

MISCELLANEOUS CIVIL.

Before D. K. Mahajan and Gopal Singh, JJ.

DEVI SHANKER PARBHAKAR,—Petitioner.

versus

THE STATE OF HARYANA ETC.

C.W. No. 1357 of 1969

January 5, 1971.

Punjab Public Relations Department (Gazetted) Service Rules (1958)—Rule 10—"Permanent Vacancies" mentioned in the Rule—Whether means "permanent posts"—Person appointed on probation in the Punjab Public Relations Department in 1958—Permanent post falling vacant subsequently—Such probationer—Whether, entitled to be appointed to that post after the completion of probation period without any blemish.

Held, that the text of the proviso appended at the end to Rule 10 in conjunction with the language of sub-rule (1) of Rule 10 of the Punjab Public Relations Department (Gazetted) Service Rules, 1958 leaves no doubt that the expression 'Permanent vacancies' in the context implies 'permanent posts'. If a person is appointed on probation in the Punjab Public Relations Department and a permanent post subsequently falls vacant, the incumbent on probation is entitled to be appointed to that post after the completion of the period of probation without any blemish or default attaching to his work or conduct. Although at the time the incumbent is appointed on probation against a "permanent vacancy" existing on the date of his initial appointment on probation, yet the occurrence of subsequent "permanent post" can be availed of by that incumbent. (Paras 4 and 7)

Case referred by Hon'ble Mr. Justice R. S. Narula on 8th December, 1969 to a larger Bench owing to an important question of law involved in the case. The case was finally decided by the larger Bench consisting of Hon'ble Mr. Justice D. K. Mahajan & Hon'ble Mr. Justice Gopal Singh on 5th January, 1971.

Amended Petition under Articles 226 and 227 of the Constitution of India praying that a writ in nature of Certiorari, or any other appropriate writ, order or direction be issued quashing the order of respondent No. 1, dated 29th May, 1969, (Annexure 'A') and an ad-interim order be issued praying the operation of the impugned order till the decision of this writ petition.

ANAND SWAROOP, SENIOR ADVOCATE, WITH S. M. ASHRI, ADVOCATE, for the petitioner.

R. N. MITTAL, ADVOCATE, FOR ADVOCATE-GENERAL, (HARYANA), for the respondents.

JUDGMENT

The judgment of this Court was delivered by :—

GOPAL SINGH, J.—This writ petition referred to larger Bench by Narula J., by order, dated December 8, 1969, has been filed by Devi Shanker Prabhakar, under articles 226 and 227 of the Constitution impugning the validity of order of his reversion, dated May 29, 1969. Facts leading to the filing of the petition are as follows:—

(2) The petitioner was appointed as Social Educational Organiser in the Department of Development of the composite State of Punjab on February 9, 1953. He was taken as Publicity Supervisor on November 9, 1956 in the Public Relations Department of the State. On July 14, 1959, the petitioner was promoted to the post of District Public Relations Officer in a leave vacancy that occurred as a result of Shri Ishar Chander, District Public Relations Officer having proceeded on leave. On October 29, 1969, Shri Ishar Chander cancelled his leave. The petitioner continued to hold the post of District Public Relations Officer as Shri Ishar Chander had been appointed elsewhere. The Punjab Public Service Commission, by letter dated May 13, 1961, accorded approval for continuance of the petitioner on the post held by him. The petitioner was appointed to that post on probation for one year ending October 6 or 7, 1961. The petitioner crossed efficiency bar of that post on November 9, 1963. On February 16, 1967, Parkash Dev, who was a confirmed District Public Relations Officer, retired. On July 31, 1968, Nirbhai Singh another District Public Relations Officer also retired. The Petitioner continued working as a District Public Relations Officer upto the date of his reversion. These facts are not controverted on behalf of the respondents.

(3) The validity of the order of reversion dated May 29, 1969 has been challenged on the following grounds :—

- (1) Under Rule 10 of the Punjab Public Relations Department (Gazetted) Services, Rules, 1958, the petitioner had been appointed to a permanent post on probation and stood confirmed on the expiry of the period of probation.
- (2) That the order of reversion visits the petitioner with penal consequences and is violative of article 311(2) of the Constitution and the reversion of the petitioner cannot be held to be for reason administrative.

Rule 10 of the Service Rules runs as follows :—

“Probation.—(1) Members of the Service, who are appointed against a permanent vacancies, shall, on appointment to any post in the Service, remain on probation for a period of two years in the case of members recruited by direct appointment and one year in the case of members recruited otherwise;

Provided that the period of service spent on deputation or on a corresponding or a higher post may be allowed to count towards the period of probation fixed under this rule.

(2) If the work or conduct of any member during his period of probation is, in the opinion of appointing authority, not satisfactory, the appointing authority may dispense with his services or revert him to his former post if he has been recruited otherwise than by direct appointment.

(3) On the completion of the period of probation of any member, the appointing authority may confirm such member in the appointment or, if his work and conduct have, in the opinion of the appointing authority, not been satisfactory, dispense with his services or revert him to his former post if he has been recruited otherwise than by direct appointment or extend the period of probation and thereafter pass such orders as it could have passed on the expiry of the original period of probation :

Provided that the total period of probation including extensions, if any, shall not exceed three years if there is a permanent vacancy against which such member can be confirmed.

