
(1992) 12 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil writ Petition No. 2019 of 1983

Magna Ram Chuoudhary

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-12-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311
Penal Code, 1860 (IPC) — Section 149, 302, 304

Citation : (1992) WLN 292

Hon'ble Judges : R.P. Saxena, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajendra Saxena, J.—By means of this writ petition, the petitioner has prayed that order of termination of his services dated 10.9.81 (Annex. G) be declared null and void and that he be declared to be in Government service and allowed all benefits as if his services were not terminated. He has further prayed that the respondents be also directed to pass necessary orders to regularise the period of his suspension.

2. The facts of this case are not such in dispute. The petitioner, who is a Post Graduate and an orthopedically handicapped person, made an application to the Social Welfare Department, Government of Rajasthan for a suitable Job. The Social Welfare Department vide their letter dated 23.1.81 (Annex. A) while transmitting the said application requested the Commissioner, Transport (respondent No.3 to give appointment to the petitioner in the reserved 2% quota for the physically handicapped persons drawing the attention to the provisions of the Rajasthan Employment to Handicapped Persons Rules, 1976 (hereinafter referred to as "the Rules, 1976"). Thereupon, respondent No. 3 by his order dated 12.2.81 (Annex. B) appointed the petitioner as LDC on ad hoc and temporary basis for a period of six month or till a selected candidate was available from the RPSC, which ever was earlier. In the appointment letter it was

also mentioned that the petitioner was a physically handicapped person and a copy thereof was also sent to the Social Welfare Department. The petitioner was ordered to join his duties in the office of the Regional Transport Officer, Jodhpur, which he joined on 20.2.81. Prior to the said appointment, the petitioner was facing a criminal charge u/s 302 and other allied sections of the Indian Penal Code along with other persons in the court of Sessions Judge, Jodhpur. It appears that on 22.5.81, the Sessions Judge, Jodhpur convicted the petitioner for the offence u/s 304 Part-II read with Section 149 IPC and sentenced him to four years' R.I. The petitioner was, therefore, arrested on 22.5.81 and he remained in custody for more than 48 hours and as such respondent No.3 by his order dated 27.5.81 (Annex. C) placed him under suspension under Rule 13 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (briefly the "Rules, 1958"). The petitioner filed an appeal against his conviction and sentence in the Rajasthan High Court, which was admitted and his application for suspension of the sentence was accepted and his sentence was suspended pending the hearing of the appeal. The petitioner, therefore, approached the respondent No.3, who by his order dated 4.6.81 (Annex. D), keeping in view the suspension of sentence granted by this Court, reinstated him in service and mentioned in the said order that the question of treating the suspension period will be decided after the final decision of the criminal appeal by the Rajasthan High Court or on completion of the departmental enquiry against the petitioner. The petitioner, who was directed to await further posting orders, was posted against a vacant post in the office of the Regional Transport Officer, Kota vide order dated 4.8.81 (Annex. E). The petitioner being a physically handicapped person was also considered eligible for the grant of vehicle allowance at the rate of 10% of his pay or Rs. 50/- whichever was less w.e.f. 23.5.81 by the respondent No.3 vide his order dated 4.9.81 (Annex. F). The petitioner continued to work at Kota but the respondent No.3 by his order dated 10.9.81 (Annex. G) extended petitioner's services till 10.9.81 and simultaneously terminated his services by the same order. The petitioner, therefore, submitted representations dated 22.9.81 and 14.12.81 (Annex. H & I) to the Transport Minister (respondent No. 2) and also sent representation dated 11.1.82 (Annex. J) to respondent No.3. Ultimately, the Dy. Transport Commissioner, by his letter dated 5.6.82 (Annex. L) informed the petitioner that he was appointed as LDC on ad hoc and temporary basis for a period of six months and that thereafter his services were extended upto 10.9.81 only, hence it was not possible to extend his services beyond that date.

3. The petitioner has pleaded that in fact his services have been terminated on account of the criminal case pending against him and that his termination order Annex. G has been deliberately couched in a form and camouflaged as if his services have been terminated without any stigma. According to him, the order of termination of services is malafide, because he was not further informed of the reasons of the termination nor any departmental enquiry was held which was contemplated against him as mentioned in the order of his reinstatement

(Annex. D). Hence the impugned order (Annex. G) is against the principles of natural justice, arbitrary and mala fide and violative of Articles 14 and 16 and 311(2) of the Constitution of India. He has further pleaded that one of his Juniors viz., Mr. Bhagwati Prasad Kasotla, who was appointed as L.D.C. in March, 1981 and who was junior to him, has still been retained in the service and that his services have also been regularised and as such he has been subjected to hostile disorientation.

