

(2017) 05 OHC CK 0038

In the Orissa High Court

Case No : 6367 of 1998

Gouri Sankar Mohapatra

APPELLANT

Vs

Regional Director, D.A.V. Institutions (Orissa & West Bengal)
and others

RESPONDENT

Date of Decision : 02-05-2017

Acts Referred:

[Talcher Thermal Power Station \(Acquisition and Transfer\) Act, 1994](#),
Section 5(1)

Citation : (2017) 05 OHC CK 0038

Hon'ble Judges : B.R.Sarangi

Bench : SINGLE BENCH

Advocate : B.Routray, B. Panda, B. Dash, S.S. Kanungo, A.K. Baral, D.K. Mohapatra, S.B. Nanda, S.K. Mishra, P.K.Mishra, D.P. Nanda, U.N. Nayak, J.K. Nanda, P.K. Mohapatra

Final Decision : Dismissed

Judgement

1. The petitioner, having acquired B. P. Ed. and M. P. Ed. qualification, offered his candidature for the post of Physical Education Teacher (PET) pursuant to the advertisement Annexure-1 dated 29.06.1996 published by opposite party no.1. He was called upon and attended the interview held on 07.07.1996. On being duly selected, he was issued with letter of appointment Annexure-3 dated 15.07.1996. Pursuant thereto, the petitioner joined the school of opposite party no.1 on 15.07.1996 and continued there as a Physical Education Teacher on certain terms and conditions on ad hoc basis on consolidated salary of Rs.3,500/- per month. As per the terms and conditions, in clause no.5 it was clearly indicated that the appointment would not confer any right on the petitioner for a regular or a permanent appointment unless he was invited for the interview and selected for the fresh appointment.

2. While the petitioner was continuing as such, opposite party no.1 issued second advertisement on 23.04.1997 indicating a fresh interview to be held on

20.05.1997. Accordingly, the petitioner appeared in the said interview on 20.05.1997 and he became successful. In terms of clause no.5 of earlier appointment letter dated 15.07.1996, his services were regularized and regular appointment letter was issued by opposite party no.1 with the counter signature of opposite party no.2 vide Annexure-4 dated 21.05.1997 allowing the scale of pay of Rs.1200-2040/- instead of Rs.1640-2900/-.

3. As there was no such scale of pay of Physical Education Teacher, which was allowed to the petitioner, he claimed for scale of pay of Rs.1640-2900/- which was admissible to PET in D.A.V. Higher Secondary Schools as per budget estimation of D.A.V. Higher Secondary School, (N.T.P.C./T.T.P.S.), by making representations to opposite parties on 24.02.1998. When no action was taken, he approached this Court by filing the present writ petition.

4. When the matter was subjudice before this Court, petitioner was terminated from service on 02.07.1998 antedating the same and relieved on 03.07.1998. He filed misc. case no. 8578 of 1998 with a prayer to stay operation of the order of termination. Consequentially, by order dated 16.07.1998 this Court directed opposite parties no. 1 and 2 not to take any coercive action against the petitioner. Despite such order being passed by this Court, even though the antedated order of termination was not communicated to the petitioner, the opposite parties relieved the petitioner from his post on 03.07.1998 with the plea that his services have been terminated.

5. Mr. S.D. Routray, learned counsel appearing on behalf of Mr. B. Routray, learned Senior Counsel for the petitioner contended that the petitioner filed representation claiming the scale of pay of Rs.1640-2900/-, which was admissible to the post of Physical Education Teacher. When such grievance of the petitioner was not considered and kept pending by the authority, he approached this Court. While the matter was subjudice before this Court, he was terminated from service antedating the same and relieved from the post by relieve order dated 03.07.1998 in Annexure-B. Therefore, the action of the authority is not only arbitrary, unreasonable, contrary to the provisions of law but also violative of the principles of natural justice.

6. Mr. Kanungo, learned counsel appearing on behalf of Mr. D.P. Nanda, learned counsel for the opposite parties stated that the petitioner though was appointed on 21.05.1997 on regular basis as a Physical Education Teacher in D.A.V. Higher Secondary School, N.T.P.C. (T.T.P.S.) in the scale of pay of Rs.1200-20140/-, but his appointment was based on certain terms and conditions that he would remain on probation for a period of two years with effect from the date of his joining to the post and on completion of the probation period he would be confirmed in writing in his post in case his work and conduct were found to be satisfactory. Further his period of probation could be extended by one year and his services could be terminated without assigning any reason by giving one month's notice or salary in lieu thereof, on either side during this period. In terms of appointment letter, while the petitioner was continuing under probation period,

on 03.07.1998, he was relieved from his duty on termination of service. Once the petitioner was terminated from service during his probation period, question of grant of higher scale of pay contrary to the terms of appointment letter is not admissible. Therefore, the claim made by the petitioner cannot sustain in the eye of law.

7. The D.A.V. Higher Secondary School was established by Talcher Thermal Power Station (T.T.P.S.) in the year 1986 and was being managed by T.T.P.S. till 1995. Thereafter, a resolution as per proviso to Sub-section (1) of Section 5 of the Talcher Thermal Power Station (Acquisition and Transfer) Act, 1994, having been duly passed on 03.06.1995, T.T.P.S. was taken over by National Thermal Power Corporation (N.T.P.C.). In 1996 N.T.P.C. handed over the institution to the D.A.V. College Trust Management Society situated at New Delhi. Pursuant to advertisement for walk-in-interview dated 29.06.1996 for appointment of Physical Education Teacher, the petitioner was appointed as Physical Education Teacher on ad hoc basis. The erstwhile T.T.P.S. of the then Orissa State Electricity Board, having been taken over by N.T.P.C. pursuant to Orissa Act 7 of 1995, a Memorandum of Agreement dated 29.04.1996 between N.T.P.C. and the D.A.V. Trust and Management Society, New Delhi (for short the "Society") was executed, by which N.T.P.C. handed over the said Higher Secondary Institution containing Classes XI and XII only to the Society which had a net work of hundreds of public schools and some of those were offering Higher Secondary Education established and run in the country. All those schools, except a few, were affiliated to the Central Board of Secondary Education, New Delhi (C.B.S.E.). The case institution is affiliated to the Council of Higher Secondary Education, Orissa (C.H.S.E.).

