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be binding on him according to custom, the decree shall enure for the benefit of all persons, who are entitled to impeach the sale. If the nearest reversionary heir at the time of making the alienation does not bring a suit for declaration challenging the alienation then it can be brought by the remote heir if he is a descendant from the great-great-grandfather of the alienor. However, when the succession opens on the death of the alienor or alienors then the only person, who can file a suit for possession of the property on the basis of the declaratory decree will be the person, who is the immediate heir of the deceased alienor or alienors.

(8) For the reasons given above, I hold that if there are more than one alienors and their shares in the alienated property are defined, a suit for possession on the death of one of the alienors for possession of his share in the property is maintainable by his heirs on the basis of a declaratory decree already obtained regarding that alienation. The right to sue accrues to such heirs under Article 2(b) of Punjab Act No. 1 of 1920 from the date of the death of the alienor. As a result this appeal is accepted, the judgment and decree of the lower appellate Court are set aside and the suit is remanded to the trial Court for decision on merits. As the point of law involved is not free from difficulty, I would leave the parties to bear their own costs.

K. S. K.

APPELLATE CIVIL.

Before Manmohan Singh Gujral and D. S. Tewatia, JJ.

BHAN SINGH,—Appellant.

versus

STATE of Punjab,—Respondent.

R.S.A. No. 267 of 1968.

July 20, 1973.

Constitution of India (1950)—Article 311(2)—Reversion of an officiating Government servant on the ground of his record being 'generally unsatisfactory'—Whether attaches stigma and invites penal consequences—Provisions of Article 311(2)—Whether attracted.

Held, that an order of reversion of a Government servant on the ground of his record being 'generally unsatisfactory' casts a reflection both on his work and conduct as the record contains opinion both with regard to his work and conduct in general. A bare perusal of such an order reasonably leads to the inference that his work and conduct were blame-worthy. The expression 'generally unsatisfactory records' signifies both unsatisfactory work as well as unsatisfactory conduct. Such an order of reversion attaches a stigma and invites penal consequences. Such an order amounts to an order of dismissal and hence requires compliance with the provisions of Article 311(2) of the Constitution of India. (Para 12).

Case referred by Hon'ble Mr. Justice D. S. Tewatia, to a Larger Bench on 22nd January, 1973, for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Man Mohan Singh Gujral and Hon'ble Mr. Justice D. S. Tewatia, finally decided the case on 20th July, 1973.

Regular Second Appeal from the decree of the Court of Shri Joginder Singh Mander, Additional District Judge, Ambala, dated the 6th day of November, 1967, affirming that of Shri R. D. Garg, Sub-Judge IIIrd Class, Ambala, dated the 27th February, 1967, dismissing the plaintiff's suit.

Both the Courts left the parties to bear their own costs.

I. B. Bhandari, Advocate, for the appellant.

J. S. Narang, Advocate, for the respondent.

JUDGMENT

GUJRAL, J.—Bhan Singh plaintiff-appellant had joined the Police Department as Constable in 1935 and was subsequently promoted as officiating Sub-Inspector of Police in 1955. By order, dated 10th September, 1962, passed by the Deputy Inspector-General of Police, Ambala Range, he was reverted to his substantive post of Assistant Sub-Inspector of Police and finding this order to be illegal he challenged it through the present suit on the ground that he had not been afforded any opportunity to show cause against this order even though he had been visited with penal consequences. The suit was filed after service of a notice under section 80 of the Civil Procedure Code on the defendant. The State of Punjab resisted the suit and took up the plea that the reversion had been ordered for administrative reasons and that no inquiry was necessary to be held

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in the case. The parties went to trial mainly on the following issue :—

“Whether the order of reversion of the plaintiff made on 10th September, 1962, is penal or *mala fide* as alleged by the plaintiff?”

During the trial the plea of *mala fides* was given up by the plaintiff and the matter was only contested with regard to the remaining part of the issue. The learned trial Court on coming to the conclusion that the order, dated 10th September, 1962, was not penal in nature found this issue against the plaintiff and also held that the subject-matter of the suit was not justiciable which plea had been raised as a preliminary issue. In view of these findings, the plaintiff's suit was dismissed but the parties were left to bear their own costs. In appeal, the judgment and decree of the trial Court were upheld, and being aggrieved against this, the plaintiff has filed the present regular second appeal in this Court.

2. The appeal originally came up before D. S. Tewatia, J. His Lordship, however, referred the matter to a larger Bench for the reason that the decision of this Court in *State of Punjab v. Munna Lal (1)*, needed reconsideration. This is how the matter has come up before us.

