
(2006) 12 AHC CK 0036
In the Allahabad High Court

Aizaz Ahmad

APPELLANT

Vs

The Principal, Industrial Training Institute, The Directorate,
Training and Employment and The State of U.P.

RESPONDENT

Date of Decision : 01-12-2006

Acts Referred:

Citation : (2006) 10 ADJ 308

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—The petitioner has prayed for the quashing of the order dated 1/2.2.1990 (Annexure 3 to the writ petition) by which his services have been terminated w.e.f. 28.2.1990.

2. The petitioner was appointed as Lower Division Clerk in the Industrial Training Institute, Bulandshahar vide appointment letter dated 24.4.1989 issued by the Principal. The petitioner joined duties in pursuance of the above letter of appointment and worked continuously till the passing of the impugned order.

3. In the counter affidavit filed on behalf of the respondent No. 1, it has been stated that the appointment of the petitioner was purely on temporary basis and as such his services were governed by the U.P. Temporary Government Servant (termination of Service) Rules, 1975. Therefore, no illegality has been committed in terminating his services by giving one month's notice. In the supplementary counter affidavit the respondent No. 1 has stated that the appointment of the petitioner was purely temporary in nature and the said appointment was not even approved by the Director, Training and Employment, U.P., Lucknow and in fact had been disapproved vide letter dated 20/22.1.1990 on the ground that his appointment was unlawful as it was not made through the Regional Selection Committee and was without the prior approval of the Director as envisaged by the office order of the Director dated 16.6.1983. Therefore, the Director issued

directions to the respondent No. 1 (Principal) to cancel the appointment of the petitioner. However, instead of cancelling the petitioner's appointment as directed it was considered proper to terminate his services simpliciter as he had not been confirmed. Accordingly, the services of the petitioner were terminated by the impugned order.

4. Sri H.R. Misra, learned Counsel for the petitioner submitted that the impugned termination order is unsustainable under law as the principles of natural justice have not been followed before passing the same. The petitioner was not given any show cause notice or any opportunity of hearing before terminating his service. The impugned order casts a stigma as per the allegations made in the supplementary counter affidavit.

5. I have examined the records of the writ petition and the impugned order of termination as well as the letter of appointment. Undisputedly the petitioner was appointed temporarily and was not confirmed on the post of the Lower Division Clerk. Therefore, he was purely a temporary employee whose services were covered by the U.P. Temporary Government Servants (Termination of Service) Rules, 1973. Rule 3 of the aforesaid rules provide that the services of temporary employee shall be terminable at any time by a month's notice in writing. The said Rule 3 is quoted below:

3. Termination of service.- (1) Notwithstanding anything to the contrary in any existing rules or orders on the subject, the services of a Government servant in temporary service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority, or by the appointing authority to the Government servant;

(2) The period of notice shall be one month :

Provided....

Provided....

Provided....

6. The Apex Court while considering the termination of a temporary Government employee under the aforesaid Rules in the case of State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, has held that a temporary Government servant has no right to hold the post and his services are liable to be terminated by giving him one month's notice without assigning any reason. Whenever the appointing authority is satisfied that the work and conduct of a servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the services or the relevant rules or it may decide to take the punitive action against the said temporary Government servant. If the authority decides to take the punitive action it may hold a formal inquiry by framing charges and giving opportunity of hearing. The Court further held that in determining the nature of the order i.e.

whether the termination is simplicitor or is punitive in nature the Court has to apply two tests namely (1) whether a temporary Government servant had a right to the post and (2) whether he has been visited with evil consequences and if either of the above two tests is satisfied, it must be held that the order of termination of a temporary employee is by way of punishment. In the present case there is no dispute that the petitioner was a temporary employee and as such he had no right or lien on any post. In *Triveni Shankar Saxena Vs. State of U.P. and others*, the Supreme Court has observed that an employee acquires lien on the post only when he has been confirmed and made permanent on the post and not earlier. The petitioner has not been confirmed on the post of Lower Division Clerk and has not been made permanent on the said post and, therefore, he had acquired no lien over the same. The termination of his service also does not visit him with evil consequences in as much as "evil consequences" do not include the termination of services of a temporary Government employee, if it is done in accordance with Rules or terms and conditions of service vide *Parshottam Lai Dhingra v. Union of India* 1958 SLR 828 Para 7. Undisputedly the services of the petitioner have been terminated in accordance with Rule 3 of the above Rules. Therefore, the impugned order of termination passed against the petitioner is no way punitive in nature nor does it indict the petitioner for any misconduct.

