

The State of Haryana *v.* Mulkh Raj (Mehar Singh, C.J.)

her husband's property by reason of her remarriage with her husband's brother and the same holds good with regard to Dhaliwal Jats of Muktsar Tehsil in the Ferozpur District.

(23) As this is the only point involved in the case and the entire case was referred to the Full Bench, this appeal must be dismissed and the decree of the lower appellate Court confirm. As the point involved in this case was not free from difficulty, there would be no order as to costs in this Court, but the costs of the Courts below will be borne by the parties as directed by the lower appellate Court.

Mehar Singh, C.J.—I agree.

D. K. Mahajan, J.—I agree.

Gurdev Singh, J.—I agree.

Bal Raj Tuli, J.—I also agree.

K.S.K.

FULL BENCH

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

THE STATE OF HARYANA,—*Appellant*

versus

MULKH RAJ,—*Respondent*

Letters Patent Appeal No. 369 of 1967

December 1, 1969

Punjab Police Rules (1934)—Volume II—Rules 13.10, 13.12 and List E—Constitution of India (1950)—Article 311(2)—Reversion of an officiating Police Officer on grounds of incompetency or unsuitability—Removal of his name from list E as well—Whether entails penal consequences—Such reversion—Whether reduction in rank—Article 311(2)—Whether attracted.

Held, that an officiating officer has no right to the post in which he officiates and it is always open to the proper authority to revert him to his substantive rank on grounds of inefficiency and unsuitability to hold that post. A police officer has no right to have his name on list E under Punjab Police Rules. However, if his name has come on this list, but was subsequently removed, he can again come back to it provided his work or conduct is of outstanding merit and justifies the same. There is thus no permanent or prolonged bar to his coming back to

the list, the only condition being the outstanding merit of work or conduct. If, after his name has been removed from List 'E', he improves himself and shows outstanding merit in his work and conduct, obviously his name may be restored to that list by the order of the Deputy Inspector-General. So removal of such an officer's name from List 'E' does not debar him from future promotion, nor does it indefinitely postpone his chances of future promotion, because once the Deputy Inspector-General finds that his subsequent work or conduct is of outstanding merit, he has the power to restore him back to List 'E' and thus place him in the line for promotion. If removal from list 'E' was a permanent feature which debarred such an officer from promotion in future, or deferred his chances of future promotion indefinitely, then that would be a penal consequence that would accompany reversion, if it follows with reversion, but this, as pointed out, is not so. Rules 13.10 and 13.12 specifically provide for removal of the name of a police officer from List 'E' for cause and restoration of the same to that list in recognition of subsequent work conduct of outstanding merit of such an officer. So removal from List 'E' is not a permanent feature. Thereby itself does not debar future promotion nor does it defer chances of future promotion indefinitely. It is left in such a case to the officer concerned to merit his being placed back in the list, and if he shows such merit, there is no reason why he should not come back to the list. The position of such an officer is no different from an officer who has not yet come on List 'E'. Both are in exactly the same situation. Either of them will have to show outstanding merit in his work and conduct to deserve to come on that list and either will come on that list when he satisfies that test. It is this consideration of these rules which leads to the conclusion that removal of the name of an Assistant Sub-Inspector of Police from List 'E', which removal is always for cause as given in the rules, does not *per se* debar him from future promotion or indefinitely defer his chances of future promotion. He alone is responsible for marring his chances of future promotion if he does not show outstanding merit in his work and conduct. (Para 5.)

D. S. TEWATIA, ADVOVATE AND C. B. KAUSHIK, ADVOCATES, for the Appellant.

S. P. JAIN, ADVOCATE, for the Respondent.

JUDGMENT

MEHAR SINGH, C.J.—The respondent, Mulkh Raj, was confirmed as Assistant Sub-Inspector of Police in 1951. His name having been brought on List 'E' as fit for promotion to the post of Sub-Inspector of Police. According to sub-rule (1) of rule 13.10 of the Punjab Police Rules, 1934, Volume II, Page 8, he was promoted as officiating Sub-Inspector of Police with effect from April 1, 1951. On July 5, 1957, the Deputy Inspector-General of Police made this order with regard to him—"A bad type, who deserves reversion in view of his doubtful reputation. Weak nature and colourless record. Issue orders

The State of Haryana v. Mulkh Raj (Mehar Singh, C.J.)

for his reversion with immediate effect." On that the same officer passed the order, Exhibit P.10, of the same date which said - "Officiating Sub-Inspector Mulkh Raj, No. 98/A of Karnal District is reverted to his substantive rank of Assistant-Sub Inspector of Police with effect from today the 5th of July, 1957. He will remain posted in the Karnal District." His name was also removed from List 'E'.

