
(1979) 09 MAD CK 0006
In the Madras High Court

Dr. G. Srihari

APPELLANT

Vs

Madras Dock Labour Board and Another

RESPONDENT

Date of Decision : 06-09-1979

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Tamil Nadu General Sales Tax Act, 1959 — Section 16
Tamil Nadu Shops and Establishments Act, 1947 — Section 41, 51

Citation : (1980) 93 LW 153

Hon'ble Judges : T. Ramaprasada Rao, C.J;Natarajan, J

Bench : Division Bench

Judgement

Natarajan, J.—This appeal is directed against the dismissal of the appellant's writ petition wherein he sought for the issue of writ of

certiorified mandamus for" quashing the order of the second respondent to disturb the order of dismissal passed by the first respondent and for

directing the first respondent to reinstate the appellant in its service and provide back wages and other benefits to him.

2. Consequent upon the extension of medical benefits to the members of the families of the workers employed in the Deck Labour Board, two

posts of Assistant Surgeons were created. The appellant was appointed to one of the two posts and for the other post one Smt. Helen C. Kumar

was appointed by the Chairman of the Board by proceedings dated 28-3-1968. The posts carried a basic salary of Rs. 325 per mensem and

allowances under various heads, amounting to Rs. 776 and the post was in the scale of Rs. 325-25-500-EB-30-590- EB-30-800 plus a non-

practising allowance of 25 per cent of the basic pay subject to a minimum of Rs. 150. The appellant joined duty on 1-4-1968, The two posts were

subsequently made permanent in July, 1970.

3. The creation, appointment and termination of the services of the employees in the Dock Labour Board are governed by the Dock Workers

(Regulation of Employment) Act, 1948 and the Madras Dock Workers (Regulation of Employment) Scheme, 1956 framed under Sub-section (1)

of Section 4 of the Act. At the time of the appellant's appointment, Clause 6 of the Scheme provided that in respect of posts where the maximum

salary, exclusive of allowances, was Rs. 600 and above per mensem, they can be created and, likewise, appointments to those posts can be made

by the Board only with the previous approval of the Central Government. The post of Assistant Surgeon would also fall within the category of

posts mentioned above, because the post carried a maximum salary of more than Rs. 600 per mensem exclusive of allowances.

4. On 2-1-1970 the appellant was assigned the work of Medical Officer in the place of one Dr. Francis who had resigned his job and

proceeded overseas. Some months later, the appellant asked for charge allowance of Rs. 300 per mensem in view of the additional duties he was

performing, but his request was not granted. The appellant, therefore, wanted to be relieved of his additional responsibilities and he was

accordingly relieved.

5. On 30-1-1971 the appellant was served with an order terminating his services with effect from 1-3-1971. The appellant filed an appeal on 23-

3-1971 u/s 41 of the Tamil Nadu Shops and Establishments Act, 1947 for setting aside the order of termination of his services. But, an objection

was raised that the Dock Labour Board would not fall within the purview of the said Act. The appellant then filed a petition u/s 51 of the said Act

before the Commissioner of Labour for a decision on the question whether the Tamil Nadu Shops and Establishments Act would apply to the

Dock Labour Board or not. The Commissioner of Labour sustained the objection of the Board and dismissed the petition. The appellant then

approached the second respondent by means of a petition dated 24-4-1974 and prayed the second respondent to interfere and set aside the order

of termination.

6. At this stage of matters, the Deputy Chairman sent a letter on 29-5-1974 asking the appellant to meet him and, when the appellant met him, the

Duputy Chairman suggested that the appellant may receive a sum of Rs. 1,500 as compensation and give up his attempts to seek reinstatement.

The appellant declined to accept, the offer. Again, on 26-12-1974, the appellant was asked by the Deputy Chairman to meet him and this time,

the Deputy Chairman offered a higher compensation of Rs. 5,000 in full settlement of the appellant's claim for reinstatement. This offer too was declined.