3. The order of reversion was passed in the following words:—

“The following Offg. S.Is. are hereby reverted to their substantive rank of A.S.I., with effect from 10th September, 1962, on account of their generally unsatisfactory record. On reversion, they are posted to the district as shown against each:

Name of the Officer.	Present posting.	New place of posting.
* * *	* *	* *
* * *	* *	* *
3. Bhan Singh 3/A	Ambala	Rohtak
* * *	* *	* *

It is contended on behalf of the appellant that the expression “generally unsatisfactory record” employed in the order of reversion casts aspersion on the conduct of the appellant and as no

opportunity envisaged in Article 311 of the Constitution of India was given to the appellant the order was illegal and was liable to be struck down.

4. It is well settled that Article 311 of the Constitution applies to temporary servant or probationer and if instead of terminating the services under the terms of the contract or the relevant rules the authority proceeds to dismiss him it is incumbent on the concerned authority to afford reasonable opportunity to the probationer or the temporary servant as provided in Article 311(2) of the Constitution. If the order on the face of it shows that it was not an order of discharge, but one of dismissal, Article 311(2) of the Constitution would come into play. In case it is brought out that the order casts an aspersion on the temporary servant or attaches a stigma to him the order of termination of services must be held in substance to amount to an order of dismissal *Jagdish Mitter v. The Union of India* (2).

5. The argument raised on behalf of the appellant would necessitate a close examination of the order passed in the present case and require its construction.

6. In *Munna Lal's case* (1), the order of reversion was passed in the following words:—

“Officiating A.S.I. Munna Lal, No. 468 of the Hissar District is reverted to his substantive rank of Head Constable from today the 10th April, 1962, for generally unsatisfactory record.

In interpreting the expression “generally unsatisfactory record”, it was held by this Court that an aspersion was cast in the order of reversion inasmuch as the record was considered generally unsatisfactory.

7. In *Jagdish Mitter v. The Union of India* (2), the order by which the Government servant was discharged ran as under:—

“Shri Jagdish Mitter, a temporary 2nd Division Clerk of this office having been found undesirable to be retained in Government service is hereby served with a month's notice of discharge with effect from November 1, 1949.”

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While interpreting this order it was observed as under:—

“No doubt the order purports to be one of discharge and as such, can be referred to the power of the authority to terminate the temporary appointment with one month's notice. But it seems to us that when the order refers to the fact that the appellant was found undesirable to be retained in government service, it expressly casts a stigma on the appellant and in that sense, must be held to be an order of dismissal and not a mere order of discharge.....It seems that anyone who reads the order in a reasonable way, would naturally conclude that the appellant was found to be undesirable, and that must necessarily import an element of punishment which is the basis of the order and is its integral part.”

On these findings it was concluded that the High Court was in error in coming to the conclusion that the Government servant had not been dismissed but had been merely discharged.

8. In *The State of Uttar Pradesh v. Madan Mohan Nagar* (3), the Government servant was compulsorily retired and the order of retirement was in the following terms:—

“I am directed to say that the Governor has been pleased to order in the public interest under Article 465-A and Note (1) thereof of the Civil Service Regulations, the compulsory retirement with effect from September 1, 1960, of Sri Madan Mohan Nagar, Director, State Museum, Lucknow, who completed 52 years of age on July 1, 1960, and 28 years and 3 months of qualifying service on 31st May, 1960, as he has outlived his utility.”

While interpreting this order it was observed that it contained a clear statement that the respondent had outlived his utility and that he was incapacitated from holding the post of Director, State Museum, Lucknow. It was found that the order clearly attached a stigma to him as any person who read this order would consider that there was something wrong with him or his capacity to work.

9. On behalf of the respondent reference was made to *State of Bombay v. F. A. Abraham* (4), *Union of India and others v. R. S.*

(3) A.I.R. 1967 S.C. 1260.

(4) A.I.R. 1962 S.C. 794.

Dhaba (5) and Hari Singh Mann v. The State of Punjab and others (6). In *F. A. Abraham's* case the order was of reversion simpliciter and no reasons for the reversion were mentioned. It only stated that "Shri F. A. Abraham Deputy Superintendent Police, Parbhani, is reverted to rank of Inspector." The argument in this case was not that the words in the order themselves suggested that any stigma attached to the Government servant. On the other hand, it was pleaded that the Government servant had been reduced in rank by way of punishment because a department inquiry had been held and because reasons for the action had not been supplied to the Government servant. This contention was repelled in the following words:—

"The High Court seems to have been in error also in drawing an inference from the holding of the departmental inquiry that the respondent must have been reduced in rank by way of punishment. The departmental inquiry was held long after the order reverting the respondent had been passed and could not have been the occasion for the reversion of the respondent. The Government had the right to consider the suitability of the respondent to hold the position to which he had been appointed to officiate. It was entitled for that purpose to make inquiries about his suitability. This is all that the Government did in the case. This inquiry cannot show whatever the findings may have been, that the reversion earlier made was by way of punishment."