(2) The respondent by a suit, instituted on February 7, 1961, sought declaration that the order of the Deputy Inspector-General of Police of July 5, 1957, reverting him from the officiating post of Sub-Inspector of Police to his substantive rank of Assistant Sub-Inspector of Police coupled with the removal of his name from List 'E', was *ultra-vires*, without jurisdiction, illegal and unconstitutional, and thus he continues officiating Sub-Inspector of Police. The learned trial Judge by a decree of February 15, 1962, decreed the claim of the respondent, being of the opinion that reversion of the respondent in the wake of the nature of the order of his reversion and the removal of his name from List 'E' was by way of punishment and attracted Article 311 of the Constitution and as the provisions of that Article were not complied with before the order was made, the respondent was entitled to the declaration sought by him. On appeal, the learned Senior Subordinate Judges reversed the decree of the trial Court on August 3, 1962, following the decision of Falshaw, J. in *Head Constable Jagir Singh v. The Punjab State* (1), in which the learned Judge held that "In my opinion reversion of an officer to his substantive rank from an officiating rank on grounds of inefficiency does not amount to punishment and does not fall within the scope of Article 311 I am also of the Opinion that the lower appellate Court has taken a correct view in holding that the removal of his name from List 'D' does not amount to reduction in rank and in my opinion no officer can claim as right to have his name on any such list." On second appeal by the respondent, the learned Single Judge reversed the decree of the first appellate Court, restoring that of the trial Court, following *The State of Punjab v. Rajinder Singh* (2), a decision by Dua and Narula, JJ., in which at page 657 the learned Judges stated the fifth proposition in this way--"that if on the reversion of a Sub-Inspector of Police to his substantive rank, it is further ordered as a consequence of the revision that his name should also be removed from list 'E' or is actually so removed because of the reversion thus either debarring him from further promotion or indefinitely postponing his chances of future promotion, the case would be hit by

(1) R.S.A. 443 of 1961 decided on 8th December, 1961.

(2) I.L.R. (1966) 1 Pb. 84=1965 P.L.R. (Supl.) 625.

Article 311(2) of the Constitution as the revision would in such a case result in penal consequences." This is an appeal by the State of Haryana, having been in the meantime substituted for the State of Punjab by reason of the provisions of the Punjab Reorganisation Act of 1966, under Clause 10 of the Letters Patent from the judgment and decree of the learned Single Judge.

(3) In *Rajinder Singh's case* (2), the learned Judges gave consideration not only to the judgment of Falshaw J., in *Head Constable Jagir Singh's case* (1), but also to two other cases, *State of Punjab v. Wattan Singh* (3), and *Punjab State v. Gurbux Singh*, decided by Mahajan J. and reported as (4), which two cases proceeded on the same view as propounded by the learned Judges in proposition 5 as reproduced above, which is not quite consistent with the approach of Falshaw J., in *Head Constable Jagir Singh's case* (1), but the learned Judges explained that case and tended to be of the opinion that what they were deciding was not inconsistent with it. In *Jagraj Singh v. State of Punjab* (5), Sharma, J., followed *Rajinder Singh's case* (2). The learned Judges in *Rajinder Singh's case* (2), also reproduced in extenso rules 13.1., 13.4., 13.9, 13.10, 13.11 and 13.12 of the Punjab Police Rules. While this is so, it appears from the judgment in *Rajinder Singh's case* (2), that rules 13.10 and 13.12 did not receive quite the consideration consistent with the provisions in the same, and it further appears that the same was the position in the cases of *Wattan Singh* (3), and *Gurbux Singh* (4). It is therefore, necessary to go into the details of those two rules.

