

(1968) 03 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 206 of 1967

G. Vasantha

APPELLANT

Vs

The State of Nagaland and Others

RESPONDENT

Date of Decision : 04-03-1968

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1949 — Rule 3
Constitution of India, 1950 — Article 226, 311, 311(1)

Citation : (1968) 03 GAU CK 0004

Hon'ble Judges : C. Sanjeeva Row Nayudu, C.J; P.K. Goswami, J

Bench : Division Bench

Advocate : T.C. Das, for the Appellant; D.M. Sen, General and A.R. Barthakur, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Nayudu, C.J.—In this petition Under Article 226 of the Constitution the termination of the services of the Petitioner Shrimati G. Vasantha, who was employed with the State of Nagaland as an Assistant Teacher in Zunheboto High School, with effect from 1st April 1967 by an order dated 16th February, 1967 issued by the Deputy Director of Education, Nagaland, Kohima is questioned. claims that she was like nature to quash and cancel the impugned order dated 16-2-67 terminating her services and to direct the Respondents including the State of Nagaland to forbear from giving effect to their order terminating her services as mentioned above.

2. The Petitioner first entertained in service in the month of June 1962 and was appointed to the post of Assistant Teacher in Zunheboto High School by the Chief Secretary to the Government of Nagaland. According to the Petitioner, she served faithfully and discharged her duties quite efficiently and to the satisfaction of the authorities concerned. The Petitioner, who is a B. A. (Hons.) Graduate of the Madras University, which is equivalent to an M. A. degree, appears to have earned a good reputation as an assistant teacher, as she claims in the petition

and she served in the same school till the last date of March 1967 for a period of nearly five years. She claimed that in the seniority list of the Education Department, her name appeared in the 11th position.

In view of her efficient service, the Government of Nagaland in the year 1963, rewarded her with inauguration of the State of Nagaland Medal in view of her loyal and valuable service to the State. She further alleged that all of a sudden and to her great surprise the Deputy Director of Education, Nagaland, Kohima, Respondent No. 4 to the petition, served a notice to the Petitioner dated 16th February, 1967 terminating her services on and from 1st April 1967 without giving any reason or mentioning any grounds for the action taken. The Petitioner further claimed that no information of any kind was given to her, nor was any reason shown for the termination of her services, no charge or changes have been framed against her nor was she given an opportunity to show cause before the termination of her services. The Petitioner further claimed that during the relevant period, that is, 1966-67, there were five assistant teachers in Zunheboto Government High School, Nagaland, where the Petitioner was serving as one of the graduate assistant teachers and that in view of Notification No. EDS/1/29/65 dated 10-10-66 issued by the Joint Secretary to the Government of Nagaland the service as well as the post of the Petitioner became permanent.

The Petitioner has claimed that the being in her permanent post in view of the said notification, any termination of her service in the manner aforesaid is against the principle of natural justice and in violation of the provisions of Article 311 of the Constitution. The Petitioner points out that she made representations against the action taken against her but received no answer. The Petitioner accordingly prays for the issue of a writ in the nature of mandamus or like nature to quash and cancel the impugned order dated 16-2-67 terminating her services and to direct the Respondents including the State of Nagaland to forbear from giving as mentioned above.

3. The State of Nagaland represented by the learned Advocate General of the State contended that the post held by the Petitioner was a temporary post, which according to the contract of service is terminable with one month's notice, that one month's notice had accordingly been given to her, that her services were terminated in conformity with the terms and conditions of the contract of service under which the Petitioner was serving and that there was no mala fides or other cause for terminating her services. As the Petitioner, according to the Respondent, had no permanent footing, she cannot claim the benefit of Article 311 of the Constitution as a precursor to removal from service. It is also claimed that the termination of the services of the Petitioner was in order and no exception can be taken to it. It is also contended by the learned Advocate General that the Petitioner was not a quasi permanent servant and, therefore, the benefits of that service are not attracted in her case and the services of the Petitioner having been rightly terminated, she could have no cause for complaint and the petition should be dismissed.

4. It is clear from the submissions made in the case and the affidavits filed, that the Petitioner was in service for a period of nearly five years as a graduate teacher in the employment of the Nagaland Government, and that she had been appointed by the Chief Secretary to the Government of Nagaland, although in a temporary post. It is also clear that the appointment letter Annexure "A" to the petition dated 23-10-62 did say that the service may be terminated by one calendar month's notice in writing on either side. But the point for consideration have been validly terminated in the circumstances of the case.