From the above it is obvious that the ratio of the decision in *F. A. Abraham's* case is not attached to the facts of the present case as in that case the order on the face of it did not cast any aspersion on the work and conduct of the Government servant.

10. In the case of *R. S. Dhaba* (supra) the Government servant was reverted from his officiating position as Income-tax Officer, Class II, as his work was not found satisfactory. The order of reversion in that case reads as under:—

"Establishment Gazetted Class II Income-tax Officer. Reversion of Shri R. S. Dhaba, officiating Income-tax Officer, Class II at present employed as Income-tax Officer, E-Ward, Ludhiana, having been found unsuitable after trial

(5) 1969 S.L.R. 442.

(6) 1970 S.L.R. 915.

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to hold the post of Income-tax Officer, Class II, is hereby reverted as officiating Inspector, Income-tax, with immediate effect."

In that case the principal contention was not that there was anything in order of reversion which indicated that a stigma was attached to the Government servant. On the other hand the main argument was that the order was made by way of punishment as indicated by a demi-official letter of the Commissioner of Income-tax which stated that the Government servant should be reverted because of the large number of complaints which the Department had received against the integrity of the Government servant and the bad reports received by him from the officer's superiors. It was said that the Commissioners was largely influenced by the complaints received against the officer about his honesty while coming to the conclusion that he was not suitable for the post of Income-tax Officer. This contention was repelled with the following observations :—

"The test for attracting Art. 311(2) of the Constitution in such a case is whether the misconduct or negligence is a mere motive for the order of reversion or termination of service or whether it is the very foundation of the order of termination of service of the temporary employee."

It was found that the misconduct was merely a motive for the order of reversion. It was also held that the order of reversion did not contain any express words of stigma attributed to the conduct of the Government servant concerned. The decision in that case also does not advance the case of the respondent.

11. In *Hari Singh Mann v. The State of Punjab and others* (6), the services of the petitioner, Hari Singh Mann, who was Deputy Superintendent of Police, Amritsar, on probation, were dispensed with as he was considered unfit for appointment to the State Police Service. It was contended on behalf of the petitioner in that case that the use of the word "unfit" in the order of the termination of services attached a stigma to the petitioner. Following the ratio of the decision in *R. S. Dhaba's* case it was held that the word "unfit" did not attach any stigma. It was stated that an authority after judging the work of the probationer could come to the conclusion that his work was not up to the mark so as to warrant his confirmation. In the case of *R. S. Dhaba (supra)*, it was ruled by the Supreme Court that the Government servant who was officiating in a post had no right to hold it for all time and that he holds the post on an

implied term that he will have to be reverted if his work was found unsuitable. A reversion on the ground of unsuitability was considered an action in accordance with the terms on which the officiating post was held and did not amount to reduction in rank by way of punishment so as to attract Article 311 of the Constitution. In view of these reasons, it was held that the word "unfit" implied unsuitability to hold the post and this did not attach any stigma to the Government servant. In the present case, the reasons provided in the order are entirely different and the ratio of the decision in *Hari Singh Mann's* case is not applicable.

12. To say that the record of a Government servant was generally unsatisfactory casts a reflection both on his work and conduct as the record would contain opinion both with regard to his work and conduct in general. A bare perusal of the order would reasonably lead to the inference that the appellant's work and conduct was blameworthy. In this conclusion I am supported by the decision of this Court in *State of Punjab and another v. Darshan Singh* (7). In that case it was found that the order of termination recorded that the work and conduct of the Government servant was not found satisfactory and that his services were terminated in accordance with his conditions of appointment. While holding that his order was not an order of termination simpliciter but an order attaching a stigma it was reasoned as under :—

"Now, anybody reading this order of termination of the service of the respondent would reach the immediate conclusion that the respondent is not a person who is entitled to employment, because not only his work but his conduct also was not found satisfactory. This attaches a stigma to him and casts an aspersion against his capacity for work as also against his conduct."

In my opinion, the above observations are fully attracted to the order passed against the appellant as "unsatisfactory record" would signify both unsatisfactory work as well as unsatisfactory conduct. Taking this view of the matter and for the reasons stated above, I hold that the order dated 10th September, 1962, whereby the appellant was reverted to the post of Assistant Sub-Inspector of Police attaches a stigma and invites penal consequences and, therefore, amounts to an order of dismissal. It is not disputed that if the

