
(2005) 11 GAU CK 0031
In the Gauhati High Court
Case No : Writ Appeal No. 83 of 2004

R.K. Angousana Singh

APPELLANT

Vs

Sainik School Society and Others

RESPONDENT

Date of Decision : 18-11-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16

Sainik Schools Societys Rules — Rule 416, 421, 422, 427, 7.07

Citation : (2006) 1 GLT 717

Hon'ble Judges : T.N.K. Singh, J;H.N. Sharma, J

Bench : Division Bench

Advocate : S. Rupachandra Singh, for the Appellant; N. Ibotombi Singh, CGSC, for the Respondent

Final Decision : Allowed

Judgement

T.N.K. Singh, J.—This Writ Appeal directed against the judgment and order of the learned Single Judge dated 30.11.2004 passed in W.P. (C) No. 788 of 2004 involves a very short question of fact, which has been narrated in a short compass herein. The Sainik School, Imphal, Manipur is run through a Board of Governors of Sainik School Society, a Society registered under the Societies Registration Act, 1860, under the Ministry of Defence, Govt. of India. The Society has its own Rules and Regulations governing the organization and administration, terms and conditions of service, conduct rules, etc. of its employees. As per the Rules and Regulations of the Society, the Defence Minister, Govt. of India functions as the Chairman of the Board of Governors, the Chief Minister or the State Education Minister functions as the Member of the Board of the Governors. The Appellant/writ Petitioner was appointed as Nursing Assistant under an order of the Principal, Sainik School, Imphal, Manipur. The terms and conditions of the appointment order dated 30.10.2002 which would be pertinent for deciding the present writ appeal are quoted hereunder:

4. You will be on probation for a period of one year extendable to 2 years as per

Sainik Schools Society's Rules and Regulations. On successful completion of probation period you may be considered for confirmation in the above post. During the period of probation your services may be terminated by the appointing authority without assigning any reason with one month notice. Your services may also be terminated without notice and without assigning any reason on disciplinary grounds. The previous service rendered by you in organization other than Sainik Schools will be considered for counting of pensionary benefits at the time of retirement provided:

(i) the erstwhile service is a pensionable service and

(ii) the erstwhile organization undertakes in writing that it will bear the financial liability towards pension contribution for the relevant period.

* * * 8. All other terms and conditions of your service as laid down in the Sainik Schools Society's Rules and Regulations, as amended from time to time, shall be binding on you. You are required to acquaint yourself with the governing Rules and Conduct Rules as applicable to Sainik Schools employees and given in Sainik Schools Society's Rules and Regulations and shall strictly abide by the same.

* * * 12. If the above terms and conditions are acceptable to you, are required to sign the acceptance certificate appended to this letter and submit the same to this office by 05 Nov. 2002.

Rule 7.08 of Chapter-VII (Terms and Conditions of Service) of the Sainik School Society's Rules and Regulations which govern the terms and conditions of the Appellant/Writ Petitioner, reads as follows:

7.08. During the period of probation, the Principal may terminate the services of any member of staff, appointed by him under his own powers, after giving him one month's notice in writing and without assigning any reason. Reciprocally, any member of staff on probation may leave after giving one month's notice of resignation or surrendering one month's salary. Notes:

1) The period of vacation can be included by the members of vocational staff within the notice period provided notice of resignation is given at least 7 days prior to the commencement of vacation period.

2) Members of staff (both vocational and non vocational) are not permitted to set off wholly earned leave to their credit against the notice period receipt that provided in Rule 7.07 above and leave should be sanctioned by the leave sanctioning authority in its own discretion.

2. After completion of one year of his service, the probation period of the Appellant/ writ Petitioner was again extended for another period of one year by an order of the Principal, Sainik School, Imphal, Manipur dated 24.10.2003 which reads as follows:

EXTENSION OF PROBATIONARY PERIOD

Reference this School appointment order No. SSI/110/Admn dated 30 Oct.2002.

Your probationary period has been extended by one year i.e. upto 07 Nov. 2004 for further observation.

3. Admittedly, without issuing any notice, the Principal, Sainik School, Imphal, Manipur issued the impugned termination order for terminating the service of the Petitioner. For effective decision of this writ appeal, the impugned termination order is quoted hereunder in entirety:

CONFIDENTIAL

Ref: SSI/110/Adm 04 Nov.2004 Shri R.K. Angousana Singh Nursing Assistant Sainik School, Imphal.

TERMINATION OF SERVICE

1. Reference this school letter of even No. dated 30 Oct. 2002.

2. Your services would no longer be required with immediate effect. You are entitled to draw an amount to one month salary in lieu of the notice period.

3. You are, therefore, required to hand over the stores held by you to the Board detailed for this purpose. You are advised to carry out clearance and hand over the quarters to the Quartermaster latest by 05 Nov 2004(AN).