5. Two main points have been urged before us by Mr. Das, the learned Counsel for the Petitioner. He claimed that as she was appointed by the Chief Secretary to the Government and as the termination of her appointment was by the Deputy Director of Education, who is a subordinate to the Chief Secretary or an inferior officer to the Chief Secretary, the termination is in violation of Article 311 (1) of the Constitution and, therefore, is bad. The second point taken by Mr. Das is that although she was initially recruited to a temporary post, the post itself had been made permanent by the Government orders and that according to the instructions issued by the Chief Secretary to the Government of Nagaland, the holders of the posts that had been declared permanent must be declared to have been appointed on a permanent basis to those posts. Such being the case, the Petitioner must be deemed to be a permanent Government servant and, therefore, could not be removed from service without following the procedure envisaged by Article 311 of the Constitution.

6. On the first point we are satisfied that the Petitioner was appointed by the Chief Secretary, which is made clear from Annexure A to the petition, the genuineness of which is not disputed. It is also clear that the services of the Petitioner were terminated by the notice issued by the Deputy Director of Education, vide Annexure D to the petition dated 16th February, 1967, and it is not also disputed that the Deputy Director is an inferior officer to the Chief Secretary to the Government. But the only point that the learned Advocate General urged in this behalf is that mere termination of service does not amount to one of the three actions contemplated by Article 311 of the Constitution, namely, dismissal, removal or reduction in rank. On this point, under the circumstances of the instant case, we feel that termination of service has the direct effect of a removal from service, because the incumbent serving the State is no longer in a position to serve, and, therefore, no special meaning attaches to the word "removal. We are satisfied that what is contemplated by Article 311 of the Constitution is an exclusion from service, whether it is by way of an order of removal or by way of an order of termination of the service. Hence we are satisfied that in the instant case the authority, namely the Deputy Director of Education, who sought to terminate the service of the Petitioner, had no jurisdiction to terminate the services of the Petitioner.

In this connection reliance was sought to be placed on the order dated the 3rd January 1967 issued by the Joint Secretary to the Government of Nagaland,

Education Department, which contained delegation of financial and cognate powers to the Deputy Director of Education to exercise the powers of the head of the Department during the absence of the Director of Education or during such period as the post of the Director of Education may be vacant. Our attention has been drawn to paragraph 9 of the affidavit-in-opposition of Mr. K. Jethro Angami, Assistant Director of Education to the effect that at the time the Deputy Director of Education was holding charge of the office of the Director of Education. We are satisfied that even assuming that the delegation, were true, that would not be sufficient to empower the Deputy Director of Education to exercise all the powers of the Director of Education in regard to the order quoted above and in the instant case it cannot take away the rights of the Petitioner under Article 311 (1) of the Constitution. The objection still remains that the removal was not effected by the Chief Secretary, who was superior to the Director of Education. In the circumstances, therefore, we hold that the removal in the instant case is contrary to Article 311 (1) of the Constitution and, therefore, is unconstitutional and invalid.

7. The next point to consider is whether the Petitioner could be said to be in permanent service, and even otherwise, whether Article 311 of the Constitution is attracted to the case.

8. It is true that the termination appears to be innocuous and not on any disciplinary or punitive grounds, but the question that arises for consideration is whether it is so innocent as it appears to be. If the claim in the petition that her services were greatly appreciated and that she was rewarded on account of her services were to be accepted as true, particularly when the same are not denied specifically in the counter-affidavits, one would like to know what exactly the reason for the termination of her services is. Of this there are absolutely no indications in the record. That the Petitioner had been holding this post for a period of nearly five years is not disputed and nothing is alleged against her either as to her conduct or to her ability and efficiency. On the date of termination of her services, she was holding a permanent post and five posts of assistant teachers were declared permanent under Schedule 9 at page 19 of the paper book read with Government Notification No. EDS/ 1/29/65 dated 10-10-66 referred to above, which is Annexure E to the petition. It is also claimed by the Petitioner that she was the seniormost of the five assistant teachers.

9. Our attention has been invited in this connection to the circular letter dated 1-11-66 at page 46 of the paper book issued by the Joint Secretary to the Government of Nagaland, Home Department, Kohima to all heads of departments. The heading of this letter is as follows:

Sub: Making of posts under the Nagaland Government permanent and grant of permanency to Nagaland Govt. employees. Framing of permanency Rules.

In this circular letter the joint Secretary states as follows:

In connection with the above I am to mention that the Government of Nagaland

to be in quasi-permanent service will shortly be issuing rules regarding grant or pennenancy and confirmation of individual against permanent posts. Until these rules are promulgated no persons should be made, permanent against any post under the Nagaland Government.

