
(1987) 12 SHI CK 0001
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 350 of 1987

Kuldip Singh

APPELLANT

Vs

The State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 29-12-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1988) 2 ShimLC 46

Hon'ble Judges : P.D. Desai, C.J;R.S. Thakur, J

Bench : Division Bench

Advocate : Harish Behal, for the Appellant; P.N. Nag, Geneal, for the Respondent

Final Decision : Allowed

Judgement

P.D. Desai, C.J.—The Petitioner was appointed by the Director of Social and Women's Welfare, Himachal Pradesh, as driver on daily wages at the rates approved by the Deputy Commissioner, Simla, for a period of three months with effect from October 28, 1986, or till the post was filled in on regular basis and was given posting in the Directorate of Social and Women's Welfare, vide Annexure P-I, dated December 27, 1986. He was thereafter re-appointed twice as driver, after giving fictional breaks, vide orders dated March 2, 1987 and May 18, 1987, for the periods from January 30, 1987 to April 29, 1987 and from May 1, 1987 to July 29, 1987, respectively. Although his last appointment in terms of the order dated May 18, 1987, came to and end on and from July 30, 1987, he was continued to be employed till July 31, 1987, when his services were "dispensed with immediate effect"" as "no longer required" vide Annexure P-2. The Petitioner challenges herein the said order dispensing with his employment.

2. In the affidavit-in-reply dated September 25, 1987, filed by the Director, Social and Women's Welfare, Himachal Pradesh, the ground which formed the real basis for the termination of the employment of the Petitioner is disclosed in the following words in para 4:

Para 4.-The services of the Petitioner were not terminated to accommodate another person as alleged by him. A team of ICDS Projects from Andhra Pradesh had come to this State in July, 1987 to visit various projects being run by this State Government. The Superintendent ICDS was deputed to accompany the team. The Vehicle No. HPS 5786 alongwith Petitioner as Driver was placed at the disposal of the said Superintendent for undertaking the journey with the team. While going from Dharampur to Rampur with the study team on ICDS from Andhra Pradesh on 15-7-1987, the vehicle No. HPS 5786 went out of order at Theog. The members of the team had to be transported in another jeep and the luggage remained in jeep No. HPS 5786. When this vehicle reached Rampur on 16-7-1987 morning, one attache case of Smt. K. Sunanda, a member of the team was found missing. The driver of the vehicle Sh. Kuldeep Singh Petitioner told that it was stolen at Theog. The case was registered with the Police Station Theog by the said Superintendent on 15-7-1987 with regard to the theft of the luggage. The Theog Police caught the culprit and the attache case was recovered from him and restored to the owner on 18-7-1987.

This episode occurred because of the sheer negligence of the Petitioner. It also brought bad name to this State as the members of the team were from Andhra Pradesh and we were expected to provide them the best services.

The services of the Petitioner were terminated because of this lapse/negligence on his part.

In paras 6 and 7 of the said affidavit also, there is a reference to the alleged "lapse", "negligence" and "carelessness" of the Petitioner as disclosed by the incident in question.

3. The Petitioner thereafter moved an application for amendment of the petition which was granted and by way of the amended petition he has challenged the impugned order as illegal on the ground, inter alia, that the termination, although apparently simpliciter, is truly penal in nature and that it could not have been effected without compliance with the elementary rules of natural justice. In reply to the amended petition, an affidavit-in reply dated December 26, 1987, has been filed by the Director, Social and Women's Welfare, Himachal Pradesh, in which the same defence has been put forward but a little more vehemently. Paras 4 and 7 of the affidavit in-reply are reproduced hereinbelow verbatim:

Para 4.-The Petitioner was not a regular Government servant. He was offered the post of Driver on daily wages basis for specific period as a stop gap arrangement as is apparent from his appointment orders. The Respondent No. 2 was not required to offer him opportunity to defend himself as the theft of luggage from the Jeep which was under his charge was sufficient to prove his negligence and carelessness. The Petitioner is solely responsible for the lapse as he should not have given lift to the unauthorised persons in the vehicle. Had he not given this lift, the ugly episode would not have occurred which brought bad name not only to the Department but also to the entire State. The members of the study team

were our Honourable Guests and we were supposed to look-after their comforts properly. Instead, due to the negligence of the Petitioner, the luggage of the members of the study team was stolen, which put them to a lot of inconvenience. It was beyond the knowledge of the Department that the glass of the back door of the vehicle was defective. The Petitioner apprised the Department of this fact vide his application dated 25-7-1987 i.e. after a lapse of 10 days of the aforesaid episode. The reporting of defective glass of back door seems to be an after-thought, in order to absolve himself of the episode of theft. If such action is not taken against the defaulting employees, it gives encouragement to the negligent and inefficient member of the staff. His services had to be terminated to maintain proper discipline and efficiency in the Department. The appointment letter issued to the Petitioner did not debar the Respondent No. 2 in terminating the services of the Petitioner, at any time, without assigning any reason.

