
(1980) 02 MAD CK 0030
In the Madras High Court

M. Rathinavelu

APPELLANT

Vs

R.C. Khanna, Branch Manager, Films Division and Another

RESPONDENT

Date of Decision : 05-02-1980

Acts Referred:

Citation : (1980) 93 LW 619 : (1980) 1 MLJ 476

Hon'ble Judges : V. Ramaswami, J

Bench : Division Bench

Judgement

V. Ramaswami, J.—The petitioner was appointed as a Chowkidar in a temporary capacity by an order of the second respondent dated 22nd April, 1974. The post of Chowkidar at that time was a temporary post. The order of appointment further stated that "he will be on trial for a period of two years from the date of his appointment which may be extended at the discretion of the appointing authority". Though a notice of termination of service by giving one month's notice was given on 23rd August, 1974, obviously on the basis of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, hereinafter called the Rules, by a subsequent notice, dated 24th September, 1974, the competent authority withdrew the notice of termination of service and the petitioner was permitted to continue as usual. Subsequently, by the impugned order dated 25th March, 1977, the petitioner's services were terminated under Sub-rule (1) of Rule 5 of the Rules. The impugned order reads as follows:

In pursuance of Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I hereby give notice to Shri M. Rathinavelu, Officiating Chowkidar in the Distribution Branch Office of this Division at Madras that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or as the case may be tendered to him.

The learned Counsel for the petitioner contended that as per the original order of appointment he was appointed as a Chowkidar in a purely temporary capacity and that he will have to be on trial for a period of two years which may be

extended at the discretion of the appointing authority. The petitioner had completed the period of two years on 21st April, 1976. but the competent authority had not exercised his discretion either to continue him temporarily or to terminate his services. Therefore, his continuance in service subsequent to 21st April, 1976 cannot be treated as temporary. But at the same time. the learned Counsel for the petitioner was not able to affirm that the petitioner has become a quasi-permanent Government servant. This is because, Rule 3 relating to quasi-permanent service provides that a Government servant shall be deemed to be in quasi-permanent service if he has been in continuous temporary service for more than three years and if the appointing authority, being satisfied, having regard to the quality of his work, conduct and character, as to his suitability for employment in a quasi-permanent capacity under the Government of India has made a declaration to that effect. In this case, though he had completed three years of continuous temporary service, there is no declaration by the competent authority as required under Rule 3 of the Rules. The Supreme Court in two decisions reported in *State of Nagaland v. G. Vasantha* AIR 1970 SC 537, and *Jaswant Singh and Others Vs. Union of India (UOI) and Others*, , has held that unless a factual declaration is made as provided under Rule 3, a temporary Government servant, cannot claim to be a quasi-permanent Government servant. There was no appointment of the petitioner as a permanent Government servant subsequent to the two years above referred to. In those circumstances, he shall be deemed to have continued only as a temporary Government servant and not either as a quasi-permanent Government servant or a permanent Government servant.

2. Rule 5(1) of the Rules provides that the services of a temporary Government servant who is not in quasi -permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant and that the period of such notice shall be one month. It is in exercise of this power, the appointing authority terminated the services of the petitioner by issuing a month's notice under the impugned order.

3. The question that arises for consideration is whether these rules are applicable to the petitioner. The rules apply to all persons who hold a civil post under the Government of India and who are under the rule-making control of the President but who do not hold a lien or a suspended lien on any post under the Government of India or any State Government. Rule 2(d) defines "temporary service" as meaning the service of a temporary Government servant in a temporary post or officiating service in a permanent post, under the Government of India. In this case. the petitioner, as already stated, was appointed as a temporary Government servant in a temporary post. Therefore his service will be a temporary service within the meaning of Rule 2(d) and as such, the rules were applicable. But what the learned Counsel for the petitioner contends is that since the petitioner had been in service for more than three years and as per the Government Orders, a temporary post, continued for more than three years,

becomes a permanent post and that, therefore the petitioner shall be deemed to be holding, as a temporary Government servant in a permanent post and as such the rules are not applicable. This contention cannot be accepted. Even if the post, by any deeming provision, is to be considered as a permanent post, unless he is declared to be holding that post in a quasi-permanent capacity as required under Rule 3, he cannot claim to be holding the post as a quasi-permanent Government servant.

4. In the decision reported in *State of Nagaland v. G. Vasantha* AIR 1970 SC 537, the facts were these. The respondent in that case was appointed on a purely temporary basis to a temporary post. Later on, the Government declared the post as a permanent one after three years, but there was no declaration as required under Rule 3 making the person holding the post as quasi-permanent Government servant. The Supreme Court held that in those circumstances, the concerned Government servant continued to be a temporary servant and the order of termination giving a notice of one month was valid. Therefore, even if the post had been made subsequently permanent, since at the time when the petitioner was appointed, the post was temporary and he was appointed in a temporary capacity, the temporary Government servant rules are applicable to the petitioner. Therefore the contention of the petitioner that Rule 5 of the Rules could not have been invoked by the respondents is not acceptable.