(4) It is a settled proposition that an officiating officer has no right to the post in which he officiates and it is always open to the proper authority to revert him to his substantive rank on grounds of inefficiency and unsuitability to hold that post. The approach of Falshaw, J., in *Head Constable Jagir Singh's case* (1), that no police officer has a right to have his name on a list, such as List 'E' in the present case, is again unexceptional. The question then is, does the reversion of an officiating officer on the ground of incompetency or unsuitability accompanied by the removal of his name from a list, like List 'E', as in the present case, entail penal consequences by reason of which the reversion becomes reduction in rank attracting

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- (3) R.S.A. 353 of 1961 decided on 24th May, 1961.
 - (4) (1964) 66 P.L.R. 344.
 - (5) 1966 Curr. Law Journal (Pb.) 896.

Article 311(2) of the Constitution? The answer to the question depends mainly upon the effect of the second part of the order in such a case, that is to say, the removal of the name of the officer from the list, as in the case of the respondent the removal of his name from List 'E'. If such removal coupled with reversion is a penal consequence, then obviously Article 311 (2) is attracted, but, if not so, then that Article does not come in for consideration. The learned Judges in *Rajinder Singh's case* (2), rightly point out that if the reversion, coupled with removal of the name from List 'E', as in this case, debars future promotion or indefinitely postpones chances of future promotion, that is a penal consequence. The question, however, is does the removal of the name from a list, like 'E' as in the present case, has that consequence? This brings in immediately the consideration of rules 13.10 and 13.12 of the aforesaid rules, which are—

"13.10. (1) A list of all assistant sub-inspectors, who have been approved by the Deputy Inspector-General as fit for trial in independent charge of a police station, or for specialist posts on the establishment of sub-inspectors shall be maintained in card index form by each Deputy Inspector-General. Officiating promotions of short duration shall ordinarily be made within the district concerned,—vide sub-rule 13.4(2), but vacancies of long duration may be filled by the promotion of any eligible man in the range at the discretion of the Deputy Inspector-General. Half-yearly reports on all men entered in the list maintained under this rule shall be furnished in the form No. 13.9(3) by the 15th October, in addition to the annual report to be submitted by the 15th April, in accordance with Rule 13.17(1).

(2) No Assistant Sub-Inspector shall be confirmed in a substantive vacancy in the rank of Sub-Inspector unless he has been tested for at least a year as an officiating Sub-Inspector in independent charge of a police station in a district other than that in which his home is situated.

13.12. (1) In filling temporary vacancies in the rank of Sub-Inspector the object shall be to test all men on list 'E' as fully as possible in independent charges. The order in which names occur in the list should be disregarded, the

opportunities of officiating in the higher rank being distributed as evenly as possible. As Assistant Sub-Inspector officiating as a Sub-Inspector should ordinarily continue so to officiate for the duration of the vacancy, and should not be reverted merely because another Assistant Sub-Inspector senior to him is not officiating. This principle may, however, be modified if in any case its observance would result in a thoroughly competent man being deprived by a man markedly his junior of an officiating appointment of more than 8 months' duration.

- (2) The conduct and efficiency of men on lists D and E shall be at all times watched with special care. Any officer, who, whether in his substantive rank or while officiating as an Assistant Sub-Inspector or Sub-Inspector, is guilty of grave misconduct of a nature reflecting upon his character or fitness for responsibility, or who shows either by specific acts or by his record as a whole, that he is unfit for promotion to higher rank shall be reported to the Deputy Inspector-General for removal from list D or list E, as the case may be. In interpreting this rule discrimination shall be shown between faults which are capable of elimination by experience and further training, and those which indicate definite incompetence and defects of character. Officers whose names have been removed from either list D or list E may be restored by order of the Deputy Inspector-General in recognition of subsequent work or conduct of outstanding merit."

