
(2006) 12 AHC CK 0055
In the Allahabad High Court

R.P. Garg

APPELLANT

Vs

Indian Oil Corporation Ltd.

RESPONDENT

Date of Decision : 01-12-2006

Acts Referred:

Citation : (2006) 10 ADJ 292 : (2007) 5 AWC 4454 : (2007) 1 AWC 869

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—The petitioner was appointed as Electrician Cr. III with Indian Oil Corporation Ltd. vide letter of appointment dated 21.4.1986. The said appointment of the petitioner was on probation. According to the appointment letter the probation was for a period of six months from the date of joining and was liable to be extended or reduced. However, condition No. 3 of the appointment letter stated that the petitioner was not liable to be treated as confirmed unless a letter of confirmation to that effect is issued. The petitioner alleges that he had worked satisfactorily and he had completed the probation period which was never extended. Under the model standing orders framed under the Industrial Employment Standing Orders Act, which are applicable, the maximum period of probation provided is one year and on completion of the said period of probation, the services of the petitioner were deemed to be automatically confirmed. These Model Standing Orders being statutory in nature supersedes the terms and conditions contained in the letter of the appointment. Therefore, the petitioner stood confirmed after he had put in over one year of service. However, his services were abruptly terminated without any notice or opportunity of hearing vide order dated 26.4.1989 on the ground that he is on probation and his services are no longer required. The said termination order is under challenge by the petitioner.

2. In the counter affidavit, the respondents have tried to justify the termination by stating that the petitioner, before joining his duties had given a declaration

suppressing material information and containing false information. The petitioner in the declaration form had concealed about his last employment, which was with U.P. Rajya Vidyut Utpadan Nigam Ltd. On inquiries it was revealed that the petitioner was sponsored for training by the Nigam from 3rd February 1986 to 4th July 1986 but the petitioner deserted training on 19th May 1987 by submitting his resignation which was in violation of the contract which was for a period of three years. Therefore, he had rendered himself disqualified for appointment.

3. The first question which arises for determination is whether the services of the petitioner stood confirmed or he continued to be on probation on the date on which his services were terminated.

4. Undisputedly under the appointment letter the petitioner was appointed on probation and the probation was to continue till a letter of confirmation was issued to him. Admittedly no letter of confirmation was ever issued to the petitioner.

5. However, according to the petitioner he stood confirmed under the Model Standing Orders as he had continued in service beyond 12 months, the maximum period of probation provided therein. Learned Counsel for the petitioner Sri Rahul Sahai in this connection placed reliance upon a decision of the Hon'ble Supreme Court in the case of Western India Match Company Ltd. Vs. Workmen, In this case the Apex Court held that where the terms of the agreement were inconsistent with the Standing Order, the terms of employment as per the Standing Order would prevail over the express terms of the contract of service. In other words, the terms and conditions of employment inconsistent with the Standing Orders would not survive. Thus, from the above it is evident that the Standing Orders, which have the statutory force would prevail over the terms and conditions of the letter of appointment. The Standing Order provides for a probation of a maximum period of 12 months. Therefore, the period of probation of the petitioner cannot exceed the above period. Since the petitioner satisfactorily continued in service for three years he stood automatically confirmed on the expiry of the above probation period of 12 months and as such was a confirmed employee when his services were terminated.

6. Sri V.K., Senior Advocate assisted by Sri Vivek Ratan emphasized that since the petitioner was guilty of concealment of facts and of making false declaration, his services have rightly terminated as the corporation does not want to retain such type of persons in employment.

7. I have examined the record of the writ petition and have perused the impugned termination order dated 26th April 1989. The impugned order specifically states "You were on probation and no confirmation letter is yet issued to you. Your services cannot therefore be regarded as confirmed. Your services are no longer required by the Corporation and hence terminated with immediate effect". The contents of the impugned order demonstrates that the service of the

petitioner had been terminated by treating him to be on probation and for no other ground much less for the reasons stated in the counter affidavit. The termination order does not say that the services of the petitioner are being terminated on the ground of concealment of facts and for making a false declaration at the time of seeking the employment.

8. The impugned order has to be judged in the light of what has been contained in it and not on the basis of the stand or the defence taken in the counter affidavit. The respondents, by counter affidavit cannot supplement reasons which are not contained in the impugned order. The above view is fortified by the decision of the Supreme Court in case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, The Apex Court in the said decision ruled that when statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. In view of the above it is not possible to consider the defence taken by the respondents in the counter affidavit and to read the reasons mentioned therein for terminating the services of the petitioner to be part of the impugned order. Therefore, as the services of the petitioner under the Standing Orders stood confirmed he was not liable to be terminated for the reasons recorded in the impugned order by treating him to be on probation. Admittedly, no disciplinary proceedings were initiated against the petitioner. Accordingly, the impugned order is unsustainable and is liable to be quashed.

9. Sri Agrawal then relied upon the decision in the case of Ramesh Prasad Patel v. Union of India and Ors. 2006 (4) ADJ 772 and submitted that even if the petitioner is treated to be a confirmed employee since his services have been terminated on the ground as stated in the counter affidavit i.e. for making wrong declaration, which was subsequent found to be false as such the principles of natural justice are not attracted and the appointment of the petitioner itself stand vitiated under law. The above argument is devoid of any substance in as much as the impugned termination order has otherwise been found to be invalid without going into the question of it having been passed in violation of the principles of natural justice. Moreover, the respondents have not chosen to cancel the appointment of the petitioner on the alleged ground of misrepresentation or concealment of fact which may have possibly be done without affording any opportunity of hearing to the petitioner.

10. In view of the above discussion, the impugned termination order dated 26th April 1989 (Annexure 3 to the writ petition) is quashed. However, the respondents are at liberty to pass a fresh order if they so desire in accordance with law.

11. The writ petition is allowed. No order as to costs.