5. The learned Counsel for the petitioner then contended that even so, the order is one by way of punishment and not a mere termination of service simpliciter and that, therefore, the procedure contemplated under Article 311 of the Constitution should have been followed. It is not necessary for me to go into the question as to whether Article 311 of the Constitution is applicable to a case governed by the Central Civil Services (Temporary Service) Rules, 1965, as I am not satisfied that the impugned order was made by way of punishment. The learned Counsel for the petitioner relied on the following facts in support of his contention that the impugned order was one made by way of punishment. We have already noticed that the second respondent issued a notice of termination of service on 23rd August, 1974 giving one month's notice. On receipt of this memo, the petitioner appears to have filed a representation on 6th September, 1974. It appears that his petition was forwarded by the first respondent to the second respondent with a recommendation to provide him a chance to improve his performance in the post of Chowkidar. Accordingly, probably because of this request, the original termination notice dated 23rd August, 1974 was withdrawn on 24th September, 1974, the Branch Manager issued a memo. to the petitioner stating that his petition was forwarded with a recommendation to provide him a chance to improve his performance in the post of Chowkidar, though he was found missing from the office during night-time and in the mornings and at times he was not available when the office work suffered and the office remained insecure due to his absence from duty without any proper reason. The office memo. further stated that the second respondent, taking into consideration the recommendation of the first respondent purely on humanitarian and

compassionate grounds has withdrawn the termination order and as such the petitioner is warned to be careful in future in the performance of his duties and presence in the office while he is supposed to be on duty. The Branch Manager further stated that in case of any omission and any adverse report on his work, it may not be possible to retain him in service and his case may be recommended to the Administrative Officer for termination of service. On the 10th of February, 1977, a communication was received by the petitioner communicating the adverse remarks. In the confidential report for the year 1976, against the professional assessment, the adverse remark was "he was not amenable to discipline, and, until he improves his performance, it is difficult to retain him in service." Against general assessment column the adverse remarks, communicated read:

Repeated reports have been received against the official about his quarrelsome nature, while on duty, from other offices. Chowkidars from other offices in Shastri Bhavan also complain for his non-co-operative attitude towards them at nights while has no business to go to them. His performance has been all through below average.

6. The impugned order was made on 25th March, 1977. The learned Counsel for the petitioner states that having regard to the memo. dated 27th September, 1974, where he was warned that any omission and any adverse report on his work in future may entail termination of his service and the memo. communicating the adverse remarks closely followed by the termination under Rule 5, it will be clear that the termination cannot be a termination simpliciter, but it was by way of punishment for indiscipline or quarrelsome nature or on the ground of complaint of non-co-operation by order of Chowkidars and, that, therefore, it is liable to be set aside. Though Rule 5 enables the appointing-authority to terminate the service of a temporary Government servant by giving him a notice in writing, normally it is expected that there was some motivation for that order, in the sense, that the person holding the post in either unsuitable or his performance was unsatisfactory performance or the unsuitability is a motive for termination and when, on those factors, the termination was made to infer it was by way of punishment, is slender. In a proper case, probably if the facts, warrant, the same ground of unsatisfactory performance or unsatisfactory conduct may be a ground for punishment and instead of following the procedure the termination power was invoked as a garb really to impose the punishment. But in this case, on the facts, I am not satisfied that the order of termination was by way of punishment. It is true that in the communication, dated 27th September, 1974, the petitioner was warned to be careful in future, but that is expected from any head of the department, when he finds any slackness of work and on that ground it cannot be stated that if on a future occasion his services are terminated, the termination was by way of punishment and not a termination simpliciter. Nor can the petitioner rely on the communication of the adverse remarks as a ground for contending that the impugned termination was by way of punishment. Every Government servant is entitled to be informed of the

adverse remarks and the rules require the head of the department to communicate such adverse remarks. In fact at the end of the communication, the memorandum also states that these adverse remarks are communicated to him so that he may know in which direction improvement is required in his performance. Merely because the adverse remarks have been communicated and the adverse remarks related to indiscipline and quarrelsome nature of the petitioner, it cannot be contended that the termination was by way of punishment. It may be the motivation of the order terminating the service was by reason of the unsatisfactory performance of unsuitability for the purpose, but that will not be considered to be by way of punishment and the order itself does not affect the future career of the petitioner. This contention of the learned Counsel for the petitioner also is therefore not sustainable.

7. The learned Counsel for the petitioner has contended that the order is vitiated by mala fides on the part of the first respondent, Branch Manager. In the affidavit filed in support of the writ petition, the petitioner had stated that because he stood in the way of the first respondent using the premises during nights for certain unauthorised purposes of exhibiting some films or entertainment, he had some grievance against the petitioner. He had also stated in the affidavit that if an enquiry is made on this matter, these facts could be established. The first respondent has filed a counter-affidavit denying this charge. Since there is only an assertion and a denial, it is not possible for me to come to a definite conclusion whether the first respondent was actuated by any malice. But in any case, there is no mention about the second respondent who is the competent authority to terminate the service of the petitioner. Therefore on this ground of mala fides, the order is not liable to be interfered with; in fact the mala fides are not established also.

8. The writ petition accordingly fails and is dismissed. There will be no order as to costs.