

(1973) 11 MP CK 0006
In the Madhya Pradesh High Court
Case No : M.P. Case No. 18 of 1971

Jagdish Prasad Mishra

APPELLANT

Vs

State of M.P., Bhopal and another

RESPONDENT

Date of Decision : 05-11-1973

Acts Referred:

Constitution of India, 1950 — Article 16, 226, 227

Citation : (1974) J LJ 300 : (1974) MPLJ 181

Hon'ble Judges : G.G.Sohani, J;A.P. Sen, J

Bench : Division Bench

Advocate : A.M. Mathur, for the Appellant; A.K. Chitale, for the Respondent

Final Decision : Dismissed

Judgement

G.G. Sohani, J.

This petition, under Articles 226 and 227 of the Constitution of India, is directed against an order dated 19-11-1970 passed by the Managing Director, Madhya Pradesh State Warehousing Corporation, Indore, termination the service of the petitioner.

The facts giving rise to this petition are briefly as follows:

Respondent No. 2 is a corporation established under the Warehousing Corporation Act, 1962 (hereinafter referred to as the "Act"). By an order dated 5-12-1967, the petitioner was appointed on probation for one year by respondent No. 2 as Junior Technical Assistant on terms and condition mentioned in the said order. The period of probation was extended for a further period of six months by an order dated 24-12-1968, passed by the Managing Director of respondent No. 2. After the expiry of the extended period of probation, the petitioner continued to be in service of respondent No. 2 till 19-11-1970 when his services were terminated by respondent No. 2 by an order dated 19-11-1970, by giving one month's notice.

Shri Mathur, learned counsel for the petitioner, has assailed the order of termination mainly on the ground that it contravenes Regulation 13 of the Madhya Pradesh State Warehousing Corporation Staff Regulations, 1962. It is contended that termination of services of the petitioner before attaining the age of fifty five years is contrary to Regulation 13 and as such is illegal. This contention has no force. Regulation 13 is applicable to a permanent employee of the Corporation. By its very nature, it cannot be made applicable to a person who has been temporarily employed by the Corporation. The order dated 5-12-1967 appointing the petitioner as Junior Technical Assistant on probation period of one year makes it very clear that the appointment was temporary. The relevant portion of the order appointing the petitioner along with thirty one other candidates reads as follows:

The appointment of each of the above candidates is purely temporary and subject to the following conditions:

(1)

(2) that during the above specified probationary period if his work is not found satisfactory, his services can be terminated without serving any notice from the Corporation at any time and thereafter his services are liable to be terminated by giving one month's notice on either side.

The petitioner has not placed on record any order of the Corporation appointing him permanently as an employee of the Corporation. Learned counsel for the petitioner has not drawn our attention to any provisions of the Act or the Regulations made thereunder which would turn the petitioner's temporary appointment into a permanent appointment after a lapse of certain period. Moreover, as the petitioner was appointed on probation in the first instance, unless an order confirming him is passed by the Corporation, the petitioner shall be deemed to have continued in his post as a probationer. The law on the point is now well settled. It has been held by their lordships of the Supreme Court in *Shri Kedar Nath Bahl Vs. The State of Punjab and Others*, as follows:

Where a person is appointed as a probationer in any post and a period of Probation is specified, it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf. Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period, or there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. At the end of the period of probation an order confirming the officer is required to be passed and if no such order is passed and he is not reverted to his substantive post, the result merely is that he continues in his post as a probationer.

The terms of appointment of the petitioner do not indicate that confirmation would automatically follow at the end of the specified period. No specific service rule has been brought to our notice which provides that, on the expiry of the

probationary period the appointment of the petitioner is confirmed. It is, therefore, quite clear that the petitioner continued to be on probation till 19-11-1970 when an order terminating his services was passed. Regulation 12(1) of the Regulations, reads as follows:

12 (1) The service of an employee of the class who is on probation may be terminated at any time by giving him one month's notice or pay in lieu thereof, provided that such notice shall not be necessary in the case of a temporary employee of class IV whose service is terminable without such notice by the terms and conditions of his appointment.

It is thus quite clear that in terminating the services of the petitioner, by giving him one month's notice, respondent No. 2 has acted in accordance with Regulation 12 (1) of the Regulations and the terms and conditions of the appointment of the petitioner, as contained in the order dated 5-12-1967. The termination, therefore, cannot be said to be illegal.

It was next contended on behalf of the petitioner that the order of termination of his services violated the provisions of Article 16 of the Constitution of India as untrained persons Junior to the petitioner were retained in service. There is no merit in this contention. The petitioner was a temporary employee of respondent No. 2 holding the post expressly on the condition that his services were liable to be terminated at any time on one month's notice. In *The Union of India v. Pandurang Kashinath More* A I R 1962 S C 63, their Lordships of the Supreme Court have observed that the fact that the service of an employee is terminated while employees junior to him are retained in service, does not by itself prove unequal treatment. In *Union of India v. Prem Parkash Midha* 1969 S L R 655, the Supreme Court observed as follows:

The District Court also held that when the service of the respondent was terminated and officers junior to him were retained in service, the respondent was denied equal opportunity to hold public service under Article 16 of the Constitution. But there is nothing in Article 16 of the Constitution which supports the view expressed by the learned District Judge. By Article 16, all citizens are entitled to equality of opportunity in matters relating to employment or appointment to any office under the State. By merely terminating the employment of the respondent, the respondent was not denied of equal opportunity to hold public service. Under Article 16 of the Constitution, it is not one of the fundamental rights that a person who is an employee of the State shall be entitled to continue in service and that his employment shall not be terminated so long as persons junior to him remain in service.

It is thus clear that the impugned order cannot be challenged on the ground that it violates the provisions of Article 16 of the Constitution of India.

For all these reasons this petition has no force and is accordingly dismissed. The petitioner shall pay costs of this petition to respondent No. 2 Counsel's fee Rs. 100 if certified. The balance of the amount of security deposit, if any, after

deduction of costs, shall be refunded to the petitioner.