

State of Punjab *v.* Vidya Parkash (Mehtar Singh, C.J.)

(vii) the combined effect of the operation of clause (a) of sub-section (2) of section 297 of the 1961 Act and of the Income-tax (Removal of Difficulties) Order, 1962, issued under section 298 of the said Act is that all proceedings including an application for a reference to the High Court in relation to the assessment year in respect of which the return of income was filed before April 1, 1962, must be dealt with under the 1922 Act as if the 1961 Act had not been passed.

(22) As a result of the above findings this application is dismissed. We do not, however, make any order as to costs.

K.S.K.

LETTERS PATENT APPEAL

Before Mehtar Singh, C.J. and Bal Raj Tuli, J.

STATE OF PUNJAB,—*Appellant*

versus

VIDYA PARKASH,—*Respondent*

Letters Patent Appeal No. 254 of 1968

July 15, 1968

Constitution of India (1950)—Article 311(2)—Government servant officiating on a higher post—Formal inquiry started against him on charges of misconduct—Such inquiry dropped and Government servant reverted to his substantive post—No opportunity afforded to disprove the charges—Article 311(2)—Whether infringed—Order of reversion—Whether can be quashed.

Held, that where it is a case of a probationer or a temporary Government servant, and the Government either holds a preliminary enquiry into his conduct or even orders a formal enquiry, but drops it before recording a finding against him and proceeds to discharge him from service in accordance with the terms and conditions of his service, then, as the order of discharge carries no stigma on the face of it, the future of such a person is not affected in seeking fresh employment elsewhere thereafter. The Government has the right to discharge such a Government servant from service within the terms and conditions of his service either when it informs itself of his misconduct by a preliminary enquiry or even when it proceeds against him by a formal enquiry but does not

see it to a conclusion. The position is quite the same when an officiating Government servant is involved. No doubt even in his case the Government has the right to inform itself about his conduct by a preliminary enquiry and from various sources and to reach the conclusion whether his further continuance in a higher officiating post is or is not suitable, but when it proceeds beyond that and it gives a beginning to a formal enquiry against such a Government servant by serving on him a formal charge-sheet detailing charges against him, accompanied by a statement of allegations giving particulars of the charges, and thereafter it reverts him to his substantive post without enabling him to defend himself and to clear himself against such allegations of misconduct, it leaves a stigma against his service. He is denied opportunity to wash off that stigma by proving to the contrary than alleged in the charges. Instead he suffers reversion to a lower though a substantive post, but is unable to defend his conduct which is the real basis of his reversion. This leaves a stigma on his record which must inevitably affect his future career in that it will come up against his chances of promotion in future, the charges having remained not disproved on the record. The effect of it is penal, in as much as it is going to affect his future chances of promotion. The reversion being by way a penal consequence and provisions of Article 311(2) of the Constitution having not been complied with, the order of reversion has to be quashed. (Para 7)

LETTERS PATENT APPEAL under Clause X of the Letters Patent against the judgment of the Hon'ble Mr. Justice Tek Chand passed in Civil Writ No. 358 of 1966 on February 5, 1968.

S. K. JAIN, ADVOCATE, for ADVOCATE-GENERAL, PUNJAB, for Appellant

RESPONDENT IN PERSON.

JUDGMENT

The judgment of the Court was delivered by—

MEHAR SINGH, C.J.—In this appeal by the State of Punjab under clause 10 of the Letters Patent from an order, dated February 5, 1968, by a learned Single Judge, the respondent, Vidya Parkash, was appointed Head Assistant on July 14, 1949, by the Excise and Taxation Commissioner of Punjab. He was promoted as an Assistant Excise and Taxation Officer on and from October 31, 1956, but was reverted to his substantive post on March 4, 1958. The respondent made a grievance on this account also in his petition under Articles 226 and 227 of the Constitution, but the learned Single Judge has dismissed his prayer in this respect on the ground that he did not make a grievance in this regard for a number of years until he filed his petition in this Court on February 16, 1966, which claim was,

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therefore, not available to him on account of laches. The respondent has taken no steps against this order of the learned Single Judge and so this part of the case of the respondent is no longer a matter of controversy. Subsequently he was again promoted Assistant Excise and Taxation Officer on and from February 2, 1960.

(2) On January 19, 1963, he was suspended from service and on March 25, 1963, was served on him a charge-sheet, dated March 13, 1963 (Annexure D.1) with the show-cause notice, Annexure D. There are two charges referred to in the charge-sheet Annexure D.1. Under the first charge the allegation was that, while Assistant Excise and Taxation Officer at Ludhiana, the respondent decided the case of assessment for the year 1960-61 of the firm Aggarwal Textile Mills by splitting up the amount of the gross turnover into two parts so as to bring it below Rs. 5,00,000 in each case, whereas the total was in excess of Rs. 5,00,000, thus bringing the case of the assessment of the particular firm within his pecuniary jurisdiction. And in that way he acted improperly and with ulterior motive in making the assessment of the case of that firm. In the second charge, exactly a similar allegation was made in regard to another firm Sunder Singh-Gurcharan Singh by splitting up the assessment into two parts so as to bring the amount of each within his pecuniary jurisdiction, which, it was said, he had done with ulterior motive. He was asked, within fifteen days, to show-cause against the correctness or otherwise of the charges against him. The notice also enquired whether the respondent desired to be heard in person. It informed him that facilities to inspect the records and documents would be made available to him for purposes of his defence. According to paragraph 7 of his petition, the respondent said in reply to the show-cause notice and the charge-sheet that he had done nothing illegal or irregular, as he had followed the established practice of the department and cited executive instructions on the subject, which he had followed while making the assessments. He also relied, in support of his case, on *Madan Lal Arora v. The Excise and Taxation Officer, Amritsar* (1).

