

(1964) 05 P&H CK 0033
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 447-D of 1960

Baldev Prasad Chaturvedi

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-05-1964

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(2)
Defence Accounts Department (Temporary Service) Rules, 1949 — Rule 5

Citation : AIR 1965 P&H 303 : (1969) 2 LLJ 254

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Judgement

(1) This petition of Baldev Prasad Chaturvedi under Article 226 of the Constitution of India is directed against the order of Controller of Defence Accounts, Eastern Command, Meerut passed on 5th of October, 1959 terminating his services as a temporary employee under Rule 5 of the Defence Accounts Department (Temporary Service) Rules 1949.

(2) The petitioner was appointed a lower division clerk in the office of the Controller of Defence Accounts Eastern Command Meerut on 11th of April, 1955. Subsequently he was transferred on compassionate grounds at his own request to his home town of Mathura with effect from 16th of September, 1957. On 16th of January, 1959 a letter was issued by the Local Audit Officer calling upon the petitioner to improve his conduct and work failing which his services would have to be terminated. Eventually in pursuance of the impugned order of 5th of October, 1959 the services of the petitioner were terminated with effect from 28th September, 1959. It was mentioned in the order that the petitioner will be paid a sum "equivalent to the amount of his pay plus allowance for one month which is the period of notice due to him."

Later, the petitioner asked for a certificate from the Department and it was granted to him on 21st of October, 1959. In this certificate which is Exhibit P-1 it

was stated that the petitioner was employed in the Defence Accounts Department for the period 11th of April, 1955 to 28th of September, 1959 and his ability as a lower division clerk "was below average" and against the column of "Character" was stated that "conduct was unsatisfactory". It may be mentioned that under paragraph 445 of the Defence Accounts Department (Office Manual) Part I such a certificate may be granted to non-gazetted personnel who have served in the Defence Accounts Department on application. A specimen certificate is given in Annexure A and there is no manner of doubt that Exhibit P. 1 is in accordance therewith. It is mentioned below the specimen certificate in Annexure A that under the column of "ability" a person is to be classified as excellent /very good/good/below average poor "character", it is stated underneath the Annexure that a person concerned should be classified as exemplary/very good/good unsatisfactory as the case may be. Thus the certificate of service which was asked for by the petitioner bore the entries which should be filled in accordance with the provisions of the specimen certificate.

(3) It may be also be mentioned that in sub-paragraph (2) of paragraph 445, it is enjoined on the authorities concerned that "in granting certificates care should be exercised that the whole truth in respect of the individual concerned is stated in the certificate."

(4) The representation and appeals preferred by the petitioner having failed he has approached this Court on the ground that he termination of service without any show-cause notice is void being in breach of the provisions of clause (2) of Article 311 of the Constitution which required that no civil servant, "shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him".

(5) it is contended by Mr. Nath the learned counsel for the petitioner that the certificate of service which followed the order of the termination of services has placed a stigma on the petitioner which makes it impossible for him to obtain re-employment elsewhere. There termination of services thus has been accompanied by penal consequences which made it incumbent on the respondent Union to have a regular enquiry before removing him from service. It is argued on his behalf by Mr. Narula that the statutory rules required that a charge-sheet should in the first instance have been drawn up against the petitioner and a regular enquiry held before an enquiry held before an order of punishment was passed. Reliance has been placed on *Parshotam Lal Dhingra Vs. Union of India (UOI)*, in which it was held that the constitution makes no distinction between person holdings permanent or temporary posts and the protection of Article 311 extends equally to all government servants holding permanent or temporary posts.

