

(1996) 09 MAD CK 0037

In the Madras High Court

Case No : Writ Petition No. 2537 of 1987

B. Krishnamurthy

APPELLANT

Vs

Chairman, Madras Port Trust and Another

RESPONDENT

Date of Decision : 05-09-1996

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1996) 2 LLJ 1245

Hon'ble Judges : N.V. Balasubramanian, J

Bench : Single Bench

Advocate : D. Ashok Kumar, for the Appellant; Arumugham, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Balasubramanian, J.—The writ petitioner joined in the Madras Port Trust as Mines Engineer on June 3, 1971. Ever since the date of

joining duty as Mines Engineer, Madras Port Trust, he was working in the capacity of Mines Engineer on the pay roll of the Madras Port Trust.

The petitioner received a notice on March 26, 1986 stating that his services were not required with effect from June 30, 1986 on the ground that

the Port Trust had stopped all the quarry operations at Pallavaram Quarry. The petitioner made representation that he was working as a permanent

employee and even if Pallavaram Quarry is closed, he must be absorbed elsewhere in other departments of the Government. The complaint of the

petitioner is that other employees who were working under him were absorbed by the respondents, but the petitioner alone was singled out, and

was not granted any alternative job. On June 30, 1986, the respondents passed an order stating that the petitioner was relieved, from the post of

Mines Engineer with effect from June 30, 1986 consequent to the termination of

his services due to closure of Pallavaram Quarry. The petitioner has challenged the order of termination on the ground that the order of termination is against the rules and regulations of Madras Port Trust and the order is silent with reference to compensation. It was also contended that the petitioner was willing to work in some other department of the Government and with-, out considering his request, the order of termination was passed.

2. The respondents have filed a counter-affidavit to the effect that the Madras Port Trust has taken on lease the Pallavaram Quarry Lands from the Tamilnadu Government and the lease was terminated and the ouarry was surrendered to the Government of Tamilnadu with effect from June 30, 1986. Consequently, the petitioner"s services were terminated after giving three months notice. The termination of the services of the petitioner was due to bonafide reasons consequent on the abolition of the post. It is also stated that the petitioner is holding a De- gree in Mining and Metallurgy and there are no suitable alternative post that could be offered to the petitioner in the Madras Port Trust, and there was no equivalent post. As regards others who were working in the quarry, the Port Trust ab-sorbed them as Khalasis, Hammermen and Storemen. It was also stated that the petitioner received a sum of Rs.37,715/- in full settlement of his Provident Fund dues from the respondents . Therefore, it was stated that the termina-tion of services of the petitioner consequent to the abolition of the post of Mines Manager was in accordance with rules.

3. Learned counsel for the petitioner reiterated the averments made in the affidavit filed in support of the writ petition. He submitted that the petitioner was thrown out of the job and even if the post was abolished the petitioner should have been given another alternative job in Madras Port Trust itself. He has submitted that the petitioner should have been offered another al- temative job, because at the time of termination of service, he was fairly an aged man and it was impossible task for him to seek another employment at that point of time. Since the Madras Port Trust itself has abolished the post, it should have taken steps to rehabilitate the petitioner in some other capacity as was done in the case of other employees who were working under the petitioner.

4. On the other hand, learned counsel for the respondents submitted that

consequent on the abolition of the post, the petitioner cannot claim that he should be reinstated. Learned counsel for the respondents submitted that the abolition of the post was bona fide because the lease to quarry the minerals was terminated with effect from June 30, 1986 and the land was surrendered to the Government of Tamil Nadu. The petitioner was a Mines Engineer and the job that would be suitable for him was only Mines Engineer and when the mining operation was closed due to termination of lease, the post of Mines Engineer was abolished and the petitioner's services were also terminated. It was therefore, submitted that the termination of petitioner's services was legal, proper and in accordance with rules. In so far as other employees worked under the petitioner are concerned, it is submitted that they were absorbed as khalasis, hammermen and storemen. Since there was no alternative post available for the petitioner, the petitioner's services were terminated.

