

(1991) 11 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 62 (SH) of 1991

Ajoy Kumar Thapa

APPELLANT

Vs

Chairman, Meghalaya State Electricity Board

RESPONDENT

Date of Decision : 28-11-1991

Acts Referred:

Citation : (1991) 2 GLJ 462 : (1992) 1 GLR 275

Hon'ble Judges : S.N.Phukan, J and N.G.Das, J

Bench : Division Bench

Advocate : T.Yangi, S.R.Sen, M.Z.Ahmed, B.N.Sharma, Advocates appearing for Parties

Judgement

S.N. Phukan,J.

1. The writ petitioner was appointed by the Meghalaya State Electricity Board temporarily to officiate as SubInspector (Security) initially for a period of 3 months with effect from 24th of August, 1989. The said letter is at Annexure 1. Subsequently his service was extended and by the impugned order No. CONF. 214/89/19 dated 1st May, 1991, the Secretary of the Board informed the petitioner that "as the term of your adhoc appointment had expired on 24.11.1990, the Chairman regrets his inability to consider your request for reappointment under the Board." In spite of the above order, we find that the Chairman himself vide letter dated 8th February, 1991 addressed to the petitioner entrusted to do some work and by order dated 11.2.91. the Chairman directed the Chief Engineer to make available one jeep to the petitioner vide Annexure 7. We also find that the petitioner apply for leave on 16th of February and on the application, the petitioner was granted leave by the Chairman vide Annexure 8 to the present petition.

2. In the counter filed on behalf of the Board in paragraph 11 it has been stated that the petitioner was an adhoc employee whose service was extended with effect from 25.8.1990 by order dated 6.10.1990 for a period of 3 months only

i.e. up to 24.11.1990 It is also stated that the petitioner misused his official power and by his own act, the petitioner created law and order problem and the Durbar of 3 villages viz Pyllun village, Nongsder village and Umiam village took a decision on 12.11.1990 directing the petitioner to leave Barpani. his place of work. It has also been stated in the said paragraph in the counter that thereafter petitioner was not available at Barpani. He also did not report for duty to his controlling officer or the Secretary.

3 We have heard Mr. M. Z. Ahmed, learned counsel for the petitioner and Mr. S. R. Sen, learned Standing Counsel for the respondents Board. After hearing tli2 learned counsel for the parties at length, we propose to dispose of the matter at the stage of admission.

4. The first point urged by Mr. Ahmed, is that although the impugned orders looks as if it is a termination simpliciter actually from paragraph 11 of the counter it is found that the termination is by way of punishment. It is found from the record that the petitioner was allowed to work even after 24.11.90 as stated above. Learned counsel has drawn our attention to various decision of the Apex Court on this point and as well as regarding regularisation of adhoc employees. We shall refer to the decision at the relevant place.

5. On the other hand Mr. Sen has urged that the decisions relied upon by the learned counsel for the petitioner are not relevant as the petitioner was an adhoc employee and not a regular employee and in this connection decision of this Court in Shri Sadananda Majumdar vs. The State of Tripura & others, (1984)1 GLR (NOC) 8 has been referred to.

6. On perusal of the said judgment we find that the Court distinguished appointment on adhoc basis and officiating basis on the basis of the F.R. 9(19). But this point need not detained us as the Apex Court has repeatedly laid down the law regarding regularisation of the adhoc employee.

7. We need not burden this order by referring to all the decisions and in our opinion the recent decision of the Apex Court in Jacob M. Puthuparamnil & others vs. Kerala Water Authority & others, AIR 1990 S? 2228 would serve our present purpose.

8. On going through the judgment we find that the Apex Court considered the important decision of the Daily Rated Casual Labour employed under P & T Deptt. vs. Union of India, (1988) 1 SCC 122 : (AIR 1987 SC 2342), and also quoted the relevant, portion of the said judgment in paragraph 11 of Jacob's Case (supra) We quote below the decision of the Apex Court in Jacob Case (supra) in paragraph 15 of the judgment. The relevant portion runs as follows:

"It is unfair and unreasonable to remove people who have been rendering services since sometime as such removal has serious consequences. The family of the employee which has settled down and accommodated its needs to the emoluments received by the bread winner will face economic ruination if the job

is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will i e wholly wasted and the incumbent may be rendered ps "age barred" for securing a job elsewhere. It is unfair to use him, generate hope and a feeling of security in him, attune his family to live within his earnings and then suddenly to throw him out of job."

Reliance has been placed by Mr. S.R. Sen in a decision of a Division Bench of this Court in Shri S.Suniichandra Sharma vs. State of Manipnr, (1990) 1 GLR 43 and the said decision was rendered by one of us (Phukan,J) sitting in Division. That decision is not applicable to the case in hand, as we find "that for that service rules were framed, but it is not so in the case in hand.

9. Coming to the impugned order, we find that the order is bad in law on the face of it as the order was issued on the 1st of May, 1991, but the service of the petitioner was terminated with effect from a retrospective date i.e. from 24.11.90. On this ground alone, this order has to be quashed.

10. The law is well settled regarding removal of temporary/adhoc Govt. servant. Even if the order appears to be an order of termination simpliciter the Court has got power, in fact it is the duty to lift the veil to find out whether the order was passed by way of punishment. If the order was passed by way of punishment, it will hit Article 14 of the Constitution and is also liable to be struck down.

11. In this connection it may be stated that there are various decisions of the Apex Court and we may now refer to the decision in Jarnail Singh & others vs. State of Punjab & others, AIR 1986 SC 1626 : 1986 Lab 1C 1086. In that case their Lordships held that mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an adhoc appointee is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It was also held that it is the substance of the order i.e. the attending circumstances as well as the basis of the order that have to be taken into consideration. In other words, when an allegation is made by an employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the Court to lift the veil and to see the real circumstances as well as the; basis and foundation of the order complained of. In other words, the Court in such cases will lift the veil and will see whether the order was made on the ground of misconduct, inefficiency or not.

12. Coming to the case in hand, we find from paragraph 11 of the counter as stated above, that the present impugned order of termination was not an order of termination simpliciter, but it was by way of punishment. For lifting the veil, the; statement made in paragraph 11 of the counter is sufficient and we do not need any other material.

13. For what has been stated above, we find merit in the present case and accordingly the impugned order dated 1st May, 1991 is quashed and the petitioner shall be deemed to be in service.

We make it clear that this order shall not be a bar for the respondents Board to take action in accordance with law if there is any occasion of such action. It is needless to say that the Board is bound to consider the case of the petitioner for regularisation in terms of its various decisions rendered by the Apex Court. In the result, the petition is allowed. No costs.