The termination of service, it is argued, was clearly by way of punishment as it was accompanied by evil consequences. In the other words of Chief Justice Das, "to permanent civil posts" will be add qualifying words to the Article which will be

contrary to sound principles of interpretation of a Constitution or a statute. The answer given by Mr. Shanker to this argument is that the petitioner being a temporary Government servant was governed by Rule 5 of the Defence Accounts Department (Temporary Service) Rules which says that "the is not in quasi-permanent service shall be liable to termination at any time by notice in writing.....". Mr. Shankar relies also on the observations of Chief Justice Das at page 861 of the report where it is said that:

"Any and every termination of service is not a dismissal removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or remove as has been held by the Court in Satish Chandra Anand Vs. The Union of India (UOI), Likewise the termination of service..... in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Art. 311(2).....It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific services rule nevertheless to terminate the service the motive operating on the mind on the Government is..... wholly irrelevant. In short if the termination of service is founded on the right flowing from contract or the service rules then prima facie the termination is not a punishment and carried with it no evil consequences and so Art. 311 is not attracted.....".

Now, it is significant to observe that the certificate on which the argument of the learned counsel is founded was solicited by the petitioner himself and was furnished strictly in accordance with the rules the entries conforming to the specimen certificate form. The order of termination does not on the face of it carry any suggestion of misconduct or stigma. It is true that the termination of services may have been prompted by consideration which have been specifically mentioned in the judgment of Chief Justice Das. These however do not operate to give a tinge of punishment to the order which is sought to be impugned. Mr. Shanker in controverting the argument of Mr. Narula relies on another Supreme Court decision of The State of Orissa and Another Vs. Ram Narayan Das, in which a probationer was discharge in accordance with the statutory rules and it was held that mere termination of employment does not carry with it any evil consequences such as forfeiture of pay or allowances loss of seniority stoppage or postponement of future chances of promotion to justify the attraction of Art. 311(2). Mr. Justice Shah speaking for the Court, said that--

"An order discharging a public servant even if a probationer in an enquiry on charge of misconduct negligence inefficiency or other disqualification may appropriately be regarded as one by way of punishment but an order discharging a probationer following upon an enquiry to ascertain whether he was fit to be confirmed is not of that nature."

(6) In the present case no enquiry was ever held and the statements in the

character certificate that the ability of the petitioner was below average and that his conduct was unsatisfactory could not possibly lead to the conclusion that the stigma of misconduct had been added to the order of discharge.

(7) Mr. Narula next relied on another authority of the Supreme Court in *The State of Bihar Vs. Gopi Kishore Prasad*, where it was observed by Chief Justice Sinha speaking for the Court that the provisions of Art. 311(2) are applicable to a probationer who had been discharged from service on enquiry as being unsuitable to the post on grounds of notoriety for corruption and unsatisfactory work in the discharge of his public duties. The facts of that charge order were clearly by way of punishment. It has been rightly contended by Mr. Shankar that the evil consequences envisaged in the authority of the Supreme Court must flow from the order of discharge itself. The order of discharge clearly does not indicate that the services of the petitioner were being dispensed with in consequence of any misconduct or other delinquency of this type. The certificate which was given on the asking of the petitioner cannot in other words convert the plain and simple order of discharge into one of dismissal. The legal consequences of the certificate must therefore be kept in their proper perspective and the true purport and effect of the order of discharge should not be dimmed by the statements made in the certificate.

(8) The petitioner being a temporary employee it cannot be denied that the termination of his service under Rule 5 is valid. No evil consequences can be said to flow from this order according to the test laid in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, and Art 311 is clearly inapplicable.

On the reading of Rule 5 in Court by Mr. Shankar Mr. Narula raised another point that the notice was not given by the appropriate authority. This point has never been raised in the petition and is clearly an after-thought. Rule 5 requires that a notice should either be given by the Government servant to the Controller of Accounts or by Controller of Accounts under whom he is serving to the Government servant. The notice Exhibit R. 1 is given by the Controller of Defence accounts Eastern Command Meerut and I do not see how its validity could be questioned on the ground that it was sent by the wrong authority. In event the point has never been taken in to raise it at the time of arguments.

(9) I see no force in this petition which must be dismissed. As the petitioner is an employee whose services have been terminated I would not make any order as to costs against him.

(10) Petition dismissed.