According to sub-rule (1) of rule 13.10, an Assistant Sub-Inspector of Police has to be approved by the Deputy Inspector-General as fit for trial in an independent charge of a police-station. Once he forms that opinion, then the name of the Assistant Sub-Inspector concerned is brought on List 'E'. This happened in the case of the respondent. Afterwards he was given a chance to officiate as Sub-Inspector of Police. But he was found not suitable to continue in that post and so he was reverted, which obviously gave clear proof of his unfitness for that post and hence no justification for retention of his name in List 'E' in the circumstances. Sub-rule (2) of rule 13.12 clearly provides that if a police officer in List 'E' is "guilty of grave misconduct of a nature reflecting upon his character or fitness

The State of Haryana v. Mulkh Raj (Mehar Singh, C.J.)

for responsibility, or who shows either by specific acts or by his record as a whole, that he is unfit for promotion to higher rank (his case) shall be reported to the Deputy Inspector-General for removal from list 'E'.....". So, for the grounds as stated, the Deputy Inspector-General of Police has the power to remove a police officer placed on List 'E'. Among those grounds are the grounds of unfitness for responsibility or unfitness for promotion because of specific acts or because of the record of service taken as a whole.

(5) There is provision in sub-rule (1) of rule 13.10 for half-yearly consideration of the cases of all men entered in List 'E', and, according to sub-rule (2) of rule 13.12, for cause, the name of an officer from such list can be removed by the Deputy Inspector-General, but this sub-rule further provides that "officers whose names have been removed from list F may be restored by order of the Deputy Inspector-General in recognition of subsequent work or conduct of outstanding merit." So a police officer whose name has been removed from List 'E' can come back to that list if his subsequent work or conduct of outstanding merit justifies the same. Just as he initially comes on that list, similarly, after removal of his name from that list, he can again come back to it providing his work or conduct is of outstanding merit and justifies the same. There is thus no permanent or prolonged bar to his coming back to the list, the only condition being the outstanding merit of work or conduct. If, after his name has been removed from List 'E', he improves himself and shows outstanding merit in his work and, conduct, obviously his name may be restored to that list by the order of the Deputy Inspector-General. So removal of such an officer's name from List 'E' does not debar him from future promotion, nor does it indefinitely postpone his chances of future promotion, because once the Deputy Inspector-General finds that his subsequent work or conduct is of outstanding merit, he has the power to restore him back to List 'E' and thus place him in the line for promotion. If removal from list 'E' was a permanent feature which debarred such an officer from promotion in future, or deferred his chances of future promotion indefinitely, then that would be a penal consequence that would accompany reversion, if it follows with reversion, but this, as pointed out, is not so. Rules 13.10 and 13.12 specifically provides for removal of the name of a police officer from List 'E' for cause and restoration of the same to that list in recognition of subsequent work or conduct of outstanding merit of such an officer. So removal from List 'E' is not a permanent feature. It by itself does not debar

future promotion nor does it defer chances of future promotion indefinitely. It is left in such a case to the officer concerned to merit his being placed back in the list, and if he shows such merit, there is no reason why he should not come back to the list. The position of such an officer is no different from an officer who has not yet come on List 'E'. Both are in exactly the same situation. Either will have to show outstanding merit in his work and conduct to deserve to come on that list and either will come on that list when he satisfies that test. It is this consideration of these rules which leads to the conclusion that removal of the name of an Assistant Sub-Inspector of Police from List 'E', which removal is always for cause as given in the rules, does not *per se* debar him from future promotion or indefinitely defer his chances of future promotion. He alone is responsible for marring his chances of future promotion if he does not show outstanding merit in his work and conduct. These are the clear provisions in rules 13.10 and 13.12 which do not seem to have come in for consideration in the cases in which a contrary view has been taken. It is apparent that the dictum of Falshaw, J., in *Head Constable Jagir Singh's case* (1), is the correct and the only approach to such a case as has been explained above. It has been pointed out that in *Rajinder Singh's case* (2), the learned Judges did reproduce these rules, but this precise matter did not come in the arguments before them. So the conclusion is that because of the provisions in rules 13.10 and 13.12 for removal of the name of an Assistant Sub-Inspector of Police for cause from List 'E' and because of his having every chance of being placed back on that list in case his work and conduct is of outstanding merit, such a removal is not a penal consequence which accompanies reversion, because his chances of future promotion are not marred or indefinitely postponed.

(16) So this appeal is accepted, the decree of the learned Single Judge in second appeal is reversed, and the decree of the first appellate Court is restored, with the result that the suit of the respondent stands dismissed. There is, however, in the circumstances of the case, no order in regard to costs.

GURDEV SINGH, J.—I agree.

BAL RAJ TULI, J.—I also agree.

R.N.M.