7. The appellant then made further representations to the second respondent, but all of them proved of no avail and, on 3-5-1975 the second

respondent sent a communication stating that the Government saw no valid reason to interfere in the matter.

8. It was in that background, the appellant invoked the jurisdiction of this Court under Article 226 of the Constitution of India for the issue of a

rule. The appellant assails the order of termination of his services on three grounds, namely, (1) the Dock Labour Board which appointed him did

not pass the order of termination and secondly, the prior approval of the Central Government had not been obtained before his services were

terminated; (2) the order of termination is discriminatory in nature and, therefore, contravenes the principles of natural justice and is also violative of

Article 16 of the Constitution of India and (3) the order of termination is in the nature of punishment and inasmuch as no enquiry had been held

prior to the passing of the order, it offends the principles of natural justice.

9. With reference to ground No. 1, the appellant places reliance on clause 6 of the Dock Workers (Regulation of Employment) Scheme, which

says that in respect of posts carrying a salary of Rs. 600 and above, the appointments can be made only by the Board and that too, with the

previous approval of the Central Government. The further argument is that the appointing authority alone has the requisite power to terminate the

services and this position is rendered clear by Section 16 of the General Clauses Act. As regards the second ground, the appellant would say that

Smt. Helen C. Kumar who was appointed along with him, has been retained in service, that though he was denied charge allowance when he

claimed it for having acted as Medical Officer, such allowance was readily sanctioned later when another Assistant Surgeon, D. Kesavalu, was

asked to officiate in that post and that when young doctors fresh from college

were appointed as Assistant Surgeons, they were given the same pay and allowances as had been given to him without bearing in mind the age, experience and superior knowledge of the appellant. On the third ground, the appellant would say that no reference was made in the impugned order or in the counter statement filed by the first respondent about any shortcomings or irregularities in his service, but yet, certain adverse entries appear to have been made in the file regarding his work and those adverse remarks have been borne in mind whom his services were terminated, and as such, the termination amounts to a disciplinary action which should have been legitimately proceeded by a proper enquiry.

10. Both the respondents have filed counter-affidavits independently. The first respondent has stated that the terms of the appellant's employment were governed by a contract and, as per the contract, the appellant's services were terminable by giving twenty-four hour's notice and, such being the case, the appellant is not entitled to treat his appointment as a statutory one and invoke the writ jurisdiction of this Court for getting relief. The first respondent has then stated that the writ petition has been filed after a delay of four years and hence the proceedings are beyond the limit of time prescribed by Courts as permissible for any writ petition being filed. The first respondent has denied the several accusations made by the appellant about discriminatory treatment. Yet another contention put forward is that clause G of the Dock Workers Scheme had been duly amended in the year 1969 substituting the onwords, ""Rupees one thousand and above"" for the words, ""Rupees eight hundred and above"" and, on account of such amendment, it was open to the Dock Labour itself to create posts within the permitted limit and appoint persons to fill up those posts without requiring the prior approval of the Central Government. The first respondent would when say that though the Deputy Chairman had signed the order of termination sent to the appellant, yet, the decision to effect the termination had been taken by the Chairman and the action of the Chairman had been ratified by the Board at its meeting held on 29/30-3-1971 and, therefore, the order of termination does not suffer from any legal flow or error. The first respondent, therefore, prayed for the dismissal of the writ petition.

11. In the counter-affidavit of the second respondent, the order of termination

has been justified on the ground that the prior sanction of the Central Government was not required for terminating the services of the appellant and that the impugned order did not suffer from any mistake or error.

