Raghunandan Prasad vs Income-Tax Commissioner, U.P., ... on 9 January, 1953

Equivalent citations: AIR1953ALL399, AIR 1953 ALLAHABAD 399

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Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. The petitioner Raghunandan Prasad held a substantive post of Inspector in the Income-tax Department. On 8-11-1941, he was given a chance to officiate as an Income-tax Officer. He continued to officiate as such for several years, but on 12-10-1946, the Commissioner of Income-tax reverted him to his substantive post. This order was communicated to Raghunandau Prasad on 15-10-1946. Against the order of 12-10-1946, Raghunandan Prasad made a representation to the Central Board of Revenue. The Central Board of Revenue passed an order on the recommendation of the Federal Public Service Commission that Raghuuandan Prasad should be given a chance to show cause against the order of reversion and after he has shown cause then only he should be reverted. This order is dated 30-9-1948. The grounds were then set out why Raghunandan Prasad was not deemed fit enough to continue as an Income-tax Officer or confirmed in that post and these grounds were communicated to Raghunandan Prasad who sent his representation to the Public Service Commission. The Public Service Commission on 26-10-1949, after considering the representation and the personal file of Raghunandan Prasad, recommended that he was rightly reverted, and on 31-10-1949, the Governor-General passed an order dismissing the representation dated 4-2-1947 and holding that Raghunandan Prasad was not fit for appointment as Income-tax Officer and he had been rightly reverted to his substantive post. On 15-11-1949 Raghunandan Prasad filed a suit in the Court of the Civil Judge of Agra, for various reliefs and claimed that his reversion was bad. This suit was decreed in part on 4-4-1951, the learned Civil Judge having ordered as follows :

> "The plaintiff's suit for a declaration that the order dated 12.10-1946 is illegal and is void and ineffectual, is decreed. It is farther declared that the plaintiff continued to hold the post of an officiating Income-tax Officer till the date of the suit. Any orders of the Government affirming or upholding the validity of the order dated 12-10-1946 shall stand vacated as far as they affect the declaration given above. The plaintiffs suit

> for other reliefs mentioned in the plaint is dismissed. Parties shall bear their own costs of the suit."

2. The ground on which the learned Civil Judge held that the order of reversion dated 12-10-1946 was void was that that order was passed without giving notice to Raghunandan Prasad to show cause why he should not be reverted. Against the decree passed by the learned Civil Judge, Eaghunandan Prasad has come up to this Court in first appeal which has been registered and numbered here as First Appeal no. 236 of 1951 and is still ponding. On 16-11-1949, the Commissioner of Income-tax communicated to the applicant the decision of the Governor-General dated 31-10-1949, rejecting Raghunandan Prasad's appeal against the order of reversion. On 10-3-1950, the Central Board of Revenue passed a fresh order which purports to be a new order of reversion with effect from 16-11-1949. The writ application in this Court was filed on 4-9-1951, and the main ground taken is that the learned Civil Judge having held that the reversion order dated 12-10-1946, was bad, the applicant should have been reinstated as officiating Income-tax Officer, not only up to the date of the suit but till his retirement. It is further urged that if the order of 10-3-1950, is deemed to be a fresh order of reversion, then the original order dated 12-10-1946, being null and void, there should have been de novo proceedings started by formulating the charges afresh and by giving a fresh notice to the applicant.

3. On behalf of the Commissioner of Income-tax, three objections have been taken, firstly, that in accordance with the High Court Rules, chap. 22, RULE 6, the applicant having an adequate remedy by way of a suit this application should not be accepted. The second objection is that the Union of India has not been impleaded, and lastly, that Article 311 of the Constitution, which deals with the question of reduction in rank, does not apply to a person reverted to his substantive post.

4. It is not necessary for us to express any opinion on the last point as that matter would arise probably in the First Appeal pending in this Court. Moreover, learned counsel for the Commissioner of Income-tax has stated that the point has already been decided in his favour by a Bench of this Court, though the judgment has not been placed before us.

5. As regards the second point, we find that the Secretary, Ministry of Finance (Revenue Division), Government of India, has been impleaded as opposite party 2, and if we were disposed to entertain this application, we might have allowed the applicant to make the necessary correction.

6. On the first ground, however, we are not satisfied that it is a fit case in which we should exercise our discretionary jurisdiction under Article 226 of the Constitution. Learned counsel for the applicant has brought to our notice a decision of thia Court, Pratab Narain Singh v. State of Uttar Pradesh, A. i. R. 1952 ALL. 99 (A), to which one of us was a party and in which it was observed that :

> "A Full Bench of this Court in Asiatic Engineering Co. v. Achhru Ram, (A.I.R. 1951 All. 746 (FB) (B)) has held that the question of existence of a specific and adequate alternative remedy is material only when the question of issue of a writ of mandamus is under consideration and not in the case of a writ in the nature of certiorari or a prohibition."

The writ application was allowed mainly on the ground that the petitioner in that case had no adequate remedy, and the observations quoted above merely set out an alternative ground. The decision in the Asiatic Engineering Co., Ltd., case (B) was not cited before that Bench and the observations were merely based on impressions of what was supposed to have been decided in that case. Moreover, the alternative remedy suggested was an approach to the local Government by a petition under Section 13, U. P. Court of Wards Act. That was considered not to be an adequate alternative remedy and the remarks were made in that connection. Reference to the decision of the Full Bench in A. I. R. 1951 ALL. 746 at p. 769 (F.b.) (B) shows that the Full Bench pointed out the difference in the legal systems in India and in England and held that in India there are various special provisions of correcting errors made by lower Courts and Article 226 of the Constitution having provided that the High Court shall have power in certain circumstances to pass certain orders in the nature of writs, it was clearly a discretion, no doubt a judicial discretion, given to the High Courts. In several Full Bench cases, this Court has pointed out that this power shall not be exercised in cases where a party has adequate or specific remedy available to it. This is particularly so when a party can ultimately come up to this Court in appeal or revision from a decision arrived at by a subordinate Tribunal. It is, therefore, not necessary to consider the history behind these writs in England for the purpose of determining whether a writ should or should not issue.

7. It is not denied that the applicant, in the case before us, if he has a grievance, can file a suit against the order of 10-3-1950, if that be treated as an order of reversion, as he had done against the order dated 12-10-1946. The only ground suggested is that such a suit would take some time for final decision, but in a suit it would be open to the parties to lead evidence and the matter will be much more satisfactorily dealt with than in a summary proceeding under Article 226 of the Constitution.

8. We are, however, not satisfied that the order dated 10-3-1950, can be deemed to be a fresh order of reversion. It appears to have been issued as a matter of extra precaution to prevent any technical objection being raised on the ground that the order of 12-10-1946, having been passed without an opportunity being given, mere dismissal of the appeal against that order was not enough and a fresh order o reversion should have been passed. On 16-11-1949, the petitioner had already been informed that the Governor General had decided that he would not interfere against the reversion of the applicant to his substantive post as an Inspector in the Income-tax Department and it was, therefore, that in the order of 10-3-1950, 16-11-1949 was chosen as the date of revision. In any case, this would, be a point which would probably arise both in the First Appeal as well as in the civil suit, if any filed, and it is not necessary for us to express any final opinion on it.

9. We are not satisfied that it is a fit case in which in the exercise of our jurisdiction under Article 226 of the Constitution we should interfere. We, therefore, reject this application with costs.