
(1994) 04 GAU CK 0013
In the Gauhati High Court
Case No : Civil Rule No. 39 of 1994

Laxmi Kanta Das

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 06-04-1994

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5, 5(1)
Constitution of India, 1950 — Article 14, 16, 311(2)
Evidence Act, 1872 — Section 123, 162

Citation : (1995) 3 GLR 431

Hon'ble Judges : S. Barman Roy, J

Bench : Single Bench

Advocate : B. Das, for the Appellant; U.B. Saha, G.A., for the Respondent

Final Decision : Allowed

Judgement

Barman Roy, J.—By this writ petition, the Petitioner seeks to challenge the order of the Superintendent of Police. West Tripura, Agartala terminating the services of the Petitioner.

2. The case of the Petitioner, in short, is that the Petitioner is a member of "Mahisyadas Community". According to him, it is a Scheduled Caste Community. Sub-Divisional Officer, Dharmanagar after making elaborate enquiry issued a certificate in his favour way back on 20.8.87 stating, inter alia, that the Petitioner is a member of the Scheduled Caste Community. Sometime in February, 1991 the Petitioner was appointed as Lower Division Clerk under the Police Department of the Government of Tripura against a post reserved for Scheduled Caste.

3. It is stated by the Petitioner that once one Mr. B.S. Yadab. Additional Superintendent of Police (Rural), West Tripura, Agartala informed the Petitioner that there were some allegations against him that he does not belong to Schedule Caste Community and also that on the basis of a false certificate stating that he belonged to Scheduled Caste Community, the Petitioner grabbed the appointment order to the post of Lower Division Clerk, as already stated. The

said Additional Superintendent of Police made an elaborate enquiry into the matter and also heard the Petitioner and collected from him his Employment Exchange Card and Scheduled Caste Certificate. Subsequently the aforesaid documents were returned back to the Petitioner on 1.7.1991.

4. It is further alleged by the Petitioner that he was asked by the Superintendent of Police, West Tripura, Agartala to appear before one Shri B. Dutta Choudhury, Inspector of Police, Vigilance on 9.7.1992 in connection with some enquiry into a vigilance case. Subsequently the Petitioner learnt that the enquiry was about the same allegation against the Petitioner that the Petitioner does not belong to Scheduled Caste Community and that by using a false Scheduled Caste Certificate he had obtained/grabbed the appointment to the said post of Lower Division Clerk. However, the Petitioner duly appeared before the said Inspector and made a statement stating, inter alia, that he belongs to "Mahisyadas Community" and his community is a Scheduled Caste Community and accordingly, the certificate he had obtained from Sub-Divisional Officer, Dharmanagar is not at all false and it is genuine.

5. Again by Memorandum dated 24.9.1993 the Superintendent of Police, West Tripura, Agartala intimated the Petitioner that it was reported to him that by producing a false certificate that Petitioner belonged to Scheduled Caste Community, he had grabbed the said appointment to the post of Lower Division Clerk and therefore, Superintendent of Police asked the Petitioner to explain why appropriate disciplinary action should not be taken against him for producing a false certificate and thereby procuring the said appointment. The Petitioner duly submitted his reply denying the aforesaid allegations. In the said reply it was, inter alia, contended by the Petitioner that the Scheduled Caste Certificate issued to the Petitioner by the Sub-Divisional Officer, Dharmanagar has not been cancelled by any authority whatsoever and therefore so long as the said certificate stands valid, it cannot, be said that the said certificate is false or that the Petitioner does not belong to Scheduled Caste Community.

6. The Petitioner also stated that some mischiefmonger lodged some complaint to the authority alleging, inter alia, that the Petitioner does not belong to Scheduled Caste Community and on the basis of such complaint some enquiries were held behind the back of the Petitioner. The Petitioner has not been given to know who made the allegation against the Petitioner. The Petitioner further reiterates in the writ-petition that the Sub-Divisional Officer, Dharmanagar, who issued the said certificate to the Petitioner, never cancelled the said certificate nor ever issued any show cause notice to the Petitioner.

7. The Petitioner apprehended that behind his back the Administrative Reforms Department and its Vigilance Organisation under the Government of Tripura and the Director General of Police, Tripura took up the matter and the said authorities decided to terminate the services of the Petitioner under Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965 on the ground that the Petitioner submitted a false Scheduled Caste Certificate and on that basis he procured a job

under a Government Department.