12. Mohan, J, who deals with the writ petition, has taken the view that the Deputy Chairman was not inhibited by any rule or regulation from

terminating the services of the appellant and as such, the impugned order does not suffer from any flaw, that even assuming that the Board alone

had the power to terminate the appellant's services, the Board has, as a matter of fact, ratified the termination order on 30-3-1971 and, as such,

the order can be treated as one passed by the Board itself and, lastly, that, on a perusal of the file, he found that adverse remarks about the

unsatisfactory work of the appellant have been made and, having regard to those entries, there was no question of discrimination of the appellant in

sending him out of service and, it was a case where the first respondent availed of its contractual right to terminate the services of the appellant who

was only a temporary employee and terminated his services. On such reasoning the learned Judge has dismissed the writ petition and hence the

aggrieved petitioner has come forward with this writ appeal.

13. Mr. Ramachandran, learned Counsel for the appellant, contended before us that the order of termination of services is not in accordance with

Clause 6 of the Scheme and, therefore, the order is an ineffective one. We have already referred to the terms of Clause 6 in the scheme which says

that in respect of posts carrying a maximum salary of Rs. 600 and more, the Board should obtain the previous approval of the Central Government

for creation of the posts and also for appointment of personnel to such posts. Learned Counsel argued that though there is no specific mention in

Clause 6 about the Board alone having the power for terminating the services of an officer like the appellant, who was admittedly appointed by the

Chairman of the Board, Section 16 of the General Clauses as set would come into play and, in view of that, it would automatically follow that only

the authority having the power to make the appointment will have the power to terminate the services of the appointee. In support of this argument,

Mr. Ramachandran invited our attention to Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, . and

Mohammad Ilyas Alvi Vs. State of Maharashtra, . These cases cannot be of any

help to the appellant because the Federal Court case deals with the question whether a receiver appointed by the Court could not be removed from office under Order XL Rule I Code of Civil Procedure, even though the rule speaks only about the power of Court to appoint, receiver. The other two cases deal with permanent appointments, which, however, is not the case here, inasmuch as the appellant's appointment was only a temporary one. We may, even at this juncture, point out that in *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, , the Supreme Court has pointed out that "" writs can be issued only to enforce the performance of statutory duties, not duties under a contract; the appointment of the appellant was under a contract,

14. For the respondents it was pointed out that clause 6 of the Scheme had been subsequently amended and, as per the amendment, it was only in respect posts carrying a maximum salary of Rs. 1,000 that prior approval of the Central Government had to be obtained, and in view of such amendment, the post of Assistant Surgeon was not one for the appointment to, or termination of which the prior approval of the Central Government had to be obtained. The argument, therefore, is that even assuming that as per old clause 6 of the Scheme, the prior approval of the Government was required for terminating the services of the appellant, after the amendment of the clause, the necessity ceased to exist and, therefore, the Board was competent to terminate the services of the appellant. Countering this argument, the appellant's counsel would say that the appellant's rights will have to be determined in accordance with the conditions which prevailed then he was appointed and, therefore, the terms of Clause 6 as they originally stood would have to be applied, and if so applied, the order of termination can be validly passed only after obtaining the prior approval of the Central Government. As authority for this proposition, Mr. Ramachandran relied upon *Delhi Transport Union v. B. B.L. Hajolay* 1973-I L.L.J. 76. Mr. Dolia appearing for the first respondent refuted this contention and placed reliance upon *Corporation of Calcutta v. A.K. Sen* LXXXIII Cal. Weekly Notes, 43. Where it was held that the expression ""appointing authority"" would not mean the authority which had actually appointed the employees, but would mean the authority which would be competent to do so at the time the order of termination was

made. Even this argument we are unable to accept, because the argument of the appellant's counsel proceeds on the footing that the appellant was employed on a permanent basis on statutory terms and, as such, certain rights because inherited and consequently, no order of termination can be passed in derogation of those rights.

