
(1990) 09 GAU CK 0003
In the Gauhati High Court
Case No : Civil Rule No. 1050 of 1989

Anil Kumar Tiwari

APPELLANT

Vs

State of Manipur

RESPONDENT

Date of Decision : 10-09-1990

Acts Referred:

Central Civil Services (Temporary Services) Rules, 1965 — Rule 5, 5
Constitution of India, 1950 — Article 311, 311

Citation : (1990) 2 GLJ 448 : (1991) 1 GLR 248

Hon'ble Judges : S.N.Phukan, J and J.M.Srivastava, J

Bench : Division Bench

Advocate : S.Jayanta Singh, Promod Chandra Singh, Advocates appearing for Parties

Judgement

S.N. Phukan, J.—In this petition under Article 226 of the Constitution, the petitioner has assailed the order of termination dated 18.8.89 purported to have been passed under subrule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, for short, "the Rules". The said order is available at Annexure A/2 to the petition.

2. By order dated 8.9.86 vide Annexure A/1 to the petition, the petitioner on the recommendation of the D.P.C. was appointed to the Grade IV post along with others under the Medical Department and was placed for probation for a period of 2 years. Subsequently, by the impugned order he was terminated from service (Annexure A/2 to the petition). The petitioner made a representation dated 15.8.89 vide Annexure A/3 to the petition and thereafter the Medical Director issued the memorandum dated 13th October, 1989 vide Annexure A/4 to the petition. By this memorandum, the petitioner was informed that he was terminated from service for violation of Rule 3 (1) (iii) of the Central Civil Services (Conduct) Rules, 1964 i.e. his conduct was unbecoming of an Government servant,

3. Clause (d) of Rule 2 of the Rules, defines "temporary service" means the

service of a temporary Government servant in a temporary post or officiating post in a permanent post under the Government. Rule 5 of the said Rules empowers the Government to terminate the service of a temporary Government servant by giving notice in writing and the period of the said notice shall be one month. This rule further provides that the service of such temporary Government servant may be terminated forthwith by payment to him a sum equivalent to amount of his pay and allowances for the notice period.

4. The power under Rule 5 of the Rules can be exercised only in respect of temporary Government servant i.e. a Government servant appointed temporarily in a temporary post or in officiating capacity in a permanent post. From the order of appointment vide Annexure A/1 it is clear to us that the petitioner was not appointed in a temporary post or in officiating capacity in a permanent post. We, therefore, of the opinion that the Rule 5 of the Rules is not applicable in case in hand.

5. That apart though the impugned order of termination at Annexure A/2 to the petition appears to be an order of termination simplicitor, but reading this order with the office memorandum dated 13.10.89 vide Annexure A/4 to the petition, it is absolutely clear that the termination order was passed for the alleged misconduct of the petitioner. Therefore provision of Article 311 of the Constitution is applicable to the case in hand and as no reasonable opportunity was given to the petitioner the impugned order is liable to be quashed.

6. In the result, we quash the impugned order of termination dated 8.8.89 vide Annexure A/2 to the petition and the rule is made absolute. The petitioner shall be taken back into service immediately. No costs.