Sd/- (MS Bhandari) Wing Commander, Principal

4. The Appellant/writ Petitioner, being aggrieved by the said impugned termination order dated 4.11.2004, filed the writ petition being W.P. (C) No. 788 of 2004 for quashing the impugned termination order on the main ground that the order was issued without giving one month's notice infracting Rule 7.08 of the Terms and Conditions of Services of the employees of the Sainik School Society quoted above, against the present Respondents, i.e. (1) The Sainik School Society represented by the Honorary Secretary, Board of Governor, Ministry of Defence, CGO Complex, Room No. 222, Post DHQ, New Delhi-10001; (2) The Chairman, Local Board of Administration, Sainik Schbol, Imphal; (3) The Principal, Sainik School, Imphal and (4) The Union of India. The Respondents also filed their affidavit-in-opposition stating, inter alia, that as per Rule 7.08 of Sainik School Society's Rules and Regulations, during the period of probation, the Principal may terminate the service of any member of staff, appointed by him under his own powers, after giving him one month's notice in writing or one month's salary in lieu thereof and without assigning any reason. The learned Single Judge had passed the impugned judgment and order dated 30.11.2004 for dismissing the W.P. (C) No. 788 of 2004 for the reasons that the absence of one month's notice did not vitiate the termination order having regard to the fact that the termination order of the Petitioner was a termination simpliciter on unsatisfactory performance during his probation period and at the most the Appellant/writ Petitioner would be entitled to one month's pay in lieu of one month's notice. In the present writ appeal, the only point to be discussed is

whether or not the impugned termination order dated 4.11.2004 which was, admittedly, issued without giving one month's notice is infraction of Rule 7.08?

5. It is now a well settled principle of law that subordinate legislation is made by a person or a body by virtue of the powers conferred by a statute. Bye-laws are made in the main by the local authorities or similar bodies or by statutory or other undertakings for regulating the conduct of persons within their areas or for resorting to their undertakings. Any action of such bodies in excess of their powers or in violation of the restriction placed on their power is ultra vires. It is also equally well settled that the statutory bodies have no free hand in framing the conditions and terms of services of their employees. These statutory bodies are bound to follow the terms and conditions as laid down in the Rules and Regulations. The regulations prescribe the terms and conditions of appointment, condition of service and procedure for dismissing employees, thus regulations are not only binding on the authority but also to the employees equally. We may here recall the observations of Justice Frankfurter in *Vitarelli v. Seaton* (1959) 359 US 535.

An executive agency must be rigorously held to the standards by which it professes its action to be judged.... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.... This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword

6. We may also refer to the decisions of the Apex Court (Constitution Bench) in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, .* In that case, the Apex Court held that the regulations framed by the corporations, i.e. Oil and Natural Gas Commission, Life Insurance Corporation and Industrial Finance Co., basing on which employments were made were binding not only to the Corporation but also to their employees. The Hon'ble Mr. Justice A.R. Ray (as then he was) on his behalf and on behalf of Hon'ble Mr. Justice V.K. Chandrachud and Hon'ble Mr. Justice S.C. Gupta, in that case, observed that regulations framed by those Companies were intended to be binding upon them and were the basis on which the employment were made.

7. The conditions of service of an employee/government servant are regulated by the rules and regulations and also equally employers, even the legal authorities or/state within the meaning of Article 12 of the Constitution of India, are governed by the rules and regulations framed by them even if the service is contractual. The Apex Court observed in *Roshan Lal Tandon Vs. Union of India (UOI)*, as follows:

It is true that the origin of Government service is contractual. There is an offer

and acceptance in every case. But once appointed to his post or office the Govt. servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties.

x x x It is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest.

As Salmond and Williams put it "In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status.

8. From the bare perusal of the terms and conditions of the services of the Appellant/Writ Petitioner mentioned in the said Rule 7.08, it is crystal clear that the wordings of the rules are clear and simple and it speaks very clearly that the service of the probationer during the period of probation could only be terminated by the Principal only after giving him one month's notice in writing. Nothing is mentioned either indirectly or directly in the said Rule No. 7.08 that the employees of the Sainik schools or/Sainik Schools Society could be terminated with immediate effect by giving one month's pay in lieu of one month's notice. According to the well settled principle for interpretation of statute, the maxim "expressum facit cessare taciturn" should be applied in interpreting the expressed meaning of the statute in much as "when there is expressed mention of certain things, then anything not mentioned is excluded". We may here recall the observations of Lord Reid in *Atkinson v. Union State Market Govt.* L.R. 1971 AC 197 that "It is now well recognized that the court has powers to expand procedure laid down by statute if that is necessary to prevent infringement of natural justice and is not plainly the contrary to the intention of parliament." The Apex Court (Constitution Bench) in *Union of India and Another Vs. Tulsiram Patel and Others*, held that the maxim "expressum facit cessare taciturn" (when there is expressed mention of certain things, then anything not mentioned is excluded) should be applied in interpreting the statute. By following the ratio laid down by the Apex Court in the *Union of India and Anr. v. Tulsiram Patel*, as well as the maxim "expressum facit cessare taciturn", it would not be tenable under the law to accept the interpretation of the said Rule No. 7.08 by the Respondents which had been accepted by the learned Single Judge under the impugned judgment and order dated 30.11.2004 passed in W.P. (C) No. 788 of 2004 that the service of the probationer during the period of probation could be terminated immediately by giving one month's pay in lieu of one month's notice

