

(1976) 12 GUJ CK 0008
In the Gujarat High Court

Case No : Spl. Civil Application No. 1396 of 1971

Purshottam S. Irani

APPELLANT

Vs

H.M. Singh, Regional Director, (Food) and Others

RESPONDENT

Date of Decision : 07-12-1976

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 34
Constitution of India, 1950 — Article 226, 311

Citation : (1978) 19 GLR 1 : (1979) 1 LLJ 108

Hon'ble Judges : Seshareddi Obul Reddi, C.J;N.H. Bhatt, J

Bench : Division Bench

Judgement

Reddi, C.J.—This special civil application has been referred to a Division Bench by our learned brother, D. P. Desai, J., as, in his opinion, the interpretation placed on Rule 34 of the Civil Services (Classification, Control and Appeal) Rules of 1957 and 1965 by Sarela, J., in S. K. Das Gupta v. O. N. G. Commission AIR 1970 Guj 148, is not correct. The learned Judge in the operative portion of his order of reference observed -

"Thus, in my opinion, the conclusion of Sarela, J., that Rule 55B survives notwithstanding the repeal of 1930 Rules by Rule 34 of 1957 Rules, is with respect, not correct in respect of new entrants after 1957 Rules, and in any case requires reconsideration".

2. The fact necessary for the disposal of this petition are briefly these. The petitioner was appointed as a godown clerk in the service of the Union of India with effect from November 20, 1967 by the Regional Director (Food), Bombay. It was stated in that order that his employment was purely temporary and he would be on probation for a period of two years and if his conduct was found not satisfactory, he was liable to be discharged during the period of probation. The petitioner was served with an order dated March 25, 1971 by which his services were terminated with effect from the date of expiry of one calendar month from the date on which the order was served on him. He was actually discharged from

service on April 29, 1971. It is this order terminating his probation and discharging him from service that is challenged under Art. 226 of the Constitution.

3. Mr. Mehta, learned counsel appearing for the petitioner, contended relying upon the view expressed by Sarela, J., in S. K. Das Gupta's case (supra) that the old Rule 22B in the 1930 Rules still survives notwithstanding the coming into force of the 1957 or 1965 Rules. According to him, Rule 34 of the 1957 Rules is limited in its operation and does not cover cases where a Government servant is not punished. It is further argued by him that if it was the intention of the rule-making authority that Rule 55B of the old Rules should not survive, there would have been a specific reference to that aspect in Rule 34 of the 1957 Rules which provides for repeal and savings. In the alternative, the learned counsel also contended that the foundation for terminating the probation of the petitioner was the alleged misconduct of the petitioner and as such he was entitled to the protection of Art. 311 of the Constitution.

4. To appreciate the points urged by the learned counsel, we may refer to Rule 55B in the 1930 Rules and Rule 34 in the 1957 Rules. Rule 55B reads -

"55B. Where it is proposed to terminate the employment of a probationer whether during or at the end of the period of probation, for any specific fault or on account of his unsuitability for the service, the probationer shall be apprised of the grounds of such proposal and given an opportunity to show cause against it, before orders are passed by the authority competent to terminate the employment".

Rule 34 of the new Rules reads -

"34. Repeal and Savings : (1) The Civil Services (Classification Control and Appeal) Rules and the rules contained in the notification of the Government of India in the Home Department, No. F. 2-19/30-Etts. dated 27th February, 1932, and any notifications issued and orders made under any such rules to the extent to which they apply to persons to whom these rules apply and in so far as they relate to classification of Central Services specified in the Schedules except the General Central Services or confer power to make appointments, impose penalties or entertain appeals are hereby repealed".

Provided that :

"(a) such repeal shall not affect the previous operation of the said Rules, notification and orders or anything done or any action taken thereunder;

(b) any proceedings under the said Rules notifications or orders pending at the commencement of these rules shall be continued and disposed of, as far as may be, in accordance with the provisions of these Rules.

(2) Nothing in these Rules shall operate to deprive any person to whom these Rules apply of any right of appeal which had accrued to him under the Rules,

notifications or orders repealed by sub-rule (1) in respect of any order passed before the commencement of these rules.

(3) An appeal pending at or preferred after the commencement of these Rules against an order made before such commencement shall be considered and orders thereon shall be passed, in accordance with these Rules".

Under the old Rule it was incumbent upon the competent authority before the services of a probationer could be terminated to apprise him of the grounds on which his services were proposed to be terminated. In other words, a reasonable opportunity had to be afforded to him to meet the grounds on which the competent authority sought to rely to terminate the probationer's services. A similar Rule as Rule 55B has not been introduced in the 1957 or 1965 Rules, the obvious reason being that termination of probation of a probationer in Government service is not considered to be a punishment. What Mr. Mehta contends is that notwithstanding the fact that termination of the probation of a Government servant is not a punishment, in view of the old Rule not being specifically repealed by Rule 34, the old Rule survives so as to make it incumbent upon the competent authority to follow the procedure in Rule 55B.

5. The petitioner has been appointed temporarily on probation after the new Rules came into force. The question is, whether when he is governed by the new Rules of 1957 and 1965 in respect of his appointment, he could fall back upon one rule of 1930 which prescribes the conditions before a probationer's services could be terminated. We are unable to agree with Mr. Mehta that Rule 55B by mere reason of the fact that there is no reference to its repeal in Rule 34 of the new Rules, that particular old Rule still survives. What Rule 34(1) speaks of is this. It makes the new rules applicable to all those persons who are appointed prior to the coming into force of the new rules and to whom the old rules apply. According to Mr. Mehta, the application of the new rules is limited except to the extent of conferring powers upon the Government to make appointments, impose penalties or entertain appeals and does not cover cases of termination of a probationer's services as there is no reference to the termination of probationer's service in Rule 34(1). Rule 34 only says that the present Rules apply to all the persons to whom the old rules applied and refers to their appointments, imposition of penalties or entertainment of appeals. In other words, the new Rules regarding appointments, imposition of penalties and entertaining appeals govern those Government servants who enter service prior to the commencement of the new Rules. The right to the extent saved are detailed in the provisos. Any rights accrued to them or any action taken or any proceedings initiated against them shall be continued and disposed of in accordance with the provisions of the new Rules. It is not necessary when the Rules are repealed and replaced by another set of Rules that there should be a specific mention that by virtue of the new rules all the previous Rules are thereby repealed. The language of Rule 34 is clear enough to demonstrate that the old Rules do not operate or govern even those who were employed under those

Rules except to the extent saved by Rule 34. We are unable to understand how a person who has entered service after the 1957 and 1965 Rules came into force could call in aid rules which have been repealed under which he was not appointed and had been repealed. There is nothing to suggest as has been contended by the learned counsel that, the Rule 34 saves Rule 55B by mere reason of absence of reference to Rule 55B in the new Rules. We are, therefore, unable to agree with the view expressed by Sarela, J., in S. K. Das Gupta's case (supra) that Rule 55B still survives notwithstanding the repeal of those Rules by virtue of Rule 34 of the new Rules.

6. The learned counsel alternatively argued that the alleged misconduct of the petitioner, namely, his undisciplined behaviour was used as a weapon by the competent authority to terminate his services. There is nothing to suggest from the order by which the petitioner's services have been terminated that his services were terminated for the alleged reason that he was indisciplined. The impugned order does not cast any aspersion or stigma on him. There is nothing to suggest that the order has been passed as a measure of punishment.

7. In the result the petition fails and is accordingly dismissed. Rule discharged. No costs.