
(2010) 11 P&H CK 0095
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 14230 of 1990

Gopal Pandit

APPELLANT

Vs

Punjab and Haryana High Court and Others

RESPONDENT

Date of Decision : 30-11-2010

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2011) 1 ILR (P&H) 856

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M. Jeyapaul, J.—The petitioner challenges the impugned order passed by the 3rd respondent, which was confirmed in appeal by the 2nd

respondent and further confirmed in the revision preferred before the 1st respondent.

2. The petitioner was appointed as a Class IV employee by the 3rd respondent, Senior Sub Judge, Sonapat. The order of appointment would

read that the appointment of the petitioner being a temporary one could be terminated at any time without any notice. The service of the petitioner

was terminated by the 3rd respondent by passing the following order :

The services of Gopal Pandit son of Shri Munshi Pandit, resident of Gangri Post Office, Hirodi District Hajari Bag (Bihar), who is working as a

temporary peon in this office are no longer required and therefore his services are hereby terminated with effect from 27th January, 1989 F.N.

3. The only reason assigned by the 3rd respondent for termination of the service of the petitioner with effect from 27th January, 1989 (FN) was

that the temporary service of the petitioner was no longer required.

4. The petitioner preferred an appeal before the 2nd respondent contending inter-alia that the order passed by the 3rd respondent was arbitrary.

Citing three decisions of this Court in Krishan Chand Goyal versus Punjab State and another 1980(2) S.L.R. 623, Punjab State Transport

Department versus Amarjit Singh, 1986 (2) S.L.R. 663 and Baldev Krishan Ashta versus Union of India and others 1986 (1) S.L.R. 378, the

respondent has held that even if a temporary employee was senior in rank he could be terminated from service as his service was temporary in

nature.

5. In the revision preferred by the petitioner before this Court, this Court having assigned a totally different reason from that of the one assigned in

the original impugned order passed by the 3rd respondent simply confirmed the impugned order by the 2nd respondent. In order words, this Court

held in the revision preferred by the petitioner that the service record of the petitioner was not satisfactory and therefore the impugned order

passed by the 3rd respondent, confirmed by the 2nd respondent terminating the temporary service of the petitioner, warranted no interference.

6. The learned Counsel appearing for the petitioner referring to the decisions of the Hon''ble Supreme Court would submit that a temporary

employee, who is senior in rank when the juniors are very much available cannot be terminated except on the grounds that the service of the such

employee is unsatisfactory or that he is unsuitable to the position or for alike reasons. He would further submit that the revisional forum had

supplied its own reasons for confirming the order passed by the 3rd respondent and confirmed by the 2nd respondent. Referring to the circular

sent by the Registry of this Court, he would submit that the respondents had not

adverted to such a circular issued to appointing authorities concerned that the senior shall not be terminated without assigning any reason when his

juniors are still in service. Therefore, it is his submission that the impugned order passed by the 1st respondent and confirmed by the 2nd and 3rd

respondents does not stand legal scrutiny.

7. The learned Senior Deputy Advocate General for the respondents-State referring to the order of appointment would submit that the appointing

authority has power to terminate the temporary service of the petitioner without

assigning any reason. It is his further submission that one Mr.

Singhal who was allegedly instrumental in passing the termination order, was not impleaded as a party before this Court. At any rate, it is his

submission that this Court in the revision preferred by the petitioner has observed that the service record of the petitioner was not satisfactory and

therefore he cannot be permitted to continue in service as temporary employee.

8. The 3rd respondent has passed the order of termination on the ground that the temporary service of the petitioner was no longer required. It has

been demonstrated before this Court by the petitioner that on the very same day of the termination of the service of the petitioner, another

temporary employee by name Mr. Raj Kumar was recruited by the 3rd respondent. It is also demonstrated by the petitioner that there are six

temporary employees, who are juniors in rank are still continue in service. This position was also admitted by the respondents.

9. The Hon''ble Supreme Court in *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, , has held as follows:

Conversely, if the services of a temporary Government servant are terminated, arbitrarily, and not on the ground of his unsuitability, unsatisfactory

conduct or the like which would put him in a class apart from his juniors in the same service, a question of unfair discrimination may arise,

notwithstanding the fact that in terminating his service, the appointing authority was purporting to act in accordance with the terms of the

employment.

10. Following the aforesaid decision, the Hon''ble Supreme Court in *Jarnail Singh and Others Vs. State of Punjab and Others*, , has held further as

follows :

in the instant case as we have stated already hereinbefore that though the impugned order was made under the camouflage or cloak of an order of

termination simpliciter according to the terms of the employment, yet considering the attendant circumstances which are the basis of the said order

of termination, there is no iota of doubt in inferring that the order of termination had been made by way of punishment on the ground of mis-

conduct and adverse entry in service record without affording any reasonable opportunity of hearing to the petitioners whose services are

terminated and without complying with the mandatory procedure laid down in

Article 311(2) of the Constitution of India.

11. In the light of the aforesaid decision, I find that the order of termination passed by the 3rd respondent of course, in terms of the order of appointment issued to the petitioner is not only arbitrary but also discriminatory inasmuch as the juniors in rank were retained by the 3rd respondent while terminating the petitioner from service on the ground that his service was no longer required and a new temporary employee was also recruited on the very same day. Of course, the appointing authority can terminate the temporary service of an employee in terms of the order of employment on the ground that the service of the temporary employee was unsatisfactory or that he was not suitable for the job assigned or for any such similar reasons. The service of a temporary employee can be terminated on the ground that his service is no longer required only when he has been positioned as junior most in the temporary cadre. When other junior temporary employees are in service, senior in rank cannot be shown the door on the ground that his service was no longer required. Any such order passed by the authority would be definitely discriminatory.

12. On a perusal of the order passed by the revisional authority, it is found that the revisional authority has given a reason, which was not found in the original order of termination passed by the 3rd respondent that the service record of the petitioner was not satisfactory. Firstly the revisional authority cannot assign any different reason to substantiate the order of termination, passed arbitrarily or discriminatorily by the appointing authority. Secondly even assuming for the sake of arguments that the service record of the petitioner was not satisfactory as per the decision of the Hon"ble Supreme Court in Jarnail Singh and others's case (supra), the petitioner should have been given an opportunity by serving a copy of the service record to clear the stigma attached to his service. Though the order of appointment would state that even without notice the temporary service of the petitioner could be terminated, when a stigma is attached to the service of a temporary employee, the temporary employee should be given an opportunity to clear the stigma, as otherwise he will be sent out of the service mercilessly with a stigma imprinted in the service record.

13. Referring to the decision of this Court passed in CWP No. 281 of 1986 and CWP No. 2367 of 1984 following the decision in The Manager,

Government Branch Press and another's and Jarnail Singh and others's cases (supra), the Registry of this Court has issued instructions to all the

District and Sessions Judges in the State of Punjab and Haryana as well as the Union Territory of Chandigarh that the services of temporary

employees shall not be terminated without any regard to their seniority. In other words the senior employees shall not be terminated from service

while their juniors are still in service. The said circular was also not followed by the respondents while passing the impugned orders.

14. For all these reasons, holding that the impugned orders passed by the respondents are not only arbitrary but also discriminatory, the impugned

orders stand quashed. Consequently the respondents are directed to reinstate the petitioner in his original position with continuity of service, but

with half pay during the period he was out of service. All the benefits accrued to the petitioner on account of this order shall be given to him within

a span of two months from the date of receipt of this order.

15. With the above directions, the writ petition is allowed. There is no order as to costs.