
(1954) 03 AP CK 0010

In the Andhra Pradesh High Court

Case No : Writ Application No. 73 of 1953

Abdul Wahed

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 22-03-1954

Acts Referred:

Constitution of India, 1950 — Article 310(2), 311, 311(1), 32(1)

Citation : (1954) 03 AP CK 0010

Hon'ble Judges : Misra, C.J;Srinivasachari, J

Bench : Division Bench

Advocate : Attaur Rahman and Venkata Subramaniam, for the Appellant; B.N. Shastry, Govt. Advocate for the State, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasachari, J.—This is an application for the issue of a Writ of Certiorari to quash the order of the Government discharging the applicant from service. The applicant has also prayed for the issue of a Writ of Mandamus to direct the authorities to reinstate him and to pay him his arrears of salary.

2. The applicant was initially appointed as an apprentice in H. S. H. the Nizam's Electricity Department as an Asst. Meter Tester. He subsequently served as an Asst. Winder upto 30th Isfandar 1350F. On 1-2-1941 he was appointed as an electrical wiring Foreman in the Osmania Technical College and he held that post till 29-1-1946;, when he was promoted as electrical workshop instructor in the grade of Rs. 95-4-155/E.B. 155-5-180.

It would seem that at about this time the post of the workshop instructor was abolished and a new grade of artisan and craft Instructor was formed. On 11-3-1950 the Special Officer for technical and vocational education issued a general circular calling upon those persons, who did not possess the requisite qualifications for the new grade instructors, to take a departmental examination. The applicant was interviewed by a Selection Committee constituted by the

Government to examine persons in order to decide as to whether they could be appointed to the new post and was found to be unqualified. He was accordingly given three months' notice of honourable discharge from Government service on 7-3-1951 and his services were terminated as and from 15-6-1951. It is the order of termination of his services contained in the notice that the applicant seeks to challenge and prays that it be quashed.

3. The learned counsel for the applicant, Shri Attaur Rahman, contended that the order of 7-3-1951, amounted to a "removal from service" of the applicant within the meaning of Art. 311 of the Constitution and inasmuch as no opportunity to show cause was given to the applicant the mandatory provisions of the Article were not complied with and that, therefore, the order was liable to be quashed.

4. The Government in its counter contends on the other hand that the applicant's post was a temporary one and it was held by him for a period of one year and thereafter extended from year to year. It was urged, therefore, that there was in his case a mere termination of service at the expiry of the period of employment and as such the applicant could not invoke the provisions of Art. 311. It was also urged that this order of the Government did not amount in law to an order of dismissal or removal within the meaning of Art. 311 of the Constitution.

5. In support of the respondent's view point certain documents have been filed in order to show the nature of the applicant's employment. These are not denied and they clinch the whole case. They show that the applicant was at first appointed as an Asst. Electrical Foreman for a period of one year (Ex. 2 of 30th Isfandar 1350) and on the reorganisation scheme of the Govt. Technical College the existing posts were abolished and new posts created. Certain qualifications were prescribed for the new posts and till such time as properly qualified persons could be permanently appointed to such posts, the department temporarily appointed on yearly basis the persons who were already in service.

As has already been stated, the applicant was called for interview by the Selection Committee in order to ascertain whether he was fit for appointment to the new post as Instructor and since the Committee found him to be unfit, the department had no other course but to dispense with his services. The applicant's service book, of which a true copy has been filed as Ex. No. 3, shows that sanction was being obtained for the continuance of the services of the applicant from year to year. This document, in our opinion, conclusively proves that the applicant's appointment and tenure of office was only for one year at a time and unless extended it was liable to terminate automatically at the end of a year of service.

6. It was argued by the learned counsel for the applicant that the applicant's post could not be regarded as temporary inasmuch as the applicant was given a compensatory pension under Cl. 274 of the Civil Service Regulation. It was also urged that the order of the Government in discharging the applicant was not only

without sufficient cause but also mala fides. In this connection the learned counsel pointed out that two persons, Messrs. Pandrang Rao and Vadhiraaj Rao were continued in their posts although the posts that they held previously had, like the post of the applicant, been abolished.