8. The D.A.V. Managing Committee has prescribed its own Rules governing the service conditions of the employees of the D.A.V. Public Schools appointed on regular, temporary or ad hoc basis, as the case may be. The petitioner was continuing in D.A.V. Higher Secondary School situated at T.T.P.S./N.T.P.C.. On 23.04.1997, an advertisement was issued by the Regional Directorate of D.A.V. Institutions (Orissa, West Bengal and Sikkim) inviting applications for filling up of the posts of P.E.T. for regular appointment. The petitioner applied for and appeared in the interview on 20.05.1997. He got selected and was appointed on regular basis by letter dated 21.05.1997 with scale of pay of Rs.1200-2040/- subject to terms and conditions stipulated therein. Conditions no.1 and 2 of the appointment letter dated 21.05.1997 read as follows:

"1. You will remain on probation for a period of two years with effect from the date of our joining the post. On completion of the probation period you will be confirmed in writing in your post in case your work and conduct are found to be satisfactory.

2. Your probation period can be extended by one year and your services can be terminated without assigning any reason by giving one month's notice or salary in lieu thereof, on either side during this period."

9. There were 22 D.A.V. Schools situated in different parts of Orissa by that time and out of those Schools, six schools had higher secondary education facility. In all D.A.V. Schools of Orissa, West Bengal and Sikkim, no appointment of Physical Education Teacher was made in any other scale other than Rs.1200-2040/-. Subsequently, some of them were promoted to the next higher scale of Rs.1400/-2600/-. There are two types of pay scales for Physical Education Teacher in Kendriya Vidyalaya Sangathan. One is from Rs.1200-2040/- and other is from Rs.1400-2600/-. In the Council of Higher Secondary Education, the pay scale of a PET is Rs.1400-2600/-. At no point of time, a PET was given a pay scale of Rs.1640- 2900/- under any Council or Institution. Therefore, the claim of the petitioner is not justified.

10. But, the fact remains, while he was continuing on probation period, he was terminated from his service on 02.07.1998 before completion of two years of service as probation and accordingly, he was relieved from the post on 03.07.1998. By the time this Court passed interim order on 16.07.1998 he was no more in employment with effect from 02.07.1998 pursuant to relieve order dated 03.07.1998.

11. A perusal of appointment order dated 21.05.1997 (Annexure-4) would show that in conditions no.1 and 2 it has been clearly stated that the petitioner would remain on probation for a period of two years with effect from the date of his joining to the post and on completion of the probation period he would be confirmed in writing in his post in case his work and conduct are found to be satisfactory. Further his period of probation could be extended by one year and his service could be terminated without assigning any reason by giving one month's notice or salary in lieu thereof, on either side during that period. Very often his appointment was initially made on probation.

12. In *Ajit Singh v. State of Punjab*, AIR 1983 SC 494, the reason as to why a period of probation is prescribed and how such period has been understood in service jurisprudence has been elaborately discussed by the Supreme Court. The Court explained that the concept of probation acquired importance in the developing master servant relationship in public service where it became difficult for the employer to dispense with the services of an employee without following certain procedural safeguards like natural justice, etc. It was observed that in order that an incompetence or inefficiency is easy to make but difficult to prove, the concept of probation was devised.

"To guard against errors of human judgment in selecting suitable personnel for service, the new recruit was put on test for a period before he is absorbed in service or gets a right to take post. Period of probation gave a sort of locus poenitentiae to the employer to observe the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserved a right to dispense with his service without anything more during or at the end of the prescribed period which is styled as period of probation".

13. In *Parshotam Lal Dhingra v. Union of India*, AIR 1958 SC 36, the apex Court held as follows:

"An appointment to a permanent post in Government Service on probation means, as in the case of a personnel appointed by a private employer, that the servant so appointed is taken on trial".

14. In *Ajit Singh*(supra), it is held by the apex Court that the probationer does not acquire any substantive right to the post and cannot complain if his service is terminated at any point of time during probation period i.e. before confirmation. Similar view has also taken in *State of U.p. v. Kaushal Kishore Shukla*, (1991) 1 SCC 691 and also *State of Punjab v. Sukhwinder Singh*, AIR 2005 SC 2960.

15. In view of aforesaid discussion, it can safely be held that probationer appointment is, by its very nature of a transitory character and in absence of any contract or special rule regulating the conditions of service implying in such terms and conditions that it is terminable at any time.

16. In *Union of India v. Raj Kumar Gupta*, 1995 Supp (2) SCC 607, the apex Court held that a probationer's right to continue will arise only on confirmation.

17. Admittedly, in the present case, the petitioner's services were not confirmed in terms of appointment. Therefore, if any action has been taken by the opposite parties in terminating the services of the petitioner, no fault can be found with them. More so, the claim made for higher scale of pay Rs.1640-2900/- also cannot sustain as the petitioner had accepted the terms and conditions mentioned in the appointment letter in Annexure-4 where the scale of pay had been mentioned as Rs.1200-2040/- and he is bound by the terms of the appointment letter.

18. In view of the aforesaid facts and circumstances, the relief sought for in the writ petition does not deserve to be granted. Accordingly, the writ petition is hereby dismissed. No order as to cost.