

(1982) 09 DEL CK 0050

In the Delhi High Court

Case No : Civil Writ Appeal No. 1492 of 1973

Jarnail Singh

APPELLANT

Vs

Superintendent of Police and Others

RESPONDENT

Date of Decision : 01-09-1982

Acts Referred:

Citation : (1983) ILR Delhi 941 : (1983) LabIC 818 : (1983) RLR 216 : (1983) 2 SLJ 101

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Advocate : S.A.K. Dhar and A. Ahlawat, for the Appellant;

Judgement

M.L. Jain, J.

(1) The Assistant Inspector General of Police issued an order on 13th October, 1969 appointing the petitioner Jarnail Singh as Temporary Sub-Inspector against a temporary post. It was mentioned in the said order that the provisions of Rule 12.8(1) of the Punjab Police Rules (herein PPR) will not be applicable to him and that he would be governed also by the provisions of Central Civil Services (Temporary Service) Rules, 1965. On the same day, a certificate in Form No. 12.22(1) was issued to him by the Superintendent of Police by which he was appointed a member of the Police Force under the Police Act No. 5 of 1861 and was vested with the powers, functions and privileges of a Police Officer. The enrolment form as prescribed in the Ppr gives the designation of the appointing authority like this "Superintendent of Police or Deputy Inspector General of Police." But error has crept in the printed form by printing "for" in place of "or". The certificate in this case should, Therefore, be considered to have been signed by the S.P. for himself and not for the D.I.G. The petitioner underwent the prescribed course of instructions and was declared qualified for the rank of Sub-Inspector by the Training College, Phillaur. He had also passed the riding test. By order dated 15th October, 1973, the Superintendent of Police-of North District germinated the services of the petitioner under sub-rule (1) of Rule 5 of the

Central Civil Services (Temporary Service) Rules, 1965. The petitioner challenges this order.

(2) His first contention is that the order was by way of punishment and this could not be made without holding an enquiry and without show cause notice under Article 311 of the Constitution. The order is assailed as punishment in the following manner.

(3) On 11-10-1973 an F.I.R. was lodged in P.S. Kotwail, Delhi u/s 376|342|506|34 Indian Penal Code against the petitioner. The F.I.R. was lodged by one Mst. Rani. The petitioner was arrested and later on released on bail the same day. On 16-10-1973, a report appeared in the Indian Express that Jarnail Singh, Sub-Inspector has been sacked for allegedly raping the wife of a tea vendor of Chandni Chowk. The Sub Inspector had gone to her house in plain clothes to check a complaint against her husband who was not there at that time. The Patriot of the same date reported that Jarnail Singh of Kotwali Police Station has been served with a notice terminating his services for allegedly raping a woman on 12th October, 1973 according to the Superintendent of Police, North District Mr. Gautam Kaul. The alleged incident as appearing in the newspapers gave variety of versions. It looked as if the information was supplied to the Press by the Police. It is in this background that his services were terminated. Though the order on the face of it appears to be innocuous, yet it amounted to a penalty. Reliance was placed on R.D. Saxena v. and others v. State of U.P. and another 1969 S.L.R. 252. In the charge of rape the petitioner was, ultimately acquitted on 7-1-1975 because prosecutrix Rani refused to recognise him. The petitioner has now joined the noble profession of law.

(4) The case of the respondents is that the services of the petitioner were not dispensed with on account of the alleged offence. As a matter of fact when his chance came for being declared as quasi-permanent, he was passed over twice on account of unsuitable and undesirable conduct. Shortly, the respondents contend that the services of the petitioner were dispensed with on account of unsuitability. The learned counsel submitted that the previous charges of corruption cannot be taken into consideration because that will violate Ppr, Rules 18.24, 16.27. 16.38 and 16.40 which provide how the cases of corruption should be dealt with. But we are not here concerned with any charge of corruption, nor was the petitioner sent out because of previous complaints. These complaints have only provided a backdrop for consideration. Be that as it may, the impugned order does not seem to have any relationship with the case that was lodged against the petitioner. Though in virtue of The State of U.P. v. Ram Chandra Trivedi 1976 (2) S.L.R. 859, the Court is not permitted to delve into files, yet the respondents have shown me the file in which the services of the petitioner were terminated. The file shows that the termination was not at all in relation to the alleged occurrence. Therefore, it cannot be said that the said occurrence was the foundation of the important order. The Government may have been motivated by the said occurrence but the order was not made in order to cast

any stigma or impose punishment on the petitioner, rather it was done with a view to give him a chance to make good in other walks of life : See *Shamsher Singh v. State of Punjab* 1974 (2) S. L. R. 701, *The State of Bihar v. Shiva Bhikshuk Mishra* 1970 S.L.R. 863 *Union of India and others v. B.C. Gupta* 1980 (2) S.L.R. 19 In *Shamsher Singh* (Supra) it was observed that an innocuous order may involve infraction of Article 311 where the facts and circumstance established that an inquiry into misconduct resulting in stigma has preceded the order. No inquiry of any kind was made in this case. Hence, there is no need to tear the veil and see the hidden face of the order. The facts stated in the publication of the news in the national dailies were not the foundation of the termination. In *R.D. Saxena* (Supra) the facts stated in the report were held to deprive the officer of his property fair name. I wonder whether one's property is taken away or not is a sound criteria to apply for determining whether termination is by way of penalty or not. The learned Judge did agree that termination of the services of a temporary government servant if induced by the belief that he is unsuitable or dishonest will not attract Article 311, but added that if publicity is given to that belief in order that action against the government servant may act as deterrent to others, the effect would be that the action would become punitive. With respect, I must disagree with the later part of the proposition because the Press enjoys great freedom in this country and I am further of the view that if they or the government give publicity to such news, it serves a great public purpose as deterrence is one of the commendable motives for any effective and purposeful government. If the government is not allowed to dispense with its temporary servants who bring bad name to it, then, it is to ask it to carry an unwanted weight until an enquiry is held. What the ratio of several decisions of the Supreme Court appears to be is that the Government can dispense with the services of a temporary employee who has no right to a post, in either of the two ways : (i) by an order of termination simplicities in terms of the rule or contract without anything more; (ii) by attaching a stigma or casting a blame.