7. The rule that civil posts under the Government are held at will is part of the law of this country. It involves the necessary consequence that the services of Government employees are liable to be terminated at will. Article 310(2) provides for compensation being paid when a period contract is terminated in the absence of any misconduct and Art. 311 (1) lays down that a State servant cannot be dismissed by an authority subordinate to that by which he was appointed and where a dismissal or removal from service is desired a particular procedure laid down in the Article should be followed. Subject to the restrictions as aforesaid the office held by a servant of a state will be regarded as being held at will. It would follow from the above that the government has a right to terminate the service of a civil servant at will if it complies with the conditions specified in the Constitution.

8. The question that falls for determination in the present case is whether the case of the applicant falls within the ambit of Art. 311 of the Constitution. The contention of the State is that this case is not governed by Art. 311 of the Constitution inasmuch as the applicant was only discharged from service after his period of office was over and that such discharge did not amount to a "dismissal" "or removal" as envisaged by Art. 311.

The learned counsel for the applicant relying upon a decision of the Pepsu High Court in the case of -- "Ishardass Mehta v. State of Pepsu", AIR 1952 Pepsu 148 at p. 149 (A), urged in reply that Art. 311 covers all binds of removal from service irrespective of the consideration whether the termination of service was in consequence of misconduct of the servant or of any other cause. The observations of the learned Chief Justice of Pepsu High Court however show that he agreed with the proposition that a person appointed for a fixed period or on condition that his services are terminable by notice would not be governed by Art. 311 of the Constitution. This case, in our opinion, therefore, supports the stand taken by the State rather than of the applicant, for in this case also the appointment of the applicant was for a year. Its continuation from year to year necessarily carried with it the implication that it was open to the Government to terminate his services at the end of each period of appointment.

9. The learned counsel for the applicant invited our attention to another case of the Nagpur High Court -- ("Tribhuvannath Pandey v. Union of India", AIR 1953 Nag 138 (B)). The charge in this case against the employee was found to be too vaguely formulated to enable the employee to show cause against it and the learned Judges of the Nagpur High Court, therefore, declared that the applicant was not given sufficient opportunity to show cause, as required by Art. 311 of the Constitution. They observed:

The first charge made against the petitioner is so vague that it cannot be said to give any idea to the petitioner of what he has to answer.

In our opinion, the Nagpur case does not help the applicant at all.

10. We might at this stage refer to the decision of their Lordships of the Supreme Court in the case of - Satish Chandra Anand Vs. The Union of India (UOI), . That was a case where the petitioner was employed by the Govt. of India on a five year contract. When the contract of service was about to expire the Govt. of India made him a new offer to continue him in service, temporarily on the expiry of his contract of service on certain conditions. When his services were terminated by the issue of a notice he challenged the order in an application for issue of a writ under Art. 32 (1) of the Constitution.

In considering the case their Lordships observed as follows:

In our opinion Art. 311 has no application because this is neither a dismissal nor a removal from service It is an ordinary case of contract being terminated by notice under one of its clauses.

We are of the opinion that the present case before us is covered by the decision of the Supreme Court referred to above. The case before the Supreme Court was a case of termination of service after the contractual period was over while in the present case the termination of the service was after the agreed period of service had expired, viz., for a period of one year which was extended from year to year, subject to his being taken in the new cadre if he was selected by the Selection Committee.

11. The argument of the learned counsel that if the service of the applicant were only temporary he could not have been given compensatory pension or gratuity under Cl. 274, Hyderabad Civil Service Regulation, does not appeal to us. At best the payment made to the applicant could be regarded as a solatium under the rules. It cannot, in our opinion, be made a test for determining the tenure of office of the applicant in the presence of the more specific data indicating with precision the term of his employment.

The argument that in this case the action of the State was mala fide does not carry conviction. We find from the documents that have been filed by the Respondent that the Applicant was shown all the consideration necessary and it was because it was reported by the Selection Committee that he was not qualified to hold the new job that he was not given the new post. The department, in our opinion, continued the applicant in service by extending his term from year to year in order to give him an opportunity to serve in case he was found suitable for service after reorganisation. Under these circumstances no question of mala fides arises.

12. We are of the opinion that no case has been made out for the issue of a writ; of Certiorari or Mandamus and this application should fail. We dismiss the petition with costs. Advocate's fee Rs. 50/- (fifty only).