15. The next argument of Mr. Ramachandran was that the order of termination had been made only by the Deputy Chairman and not by the Dock

Labour Board. Mr. Ramachandran said that the Chairman had no right to delegate his powers to the Deputy Chairman. So far as this argument is

concerned, we find that there is no basis at all for this contention in the records. The impugned order has been issued by the Chairman and all that

the Deputy Chairman has done is to have signed the communication for the Chairman. The order has been sent on 30-1-1971. The subject of

termination of the appellant's services has been considered by the Board at its meeting on 29/30-3-1971. The resolution says that the Chairman's

note was considered, that the Deputy Chairman was asked to explain the circumstances under which the temporary services of the appellant were

terminated and that the Board ratified the action of the Chairman by passing a resolution in that behalf, There has thus been an application of mind

by the Board. We are, therefore, unable to accept the contention of the appellant that the impugned order of termination had been passed by the

Deputy Chairman, and, therefore, it is not a valid order of termination at all. Learned Counsel cited Mysore State v. M.K. Ali Beg 1977-I, L.L.J.

262, to contend that when the initial order is a nullity, a subsequent ratification of it will not cure the defect. As, in the instant case, the initial order

does not suffer from any defect, the appellant cannot place reliance upon the ratio laid down in the above said case.

16. The appellant then contended that he had been discriminated and this would be clearly seen from the different treatments meted out to him and

the other persons employed as assistant Surgeons and Medical Officer, by the Board. We find nothing from the record to sustain this contention of

the appellant. Moreover, the other officers are not parties to these proceedings and, therefore, it is not possible to render any finding about the

alleged unfair treatment meted out to the appellant.

17. The weakness of the appellant's case lies in the fact that he was appointed

only on a temporary basis and his appointment was governed by the terms of contract contained in the appointment order. As per the order of appointment, the service of the appellant was temporary in nature and was liable to termination on twenty-four hours' notice. The appellant would say that because he acted for nine months as Medical Officer, the initial order of appointment must be deemed to have become defunct. We are unable to accept this contention, for the parties had never acted on those lines at any stage of the matter. As a matter of fact, the appellant, when he was dissatisfied with the non-payment of charge allowance, wanted to be reverted back as Assistant Surgeon and this request was complied with; he was given salary and allowances permissible for the post of Assistant Surgeon held by him, all through, only in accordance with the initial order of appointment. In such circumstances, there is no scope whatever for the appellant to contend that he ceased to be a temporary employee and the terms of his employment were not contractual. Once we held that the appellant's service was on contractual basis, then, as pointed out by the Supreme Court in *Champaklal Chimanlal Shah Vs. The Union of India (UOI)*, , when an order of appointment provides for termination of services of a temporary employee by giving him notice of a particular duration, then the temporary service can be terminated by the employer giving such notice and the employee cannot put forth a contention that the termination order is discriminatory and should, therefore, be set aside. We are, therefore, unable to accept the argument that the impugned order of termination of service passed by the first respondent, which has been subsequently sustained by the second respondent, is discriminatory in nature and is, therefore, violative of Article 16 of the Constitution and also opposed to the principles of natural justice.

18. There remains then the third contention of the appellant's counsel that the order of termination is in the nature of punishment and since no enquiry had been held and no opportunity had been given to the appellant to offer his explanation, the principles of natural justice have been violated. The submission of Mr. Ramachandran on this aspect of the case is that some adverse remarks appear to have been made about the appellant in the file, but those matters have not been referred to in the impugned order or even in the counter statement filed by the first respondent

