

State Of Bihar vs Gopi Kishore Prasad on 25 November, 1959

Equivalent citations: AIR 1960 SUPREME COURT 689, 1960 BLJR 220, 1960 (1) LBLJ 577, 1959 -60 17 FJR 390

Bench: P.B. Gajendragadkar, K.C. Das Gupta

CASE NO. :

Appeal (civil) 488 of 1957

PETITIONER:

State of Bihar

RESPONDENT:

Gopi Kishore Prasad

DATE OF JUDGMENT: 25/11/1959

BENCH:

B.P. SINHA (CJ) & P.B. GAJENDRAGADKAR & K. SUBBARAO & K.C. DAS GUPTA & J.C. SHAH

JUDGMENT:

JUDGMENT AIR 1960 SC 689 The Judgment was delivered by SINHA, C.J Per Sinha, C.J The main question for determination in this appeal by special leave is whether the provisions of Art. 311 (2) of the Constitution are applicable to a probationer in the Bihar Subordinate Civil Service, who has been discharged as unsuitable on grounds of notoriety for corruption and unsatisfactory work in the discharge of his public duties.

The facts of this case are short and simple. The respondent was appointed as a temporary Sub-Deputy Collector in the year 1944. In 1946, he was vested with the powers of a magistrate of the First Class. In December, 1947, he was appointed to a substantive post in the Bihar Subordinate Civil Service, on probation. During the period of his probation, he was posted at Jamshedpur in the district of Singhbhum, and later at Nawada in the district of Gaya. Proceedings were taken against him and he was called upon to show cause why his services should not be terminated forthwith, by the Government letter dated 4 November, 1952, a copy of which was forwarded to the respondent through the District Magistrate, Gaya. In that letter it was stated that throughout the year 1948 and upon the end of May 1949 the respondent, while employed as a Sub-Deputy Magistrate at Jamshedpur, had earned notoriety for corrupt practices, that from May, 1949 to March, 1951, the respondent's reputation while posted at Nawada, continued to be bad, and that his judicial work while at Jamshedpur had been subjected to careful scrutiny by Government, leading "to discovery of incredibly perverse decisions" given by him. Instances of eight cases with all the necessary details were also recited therein. Those proceedings terminated in an order of the Government of Bihar, dated 23 July, 1953, the relevant portions of which are as follows :-

"1. Certain facts were brought to the notice of Government about the unsatisfactory work and conduct of Mr. Gopi Kishore Prasad, Sub-Deputy Collector, on probation, while posted at Jamshedpur and Nawadah, which raised grave doubts regarding his integrity and indicated that he was a corrupt and unreliable officer. Confidential enquires were made and it was found that while employed at Jamshedpur Mr. Gopi Kishore Prasad had the reputation of being a corrupt officer. Two successive Deputy Commissioner of Singhbhum under whom Mr. Prasad had served had also mentioned in their annual confidential reports that this officer had a bad reputation at Jamshedpur. The judicial work of Mr. Prasad, while at Jamshedpur, was subjected to a careful scrutiny and Government found ample materials to show that the reports about his resorting to corrupt practices were justified. He was transferred to Nawadah. Both the District Magistrate, Gaya, and Commissioner, Patna Division, reported that the Nawadah Mr. Gopi Kishore Prasad's honesty was open to doubt. He was then transferred to Gaya. His was then transferred to Gaya. His work at Gaya was found to be wholly unsatisfactory.

2. In consideration of all these facts it was provisionally decided to terminate the probation of Mr. Gopi Kishore prasad and discharge him from service. He was accordingly asked to show cause against his discharge. His explanation was carefully considered by Government and found to be unsatisfactory.

3. In view of these facts, Government have, after consulting the Public Service Commission, been pleased to order that Mr. Gopi Kishore Prasad should be discharged from service forth with.

4. Mr. Gopi Kishore Prasad, probationary Sub-Deputy Collector, is, therefore, discharged from service with effect from the date on which this order is served on him. ORDER Ordered that a copy of this resolution be forwarded to the District Magistrate, Gaya, for service on Mr. Gopi Kishore Prasad.

(By order of the Government of Bihar) (Sd.) B. N. SINHA, 24-7-53, Deputy Secretary to Government."

The respondent moved the High Court of Judicature at Patna under Arts. 226 and 227 of the Constitution against the order of the Government quoted above. The matter was heard by v. Ramaswami, J. (as he then was) and K. Sahai, J. The High Court by its judgment dated 19 January, 1955 allowed the application and quashed the order aforesaid of the Government dated 23 July, 1953. Ramaswami, J., with all the contentions raised on behalf of the respondent-petitioner in the High Court - and after examining the relevant, rules of the Civil Services (Classification Control and Appeal) Rules and Art. 311(2) of the Constitution, came to the conclusion that the respondent was not entitled to a full enquiry as contemplated by the Para. 1 of rule 55 of the Civil Service (Classification, Control and Appeal) Rules, but that he was entitled to the protection under Art. 311(2) of the Constitution. He also held that there had been a violation of the principles of natural justice, inasmuch as the special reports of the Commissioner of Chotanagpur Division and of the