8. Ultimately his apprehension proved to be true in the sense that on 17.12.1993 the Petitioner was served with an order of termination dated 17.12.1993 terminating the services of the Petitioner forthwith under Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965, Superintendent of Police. West Tripura, Agartala issued the said termination order. The copy of the order of termination is annexed to the writ petition as Annexure-F and the same reads as under:

In pursuance of the proviso to Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 hereby terminate forthwith services of Shri Laxmi Kanta Das. L.D. Clerk and direct that he shall be entitled to claim of a sum equivalent to the amount of his pay plus allowances for the period of notice for a period of one month at the same rates at which he was drawing immediately before the termination of his services.

7. Mr. B. Das, learned Counsel for the Petitioner submits that the Petitioner was terminated from his services solely on the ground that he did not belong to Scheduled Caste Community and that by producing a false Scheduled Caste Certificate the Petitioner grabbed the aforesaid appointment order to the post of Lower Division Clerk. Mr. Das submits that though the termination order may appear to be a termination simpliciter but a proper enquiry and perusal of the relevant files would divulge that the termination order is not only arbitrary and illegal but also penal in nature.

8. In reply to this Mr. U.B. Saha, learned Government Advocate raised an objection that when the termination order on the face of it is innocuous, this Court has no authority to delve into the Government files/records to find out whether the termination order was in fact penal or not.

9. To buttress this contention, learned Government Advocate referred to a decision of this Court *John Vanlala v. State of Nagaland and Ors.* (1986) 1 GLR 485. In that case learned Single Judge of this Court held that the Petitioner had failed to show *prima facie* that the order was passed by way of punishment. Therefore, it was not required to send for connected records and no question of following the principle of natural justice arises. Therefore, it is apparent that for failure of the Petitioner to make out a *prima facie* case in the petition that the termination order was passed by way of punishment, the learned Single Judge of this Court in the aforesaid decision refused to go behind the impugned termination order and examine the relevant files/records of the Government to find out as to whether the order of termination was passed by way of punishment or not. In short, learned Single Judge refused to go behind the termination order when the Petitioner himself failed to make out a *prima facie* case that the Petitioner's services were terminated by way of punishment. In the said case this Court while referring to a decision in *Anoop v. Govt. of India* AIR 1984 SC 650 observed that Supreme Court held in that case that where the form of the

order is merely camouflage of an order of dismissal for misconduct, it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. In doing so, the circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial, Therefore, the very decision of this Court relied upon by the learned Government Advocate lays down that when the order of termination is merely a camouflage of an order of dismissal for misconduct, it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. This Court further observed that in each case, it is necessary to examine the entire range of the facts carefully and consider whether in the light of those facts the authority intended to punish the Government servant or, having regard to the character, conduct and suitability in relation to the post held by him it was intended simply to terminate his services. This Court also observed that if the material against the Government servant on which the superior authority has acted and constitutes the motive and not the foundation of the order, the order is not passed by way of punishment and is merely an order of termination simpliciter. Therefore, in the instant case it is to be examined as to whether foundation of the said termination order passed against the Petitioner was alleged submission of false Scheduled Caste Certificate and procurement of a job on that basis. If that be the foundation for terminating the services of the Petitioner, then it has to be held that it was by way of punishment.

10. Learned Government Advocate also relied upon the decision in State of Uttar Pradesh Vs. Bhoop Singh Verma, In that case the Supreme Court after taking into consideration all the facts and circumstances of the case came to the conclusion that the reprehensible conduct of the Respondent merely constituted the motive for passing the order but was not the foundation of the order. Therefore, from that decision also it appears that if some reprehensible conduct is made foundation of the termination order, it amounts to an order by way of punishment and hence that cannot be treated as termination simpliciter.

11. In the instant case, it is to be examined whether the Scheduled Caste Certificate has been cancelled by any competent authority or not, If it is not cancelled by any authority competent to do so, the services of the Petitioner cannot be terminated on the ground that procurement of false Scheduled Caste Certificate and procurement of a job on that basis was merely motive behind such termination and not foundation for the termination order. When the motive itself was unjustified under the circumstances of the case, such termination order can also be interfered with.