in writing. This Court (Division Bench) also followed the ratio laid down by the Apex Court in *Union of India and Anr. v. Tulsiram Patel* (Supra) in *Hemam Bihari Singh Vs. State of Manipur and Others*, The Apex Court also discussed the maxim, *expressum facit cessare tacitum* in construction/interpretation of a provision of a statute/ rule in *Union of India (UOI) Vs. Rajiv Kumar*, In that case, the Apex Court held that there are 2(two) principles of construction (1) relating to *cassus omisus* and another in regard to reading the statute/statutory provision a whole. The Apex Court, further held that the language employed in a statute or in statutory provision is the determinative factor of legislative intent of policy makers. The words and phrases are symbols that stimulate mental reference to referent. Paras-18 and 19 of SCC in *Union of India v. Rajiv Kumar* read as follows:

18. It is a well-settled principle in law that the court cannot read anything into a statutory provision or rewrite a provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute or any statutory provision is the determinative factor of legislative intent of policy makers.

19. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute or any statutory provision is to ascertain the intention of the legislature or the authority enacting it. (See *Institute of Chartered Accountants of India v. Price Water house*) The intention of the maker is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in *Crawford v. Spooner*, courts cannot aid the legislature's defective phrasing of an Act; they cannot add or mend, and by construction make up deficiencies which are left there. (Also see *State of Gujrat v. Dilipbhai Nathjibhai Patel*). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See *Stock v. Frank Jones (Tipton) Ltd.* Rules of interpretation do not permit courts to do so, unless the provision as it stands is meaningless or of a doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn, L.C. in *Vickers Sons and Maxim Ltd. v. Evans*, quoted in *Jamma Masjit v. Kodimandra Deviah*).

9. The Apex Court in a case arising from this Court, i.e. in *Dinesh Chandra Sangma Vs. State of Assam and Others*, held that it is a cardinal rule of construction that no words should be considered redundant or surplus in interpreting the provisions of a statute or a rule. Again, the Apex Court in *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, held that the scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words, statutory enactments must ordinarily be considered according to its plain

meaning and no other words would be added, after or modify unless it is pliantly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. By following the ratio laid down by the Apex Court in the cases discussed above, we reiterate that when there is no words in the said Rule No. 7.08 to the effect that the service of the probationers could be terminated immediately by giving one month's pay in lieu of one month's notice, the said rule No. 7.08 should not be read in such manner for enabling the Principal, Sainik School, Imphal, Manipor to issue the impugned termination order dated 30.10.2004 legally by only mentioning that the Appellant/writ Petitioner would be entitled to draw an amount equal to one month's salary in lieu of the notice period. In this regard, we may, further, recall the decision of the Apex Court in O.P. Bhandari Vs. Indian Tourism Development Corpn. Ltd. and Others, that the rules which provides for termination of service of the employees of the Corporation simply by giving 90 days' notice period in lieu of such notice is violative of Article 14 and 16 of the Constitution of India. The Apex Court, further, in Raj Kumar Vs. Union of India (UOI) and Others, held that if the rules permit the termination of the services of the temporary employees immediately by simultaneous payment of one month's pay in lieu of one month's notice, termination order should be issued by simultaneous payment of one month's pay and any order for terminating the service of the temporary employees with the condition that he shall be paid a sum equivalent to the amount of pay and allowances for the period of one month in lieu of one month's notice is illegal inasmuch pay and allowances of one month has not been paid forthwith along with the termination order. But in the present case, even the one month's pay of the Appellant/writ Petitioner is not paid along with the impugned termination order dated 4.11.2004.