and, therefore, the termination of the service of the appellant is by way of punishment and such punishment ought not to have been imposed on the appellant without a proper enquiry proceeding the order of termination. It seems to us that there is no scope at all for the appellant to put forth the contentions set out above. The termination of the service of the appellant has not been done by way of a disciplinary action. On the other hand, the Board has availed of the power specifically conferred on it by the terms of the contract of service entered into between it and the appellant, which enables the Board to give four weeks' notice and terminate the service of the appellant. It is on account of that, there is no reference in the order of termination of service or in the counter about the unsatisfactory work of the appellant. However, while, in the course of arguments before the learned single Judge in the writ petition, the file seems to have been placed for the scrutiny of the learned Judge to satisfy the Court that the appellant had not been subjected to hostile treatment. While perusing the file in that context, the learned Judge has noticed that there are entries in the file commenting upon the unsatisfactory work of the appellant. This is not, therefore, a case where disciplinary action has been taken against the appellant under the guise of an order of termination of service. Mr. Ramachandran quoted *Manager, Government Branch Press v. B.B. Lollanra* 1979-I L.L.J. 156, to contend that even a temporary Government servant, if he had been arbitrarily discriminated against and singled out for harsh treatment in preference to his juniors similarly circumstanced, is entitled to the protection of Articles 14 and 16 of the Constitution, and to approach the Court for appropriate reliefs. We are afraid this argument proceeds from a misconception. The appellant's services, besides being temporary in nature were also governed by a contract, and not by a statute or rules. Therefore, the decision in the abovesaid case cannot be relied upon by the appellant. On the other hand, it is a well-settled proposition that where the services of an employee are terminated specifically in exercise of a power conferred on the employer as per contract of service entered into between the employer and the employee, then the Court will not interfere with the exercise of such "power by the employer even in these cases where the order of termination contains a reference to the petitioner's unsatisfactory work. In this context, we may only refer to a few cases which deal with the question. One of them is *K, Palanichamy v. Canara*

Bank, Bangalore (1978) Lab.I.C. 303. Which is a decision rendered by Ramanujam, J. In an earlier case, Ramiah v. State Bank of India 1968-II

L.L.J. 424, a Division Bench of this Court has held that an employer, even a statutory body, may initiate a proceeding, held an enquiry and come

to certain conclusions; it may then chose to punish the employee on a finding of misconduct or it may choose, for valid reasons, to terminate the

employment under the contract and such exercise of power under the contract is not liable to be challenged in a writ petition. Yet another case is

Municipal Corporation v. P.S. Malvenkar 1978-II L.L.J. 168 where it was held that termination of service, by the Management, of the employee

under a standing order, after giving one month's notice cannot be considered to be punitive in character, though the record disclosed unsatisfactory

service on account of past incidents for each of which punishment in one form or other had already been noted out. We are, therefore, of opinion

that in the instant case, even though the file contains some markings about the unsatisfactory service of the appellant, the order of termination of

service had nothing to do with those remarks; the order has been passed purely in exercise of the right available under the contract of appointment

to the first respondent to terminate the service of the appellant by giving notice. Hence the last contention of the appellant's counsel has also to fall

to the ground.

19. Though we find no merit in the contentions of the appellant and as such, the writ appeal deserves to be dismissed, we are inclined to follow the

course adopted by the Supreme Court in Municipal Corporation v. P.S. Malvenkar (supra), because, from the date of termination of his service,

viz. 1-3-1971, the appellant, labouring under a misconception about his rights, has been resorting to various proceedings to seek reinstatement in

service. Even at the time the Board notified the action of the Chairman in having terminated the temporary services of the appellant, the Board has

stated that ""such instances might give rise-to the view that proper opportunity was not given to the person concerned though his services were

terminated as per contract"". When the appellant preferred a petition to the second respondent, the first respondent had sent for the appellant and

offered him solatium of Rs. 1,500 and subsequently revised the offer and invited the appellant to accept a sum of Rs. 5, 000 in full quit of his

claims. In the course of the hearing of the ppeal, in response to a suggestion made by us, Dolia stated that the first respondent may be persuaded to offer Rs. 7,500 to the appellant as ex gratia payment. Taking all the circumstances into consideration, we think the first respondent should be called upon to pay a sum of Rs. 10,000 to the appellant as ex gratia payment. While, therefore, dismissing the writ appeal and directing the parties to bear their respective costs, to direct the first respondent to pay the appellant, within a period of eight weeks from this date, a sum of Rs.10,000. (Rupees ten thousand only) as ex gratia payment.