Deputy Inspector-General of Police in the Criminal Investigation Department, had not been shown to the respondent. On these grounds he held that the order of discharge impugned by the respondent was illegal and ultra vires. Sahai, J., did not express a decided opinion on the question whether the respondent was entitled to the protection of Art. 311(2) of the Constitution, because in his view the decision of the Judicial Committee of the Privy Council in *I. M. Lall* case [L.R. 75 I.A. 225] was concerned with a confirmed officer, whereas the respondent was only an officer on probation. But he agreed with Ramaswami, J., in the result on the ground of the violation of the principles of natural justice. The State of Bihar moved the High Court for leave to appeal to this Court. The application for leave under Art. 132(1) of the Constitution was heard by S. K. Das, C.J. (as the then was) and Kanhaiya Singh, J. The High Court, by its order dated 8 August, 1955, refused to grant the leave on the ground that the case had not really been determined on an interpretation of Art. 311 of the Constitution, but substantially on the ground that there had been an infringement of the principles of natural justice. The State of Bihar thereafter moved this Court for special leave to appeal, which was granted on 28 November, 1955. That is how the matter had come before this Court.

The main point in controversy before us turns on the question whether the provisions of Art. 311(2) of the Constitution are attracted to the case of a public servant who was still a probationer and had not been confirmed in a substantive post. The question whether there had or had not been a violation of the principles of natural justice, which was the basis of the decision in the High Court as indicated above, was not raised before us. The judgment of the High Court could be allowed to rest on that basis alone, but as it appears that this Court granted special leave to determine the controversy based upon the interpretation of Art. 311(2) of the Constitution, we think it necessary to express our opinion on that part of the case. The decision of this Court in *Parshotam Lal Dhingra v. Union of India* 1958 (1) LLJ 544] had not been given till then. If that decision were in existence then, perhaps the special leave would not have been granted. In our opinion, the controversy raised in this case is completely covered by the decision of the Constitution Bench of this Court in *Dhingra* case (supra.) The main question for decision in that case was whether the appellant *Dhingra* had been reduced in rank by way of punishment as a result of the order of the General Manager of the Railway. Though, in that case, this Court decided that the order impugned had not that effect, this Court went elaborately into all the implications of the service conditions, with particular reference to the Railway Service Rules and the constitutional provisions contained in S.240 of the Government of India Act, 1935, and Art. 311 of the Constitution. The elaborate discussion in that judgment has reference to all stages of employment in the public services including temporary posts, probationers, as also confirmed officers. In so far as those observations have a bearing on the termination of service or discharge of a probationary public servant, they may be summarized as follows :1. Appointment to a post on probation gives to the person so appointed no right to the post and his service may be terminated, without taking recourse to the proceedings laid down in the relevant rules for dismissing a public servant, or removing him from service.

2. The termination of employment of a person holding a post on probation without any enquiry whatsoever cannot be said to deprive him of any right to a post and is, therefore, no punishment.

3. But, if instead of terminating such a person's service without any enquiry, the employer chooses to hold an enquiry into his alleged misconduct or inefficiency of for some similar reason, the termination of service is by way of punishment, because it puts a stigma on his competence and thus affects his future career. In such a case, he is entitled to the protection of Art. 311(2) of the Constitution.

4. In the last-mentioned case, if the probationer is discharged on any one of those grounds without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge, it will amount to a removal from service within the meaning of Art. 311(2) of the Constitution and will, therefore, be liable to be struck down.

5. But, if the employer simply terminates the services of a probationer without holding an enquiry and without giving him a reasonable chance of showing cause against his removal from service, probationary civil servant can have no cause of action, even though the real motive behind the removal from service may have been that his employer thought him to be unsuitable for the post he was temporarily holding, on account of his misconduct or inefficiency or some such cause.

It would thus appear that, in the instant case, though the respondent was only a probationer he was discharged from service really because the Government had on enquiry come to the conclusion, rightly or wrongly, that he was unsuitable for the post he held on probation. This was clearly by way of punishment and, therefore, he was entitled to the protection of Art. 311(2) of the Constitution. It was argued on behalf of the appellant that the respondent, being a mere probationer, could be discharged without any enquiry into his conduct being made and his discharge could not mean any punishment to him, because he had no right to a post. It is true, if the Government came to the conclusion that the respondent was not a fit and proper person to hold a post in the public service of the State, it could discharge him without holding any enquiry into his alleged misconduct. If the Government proceeded against him in that direct way, without casting any aspersion on his honesty or competence, his discharge would not, in law, have the effect of a removal from service by way of punishment and he would, therefore, have no grievance to ventilate in any Court. Instead of taking that easy course, the Government chose the more difficult one of starting proceedings against him and of branding him as a dishonest and an incompetent officer. He had the right, in those circumstances, to insist upon the protection of Art. 311 (2) of the Constitution. That protection not having been given to him, he had the right to seek his redress in Court. It must, therefore, be held that the respondent had been wrongly deprived of the protection afforded by Art. 311(2) of the Constitution. His removal from the service, therefore, was not in accordance with the requirements of the Constitution. The appeal is accordingly dismissed with costs.