

(1975) 09 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 165 of 1971

Mohinder Singh

APPELLANT

Vs

The State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 18-09-1975

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5(1)
Constitution of India, 1950 — Article 226, 311

Citation : (1975) 4 ILR HP 612

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

Bench : Single Bench

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

Final Decision : Allowed

Judgement

R.S. Pathak, C.J.—By this writ petition the Petitioner prays for the quashing of an order terminating his services.

2. The Petitioner was appointed to officiate as Ahalmad in the court of the Senior Subordinate Judge, Nalagarh. The order was made on February 21, 1967, by the Registrar under the orders of the Judicial Commissioner. The Petitioner was subsequently transferred to Nahan as officiating Ahalmad on January 4, 1971, the learned District and Sessions Judge, Simla, made an order terminating the services of the Petitioner. Aggrieved by that order the Petitioner now prays for relief under Article 226 of the Constitution.

3. While terminating the services of the Petitioner the learned District and Sessions Judge purported to exercise the power conferred by Rule 5 (1) of the Central Civil Services (Temporary Service) Rules, 1965. That provision lays down:

5. The service 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;

....

There is no dispute that the Petitioner is not in quasi-permanent service. It is clear then that his services could be terminated only by a notice given by the appointing authority. Construing the expression "appointing authority" in Rule 5 (1) of the aforesaid rules, the Supreme Court held in *Om Parkash Gupta Swadheen v. Union of India* 1975 S.L.R. 226 that the expression must be taken to refer to the authority which actually appointed the Government servant. This construction was placed in a case where a Government servant was not appointed to a "specified post". The construction turned on the definition of the expression "appointing authority". It has not been shown by the learned Advocate-General, appearing for the Respondents, that the post of Ahalmad is a "specified post". It seems to me that the law laid down by the Supreme Court fully applies to the present case. That authority only which appointed the Petitioner is empowered to terminate his services. The appointing authority was the Judicial Commissioner, and as the position stands today the High Court alone can terminate the Petitioner's services.

4. It is urged by the learned Advocate-General that the order of appointment was signed by the Registrar and the words "by order" preceding his signature does not mean that it was the Judicial Commissioner who made the appointment. The appointment, he says, must be taken to have been made by the Registrar. The contention is plainly without force. When the Registrar recited that the appointment was made "by order", it must be taken that in making the appointment he was acting under the orders of the Judicial Commissioner. The Petitioner must be taken to have been appointed by the Judicial Commissioner.

5. It is also pointed out by the learned Advocate-General that the Petitioner was appointed by the order dated February 21, 1967, as officiating Ahalmad, Nalagarh, and his services have been terminated when he was posted as officiating Ahalmad, Nahan. He contends therefore that reference to the order dated February 21, 1967, is meaningless as the Petitioner must have been appointed afresh as officiating Ahalmad, Nahan. The learned Advocate-General has been unable to show that any fresh order of appointment was made. On the contrary, in paragraph 8 of the writ petition the Petitioner has stated that he was transferred as Ahalmad to the Court of the Senior Subordinate Judge, Nahan. That is not disputed in paragraph 8 of the return filed by the Respondents. The Petitioner must, therefore, be taken to have continued in office by virtue of the original order of appointment dated February 21, 1967. On that, it is clear that the termination of his services must be considered in the light of the original appointment. That appointment, as has been observed above, was made by the Judicial Commissioner. Therefore, the only authority which, within the meaning of Rule 5 (1) of the aforesaid rules, could have terminated the services of the Petitioner was the High Court.

6. The learned Advocate-General relies on *State of Nagaland v. G. Vasantha* A I R 1970 SC 537 and urges that the termination of the Petitioner's services cannot be assailed on the ground an authority subordinate to the original appointing authority has terminated his services. Now, the Supreme Court took the view that it did in *G. Vasantha* (supra) because a contention had been raised before it that when the services of a government servant are terminated by an authority subordinate to the appointing authority Article 311 is contravened. In the present case it is not the grievance of the Petitioner that his services were terminated in contravention of Article 311 of the Constitution. The grievance is that Rule 5 (1) of the Central Civil Services (Temporary Service) Rules was contravened.

7. The learned Advocate-General finally urges that the writ petition is belated and therefore, relief should be refused to the Petitioner. The impugned order terminating the Petitioner's services was made on January 4, 1971, and the writ petition was filed on October 13, 1971. Shortly after the order was passed the Petitioner made a representation to the learned District Judge, and was in fact permitted to appear in person before the learned District Judge on May 3, 1971, in support of his representation. The representation was rejected, and a communication to that effect was sent to the Petitioner on May 18, 1971. I am not satisfied that the writ petition has been filed with such delay as to disentitle the Petitioner to relief.

8. The writ petition is allowed, and the order dated January 4, 1971, made by the learned District Judge, Simla, terminating the Petitioner's services is quashed. The Petitioner is entitled to his costs, which I assess at Rs. 100/-.