
(2005) 12 CAL CK 0001
In the Calcutta High Court
Case No : Writ Petition No. 11442 (W) of 2003

Arjun Hela

APPELLANT

Vs

Director General, C.R.P.F., CGO Complex, Lodhi Road, New
Delhi and Others

RESPONDENT

Date of Decision : 23-12-2005

Acts Referred:

Citation : 110 CWN 423

Hon'ble Judges : Pranab Kumar Chattopadhyay, J

Bench : Single Bench

Advocate : Chittaranjan Panda and Hare Krishna Halder, for the Appellant;
Amallesh Roy, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—The petitioner is aggrieved by the office order dated 22nd May, 2003 issued by the Additional Director, D.I.G. (A.D.M) E/S, C.R.P.F., Kolkata "whereby and where under the service of the petitioner was terminated by the said respondent in pursuance of the provisions of Rule 5(1) of the Central Civil Services (Temporary) Service Rules, 1965. The petitioner was appointed to the post of Safai Karmachari by the respondent authorities. Admittedly, the name, of the petitioner was sponsored by the Employment Exchange for appointment to the post of Safai Karmachari under the respondent authorities. The petitioner was asked to appear at the interview and the competent officer ultimately selected the petitioner for the said post of Safai Karmachari as a suitable candidate and appointment letter was also issued to the said petitioner for joining the said post of Safai Karmachari.

2. The petitioner joined the post of Safai Karmachari on 17th October, 2001 and discharged his due duties and responsibilities as Safai Karmachari till 22nd May, 2003 when the service of the petitioner was terminated by the respondent Additional Director, D.I.G. (A.D.M.) in terms of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary) Service Rules, 1965.

3. The learned Advocate of the petitioner submits - that after appointment of the petitioner as Safai Karmachari, he had to undergo training and the said petitioner successfully completed the same. The learned Advocate of the petitioner further submits that the petitioner" discharged his duties during the aforesaid service period to the entire satisfaction of all concerned and no complaint was made against the petitioner from any quarter on any ground whatsoever during the said period of service.

4. The learned Advocate representing the respondents, however, submits that the service of the petitioner was terminated on the ground that the said petitioner did not pass Class VIII examination from a recognised school. It has been specifically submitted on behalf of the respondents that the Recruitment Rules for the said post of Safai Karmachari specifically provides that the requisite qualification should be minimum Class VIII pass from a recognised institution.

5. The learned Advocate of the respondents, however, admits that the concerned officer of the respondent authorities inadvertently prescribed the requisite qualification for the said post of Safai Karmachari as class VIII pass and it was never mentioned that the same should be from a recognised institution. It has also not been disputed that the petitioner has passed the Class VIII examination.

6. The only point that has been raised on" behalf of the respondents is that the petitioner did not pass Class VIII examination from a recognised institution as per the Recruitment Rules. The respondent authorities, however, did not ask the concerned Employment Exchange to sponsor the names of the candidates who have passed Class VIII examination from a recognised institution only and therefore, the concerned Employment Exchange sponsored the name of the petitioner alongwith others in order to fill up the vacant post of Safai Karmachari under the respondent authorities and the concerned respondent upon being satisfied with the performance of the petitioner ultimately selected the petitioner and issued the letter of appointment. Furthermore, the petitioner was not only sent for training but upon completion of training the said petitioner was allowed to work for more than two years.

7. The respondent authorities although terminated the service of the petitioner in exercise of the power under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary) Service Rules, 1965, but ultimately it has been admitted that the service of the petitioner was terminated on the ground that the said petitioner did not pass Class VIII examination from a recognised school even though the respondent authorities never requested the Employment Exchange concerned to sponsor those candidates who have passed Class VIII examination only from a recognised school.

8. In the aforesaid circumstances, neither the petitioner herein nor the Employment Exchange concerned was at fault and therefore, after successful completion of the prescribed training period and discharging due duties and responsibilities, the said respondent authorities should not and cannot terminate

the service of the petitioner by invoking the provisions of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary) Service Rules, 1965.

9. The learned Advocate of the petitioner challenged the propriety and validity of the aforesaid order of termination issued to the petitioner on the ground that the said order of termination cannot be treated as mere termination simpliciter as the respondent authorities decided to terminate the service of the petitioner on the ground that the said petitioner did not possess the Class VIII Pass Certificate from a recognised school.

10. The respondent authorities in the affidavit-in-opposition filed before this Court specifically made the following averment:

On subsequent verification it was found that the VIII Pass School Leaving Certificate furnished by the petitioner before the answering respondent authorities from a school which is not a recognised one and the said fact was confirmed by the School Authority as well as the concerned District Inspector of Schools. The District Magistrate corroborated the said fact during verification of the character and antecedents of the petitioner. It is pertinent to point out herein that VIII Class Pass School Leaving Certificate from a recognised institution is the requisite qualification for recruitment to the post of Safai Karmachari as per the prevalent provision.

11. Although the learned Advocate of the petitioner urged before this Court that the order of termination of the petitioner cannot be regarded as termination simpliciter in view of the disclosure of the aforesaid grounds for termination in the affidavit-in-opposition, but the learned Advocate of the respondents denied the same and referred to the following decisions of the Supreme Court in support of his arguments:

- 1) State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, .
- 2) Union of India (UOI) and Others Vs. A.P. Bajpai and Others, .