12. On the other hand Mr. B. Das, learned Counsel for me Petitioner has referred to the decision of the Supreme Court in the case of The Manager, Government Branch Press and Another Vs. D.B. Belliappa, In that case Supreme Court held that if the services of a temporary Government servant are terminated in accordance with the conditions of his service on the ground of

unsatisfactory conduct or his unsuitability for the job and/or for his work being unsatisfactory, or for a like reason which marks him off a class apart from other temporary servant who have been retained in service, there is no question of the applicability of Article 16 of the Constitution. 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, Where a charge of unfair discrimination is levelled with specificity or improper motive are imputed to the authority making the impugned order of termination of the service, it is the duty of the authority to dispel that charge by disclosing to the Court the reason or motive which impelled it to take the impugned action. Excepting, perhaps, in cases analogous to those covered by Article 311(2), proviso (c) the authority cannot withhold such information from the Court on the lame excuse that the impugned order is purely administrative and not judicial having been passed in exercise of its administrative discretion under the rules governing the conditions of the service. Supreme Court further held in that case that the executive, no less than the judiciary, is under a general duty to act fairly. Indeed, fairness founded on reason is the essence of the guarantee epitomized in Articles 14 and 16. It was further observed by the Supreme Court in this case that the services of the Government employee were terminated without giving any reason while some other employees junior to him were retained in service. The employee was earlier served with show cause notice questioning his integrity and fidelity but the Government ultimately adhered to the stand that there was no nexus between the show cause notice and termination of service. Under these circumstances, it was ultimately held by the Supreme Court that the termination was made arbitrarily and not on the ground of unsuitability or other reason. It was perhaps open to the Government to say that in view of the complaint alluded to in the show cause notice against integrity and fidelity of the employee that the former had lost confidence in the latter and considered him unsuitable to be continued in the post which was one of trust and confidence. But when the Government instead of taking any such plea has, with obdurate persistency, stuck to the position that the employee's service has been terminated without any reason, it amounted to nearly admitting that the power reserved to the employer under the conditions of employment, has been exercised arbitrarily.

13. Again Supreme Court Jarnail Singh and Others Vs. State of Punjab and Others, expressed the same view. In that case Supreme Court observed that the mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an ad hoc appointee is a termination simpliciter in accordance with the terms of the appointment without attaching any stigma to the employee concerned. It is the substance of the order i.e. the attending circumstances as well as the basis of

the order that have to be taken into consideration. When an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous forms, it is incumbent on the court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of in order to determine whether the order was made on ground of misconduct and inefficiency or not. In that case ultimately after considering the catena of decisions of the Supreme Court, it was held 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, (sic) clear that the order of termination had been made by way of punishment on the ground of misconduct and adverse entry in service record which were taken into consideration by the Departmental Selection Committee without affording the aggrieved persons any opportunity of hearing and without following the procedure provided in Article 311(2) while considering their fitness and suitability for the purpose of regularising their services in accordance with Government circular.

14. It is true that learned Government Advocate relied upon the decision in the case of *The State of U.P. Vs. Ram Chandra Trivedi*, But I find that in paragraph 11 of the decision in *Anoop Jaiswal v. Anoop Jaiswal Vs. Government of India and Another*, it has been observed that after the decision of the Supreme Court in *Samsher Singh Vs. State of Punjab and Another*, the law laid down by the Supreme Court in *Ram Chandra Trivedi*'s case is no longer good law inasmuch as in *Samsher Singh*'s case decision was made by a larger bench of as many as seven judges.

15. The main question here is whether this Court can examine the relevant files to ascertain the reasons for termination of service of the Petitioner. Now in the *The State of U.P. Vs. Raj Narain and Others*, a Constitution Bench of the Supreme Court observed that the foundation of the law behind Sections 123 and 162 of the Evidence Act is the same as in English law. Injury to public interest is the reason for the exclusion from disclosure of documents whose contents if disclosed would injure public and national interest. Public interest which demands that evidence be withheld is to be weighed against the public interest in the administration of justice that courts should have the fullest possible access to all relevant materials. When public interest outweighs the latter, the evidence cannot be admitted. The court will proprio motu exclude evidence the production of which is contrary to public interest. It is in public interest that confidentiality shall be safe-guarded. The reason is that such documents become subject to privilege by reason of their contents. Confidentiality is not a head of privilege. It is a consideration to bear in mind. It is not that the contents contain material which would be damaging to the national interest to divulge but rather that the documents would be of class which demand protection.