(5) It is only in the second, case that it cannot do so without proper enquiry under Article 311. What has been worrying the Courts is that stigma or blame may not be apparent but it be the real motive or the base of the order. In such cases, it has been held that if it is a motive, it is wholly irrelevant and the court need not question it : *Shrinivas Ganesh Vs. Union of India*, and *The State of U.P. Vs. Ram Chandra Trivedi*, . If certain complaints or circumstances are taken into account for the purpose of considering the suitability of the employee for his continuing in service or if the impugned order is made in the background of the allegations, then a departmental inquiry is not necessary. It is only when they form the foundation of termination, then the question of punishment may arise: See *State of Uttar Pradesh Vs. Bhoop Singh Verma*, . The facts alleged in this case, even if they formed the motive, were not the foundation of the order. The order in question, Therefore, cannot be held to be punitive in nature.

(6) The next contention of the petitioner is that the Central Civil Services

(Temporary Service) Rules being the general rules cannot apply to the case of the petitioner who is governed by the Special Rules i.e. Ppr which form a complete Code of service for the police. Reliance is placed in this connection upon *State of U.P. and others v. Babu Ram Upadhyaya* 1961 Sc 751. But that proposition does only support the Administration because the special Code, namely, Ppr, Rule 12.8 as amended on 8-1-1965 itself provides that the said rule shall not apply to the direct recruitment against temporary posts. Even otherwise, the Central Civil Services (Temporary Service) Rules will apply, vide *Ramachander Sagar v. Delhi Administration and Others* 1975 (1) S.L.R. 216. There is no inconsistency or conflict between the two sets of Rules, nor is the said rule 5 more drastic than the original Ppr 12.8. This argument is, Therefore, rejected.

(7) The learned counsel then urged that Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 is ultra virus Articles 14 and 16 of the Constitution because it vests the authorities with arbitrary powers to the appointing authority to dispense with the services of the temporary employees. This argument is an argument of despair. It appears to me quite clear that temporary servants form a class by themselves and there is a laudable object which is served by Rule 5 and that is that the services of a temporary employee may be dispensed with without taking any disciplinary action or casting any stigma against him. No guidelines are required for the exercise of such a simple rule. There is a reasonable nexus between the Rule and the object and the rule cannot be considered either arbitrary or otherwise unconstitutional.

(8) Mr. Dar then submitted that under Ppr, Rule 12.8 the appointment of the petitioner shall be deemed to be under probation. He has received commendation certificate. He cannot be discharged except as provided in the Ppr R. 14.12 and the terms of agreement given in enrolment Forms. I do not think that all these rules will apply to the petitioner because he is governed by the Temporary Service Rules. The amended rule 12.8 provides for two categories of officers, (i) probationers and (ii) temporary as against the unamended rule which envisaged no appointment except one on probation. The submission has no force and is rejected.

(9) The next argument is that his appointing authority was the I.G. Police or at any rate D.I.G. Police and, Therefore, his services cannot be terminated by the Superintendent of Police. It appears from the order of appointment that it was made by the Assistant Inspector General of Police. There is nothing on record to show that the appointment was made by the I.G. or D.I.G. and that the Assistant General of Police was only communicating the order mad by them. There is no basis for such a contention. I have seen the file of recruitment. The petitioner was selected by a Board chaired by a Dig but neither the Board nor the Dig or Ig had appointed or approved the appointment of the petitioner. The rank and grade of an Assistant Inspector General Police, Headquarters is equal to that of a Superintendent of Police and, Therefore if the petitioner's services were

terminated by the District Superintendent of Police, it cannot be said that his services were terminated by an officer below the rank of the appointing authority. If the submission is, that only a District Superintendent of Police or an officer superior to him can appoint a Sub-Inspector, then the very order of appointment being void ab initio, this court would not interfere if his temporary services are brought to an end later on. I think Mr. Dar would not like to press his argument to the detriment of his client. This argument, is, Therefore, rejected.

(10) Lastly, Mr. Dar submitted that the order was mala fide. According to him the petitioner was a probationary Sub-Inspector and automatically confirmed after the expiry of 3 years. He could not be termed as temporary government servant. He has been receiving commendation certificates. His services have in fact been dispensed with because of a false allegation of rape made against him though purported to have been done under a colourable and malafide exercise of the said rule 5. I do not think that any case of malafide can be made out in this manner. If the petitioner is for any reason considered not suitable then the government is at liberty to dispense with his services in accordance with the rules, made in this connection.

(11) I find no substance in any of the arguments advanced on behalf of the petitioner and dismiss this writ petition. No costs.