
(2002) 05 J&K CK 0028
In the Jammu And Kashmir High Court
Case No : LPA (SW) No. 149 of 2002

Parkash Chand

APPELLANT

Vs

State of J.& K.

RESPONDENT

Date of Decision : 21-05-2002

Acts Referred:

Jammu and Kashmir Police Act, 1983 — Section 18

Citation : (2003) LIC 2101 : (2003) 4 SCT 452

Hon'ble Judges : T.S.Doabia, J and S.K.Gupta, J

Bench : Division Bench

Advocate : A. Parihar, R. Pant, Advocates appearing for the Parties

Judgement

S.K. Gupta, J.—Appellants came to be appointed as Special Police Officers. Such appointments are visualised by the Police Act, 1983

(1927 A.D). The appointments are made under section 18 of the Act. The rights and powers of such officers stand mentioned in sections 19 & 20

of the Police Act. The services of the appellants were brought to an end.

2. The plea put across by the appellants is that they are regular civil servants and they should be governed by the provisions of the J & K Civil

Services Regulations and they should also be given protection of section 126 of the Jammu & Kashmir Constitution. This argument did not find

favour with a learned single Judge of this Court. The writ petition stands dismissed. An appeal has been preferred.

3. Before noticing the contention put across by the appellants, it would be apt to notice the provisions of sections 18 & 19 of the Act. Sections 18

& 19 reads as under :

18. Special Police Officers. When it shall appear that any unlawful assembly or

riot or disturbance of the peace has taken place, or may be reasonably apprehended and that the Police force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace has occurred; or is apprehended, it shall be lawful for any Police Officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such Police Officer may require to act as Special Police Officers for such time and within such limits as he shall deem necessary and the Magistrate to whom such application is made shall unless he sees cause to the contrary comply with the application.

19. Powers of Special Police Officers. Every Special Police Officer so appointed shall have the same powers, privileges and protection and shall be liable to perform the same duties and shall be amenable to the same penalties and be subordinate to the same authorities as the ordinary officers of Police.

4. A perusal of section 18 of the Act makes it apparent that if the circumstances as mentioned under Sec. 18 are presents, then, "it shall be lawful for any Police Officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such Police Officer may require to act as Special Police Officers for such time and within such limits, as he shall deem necessary". The words of the statute are categoric. The appointments are made with a view to meet specific need for a specific period. If this be the position then the State is right in contending that the appointment is contractual and therefore, it can be brought to an end at any time. Reliance has rightly been placed on a decision reported as *Tirath Ram v. State*, 2002(4) SCT 106 (P&H) : 2000 Kash LJ 509 : (2002 Lab IC 1893).

5. In the said case it was held that neither Article 311 nor Article 16 would be attracted. Reliance was placed on the decision reported as AIR 1953 SC 250, *Satish Chandra Anand v. Union of India*. What is said in paragraphs 10 and 11 of the judgment of the Supreme Court is being reproduced below :

'There was no compulsion on the petitioner to enter into the contract he did. He

was free under the law as any other person to accept or to reject the offer which was made to him. Having accepted he still has open to him all the rights and remedies available to other persons similarly situated to enforce any right under his contract which have been denied to him, assuming there are any and to pursue in the ordinary Courts of the land such remedies for a breach as are open to him to exactly the same extent as other persons similarly situated. He has not been discriminated against and he has not been denied the protection of any laws which others similarly situated could claim. The remedy of a writ is misconceived.

Article 16(i) is equally inapplicable. The whole matter rests in contract. When the petitioner's first contract (the five years one) came to an end, he

was not a permanent government servant, and government was not bound either to reemploy him or to continue him in service. On the other hand,

It was open to government to make him the offer it did of a continuation of his employment on a temporary and contractual basis. Though the

employment was continued, it was in point of fact and in the eyes of the law, under a new and fresh contract which was quite separate and distinct

from the old even though many of its terms were the same. Article 16(1) deals with equality of opportunity in all matters relating to employment or

appointment to any office under the State. The petitioner has not been denied any opportunity of employment or of appointment. He has been

treated just like any other person to whom an offer of temporary employment under these conditions was made. His grievance, when analysed, is

not one of personal differentiation but is against an offer of temporary employment on special terms as opposed to permanent employment. But of

course the State can enter into contracts of temporary employment and impose special terms in each case, provided they are not inconsistent with

the Constitution, and those who choose to accept those terms and enter into the contract are bound by them, even as the State is bound. When the

employment is permanent there are certain statutory guarantees but in the absence of any such limitations Government is subject to the qualification

mentioned above, as free to make special contracts of service with temporary employees engaged in works of a temporary nature, as any other

employer.

6. In view of the aforementioned judgement and in view of the specific provision

contained in Section 18 of the Police Act that a special police officer may be appointed for a specific need and for specific period, no vested right as such, came to vest in the appellants.

7. Learned counsel for the appellants places reliance on a decision reported as 2001(2) SCT 231 (SC) : AIR 2001 SC 1173, Ram Sahan Rai v.

Sachiv Samanaya Prabandhak. All that has been said in the above case is that a contract of service can be enforced. There can be no dispute with

the above proposition of law. This is the case where contract has been brought to an end. This has been done lawfully. The appointment was for a

temporary purpose. The above authority, therefore, would not be attracted to the facts and circumstances of the present case.

8. This appeal, as such, is found to be without any merit and is dismissed.