5. It is well established that when the post is terminated, there is no right created in the abolished post, where the abolition of the post was due to

bona fide reasons. The Supreme Court in the case of K. Rajendran v. State of Tamil Nadu 1982 II LLJ 359 following an earlier decision, in

Parshotam Lal Dhingra Vs. Union of India (UOI), observed that the Government cannot terminate the service of an employee except (1) by virtue

of a special terms of the contract of employment or (2) by the rules governing the conditions of service subject to certain safeguards, on the

abolition of the post. The Supreme Court in that case also noticed in a decision in the case of State of Haryana v. Des Raj 1976 I LLJ 301 that

wherein it was held whether a post should be retained or abolished is essentially a matter for the Government to decide and as long as such

decision of the Government is taken in good faith, the same cannot be set aside by the Court. The above three decisions of the Supreme Court

make it clear that it is open to the Government to abolish a post in good faith. In Naik v. State of Maharashtra 1967 II LU 486 the Bombay High

Court held that the termination of service consequent to the abolition of posts does not involve removal from service within the meaning of Article

311 of the Constitution of India and does not involve punishment at all. The Bombay High Court followed a decision of the Supreme Court in Moti

Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.,

wherein the Supreme Court held that in the absence of any such contract, in a substantive appointment of a permanent post the Government Servant so appointed has a right to hold the post until, his attainment of the age of superannuation or his retirement after a number of years of service under the relevant service rules or when the post itself is abolished.

Hence, the right to continue in the post is subject to the continuance of the post, and where the post itself is abolished due to the bona fide reasons, it is not open to the petitioner to claim that he is entitled to hold the post till the age of superannuation. The Allahabad High Court in a decision reported in *State of Uttar Pradesh and Another Vs. Dr. Prem Behari Lal Saxena*, has also taken the view that Article 311(2) of the Constitution of India does not apply to a case where the services of a permanent Government Servant were dispensed with on the abolition of the permanent post held by him. The Allahabad High Court also held that the right of the petitioner to a post envisages the existence of the post. The creation of a post and the abolition of a post are within the jurisdictional sphere of the appointing authorities and they are matters falling within the administrative functions of the Government and hence, it is neither open to the petitioner to claim that he is entitled to hold the public office even after the abolition of the said post, nor permissible for this Court to direct the continuation of the service after the abolition of the post itself. The above decisions make it clear that when the post is terminated, there is no right to create the abolished post. In view of the authoritative pronouncement by the Supreme Court and other High Courts, this Court finds it impossible to accept the contention urged on behalf of the petitioner that he has a right to the post and is entitled to continue. As already seen when the post is abolished, the incumbent to a particular post cannot \ claim as of right to continue in the post.

6. The other question that remains is whether the abolition of the post was done due to bona fide or not. On the facts and circumstances of the case, this Court finds that the abolition of the post was bona fide. The undisputed facts are that the Port Trust has taken on lease to quarry certain mineral in Pallavaram Municipality within the Municipal area and the lease period came to end on June 30, 1986 and when the lease came to an end, the Port Trust authorities surrendered the land and abolished the post of

Mines Manager. The Port Trust took the decision to abolish the post of Mines Engineer, since it had no mining operation on hand to enable the petitioner to be continued as Mines Engineer on its roll. Since this Court finds that the action of the Port Trust was bona fide in terminating the services of the petitioner, its action cannot be regarded as arbitrary. Such a policy decision is not unreasonable also.

7. The question that was urged was that the Port Trust should have offered an alternative job to the petitioner when it has offered alternative jobs to other persons working under the petitioner. It is already seen that the petitioner was holding a degree in mining and the Port Trust found that there was no additional or alternative post for Mines Manager, In the absence of an alternative employment available with the respondents, the action of the respondents in not offering an equivalent post to the petitioner cannot be said to be unjustified. In so far as the employees who worked under the petitioner are concerned, they are fortunate in the sense that they were less qualified and they were able to find a way to some suitable job in the Port Trust by way of Khalasis, Hammermen and Storemen and it cannot be expected that the Port Trust should extend the same facility to the petitioner who was higher up in the hierarchy of the officials in the Mines Department. Hence, I am not able to agree with the contentions raised by the learned counsel for the petitioner that the respondents should have offered another job. However, I suggested to the counsel for the Port Trust whether it is possible for the Port Trust to take the petitioner on its roll in its administrative side. Learned counsel for the Port Trust, after ascertaining the officials of the Port Trust informed me that there is no scope for the petitioner as the petitioner is aged nearly 57 years and there is scope of unemployment. Consequently, the writ petition has to be dismissed and accordingly, it is dismissed. There will be no order as to costs.