12. On examination of the affidavit-in-opposition of the respondent authorities I find that the said respondent authorities never came to a conclusion that the service of the petitioner was not satisfactory during the period of probation and the competent authority of the respondents also never held that the petitioner is; not suitable for the job In the aforesaid circumstances, it cannot be said that the employer has the right to terminate the service of the petitioner under Rule 5(1) of the Central Civil Services (Temporary) Service Rules, 1965

13. The learned Counsel of the respondent authorities fairly admitted that the competent authority of the respondents never asked the concerned Employment Exchange to sponsor the names of the candidates who have passed Class VIII examination from a recognised institution only. As a matter of fact, the competent authority of the respondents neither informed the Employment Exchange concerned nor even informed the petitioner that in terms of the Recruitment Rules, a candidate for the post of Safai Karmachari must pass Class

VIII examination from a recognised institution.

14. In any event, The petitioner herein was admittedly never adjudged as unsuitable for the post by the competent authority of the respondents and the petitioner was terminated from his service only on the ground that the school wherefrom the said petitioner passed the Class VIII examination was not a recognised school at the relevant point of time. It has never been alleged that the petitioner suppressed any fact from the respondent authorities regarding his academic qualification nor the Employment Exchange committed any mistake in sponsoring the name of the petitioner herein. The petitioner was duly selected by the respondent authorities for the post of Safai Karmachari and during the entire period of his service no complaint was made against the said petitioner from any quarter whatsoever.

15. The respondent authorities herein are seeking to take steps against the petitioner in order to cover up their own laches and lapses which is not permissible under the law. The respondent authorities cannot take any step against the petitioner under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary) Service Rules, 1965 without coming to the conclusion that the services of the petitioner were not satisfactory during the period of probation.

16. The learned Advocate of the petitioner referred to and relied upon the following decisions of the Supreme Court:

- 1) Ram Ekbal Sharma Vs. State of Bihar and another,
- 2) Jagdish Parsad Vs. Sachiv, Zila Ganna Committee, Muzaffarnagar and Another,
- 3) Jagdish Mitter Vs. The Union of India (UOI),
- 4) Anoop Jaiswal Vs. Government of India and Another, .
- 5) The Manager, Government Branch Press and Another Vs. D.B. Belliappa,
- 6) Kanhialal Vs. District Judge and Others,
- 7) Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another,
- 8) V.M. Chandra Vs. Union of India and Others,
- 9) 1989 (2) SLR 441 (Khem Chand vs. Union of India & Ors.)

17. The learned Advocate of the petitioner also referred to and relied upon a decision of the Supreme Court in the case of The Manager, Government Branch Press and Another Vs. D.B. Belliappa, . In the aforesaid decision, Hon''ble Supreme Court has specifically held as hereunder:

22. In view of this we have no alternative, but to hold, that the termination of Belliaappa's service was made arbitrarily and not on the ground of unsuitability or other, reason, which would warrant discriminatory treatment to him as a class

apart from others in the same cadre.

18. From the facts of the case as discussed hereinbefore it is clear that the impugned order of termination though couched in innocuous terms, yet the impugned order of termination of the service of the petitioner was infact made by way of punishment even though the petitioner never committed any misconduct during the period of probation. The Supreme Court in the case of Anup Jaiswal vs. Government Of India & Anr., reported in Anoop Jaiswal Vs. Government of India and Another, specifically held as hereunder:

12 It is, therefore, now well settled that where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the Court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the Court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee.

19. In the present case, the concerned respondents although issued an innocuous order of termination simpliciter during the period of probation, the same cannot be allowed to be sustained as after ascertaining- the true character of the order it appears that the concerned respondents issued the order of termination even though the services of the petitioner were never found unsatisfactory or unsuitable.

20. The learned Advocate of the respondents referred to and relied upon the wing decisions of the Supreme Court in support of his arguments that in the present case the order of termination is a termination simpliciter and not punitive in nature and the petitioner has been simply. discharged from the service without any stigma and with a view to give him a chance to do something in other walks of life.

1) Pavanendra Narayan Verma Vs. Sanjay Gandhi P.G.I. of Medical Sciences and anr, .

2) Registrar, High Court of Gujarat and Another Vs. C.G. Sharma, .

3) Samsher Singh Vs. State of Punjab and Another, .

4) Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others,

5) 1977 (2) SLR 653 [Sohan Lal vs. State & Ors.] Para 4.

21. In my view, the aforesaid decisions are not at all applicable in the facts of the present case as the petitioner was never found unsuitable by the competent authority of the respondents during the period of probation and therefore, the respondent authorities are not entitled to terminate the service of the petitioner during the period of probation under sub-rule (1) of Rule 5 of the Central Civil Services (Temporary) Service Rules, 1965.

22. For the aforementioned reasons, the impugned order of termination cannot be sustained and the same is accordingly quashed.

23. The respondent authorities are directed to reinstate the petitioner in service forthwith and also pay admissible salary and other allowances to the said petitioner regularly. This Writ Petition thus stands allowed. There will be, however, no order as to costs.

Let xerox plain copy of this judgment duly countersigned by the Assistant Registrar (Court) be handed over to the learned Advocates of the parties upon completion of usual undertaking.