* * * * Para 7.-In view of the facts stated to above, it is abundantly clear that the action of Respondent No. 2 in terminating the services of the Petitioner was fair, just and legal. If the defaulting officials are not punished, it breeds indiscipline in the Department. No order of the Hon''ble High Court has been disobeyed by the Respondents at any point of time. All the directions of the Hon''ble High Court are obeyed scrupulously and, therefore, no contempt of Court is attracted in the instant case. The Petitioner was appointed for specific periods and, therefore, the Respondent No. 2 was not required to offer any opportunity to the Petitioner, when the Respondent No. 2 was herself convinced about the grave lapse committed by the Petitioner in the discharge of his duties. The services of the Petitioner could not be continued till the appointment of the regular incumbent, even after noticing the Himalyan blunder perpetrated by him.

4. The law is well settled that when a termination of employment is challenged, the Court has the power and, indeed, the duty to X ray the order and to discover its true nature, if the object and effect, if the attendant circumstances and the ulterior purpose to beget rid of the employee because he is an evil to be eliminated. The Court is entitled to go behind the form of the order, to look at the substance and to set aside what may masquerade as termination simpliciter, if in reality it cloaked a dismissal for misconduct as a colourable exercise of power. If the employer illegitimately but ingeniously passes an innocent-looking order of termination simpliciter in order to avoid taking the trouble of holding a lawful inquiry suitable to the occasion or to cover up the possible inability to establish the charges by an enquiry, such action is bad and is liable to be set aside. See *L. Michael and Another Vs. Johnson Pumps Ltd.*, .

5. In the present case, the Court is absolved from the requirement of looking behind the order in the search for its real foundation because the two affidavits-in-reply filed by the Director, Social and Women s Welfare leave no room for doubt or debate that the impugned termination is based on the alleged misconduct on the part of the Petitioner arising out of what has been described

as his "negligence", "carelessness", "inefficiency", "grave lapse" and "Himalyan blunder" in the discharge of his duties. The impugned termination, therefore, could not have been effected without complying with the minimal requirements of natural justice. This elementary principle of the administrative law, which every public authority dealing with a public servant is required to observe under the circumstances aforementioned, has been brushed aside in the present case by a stroke of pen in what cannot but be described as an arbitrary manner.

6. True it is that the Petitioner was a daily rated employee. However, this Court has repeatedly held that even a daily-rated workman cannot be rushed out of employment, on such grounds and under such circumstances, without compliance with the basic rules of natural justice, although no regular departmental enquiry is required to be held against him. It may be reiterated that in the case of a daily-rated employee against whom penal action is proposed, the least that is required to be done is: (1) to inform him of the proposed action, (2) to disclose to him the material sought to be relied against him, (3) to afford him a reasonable opportunity to correct or controvert such material and to place his view-point and (4) to arrive at a fair and just decision supported by reasons. Be it realised that the protection of Articles 14 and 16 of the Constitution is available as much to an employee on daily-wages as to any other employee in the public sector. He too has to be dealt with in a fair and just manner and not arbitrarily or whimsically.

7. The learned Advocate General submitted that the employment of the Petitioner had come to an end on July 29, 1987, and that therefore, there was no question of terminating the employment on the grounds stated or otherwise and also no requirement of complying with the rules of natural justice. The submission has been made merely to be rejected. Even though the formal employment of the Petitioner may be regarded as having come to an end on July 29, 1987, the record discloses that the employment, in fact, continued beyond that date and that he was actually treated as continuing in employment on the day on which the termination took place. Indeed, the very fact that a termination order was passed is itself indicative that the employment continued and was required to be terminated.

8. It is a sad day to find, after thirty-seven years of the rule of law having been established in this country by the enactment of the Constitution, at high ranking public officer coming forward with a plea of the nature which has come on the record of the case which discloses a total obliviscence of the basic tenants of the administrative law and a disregard of the rules of fair play and justice. The Court legitimately expects that it will not have to countenance a plea of this kind in any future case.

9. For the foregoing reasons, the writ petition succeeds and it is allowed. The termination order dated July 31, 1987, Annexure P-2, is declared to be void and ineffective in the eye of law. The Petitioner is directed to be treated as having continued in employment on daily wages as driver as if such termination had not

taken place. The Petitioner will be permitted to resume duty as daily-rated driver on and from January 1, 1988 and he will continue to be employed as such till his employment is terminated in accordance with law. The Petitioner shall be paid back-wages and other benefits for the intervening period, that is, from July 31, 1987 to December 31, 1987, within a period of four weeks. The authorities will, however, be at liberty to take action against the Petitioner in accordance with law and in light of the observations made in the course of this judgment for his alleged acts or omissions, if any, which resulted in his impugned termination. Any such proceeding shall not, however, be dealt with and decided by the Director, Social and Women's Welfare, Himachal Pradesh but shall be processed and adjudicated upon at a higher level, lest such proceeding is subjected to a challenge once again on the basis of the doctrine of bias.

10. Rule made absolute accordingly. The Petitioner is entitled to the costs of the petition which are quantified at Rs. 250 and which shall be paid to him within a period of four weeks from today.