

(1991) 10 MP CK 0001
In the Madhya Pradesh High Court
Case No : M.P. No. 613 of 1988 (G.)

Devendra Kumar

APPELLANT

Vs

Laxmibai National College of Physical Education, Gwalior and
Another

RESPONDENT

Date of Decision : 01-10-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 25
Contract Act, 1872 — Section 23

Citation : (1991) 2 MPJR 299

Hon'ble Judges : S.K. Dubey, J; R.C. Lahoti, J

Bench : Division Bench

Advocate : Arun Mishra, for the Appellant; R.A. Roman, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.

By this petition under Article 226/227 of the Constitution of India, the Petitioner was appointed as a Peon, a class IV employee, and whose services were terminated with effect from 8th April, 1988, seeks a declaration that the termination of his services being illegal and void in violation of the principles of natural justice, be quashed and he be declared to continue in employment with all ancillary service benefits.

The facts giving rise to this petition are: The Petitioner was appointed as a Peon on ad hoc basis vide order dated 6th June, 1986 (Annexure P/1) for a period of three months on the pay and scale given therein and on the condition that his services can be terminated at any time without notice. The Petitioner joined his duties on 10th June, 1986. After the expiry of the specified period, Petitioner's appointment was extended from time to time for further specified periods vide Annexures P/2 and P/3 on the same terms and conditions as contained in Annexure P/1. By the last extension (Annexure P/3) dated 29-1-1988 Petitioner's appointment was extended for three months from 9-1-1988. The

Petitioner contends that he was appointed as a Peon, but to harass and victimise, the Petitioner was directed to work in Mess, to which he refused on the ground that the Mess Warden has ordered him to serve meat and to clean the utensils in which meat is cooked, which is against his religious convictions and is violative of Article 25 of the Constitution of India. Therefore, he went on leave.

In the return, it is stated that the appointment of the Petitioner was liable to be terminated without any notice and without assigning any reason; the Petitioner's work and conduct was not satisfactory; therefore, on various occasions during the period of his initial appointment and during the period extended from time to time, he was warned vide Annexures R/2, R/3, R/4 and R/5. Lastly, when the Petitioner did not work in the Mess, as directed, and on refusal of the leave applied for, the Petitioner did not turn up and unauthorisedly absented himself, he was discontinued from attending his duties in the College by not extending the period of appointment any further after 8th April, 1988.

From the facts which are clearly borne out from the petition and the return, it is candidly clear that despite unsatisfactory work and conduct of the Petitioner, for which he was warned at few occasions, the Respondents allowed the Petitioner to work for years as a Peon on ad hoc basis by extending the period of appointment from time to time. It is also borne out from the record and the contention of Shri Roman, counsel for the Respondents, that as the Petitioner committed serious misconducts of disobeying the lawful and reasonable orders, of not working in the Mess and unauthorisedly remaining absent from duty, the Respondents were right in not proceeding against the Petitioner departmentally by holding an inquiry but in terminating the services of the Petitioner without assigning any reason and without notice; therefore, the Petitioner cannot seek any relief or direction from this Court.

Now, as rightly contended by Petitioner's counsel, Shri Arun Mishra, the law is very well settled, that in public employment an employer cannot resort to Henry VIII Rules or "hire and fire" policy and, therefore, the action of terminating the services of the Petitioner by the Respondents without assigning any reason and without notice, being arbitrary is violative of Article 14 of the Constitution and opposed to S. 23 of the Contract Act. See *West Bengal State Electricity Board and Others Vs. Desh Bandhu Ghosh and Others*, *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, *O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others*, and *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others*,

The other contention of Shri Mishra that the mere form of an order is not sufficient to hold that the order of termination is innocuous and the order of termination of the services of a probationer and/or an ad hoc appointee is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned, has got a force, as it has been settled by various highest judicial pronouncements, referred to in case of *Jarnail Singh and Others Vs. State of Punjab and Others*, where in para 32 the Supreme

Court observed:

32 The position is now well settled on a conspectus of the decisions referred to herein before that the mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an ad hoc appointee is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order, i e., the attending circumstances as well as the basis of the order that have to be taken into consideration. In other words, when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the Court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of. In other words, the Court in such case will lift the veil see whether the order was made on the ground of misconduct, inefficiency, or not. In the instant case, we have already referred to as well as quoted the relevant portions of the averments made on behalf of the State-Respondent in their several affidavits alleging serious misconduct against the Petitioners and also the adverse entries in the service records of these Petitioners, which were taken into consideration by the Departmental Selection Committee without giving them any opportunity of hearing and without following the procedure provided in Article 311(2) of the Constitution of India, while considering the fitness and suitability of the Appellants for the purpose of regularising their services in accordance with the government circular made in October, 1980. Thus the impugned orders terminating the services of the Appellants on the ground that "the posts are no longer required" are made by way of punishment.

It is evidently clear that the Petitioner's services were discontinued for two misconducts: (i) defiance of the order directing him to work in the Mess, and (ii) unauthorisedly remaining absent from duty without sanction of leave, and for that it was essential for the Respondents to hold an inquiry in accordance with the service rules by observing the principles of natural justice. That being not done, the Respondents cannot contend that they exercised the power to terminate the services of the Petitioner in accordance with the terms and conditions of the contract of service. Therefore, without expressing any opinion on merit of the misconducts and the Petitioner's claim for regularisation of his employment, we simply quash the action of the Respondents of discontinuing the services of the Petitioner. Let an appropriate writ of mandamus be issued commanding the Respondents to continue the Petitioner in service, treating him to be in service from the date of his discontinuation with all ancillary service benefits including continuity of service except back wages.

In the result, the petition is allowed with costs. Counsel's fee Rs. 300/- if already certified.