4. The respondents in their counter have opposed this writ petition on the ground that the petitioner was appointed on ad hoc basis for a period of six months or till the selected candidate from the RPSC was made available; that the petitioner at the time of submitting his application for appointment did not disclose that he was facing a criminal trial for the charges u/s 302 IPC and as such he had suppressed material facts. It has been asserted that petitioner's appointment was not made against the reserved quota of the physically handicapped persons; that since the petitioner remained in Police custody for more than 48 hours since 2-5-81, after his conviction for offence u/s 304 Part-II IPC, he was suspended under Rule 13 of the Rules, 1958 and that when his sentence was suspended, he was reinstated. They have pleaded that the service of the petitioner was not extended beyond six months by the Commissioner, Transport (Respondent No.3) and, therefore, it was the duty of the R.T.O. Kota to have intimated him, but by mistake he did not do so and that when this fact came to the notice of the Commissioner, Transport the petitioner's service were extended upto 10.9.81 and terminated on the same day vide Annexure-G. They have further pleaded that the petitioner was appointed temporarily and on ad hoc basis, that the respondents did not think it proper to extend his services and that it is wrong to allege that his service was terminated because of his conviction in the criminal case. As regards, Shri B.P. Kasotia, it has been asserted that he was a scheduled caste candidate and was appointed in reserved quota and, therefore, the petitioner does not stand on the same footing because he belongs to a different class and that as such there was no violation of Articles 14, 16 and 311(2) of the Constitution of India. It has been averred that 2% reserved quota for the physically handicapped persons strictly applied for employees.

5. The petitioner has also filed a rejoinder and reiterated that he was appointed against the 2% reserved quota of physically handicapped persons; that he did not suppress any material facts and that his termination has been ordered only on account of his conviction in the criminal case and also to avoid the departmental enquiry against him.

6. I have heard the learned Counsel for the petitioner and the learned Dy. Government Advocate at length and carefully perused the relevant record.

7. Shri Mridul has vehemently contended that the petitioner was appointed against the 2% reserved quota meant for the physically handicapped persons under the Rules, 1976; that he did not suppress any fact and instead informed the respondents that the High Court has suspended his sentence, that the

respondent No.3 by his office order dated 4.9.81 (Annex. F), i.e. after expiry of six months period, had consciously allowed conveyance allowance to the petitioner, which is admissible to a handicapped person and, therefore, it is patently wrong to suggest that petitioner's services were not extended beyond the period of six months. According to him, the extension-cum-termination order dated 10.9.81 (Annex. G) was in fact passed due to the conviction of the petitioner in a criminal case and also to avoid a regular departmental enquiry against him. Moreover, no reason for termination was mentioned therein. He has also contended that Shri B.P. Kasotia, who belongs to scheduled caste and was appointed in the reserved quota for a fixed period after the appointment of the petitioner, is still being retained in service and has also been regularised on the post of L.D.C., while the petitioner, who was also appointed against the reserved quota of physically handicapped persons, has been placed out from service. Therefore, the termination of the petitioner is clearly discriminatory.

8. On the other hand, the learned Dy. Government Advocate has asserted that it is a case of termination simpliciter and that by the impugned termination order Annex. G, no stigma has been cast against the petitioner. He has submitted that since the petitioner was appointed on ad hoc and temporary basis his services were not extended further. Hence petitioner's termination is justified, legal and not violative of any principles of natural Justice.

9. I have given my thoughtful consideration to the rival submissions. It is an admitted fact that the petitioner is an orthopedically physically handicapped person, that he had submitted an application to the Director Social Welfare Department for appointment under the 2% reserved quota and that the Dy. Director, Education and Employment, Social Welfare Department, Government of Rajasthan, by his letter dated 23.1.81 (Annex. A) requested the Transport Commissioner (respondent No.3) for appointing the petitioner against 2% reserved quota of the physically handicapped person in his department. Thereupon, the respondent No.3 by his order dated 12.2.81 (Annex. B) appointed the petitioner on the post of LDC on ad hoc and temporary basis for a period of six months or till a selected candidate was made available from the RPSC, which ever was earlier. In the said order, it has also been specifically mentioned that petitioner was a physically handicapped person. Therefore, it stands amply proved that the appointment of the petitioner was made against 2% reserved quota meant for the physically handicapped persons. The respondents have not cared to file petitioner's application for appointment, alleged to have been submitted by him to the Transport Commissioner. Therefore, it can not be inferred that the petitioner had superseded any material fact regarding his criminal trial. There is no dispute that the petitioner was convicted by the Sessions Judge, Jodhpur for offence u/s 304 Part-II read with Section 149 IPC and was sentenced to four years R.I.; that he remained in custody for more than 48 hours from 22.5.81 and as such he was suspended under Rule 13 of the Rules, 1958, Vide Annex. C on 27.5.81. However, when the petitioner's criminal appeal filed before this Court was admitted and his sentence