10. It is also equally well settled that law/regulation is made not be to broken but to be obeyed according to the decisions of the Apex Court in a catena of cases, one of which is the decision of the Apex Court, i.e. a Constitution Bench in Kartar Singh v. State of Punjab reported in (1994) 3 SCC 569. Para 36 of SCC in Kartar Singh v. State of Punjab (Supra) reads as follows:

36. Law is made not to be broken but to be obeyed and the respect for law is not retained by demonstration of strength but by better appreciation of the reasons, better understanding of its reality and implicit obedience. It goes without saying that the achievements of law in the past are considerable, its protection in the present is imperative and its potential for the future is immense. It is very unfortunate that on account of lack of respect, lack of understanding, lack of effectiveness, lack of vision and lack of proper application in the present day affairs, law sometimes falls in crises.

11. Such being the well settled principle of law, the Respondents are bound to follow the said Rule, i.e. Rule 7.08, while issuing the impugned termination order inasmuch the said Rule is framed to be followed and not to be broken. We may also refer to the decision of the Apex Court in Shri Mandir Sita Ramji Vs. Lt.

Governor of Delhi and Others, that "when a procedure is prescribed by the legislature it is not for the court to substitute a different one according to its notion of justice. When the legislature has spoken. Judge cannot afford to be wiser." But in the impugned judgment and order dated 30.11.2004 the learned Single Judge held that even if the procedure for immediate termination of the service of the probationer during the period of probation without one month's notice is not prescribed by the said Rules, the procedure adopted by the Principal, Sainik School, Imphal, Manipor for issuing the impugned termination order dated 4.11.2004 for terminating the service of the Appellant/writ Petitioner forthwith without giving statutory notice of one month is correct.

12. No doubt, the termination of service of a probationer is a very drastic measure taken by the concerned authority/employer against the probationer. According to well settled principle of law when a drastic power is to be exercised, it should be save and except according to prescribed procedure. The Constitution Bench of the Apex Court in *Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others*, held that it is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where the power is of a drastic nature and it exercises in a mode other than the one provided will be violative of the fundamental right of natural justice. Para-18 of the AIR in *Hukam Chand Shyam Lal* (supra) is quoted as follows:

18. It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of drastic nature and its exercise in a mode other than the one provided, will be violative of the fundamental principles of natural justice. Now, in the present case, if the telephones of the Appellants were to be disconnected on the ground of misuse, then they had to give, in consonance with the principles of natural justice, opportunity to the Appellants to explain their conduct before taking action under Rule 427 read with Rules 416 and 421. Resort to the wrong and more drastic course provided in Rule 422, on a ground which was not germane to an action under that Rule, vitiates the impugned order, particularly when it is manifest that in making the impugned order, the General Manager was influenced more by this ground and less, if at all, by the existence of "public emergency" certified by the Delhi Administration.

13. We may also remember the decision of the Apex Court (Constitution Bench) in *Dr D.C. Wadhwa and Others Vs. State of Bihar and Others*, that it is well settled law that even the constitutional authority also cannot do indirectly what is not permitted to do directly. If there is a constitutional provision inhibiting the constitutional authority from doing an act, such provisions cannot be allowed to be defeated by adoption of any subterfuge that would be clearly a fraud on the constitutional provision. It is also know to all that the arm of the court is long

enough to reach injustice wherever it is found. Ref: Air India Statutory Corporation v. United Labour Union and Ors. reported in 1997 (2) SC 165.

14. The writ appeal, which we are now dealing, is an appeal on principle meaning thereby that this Court is exercising the Coordinate jurisdiction and it is very limited. With such limited jurisdiction and powers, we have examined the impugned judgment and order of the learned Single Judge dated 30.11.2004 as to whether or not there is patent error on the face of the record and also as to whether or not it is against the established principle of law discussed above in the factual context of this case. Regarding the jurisdiction of the Writ Appeal of this Court, reference may be made to two Division Benches of this Court in State of Tripura and Anr. v. Ramendra Nath Dey reported in 2000 (3) GLT 214 : (2001) 1 GLR 54 and Tractor and Farm Equipment Ltd. Vs. Secretary to the Govt. of Assam, Dept. of Agriculture and Others, As discussed above, we are of the firm opinion that the impugned termination order dated 04.11.2004 for terminating the service of the Appellant Writ Petitioner without giving one month's notice in writing is infraction of the said Rule No. 7.8 under which one month's notice in writing is mandatory for terminating the services of the probationers and accordingly, there is patent error in the impugned judgment and order of the learned Single Judge dated 30.11.2004.

15. In the result and for the reasons discussed above, this writ appeal has merit and accordingly allowed by setting aside the impugned judgment and order of the learned Single Judge dated 30.11.2004 passed in W.P. (C) No. 788 of 2004 and impugned termination order dated 04.11.2004. The corollary of allowing the appeal is that the Appellant/writ Petitioner should be reinstated in service forthwith, but it is left to the wisdom of the Respondents to take appropriate action if so desired in strict compliance with the Sainik School Society Rules and Regulations against the Appellant/writ Petitioner. No order as to costs.