

(1974) 04 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 174 of 1973

Manohar Lal Peerta

APPELLANT

Vs

The State of Himachal Pradesh etc.

RESPONDENT

Date of Decision : 17-04-1974

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5(1)
Constitution of India, 1950 — Article 226

Citation : (1974) 3 ILR HP 358

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : Sushil Malhotra, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—The Petitioner is aggrieved by an order terminating his services as a junior teacher in Government service and he prays for relief under Article 226 of the Constitution.

2. The Petitioner was appointed to the post of junior teacher by a letter dated June 27, 1967, issued by the District Education Officer, Simla. Subsequently, on July 27, 1973, the District Education Officer issued a memorandum to the Heads of different schools and to the Block Education Officers in the District intimating the decision of the Government that untrained Matriculate teachers, who had completed three years service, should undergo J.B.T. training for the session 1973-74-75 at the Government Basic Training School, Kulu. The Petitioner, it appears, was un-willing to undergo the training despite a number of opportunities afforded to him for the purpose. On September 26, 1973, the District Education Officer issued a notice under Rule 5(1), Central Civil Services (Temporary Services) Rules, 1965, informing the Petitioner that his services stood terminated upon the expiry of one month from the date of service of the notice. The notice was sent under cover of a letter dated September 28, 1973,

intimating that the Petitioner's services were terminated because he was reluctant to undergo the training. The Petitioner prays for the quashing of the directions contained in the letter July 27, 1973, and the notice terminating his services.

3. Learned Counsel for the Petitioner contends that the termination of the Petitioner's services was in contravention of the terms of his appointment. The Petitioner, it is said, was appointed to the post of a junior teacher, and there was no stipulation in the terms of appointment detailed in the letter dated June 27, 1967, requiring him to undergo training. It is not disputed that the Petitioner could be described as an untrained teacher, and it seems to me clear that the Government, as a matter of policy, is entitled to require that untrained teachers should undergo training. From the terms of the letter dated July 27, 1973, it appears that the policy was intended to cover all un-trained Matriculate teachers who had completed three years service. The Petitioner fell within that class. In requiring untrained teachers to undergo training the Government acted reasonably and not arbitrarily.

4. From Clause (xi) of the terms of the Petitioner's appointment, it is clear that the appointment could be terminated at any time by a month's notice given by either side without assigning any reason. Clause (xi), it is not disputed, is in the same terms as Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965. When the District Education Officer decided to terminate the Petitioner's services under that provision, he did no more than exercise the power expressly recognised in the terms of appointment. Clause (xi), as also Rule 5(1), does not limit the power of terminating the appointment of a Government servant to any specific ground. All grounds which can reasonably form the basis of terminating the appointment would fall within the scope of Clause (xi) and Rule 5(1). Any one or more of those grounds could properly constitute the foundation of an order terminating the appointment. I am referred to *State of Mysore v. R.R. Kulkarni* and Ors. 1972 S.L.R. 795. In that case, however, the Supreme Court proceeded on the ground that the power was not utilised by the administrative authority for a purpose for which the power could properly be said to have been meant. That case affords no assistance to the Petitioner.

5. My attention has been invited to *Jagdish Mitter Vs. The Union of India (UOI)*, also, where the Supreme Court has observed.

It is true that the tenure held by a temporary public servant or a probationer is of a precarious character. His services can be terminated by one month's notice without assigning any reason either under the terms of contract which expressly provides for such termination or under the relevant statutory rules governing temporary appointment or appointment of probationers.....

It is contended that as a reason was given by the District Education Officer for terminating the Petitioner's services the impugned order does not all fall within

Clause (xi) of the terms of appointment or within Rule 5(1), because the power contemplated there involves the termination of the appointment without assigning any reason. The submission is without force. Clause (xi) and Rule 5(1) truly construed confer power on the authority to terminate the appointment and entitle the authority to do so without assigning any reason for doing so. The provision merely leaves it open to the authority not to assign any reason at all. In other words, there is no obligation to assign any reason for terminating the appointment. But that does not mean that when exercising the power to terminate "an appointment under Clause (xi) or Rule 5(1) the authority is debarred From stating the reason if it chooses to do so. Merely because a reason has been assigned for terminating the appointment does not mean that the termination is not referable to Clause (xi) or Rule 5(1).

6. The next contention of the Petitioner is that the District Education Officer was estopped from terminating the Petitioner's services. It is pointed out that the Petitioner had served for six years as a junior teacher that When his services were terminated he had already crossed the age for entry into any other Government service and that if at the outset he had known that he would have to undergo training he could have decided whether he should accept the appointment at all. Reference is made to Union of India and Ors. v. Anglo Afghan Agencies etc. AIR 1968 S.C. 718, K.K. Vij, Principal Higher Secondary School v. The Government of Himachal Pradesh and Ors. 1970 S.L.R. 8, and Centary Spinning and Manufacturing Co. Ltd. v. The Ulkasngar Municipal Council AIR 1971 S.G. 1021. In my opinion, no question of estoppel arises here. According to the terms of the Petitioner's appointment his services were liable to be terminated at any time. The precarious nature of his appointment was known to him all along. It was reasonable for the Government to require him and other untrained teachers to undergo training. All reasonable orders of the Government issued after the Petitioner's appointment should be considered as falling within the contemplation of the terms of appointment. If the Petitioner did not comply with any of them, it was open to the District Education Officer to terminate his | appointment in accordance with Clause (xi) or Rule 5(1). I am of opinion that the plea of estoppel does not carry the Petitioner's case any further.

7. The petition fails and is dismissed, but in the Circumstances there is an order as to costs.