(3) There seems to have been some delay in consideration of the matter by the State Government, and the respondent then received another show-cause notice of August 2, 1963, copy Annexure E, which reads—"After taking into consideration your

(1) A.I.R. 1961 S.C. 1565.

explanation to the statements of charges and allegations on you and affording you personal hearing by the undersigned, the Governor of Punjab is provisionally of the opinion that you should be reverted to your previous appointment of Head Assistant in the Excise and Taxation Commissioner's Office, Punjab. Before he takes that action, he desires to give you an opportunity of showing cause against the action proposed to be taken. Any representation which you make in that connection will be considered by him before taking the proposed action." This memorandum is signed by the Financial Commissioner. On August, 23, 1963, the respondent made his representation in reply to this show-cause notice seeking personal hearing by the Chief Minister of Punjab. On April 3, 1964, the Punjab Government made this order—"The Governor of Punjab is pleased to order reversion of Shri Vidya Parkash, Assistant Excise and Taxation Officer, under suspension, to the post of Head Assistant in the office of the Excise and Taxation Commissioner, Punjab, with immediate effect." There were subsequent orders on the representations of the respondent in regard to allowances and other payments that were to be made to him for the period of suspension and how that period was to be treated toward the conditions of his service.

(4) The learned Single Judge has accepted the petition of the respondent on this ground that once a formal enquiry was started against him by service of statement of allegations and charges, the appellant, the State Government, could not then drop the enquiry and proceed to revert him to his substantive post, leaving the stigma of the allegations and the charges against him so as to affect his future career in service including obviously his future chances of promotion. The learned Judge, therefore, quashed the order of reversion as also the subsequent orders consequent upon that order. This, as stated, is an appeal against the order of the learned Judge by the State.

(5) It has been contended by the learned counsel for the State that the respondent was officiating in the higher post to which he had no right. Although statement of allegations and charges were served upon the respondent, but the enquiry was dropped and the State Government proceeded to revert him, obviously on the ground of unsatisfactory conduct of service, which the learned counsel says that it was perfectly entitled to do. In this respect he refers to three cases. The first case is *Jagdish Mitter v. The*

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Union of India, (2), but that was a case of discharge of a temporary Government servants from service, and their Lordships did hold that, in the case of such a Government servant, even if a formal departmental enquiry had been started, it may be dropped, and the service of such a Government servant may be brought to an end in the terms of his conditions of service. This, however, is not quite a case parallel to the present case. The reason is that in the case of a temporary Government servant who is discharged from service, by an order which on the face of it speaks nothing derogatory to him, his future in life is not affected, but in the case of a Government servant continuing in service, and being reverted on the basis of charges of misconduct, even though not tried, his future career in service is thereby affected. The second case is *The Divisional Personnel Officer, Southern Railway, Mysore v. S. Raghavendrachar* (3), but in that case an officiating Government servant was reverted in the terms of departmental instructions whereunder an officiating employee was revertible to lower scale without assigning any reasons for his reversion by a competent authority within a certain period and the case of the Government servant there was within that period. The case is not parallel on facts to the present case. The third case is *A. G. Benjamin v. Union of India* (4). But that was a case of the type as the first case in which a preliminary enquiry into the conduct of a temporary Government servant led to a finding of inefficiency but no regular enquiry was held and he was discharged from service. Their Lordships held that it did not attach any stigma to him and the termination of his service was not dismissal or removal. None of these cases is of assistance in the present case.

(6) Of the other cases that need to be considered here, the first is *State of Bombay v. F. A. Abraham* (5), but in that case the reversion took place first and the enquiry was held afterwards so as to decide the question of future promotion of the officer. In the enquiry some allegations were made against the integrity of the officer, though his superior found the same not proved. It was held that the allegations in the enquiry did not amount to reversion of the officer as a measure of punishment on account of misconduct. So

(2) A.I.R. 1964 S.C. 449.

(3) A.I.R. 1966 S.C. 1529.

(4) 1967 S.L.R. 185.