16. Therefore, from the aforesaid discussion and case laws decided by the apex

court of the land it is clear that the files containing material regarding termination of the Petitioner from his service are not of the nature which enjoy any privilege/protection. Their disclosure will in no way be prejudicial to the public interest or national interest. Therefore, I have no hesitation in my mind to hold that the relevant files are not privileged.

17. In course of hearing of the matter learned Govt. Advocate could not give any reason for terminating the service of the Petitioner. He merely submitted that the impugned order of termination being innocuous in nature and as it apparently does not contain any stigma whatsoever, there is not reason to suspect that the termination order was issued by way of punishment and that being the position, learned Government Advocate submits that there is no scope for the court to delve into the relevant files.

18. I have narrated the facts of the case as stated in the petition. Failure on the part of the State to justify the order of termination with reasons coupled with the facts and circumstances as stated in the petition, I am constrained to observe that at least the Petitioner has made out a prima facie case to suspect that the Petitioner's services were terminated by way of punishment and as such the files should be examined to ascertain what was the basis for terminating the services of the Petitioner.

19. The Supreme Court in a series of decisions cautioned that men in power must always remember that it is trite that "be you ever so high, the laws are above you." These warnings were uttered by the Supreme Court in respect of those to whom the Government is entrusted for the time being. In *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, the Apex Court observed that no doubt, the appointing authorities have power to terminate services of a temporary employee without assigning any reason. But that does not mean that the appointment is at the sweet will of the Government which can be terminated at any time, even without the existence of any cogent reason during the subsistence of the term. The expression "without assigning any reason" means without communicating any cause to the appointee whose appointment is terminated and is not to be equated with "without existence of any cause". It merely means that the reason for which the termination is made need not to be assigned or communicated to the appointee, though the decision has to be communicated. The non-assigning of reasons or the non-communication thereof may be based on public policy, but termination of an appointment without the existence of any cogent reason in furtherance of the object for which the power is given would be arbitrary and, therefore, against public policy. The Supreme Court further observed that the requirement of Article 14 should extend even in the sphere of contractual matters for regulating the conduct of the State activity. Applicability of Article 14 to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, the State cannot thereafter cast off its personality and exercise unbridled power unfettered by the

requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more. The personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. Unlike the private parties the State while exercising its power and discharging its functions, acts, indubitably, as is exacted of it, for public good and in public interest. The impact of every State action is also on public interest.

20. From the aforesaid discussion of case laws it is apparent that the State authorities have power to terminate services of a temporary employee without assigning any reason. That does not mean that the State authorities can act though no reason for termination of services exists. State cannot act arbitrarily or un-reasonably. The basic requirement of Article 14 of the Constitution is fairness in action by the State. The State cannot be permitted to act otherwise in any field of its activity, irrespective of the nature of its functions when it has the uppermost duty to be governed by the rule of law. Non-arbitrariness, in substance, is only fair play in action. Non-arbitrariness, being a necessary concomitant of the rule of law, it is imperative that all actions of every public functionary, in whatever sphere, must be guided by reason and not humour whim, caprice or personal predilections of persons entrusted with the task on behalf of the State and exercise of all power must be for public good instead of being an abuse of power. Arbitrariness is the very negation of rule of law. Satisfaction of this basic test in every state action is sine qua non to its validity and in this respect State cannot claim comparison with a private individual. Supreme Court also observed in *Shrilekha Vidyarthi's* case that there is presumption of validity of the State action and the burden is on the person who alleges violation of Article 14 to prove the assertion. This can be done by showing in the first instance that impugned State action is uninformed by reason inasmuch as there is no discernible principle on which it is based or it is contrary to the prescribed mode of exercise of the power or is unreasonable. If this is shown, then the burden is shifted to the State to repel the attack by disclosing the material and reasons which led to the action being taken in order to show it was an informed decision which was reasonable. If after a prima facie case of arbitrariness is made out, the State is unable to show that the decision is an informed action which is reasonable, the State action must perish as arbitrary.

