

(1974) 05 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 17 of 1974

Ram Lal Sharma

APPELLANT

Vs

State of Himachal Pradesh etc.

RESPONDENT

Date of Decision : 06-05-1974

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 16
Central Civil Services (Temporary Service) Rules, 1965 — Rule 1, 5, 5(1)
Constitution of India, 1950 — Article 226

Citation : (1974) 3 ILR HP 438

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

Bench : Single Bench

Advocate : H.K. Bharadwaj and S.S. Ahuja, for the Appellant; Hari Krishan, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, C.J.—The Petitioner prays for relief under Article 226 of the Constitution against the termination of his services.

2. The Petitioner is a Lower Division Clerk in the Office of the Chief Engineer, Himachal Pradesh Public Works Department, Simla. He was appointed to that post by a letter dated December 26, 1970, which inter alia, declared that the post was temporary and could be terminated at any time. Paragraph 6 of the letter provides:

The appointment may be terminated at any time by one month's notice given by either side, viz., the appointee or the appointing authority without assigning any reasons. The appointing authority however, reserves the right of terminating the services of the appointee forthwith or before the expiry of the stipulated period of notice by making payment to him/her of a sum equivalent to the pay and allowances for the period of notice or the un-expired portion thereof.

It appears that departmental proceedings were at first contemplated against the

Petitioner under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, on the ground that he had participated in a procession and addressed four meetings organised by the local workers of the Communist Party of India, and had criticised the Government. He submitted a reply to the notice, and thereafter for some time nothing was done. On January 19, 1974, however, he received a notice dated January 18, 1974, intimating that his services were not required any longer and, therefore, he was served a one month's notice in accordance with paragraph 6 of the letter of appointment, and that he would be relieved of his duties on February 17, 1974. The Petitioner challenges the validity of that order.

3. Shri H.K. Bharadwaj, holding the brief of Shri S.S. Ahuja, learned Counsel for the Petitioner, contends that the notice of the Petitioner dismissing his services is invalid because the period of notice does not cover one clear month and the department was obliged to make payment of the pay and allowances for the period for which the notice was short of one month. There is substance in this contention and it must be accepted.

4. The notice was dated January 18, 1974, but admittedly it was served on January 19, 1974. The period of one month commenced from the day on which the notice was served, because the notice became effective only when it was served. *Bachhittar Singh Vs. The State of Punjab*, and *State of Punjab Vs. Amar Singh Harika*, The services of the Petitioner must, therefore, be considered to have been terminated with effect from February 19, 1974. Inasmuch as the notice states that the Petitioner would be relieved of his duties on February 17, 1974, the period of notice for terminating the Petitioner's services fell short by two days. That being so, in order to comply with paragraph 6 of the letter of appointment it was necessary that the department, when serving the notice terminating the Petitioner's services, should also have paid him or tendered the pay and allowances for the period of two days and that payment should have been made along with the service of the notice. That was not done. And therefore, the notice terminating the Petitioner's services is invalid. The position in law on this point has been stated by the Supreme Court in *Senior Superintendent, R.M.S. Cochin and Anr. v. K.V. Gopinath*, *Sorter* 1972 S.L.R. 390, where construing Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965, which admittedly is comparable with paragraph 6 of the letter of appointment, the Supreme Court observed:

...it appears to us that the rule is capable of the only interpretation that the order of termination can be upheld if the requisite amount in terms of the rule was paid into the hands of the employee or was made available to him at the same time as he was served with the order. Rule 5(1)(a) gives the Government as well as the employee a right to put an end to the service by a notice in writing. Under Rule 1(b) the period prescribed for such notice is one month. The proviso to Sub rule (b) however, gives the Government an additional right in that it gives an option to the Government not to retain the service of the employee till

the expiry of the period of the notice; if it so chooses to terminate the service at any time it can do so forthwith "by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rate at which he was drawing them immediately before the termination of his service, or, as the case may be, for the period by which such notice falls short of one month". At the risk of repetition, we may note that the operative words of the proviso are "the services of any such Government servant may be terminated forthwith by payment". To put the matter in a nutshell, to be effective the termination of service has to be simultaneous with the payment to the employee of whatever is due to him.

Shri Hari Krishan appearing for the Respondents has placed reliance on Dr. A.N. Raina v. The State of Jammu and Kashmir and Ors. 1968 S.L.R. 683. and State of Rajasthan v. Prem Nath 1971 (1) S.L.R 124. In view of law laid down by the Supreme Court, it seems to me that these two cases do not lay down the correct law.

No other point has been pressed before me.

5. The writ petition is allowed and the notice dated January 18, 1974 terminating the Petitioner's services is quashed. I make no order as to costs.