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

that on facts this case is not near the present case. Another case in this respect is *Champaklal Chimanlal Shah v. The Union of India* (6) in which there are observations that if there is a reversion of an officiating Government servant to his substantive post in consequence of a preliminary enquiry, by means of which the Government is entitled to inform itself as to his efficiency or suitability to be retained in the superior rank, that is not a case of reversion on the basis of misconduct leaving a stigma on the officer which will affect his future career and chances of promotion. The present is not a case of a preliminary enquiry as referred to in that case. The third case in this respect is *State of Punjab v. Appar Apar Singh* (7), but that was a case in which no enquiry was held, whether preliminary or formal, in regard to or against the Government servant concerned. An enquiry was ordered and held into the affairs of a college, in which enquiry an adverse finding had been recorded against the Principal, with the recommendation by the Enquiry Committee for his reversion. He was reverted to his substantive post, which reversion was challenged by him in this Court, but his petition was dismissed on the ground that his reversion was not by way of punishment inasmuch as the circumstances did not indicate that the Government decided to punish him for any misconduct and with that intention proceeded against him. It was a case of an enquiry into the affairs of an institution, in which enquiry it was found that the Principal was not a suitable person to continue in his position and so he was reverted. It is evident that even this case is not parallel to the facts of the present case.

(7) Where it is a case of a probationer or a temporary Government servant, and the Government either holds a preliminary enquiry into his conduct or even orders a formal enquiry, but drops it before recording a finding against him and proceeds to discharge him from service in accordance with the terms and conditions of his service, then, as the order of discharge carries no stigma on the face of it, the future of such a person is not affected in seeking fresh employment elsewhere thereafter. It is in the wake of this that their Lordships have held in the cases cited that the Government has the right to discharge such a Government servant from service within the terms and conditions of his service either when it informs itself of his misconduct by a preliminary enquiry or even when it

(6) A.I.R. 1964 S.C. 1854.

(7) A.I.R. 1967 Pb. 139.

proceeds against him by a formal enquiry but does not see it to a conclusion. The position is quite the same when an officiating Government servant is involved. No doubt even in his case the Government has the right to inform itself about his conduct by a preliminary enquiry and from various sources and to reach the conclusion whether his further continuance in a higher officiating post is or is not suitable, but when it proceeds beyond that, as in this case, and it gives a beginning to a formal enquiry against such a Government servant, as the respondent, by serving on him a formal charge-sheet detailing charges against him, accompanied by a statement of allegations giving particulars of the charges, and thereafter it reverts him to his substantive post without enabling him to defend himself and to clear himself against such allegations of misconduct, it leaves a stigma against his service. He is denied opportunity to wash off that stigma by proving to the contrary than alleged in the charges. Instead he suffers reversion to a lower though a substantive post, but is unable to defend his conduct which is the real basis of his reversion. This leaves a stigma on his record which must inevitably affect his future career in that it will come up against his chances of promotion in future, the charges having remained not disproved on the record. The only near cases to the present case are those of F. A. Abraham and Appar Apar Singh, but on facts the same are not parallel, as in the first case the enquiry was held after the reversion and in the second case the enquiry was not into the conduct of the Government servant concerned but into the affairs of the institution. In the present case there were definite allegations in the charge-sheet of misconduct against the respondent, supported by a statement of allegations explaining the same, and after the respondent had rendered a reply to the charges, the formal enquiry was dropped, and he was immediately reverted to his substantive post. This was almost denying him an opportunity to disprove the charges against him. He has averred in his petition that he acted not only according to the practice of the department but according to the executive instructions in support of the same. If it was a case of preliminary enquiry, it would be something quite different. It is not a case of a preliminary enquiry. It is a case in which a formal enquiry was ordered and after the respondent had given reply to the charges, the enquiry was then dropped, and he was reverted to his substantive post. It is evident that he was reverted in consequence of charges of misconduct, which charges, as stated, he has had not the opportunity to disprove in the enquiry that should have been held into the same, and the existence of the same leaves a

stigma on his service career, of which the effect is penal, inasmuch as it is going to effect his future chances of promotion. So that his reversion is by way of a penal consequence and as undeniably provisions of Article 311(2) have not been complied with, the learned Judge was correct in his approach in accepting the petition of the respondent and quashing the order of his reversion and other consequent orders made in the wake of the same. This appeal fails and is dismissed, but there is no order in regard to costs.

K.S.K.

INCOME-TAX REFERENCE

Before Mehar Singh, C.J. and Bal Raj Tuli, J.

M/S JHANDHU MAL TARA CHAND,—*Applicants*

versus

THE COMMISSIONER OF INCOME-TAX, PATIALA,—*Respondent.*

Income-tax Reference No. 76 of 1964

August 13, 1968

Income-tax Act (XI of 1922)—Proviso to S. 13—When applicable—Low profits and absence of stock register of an assessee—Whether material for a finding and assessment under the proviso—Determination of method of computation by Income-tax Officer—Whether necessary for acting under the Proviso—Income-tax Officer—Whether can arbitrarily add a round figure to the assessable profits of an assessee—Assessee dealing in controlled commodity—His account-books not doubted by Food and Civil Supplies Department—Such books—Whether should be doubted by the Income-tax Officer.

Held, that before an Income-tax Officer applies proviso to section 13 of the Income-tax Act, 1922, he must give a definite finding that the income, profits and gains of an assessee cannot be deduced from the method of accounting employed by him (assessee). Neither low profits nor the absence of a varietywise or regular stock register is material on the strength of which such a finding under the proviso can be based and assessment thereunder made. The Income-tax Officer must discover evidence or material aliunde before he gives the finding.

(Paras 7 and 10)