. 27 of 1961.

H

M. K. Ramamurthi and Shyamala Pappu, for the appellant.

V. A. Seyid Muhammad, S. P. Nayar and B. D. Sharma, for the respondents.

The Judgment of the Court was delivered by

Shah, J. The appellant joined the Tripura Civil Service on October 30, 1949, and was posted as a probationer Divisional Purchasing Officer, Dharmnagar. In 1953 the Tripura Civil Service was split into two cadres—senior officers being absorbed as Sub-Divisional Officers and junior officers as Sub-Treasury Officers. The appellant was absorbed as Sub-Treasury Officer with effect from April 1, 1950. On May 10, 1954, the appellant was appointed officiating Sub-Divisional Officer with effect from September 10, 1953. By order dated May 12, 1954, the appellant was reverted to the post of Sub-Treasury Officer with effect from May 6, 1954. The appellant made several representations to the Chief Commissioner but without success. The appellant was suspended by order dated May 6, 1957, for failure to obey the orders of the Additional District Magistrate and he was dismissed with effect from July 3, 1958, by the order of the Chief Commissioner.

The appellant moved a petition in the Court of the Judicial Commissioner at Tripura challenging the orders of suspension and dismissal. On February 19, 1960 the Court set aside the impugned orders. By order dated November 7, 1960 the Chief Commissioner reinstated the appellant to the post of Superintendent of Surveys and by the same order reverted him to his substantive post of Sub-Treasury Officer with retrospective effect from June 7, 1957. The appeal of the appellant to the President having been rejected, he moved a petition in the Court of the Judicial Commissioner for a writ quashing the orders dated May 12, 1954 and November 7, 1960. The appellant contended that an order of reversion cannot be made to have retrospective operation.

The petition insofar as it relates to the first order was belated. Again there is no ground for holding that retrospective operation was in fact given to that order of reversion. By the order dated May 12, 1954 the appellant was reverted to the post of Sub-Treasury Officer, but the order did not state the date from which the order was to be effective. In summarising the averments made in the petition, the Judicial Commissioner stated that the petitioner had alleged that the order dated May 12, 1954, was to have effect from May 6, 1954. A copy of that petition is not filed in this Court and we are unable to accept, especially having regard to the terms of the order, that any retrospective operation was sought to be given. In any event the Judicial Commissioner was justified in refusing to entertain any contention as to the validity of the order of reversion made nearly seven years before the date on which the petition was filed.

A The second order dated November 7, 1960, passed by the Chief Commissioner consists of two parts—(i) that the appellant be reinstated in the post of the Superintendent of Surveys with effect from the afternoon of May 7, 1957; and (ii) that the appellant be reverted to the substantive post of Sub-Treasury Officer with retrospective effect from June 7, 1957. The appellant, as
 B already stated, was suspended on May 6, 1957. The order of suspension and the order of dismissal which followed it were set aside by the Judicial Commissioner, and the Chief Commissioner therefore reinstated the appellant with effect from the afternoon of May 7, 1957 to the post occupied by the appellant on the date on which he was suspended. But the appellant was not holding
 C the post of Superintendent of Surveys substantively; he was merely officiating in that post. He was therefore reverted with effect from June 7, 1957 to his substantive post. The order was passed because the post was filled by another officer approved by the U.P.S.C.

D Counsel for the appellant relied upon the observations made by S. R. Das, C.J., in *Parshotam Lal Dhingra v. Union of India*⁽¹⁾ :

E “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 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. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty.”

H These observations, in our judgment, do not assist the appellant. The order reverting the appellant from June 7, 1957, to his substantive post does not entail forfeiture of his pay or allowances or loss of seniority in his substantive rank or stoppage or postponement of his future chances of promotion.

(1) [1953] S.C.R. 828, 863.

Counsel for the appellant urged that whenever a person is reinstated as from the date on which his services were terminated he must be restored to the same office which he was holding at the date of the termination of employment or suspension and must receive salary upto the date of reinstatement which that office carried. We find no warrant for the submission. If the appellant had not been suspended, it was open to the Chief Commissioner still to revert him to his substantive post. We see no reason for holding that the Chief Commissioner could not do so when he reinstated the appellant. There is no ground for thinking that the order was made maliciously. The reason for reversion was that since June 7, 1957 another officer was occupying the post of the Superintendent of Surveys. The post having been already filled, the appellant cannot claim that when he was reinstated he should have been paid emoluments attached to the office of Sub-Divisional Officer on the footing that he continued to occupy that office which he was holding in an officiating capacity.

The appeal therefore fails and is dismissed. Having regard to the circumstances of the case there will be no order as to costs.

V.P.S.

Appeal dismissed.