7. The Supreme Court further while dealing with the service of a probationer in *Unit Trust of India and Ors. T. Vijay Kumar and Anr.* JT 1992 (6) SC 82 has held that the order of termination/discharge of a probationer simplicitor is not an order of punishment and, therefore, there is no question of giving an opportunity to him before terminating/discharging him from service.

8. In nutshell, a temporary employee neither holds any post nor any lien over any post and he cannot be said to be visited with "evil consequences" if his services are terminated simplicitor. Therefore, no opportunity of hearing is required to be accorded to him before terminating his services. The services of the petitioner have been terminated by following the mandate of Rule 3 of the Rules by giving one month's notice. The termination order assigns no reason for terminating his services and in no way casts any stigma indicting him for any unsatisfactory work or misconduct. Therefore, the aforesaid order is a simple order of termination and is not at all punitive in nature. Thus, no error of law or any legal infirmity has been committed in passing the impugned order. It has not been established before me that the impugned order is not in accordance with the above Rules.

9. Learned Counsel for the petitioner relying upon *Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others*, has contended that the principles of natural justice are applicable to all fields of administrative actions and, therefore, the petitioner was at least entitled for an opportunity of hearing before terminating his service. There is no dispute to the legal proposition that principles of natural justice are applicable to all

administrative actions but it is misconceived that even a temporary employee whose services have been terminated in accordance with the rules has any right of hearing. The ruling of the division Bench of the High Court in the matter of CM. Pandey v. State of U.P. and Anr. 1993 (3) ESC 2193 is also of no help to the petitioner as in the said case the Court was considering the case of termination of services of an administrative officer working with Hindustan Vegetable Oil Corporation Ltd. His termination was on the ground that the appointment was not in accordance with Regulation and was without going through the process of selection. It was not a case under the present Rules. Thus, the Court held that the petitioner was entitled to an opportunity of hearing and his services cannot be terminated in an arbitrary manner. There is no unreasonableness or any arbitrary action in terminating the services of the petitioner. Therefore, the said case law is distinguishable on facts and as such is of no help to the petitioner.

10. The authority relied upon by the learned Counsel for the petitioner, S. Maharool Haq v. Chancellor of Allahabad University 1996 (1) ESC 2002 is also distinguishable on facts as in the said case the appointment of the ad hoc lecturer of the Allahabad University was cancelled without any notice or affording any opportunity of hearing to the petitioner. Therefore, the division Bench of this Court held that the petitioner was entitled to defend his appointment and as such the order was bad as no opportunity of hearing given to him. In the present case the appointment of the petitioner has not been cancelled for any reason which may require opportunity of hearing to the petitioner. The termination of the petitioner is simple in nature and is not based on any ground whatsoever. Therefore, the validity of the said order has to be judged on the basis of the reasons contained therein only and not otherwise.

11. No authority has been placed before me in relation to the termination of services of a temporary employee under the aforesaid Rules which provides that even if the order of termination is simple in nature and is not punitive, the employee is entitled to notice or an opportunity of hearing. Therefore, the petition lacks merit.

12. At this stage Sri H.R. Misra, learned Counsel for the petitioner placing reliance upon the judgment of Supreme Court in M.S. Mudhol and Another Vs. S.D. Halegkar and Others, submitted that the petitioner was appointed on 24.4.1989 and despite the order of termination he had been working on the strength of the interim order of the High Court and, therefore, it would be inequitable at this stage to dismiss the writ petition putting him out of employment.

13. Be as it may be, the law as it stand has to be applied. Equity cannot override the law as equity always follows the law. In such circumstances merely because the petitioner had continued to work on the basis of the interim order of the High Court for about 15 years, it cannot be a ground to nullify the impugned order when it is otherwise legally justified under law. Compensation and sympathy has no role to play in such circumstances, even though the post of Lower Division

Clerk is not of such a great importance which would make any difference, if the appointment of the petitioner is allowed to stand but nonetheless the fact remains that the impugned order cannot be faulted with. Therefore, the Court has no option but to dismiss the petition being devoid of merits. However, it may be open to the petitioner to represent the appointing authority for the sympathetic consideration and it would be solely be at the discretion of the appointing authority to consider the suitability of the petitioner in service on the basis of the work rendered by him after the passing of the impugned order and the fact that other similarly, situated person appointed along with the petitioner have been absorbed and confirmed in service during this period.

14. With the aforesaid observation, the writ petition stands dismissed.

15. No order as to costs.