As against this we find at page 47 of the paper book a letter dated 7th January, 1967 issued by the Joint Secretary to the Government or Nagaland, Education Department, Kohima to the Director of Education Nagaland, Kohima, Annexure II (a) which lays down that incumbents are to be declared permanent in order of seniority in the cadre in accordance with the sale of pay prescribed for such posts and not according to the seniority of the incumbents in their respecseniority of the incumbents in their respective establishment even though distribution of the permanent posts have been made School/Establishment-wise in the Education Department's sanctioning letter No. EDS 1/29/65 dated 10-11-66. Then we have Annexure III at page 48 of the paper book which is a memeborandum dated 22-6-67 issued by the Home Department, Government of Nagaland, which states that all concerned are to take immediate action in declaring their respective employees permanent by the Petitioner at page 57 of the paper book, which is "minutes of a meeting" held be the Chief Secretary to the Government of Nagaland on 17th August, 1966, relevant portions of which may be extracted:

Repeated orders have been issued regarding the making of posts permanent. Despite this, the Accountant General has recently pointed that very many posts in Nagaland were still temporary giving rise to infruetuous work every year for continuance of the posts and serutiny of the records etc., in his office. The Chief secretary emphasized that Government orders had already been issued that 80 percent of all posts which were in existence for 3 years on 1st January 1966, should be made permanent. A copy of this Government order is enclosed for immediate action.

Regarding the permanency of individuals against these posts, it wad decided that even in the absence of service rules all persons who had been in service for three years and whose seniority has been fixed on the basis of the principles of seniority issued by the Home Department vide No. 11/APA/1/66 dated 9-6-1966 (copy enclosed) should be granted permanency.

10. According to Rule 3 of the Central Civil Services (Temporary Service) Rues 1949, which, admittedly, are in force in Nagaland, sa person who holds Government service for more than three years is accepted" so quasi-permanent servant and a declaration is issued in pursuance of the rule This rules is as follows.

3. A Government servant shall be deem ed to be in quasi-permanent service.

(i) if he has been in continuous Govern ment service for more than three years:
and

(ii) if the appointing authority, being satisfied as to his suitability in respect of

age, qualifications, work and character, for employment in a quasi-permanent capacity has issued a declaration to that effect, in accordance with such instructions as the Governor General may issue from time to time.

under Rule 2 (b) of these rules quasi permanent service has been defined as temporary service commencing from the date on which a declaration issued under Rule 3 takes effect and consisting of periods of duty and leave other than extraordinary leave) after that date. As Annexure A deals directly with the declaration of permanency of individuals holding permanent posts, it is, in our opinion, intended to serve as a declaration as required by Rule 3 (ii) of the said Rules. Hence, we are of opinion that the Petitioner must be regarded as a quasi permanent Government servant cannot be removed, except for reasons bringing the case within the scope of Article 311 of the Constitution.

11. the learned Advocate Genral, Nagaland placed reliance on a number of decisions. It will be useful to refer to the case of Parshotam Lal Dhingra Vs. Union of India (UOI), He placed particular reliance on the following passage at p. 49:

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 carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sough to be founded on misconduct, negligence, inefficiency of other disqualification, then it is a punishment and the requirements of Article 311 must be complied with.

Then lower down at page 49 their Lordships observed as follows:

But the mere fact that the servant has no title to the post or the rank, And the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post, does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find our if the order for the reduction also visits the Servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the government had purported to exercise its right to terminate the employment or to reduce the servant to lower rank under the terms of the contract of employment as and by way of penalty. The use of expression ?terminate? or ? discharge? is not conclusive. In spite of the use of such innocuous expressions, the Court has to apply the two tests mentioned above, namely, (1) whether the

servant had a right to the post or the rank or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to? If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and Article 311 which gives protection to Government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant.

12. the Petitioner is the seniormost in the list of the persons holding certain posts and which posts have been declared to have been permanent and nothing is shown against her, except an attempt to remove her from service by virtue of the service rules of conditions of service. Obviously, therefore, the removal has no legs to stand on and could not have been resorted to except as a punishment or penalty. Having regard to all the circumstances in this case coupled with the circumstance that the Government does not tell us how persons junior to her are retained in service while the service of the Petitioner, who is the senior most of the assistant teachers, are terminated, we feel that Article 311 of the Constitution is clearly attracted in this case and it is not disputed that the provisions of this article had not been complied with in this case. WE, therefore, hold that the order terminating the services of the Petitioner is devoid of jurisdiction and unconstitutional and quash the same, and as a consequence we declare that the Petitioner is still in service of the State of Nagaland in the post she was holding immediately prior to the termination of her services.

13. the rule is thus made absolute and the petition is allowed with costs. Advocate's fee Rs. 250 (rupees two hundred and fifty).