

(1996) 08 GAU CK 0053
In the Gauhati High Court
Case No : Civil Rule No. 312 of 1989

Chanamthabam Surchandra Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 12-08-1996

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5, 5(1)
Constitution of India, 1950 — Article 226, 311, 311(2)

Citation : (1998) 3 GLR 355

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : Ng. Premkumar Singh, for the Appellant; A. Madhuchandra Singh, for the Respondent

Judgement

H.K. Sema, J.—By this petition filed under Article 226 of the Constitution of India, the Petitioner has challenged the order of termination of his services impugned herein.

2. The Petitioner joined service as Chowkidar under the Directorate of Youths and Sports Department. He was a temporary Govt. servant and his services were I terminated under Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rule, 1965 by an order dated 13th October, 1986 issued by the Respondent No. 3 (Annexure-A/2). The Petitioner made representation to the authorities for cancellation of the order of termination. As the authorities did not dispose of the representations filed by the Petitioner, the Petitioner approached this Court by filing a Civil Rule which was registered as Civil Rule No. 967 of 1987. By an order dated 18.9.1987 a Division Bench of this Court disposed of the Civil Rule, aforesaid with direction to dispose of the representation submitted by the petition. The operative portion of the said order runs as under:

Mr. Saikia submits that as the Petitioner has already submitted representations the authorities may be allowed to dispose of the representations in accordance with law. We accordingly direct the Director and Secretary, Youth Affairs and

Sports, Govt. of Manipur, Imphal to dispose of the Petitioner's representations in accordance with law as expeditiously as possible, preferably within a period of one month from the date of receipt of this order.

3. In spite of the aforesaid direction of the Division Bench of this Court, the Respondents took considerable time in disposing of the matter and finally vide Office Memorandum dated 23.2.89 the representations submitted by the Petitioner were rejected. The said Office Memorandum dated 23.2.89 is reproduced below:

No. 10/90/84-S/SPORTS: With reference to his application dated 31.1.87 and 22.9.87 submitted to the Secretary, Youth Affairs and Sports, Govt. of Manipur for quashing the termination orders No. 1/21/86-YAS dated 10.10.86 passed by the Director of Youth Affairs and Sports, Government of Manipur, Shri Surachandra Singh is hereby informed that his application has been considered by the Govt. but there are no grounds for entertaining the same, The applications are, therefore, rejected.

4. As against the aforesaid decision of the authorities, the Petitioner has approached this Court again by filing the present writ petition.

5. Heard Mr. Ng. Premkumar Singh, the learned Counsel appearing on behalf of the Petitioner and also Mr. A. Madhuchandra Singh, the learned Govt. Advocate.

6. The submissions of the learned Counsel for the Petitioner firstly is that though the termination order contained at Annexure-A/2 to the writ petition is innocuous, the same is in the nature of punishment on the ground of misconduct. Thus, provisions of Article 311 of Constitution are attracted. Secondly the learned Counsel for the Petitioner submits that the Respondent arbitrarily singled out the Petitioner though some other employees who are similarly situated with the Petitioner and also junior to him were retained. Lastly, the learned Counsel for the Petitioner submits that the Office Memorandum rejecting the representations of the Petitioner does not disclose any reason. The learned Counsel for the Petitioner has drawn my attention to the averment made in para 3 of the counter affidavit wherein it is specifically mentioned that on 10.10.86 the Petitioner entered into the room of girl players without notice and even attempted to share one of the girl's bed forcibly. He was also given 2/3 slaps by the girls and turned out of the room. A report was made in this regard and on the basis of the report the Petitioner was terminated from service. These allegations of facts amount to misconduct and according to the learned Counsel the Petitioner was terminated from service on this allegation of misconduct, but no inquiry as contemplated by Article 311(2) of the Constitution was held, and as such the termination order cannot stand.

7. Mr. A. Madhuchandra Singh, the learned Govt. Advocate submits that the Petitioner was terminated from service on the ground of unfitness and unsuitability in service. Thus, the order of termination is innocuous and therefore no inquiry under Article 311(2) is necessary. Hence, the present termination

order contained at Annexure-A/2 under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 is proper and valid.

8. Law is settled that temporary Government servant does not have any right to the post and his services may be terminated under Rule 5 of the Temporary Service Rules, 1965, but it is also settled that if the termination is on the ground of Misconduct, then Article 311(2) is attracted and in such a case if the termination order had been passed without complying with the provision of Article 311(2), the termination order is bad in law. Even if the termination order is innocuous, the basis/ground for termination may be ascertained by lifting the veil. In the present case, as observed earlier, the Respondent State has clearly stated that the basis of termination was the alleged misconduct of the Petitioner. And it is again settled that if the misconduct was only the motive and not the foundation for the termination then Article 311(2) is not attracted but, if the misconduct was the foundation for termination then Article 311(2) is attracted. In the present case, the question to be determined is as to whether the allegation of misconduct was only the motive or the foundation for the termination. Here, as observed above, it is clear that the misconduct was the basis or the foundation for terminating the service of the Petitioner. Hence, I am of the opinion that the impugned order of termination is vitiated for violation of the provision of Article 311(2) of the Constitution.

9. The learned Counsel for the Petitioner, further, submits that the Petitioner has been arbitrarily discriminated as his junior and others who are similarly situated with the Petitioner, have been retained. This fact has not been controverted by the Government in their counter affidavit.

10. From the findings and observation as made above, it is ordered that the impugned termination order dated 13.10.1986 cannot stand and as such the same stands to be quashed. The impugned termination order dated 13.10.86 at Annexure- A/2 and Office Memorandum dated 23.2.1989 Annexure-A/8 are therefore quashed.

11. As regards the back wages, it is left to the concerned authority for its decision in accordance with rules.

12. Liberty is given to the Respondents to take departmental action against the Petitioner after following normal procedure as per law, if so advised.

13. The Respondents are directed to reinstate the Petitioner forthwith and to determine the back wages of the Petitioner within a period of 2 (two) months from the date of receipt of this order.