(4) Taking into consideration the text of the proviso appended at the end to Rule 10 in conjunction with the language of sub-rule (1) of the Rule, no doubt is left that the expression, ‘permanent vacancies’ in the context implies, ‘permanent posts’. The petitioner was not a direct recruitee. He was appointed to the post while working in the Public Relations Department. His appointment is covered by Rule 9(h) (ii) of the Rules. His initial period of probation on appointment to the post would be one year unless subsequently extended up to maximum period of three years. There is nothing to show that the period of probation had been extended. It has been

averred on behalf of the petitioner in para 7 of his petition that the petitioner had been appointed on probation and he completed the period of probation on October 6 or 7, 1961. In reply to that para, the respondent State has not specifically denied the fact of the petitioner having been appointed on probation to the post. It has only been pleaded in reply to that para that the petitioner had not been appointed to a permanent vacancy and consequently the question of his being confirmed on the efflux of period of probation did not arise. The fact of the petitioner as alleged by him in his petition supported by affidavit as to his having been appointed on probation and having completed the period of probation on October 6 or 7, 1961, has not been specifically denied. It shall be deemed to have been admitted by the respondent State. No fault having been found by the appointing authority with the work or conduct of the petitioner during the period of probation, the confirmation of the petitioner followed as a consequence on the expiry of that period. As laid down by their Lordships of the Supreme Court in *State of Punjab vs. Dharam Singh* (1), the petitioner shall be deemed to have been confirmed. The petitioner continued to hold that post for as long a period of time as 10 years without any break. According to the contents of Annexure XII filed on behalf of the respondent State, the number of permanent posts of District Public Relations Officers shown as existing on January 1, 1962 is 26. The name of the petitioner is shown at serial No. 25, against one of the permanent posts. Although against his name, it is indicated that he is temporary, but the fact remains that he was functioning on a post against a permanent vacancy. Another annexure, Annexure No. XX also filed on behalf of the State shows the petitioner at serial No. 7. That annexure refers to the permanent posts as they existed on January 1, 1969. The petitioner has been shown at serial No. 7 out of the 12 permanent vacancies, which existed on that date. That also shows that the petitioner was on January 1, 1969 working against a permanent vacancy. Considering that after the expiry of his period of probation and the fact that he was working against a permanent vacancy in 1962 and continued so working up to the beginning of 1969 and thereafter up to the date of his reversion, no doubt is left that he was holding a permanent post. The petitioner having not been found by the appointing authority during the period of probation to be blame worthy either on the ground of inefficiency or on that of misconduct, should have been confirmed.

(1) 1968 S.L.R. 247.

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The petitioner thus stood on the expiry of the period of probation automatically confirmed to the post of District Public Relations Officer.

(5) The impugned order has further been assailed on the ground that as a result of the order there follow penal consequences against the petitioner. The petitioner was drawing salary including allowances of Rs. 786.75 per mensem while working as District Public Relations Officer when he was reverted. He was reverted to the post of Block Development and Panchayat Officer. On joining, that post carried emoluments covering salary and allowances of Rs. 446 per mensem. Thus, the petitioner as consequence of reversion to a post carrying lower emoluments stands punished. The following officers had been confirmed as Block Development and Panchayat Officers by the date, the petitioner was reverted and appointed as temporary Block Development and Panchayat Officer:—

- (1) Shri Raj Kumar Naroola.
- (2) Shri Sukhchain Singh.
- (3) Shri Shiv Dayal Malhotra.
- (4) Shri Ved Parkash Khanna.
- (5) Shri Krishan Lal Kapur.
- (6) Shri Sohrab Singh.
- (7) Shri Ror Singh.
- (8) Shri Satya Pal Mehta, and
- (9) Shri R. S. Bantal.

(6) All the above officers were junior to the petitioner on the date of his reversion. By having been made to join a post lower in rank than that held by the petitioner on the date when reverted and having been appointed as temporary hand to the post to which he has been reverted, the petitioner has been rendered junior to them. This is another penal consequence, with which the petitioner has been visited as a result of the order of reversion. The petitioner's right

of promotion to higher posts and claim to higher emoluments in the ladder of his service cadre have been adversely affected. He will now have to start from the lower rung of the ladder of the post, to which he has been reverted instead of being promoted from the post of District Public Relations Officer, on which he had to be confirmed. It was obligatory upon the appointing authority as contemplated by clause (2) of article 311 read along with the above referred to service rules, by which the petitioner was governed, to charge-sheet the petitioner and to hold an enquiry prior to passing of the impugned order of reversion.

(7) It has been contended on behalf of the State that the expression, 'permanent vacancies' occurring in sub-rule (1) of Rule 10 of the Rules does not refer to 'permanent posts', but to 'permanent vacancies' and that unless at the time an incumbent is appointed on probation against a permanent vacancy existing on the date of his initial appointment on probation occurrence of subsequent permanent vacancy cannot be availed of by that incumbent. As already discussed, the language of sub-rule (1) of rule 10 read along with the proviso at the end leaves no doubt that the expression, 'permanent vacancies' means permanent posts. If a permanent post subsequently fell vacant and an incumbent on probation is entitled to be appointed to that post because of the completion of period of probation without any blemish or default attaching to his work or conduct, he deserves to be appointed in that vacancy. Reliance was placed on behalf of the petitioner on a Division Bench decision in *Rajendra Sareen vs. The State of Haryana and others* (2). In that case, the scope and applicability of this very rule came up for consideration. It was held that taking into consideration the language of sub-rule (1) of Rule 10 in conjunction with the proviso appended to that rule, the expression, 'permanent vacancies' has to be read as equivalent of 'permanent posts'. We respectfully agree with that view taken by the Division Bench of the Delhi High Court.

(8) For the above reasons, we allow the writ petition and quash the order of reversion, dated May 29, 1969. There will be no order as to costs.

B. S. G.

(2) A.I.R. 1970 Delhi 132.