was suspended, the petitioner was reinstated in service vide order dated 4.6.81 (Annex. D), wherein it was specifically mentioned that a decision regarding the suspension period of the petitioner will be taken after the judgment of the High Court in the Criminal appeal or after the completion of the departmental enquiry. Thus, a departmental inquiry against him was contemplated. Moreover, the petitioner was kept awaiting posting orders for a period of about two months and thereafter by order dated 4.8.81 (Annex. E), he was transferred and posted against a vacant post in the office of the RTO, Kota. Thereafter, by order dated 4.9.81 (Annex. F), the respondent No.3 also sanctioned conveyance allowance to the petitioner, which was only admissible to a physically handicapped person in view of the Finance Department's order No. FH/10/4/APL Group-II/76 dated 15.1.80 w.e.f. 23.5.81. Thus, it is crystal clear that even after expiry of the period of six months for which the petitioner was appointed vide appointment letter dated 12.2.81 (Annex. B), respondent No.3 consciously transferred him to the office of RTA against a vacant post and also granted conveyance allowance. This amply proves that the petitioner's services were impliedly extended and that it was not at all a case of termination simpliciter after expiry of the period of appointment by efflux of time. It may be also mentioned here that respondents in their reply have clearly alleged that the petitioner had superseded material fact about his criminal trial, which clearly reflects that his services have been terminated for the alleged suppression of the fact regarding his criminal trial at the time of filing his application for appointment. Therefore, the impugned termination order Annex. G is not innocuous. Respondents have also not pleaded that a duly selected candidate from the RPSC was made available and therefore, petitioner's services were terminated. It is an admitted fact that the post of LDC in the RTA Office was not abolished and the same is still continuing. No reason whatsoever has been mentioned in the termination order. In such circumstances, it stands fairly established that in order to avoid a departmental enquiry against the petitioner and with but waiting for the judgment of the High Court in the criminal appeal, as was mentioned in the reinstatement order dated 4.6.81 (Annex. D), the services of the petitioner were abruptly terminated without assigning any reason. Therefore, the action of the respondent No. 3 appears to be arbitrary. In pith and substance the impugned termination order was made on account of petitioner's alleged suppression of material facts regarding his criminal trial and subsequent conviction in the criminal case. No opportunity of hearing was afforded to the petitioner before terminating his services. Therefore, the impugned order Annex. G also offends the principles of natural justice.

10. It is also an admitted fact that Shri Bhagwati Prasad Kasotia was appointed in March, 1981 as LDC, whereas the petitioner was appointed on 20.2.81. Thus, Shri Kasotia was apparently junior to the petitioner. It is true that Mr. Kasotia belongs to the Scheduled Caste and was appointed in the reserved quota but petitioner was also appointed as against the 2% reserved quota of the physically handicapped persons. Thus, the petitioner was not appointed in the general quota. As mentioned earlier, it is not the case of the respondent that any person

duly selected from the RPSC in the physically handicapped category was made available. Therefore, there existed no reason as to why the petitioner, who also belongs to a reserved category should not have been continued in service specially when his junior was retained in service. In such circumstances, the petitioner has been subjected to a hostile discrimination and, therefore, the impugned termination order Annex. G is also violative of the Articles 14 & 16 of the Constitution of India. Hence, the impugned termination order can not be sustained.

11. No other point was pressed.

12. The net result of the above discussion is that this writ petition is allowed and the termination order dated 10.9.81 (Annex. G) is set aside. The respondents are directed to consider petitioner Magna Ram Chuoudhary to be in Government service and to pass necessary orders regarding the payment of subsistence allowance for the period of his suspension and further to pass necessary order after the final disposal of petitioner's criminal appeal pending in the Rajasthan High Court. The respondents shall, however, be at liberty to initiate the departmental enquiry against the petitioner, if they deem fit in accordance with the Rules, 1958. No order as to costs.