21. Accordingly, on perusal of the relevant file bearing No. F.1 (16)-PHQ/91 I find that Asstt. Inspector General of Police by his letter dated 8.12.93 directed the Superintendent of Police to terminate the services of the Petitioner. I quote the letter below:

No. F. 1 (16)-PHQ/91 Government of Tripura Office of the Director General of Police Tripura; Agartala

Dated, Agartala, the 8th December, 1993.

The Superintendent of Police, West Tripura District, Agartala.

Subject : TERMINATION OF SHRI LAXMI KANTA DAS, L.D. CLERK.

Shri Laxmi Kama Das was appointed as L.D. Clerk in your office on 19.2.91 in a temporary capacity. This refers No. 1732-36/F.5-13(11)/SPW/91 dated 8.2.91 of SP West Tripura District. He continues to be a temporary Government servant. He was appointed against a post reserved for Scheduled Castes.

2. It has transpired that certificate produced by him in respect of his caste status is not genuine. In this connection a copy of No. 392/VIG/CS/93 dated 31.5.93 (without enclosures) of SP (Vigilance) is sent herewith. It has been decided that he may be dismissed or removed from service. In this connection a copy of No. F. 11(66)-ARD/91/5847 dated 3.12.93 of Government of Tripura is enclosed herewith.

3. Shri Laxmi Kanta Das may please be removed from service by termination of his service by issue of following order by you.

In pursuance of the proviso to Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service Rules, 1965, I hereby terminate forthwith the services of Shri Laxmi Kanta Das and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rate at which he was drawing them immediately before the termination of his services.

4. The order is to be signed personally by SP West Tripura District. It need not have any preface. As provided in Clause (b) of Rule 5 of CCS (TS) Rules the period of notice is one month. Copies of order may be sent to this office as also to Admn. Reforms Deptt.

Enclosed : As above.

(N. Rajendran) Asstt. Inspector Genl. of Police (HQs) For Director General of Police, Tripura.

Memo No. 47743-44/F.1(16)]PHQ/91 dated 8.12.1993 Copy to:

The Joint Secretary (ARD), Govt. of Tripura. Refers his No. F. 11(66)-ARD/91/5847 dated 3.12.93

Sd/- (N. Rajendran) Asstt. Inspector Genl. of Police (HQs) For Director General of Police, Tripura.

22. It may be mentioned here that being directed by this court learned Government Advocate has produced the aforesaid file along with Anr. file. From this letter it is clear that the Superintendent of Police, West Tripura, Agartala was directed to terminate the services of the Petitioner on the ground that the Scheduled Caste Certificate produced by the Petitioner is not genuine.

23. From this it is apparent that foundation for terminating the services of the

Petitioner is the production of the aforesaid Scheduled Caste Certificate before the authorities to secure the appointment and according to the Respondents said Certificate is false and not genuine. It may be mentioned here that the files also disclose that the authorities will approach the Sub-Divisional Officer, Dharmanagar who issued the aforesaid Certificate for cancellation thereof. From this it is apparent that nobody on behalf of the Respondents ever approached the Sub-Divisional Officer, Dharmanagar for cancellation of the said Certificate in accordance with law. Before the said Certificate could be cancelled in accordance with law, the Respondents directed the Superintendent of Police, West Tripura, Agartala to terminate the services of the Petitioner. So, clearly the foundation for termination of services of the Petitioner was production of Scheduled Caste Certificate which is said to be false. Therefore, that being the foundation and as there is no material before me to legally hold that in fact the Petitioner produced any false certificate, I am constrained to say that the order of termination was penal in nature. Even assuming that the order of termination is not penal then the reason assigned for termination of service of the Petitioner in the relevant file was non-existent inasmuch as the said certificate was not cancelled by the authority competent to cancel it. Now for non-existent reason services having been terminated, it is constitutional obligation and duty of this Court to interfere with the matter. I have already referred to the decision of the Apex Court in *Shrilekha Vidyanhi's* case (Supre) from which it is apparent that the authorities/Respondents have the power to terminate the services of the Petitioner, who was a temporary employee, without assigning any reason therefore. But that does not mean that without any reason and arbitrarily the Respondents have any power to terminate the services of any temporary employee.

24. In view of the aforesaid discussion. I allow this petition and set aside the impugned order of termination. I direct the Respondents to forthwith allow the Petitioner to resume his duties and he shall be paid his arrear salaries, dues etc. as if he was never terminated from his service.