

(1973) 05 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 145 of 1971

Sachida Nand Sharma

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 07-05-1973

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5(1)
Constitution of India, 1950 — Article 311(2)

Citation : (1973) 2 ILR HP 371

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

Bench : Single Bench

Advocate : Inder Singh, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—The Petitioner, who is a Language Teacher in a Government High School, is aggrieved by an order dated 29th July, 1970, terminating his services.

2. The Petitioner was appointed a teacher in a Primary School in the year 1960. The order dated 8th June, 1960, appointing him stipulated that his appointment was purely temporary and was liable to be terminated on twenty-four hours notice. Thereafter he underwent training as a Language Teacher and was appointed in that capacity in the year 1964. He was employed as a Language Teacher in the Government High School, Saiglu, District Mandi when he received an order dated 29th July, 1970 terminating his services under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965. The Petitioner filed an appeal, and the appeal has been rejected by the Himachal Pradesh Government.

3. The Petitioner challenges the order terminating his services on three grounds.

4. The first ground raised by the Petitioner is that he was a permanent government servant and his services could not be terminated by a mere notice.

It is pointed out that the seniority list of teachers shows the name of the Petitioner, and Annexure B-I to the rejoinder affidavit mentions that the Petitioner was a confirmed government servant. In my opinion, neither of the two facts establishes that the Petitioner is a permanent government servant. Seniority can be maintained between temporary government servants, and a temporary government servant who is on trial may be confirmed. Nonetheless, he remains a temporary government servant. The Petitioner has failed to establish that he was a permanent government servant. Indeed, there is no material on the record that he was. The burden lay on the Petitioner to prove his case in that regard, and in my opinion he has failed.

5. The second ground raised by the Petitioner is that the impugned order was passed by way of punishment and the Petitioner was entitled to an opportunity of showing cause against the order proposed. The omission to grant that opportunity, it is said, violates Article 311(2) of the Constitution. The original records were produced by the learned Advocate-General, appearing for the Respondents, and it appears from a peruse of those records that an enquiry was made by the District Education Officer, Mandi. The report disclosed that the Petitioner had been guilty of misconduct in relation to a female student of the educational institution, and the District Education Officer suggested that the Petitioner should be transferred. The report was examined by a superior officer of the Education Department, and he drew up a note recommending that in view of the misconduct of the Petitioner a lenient view should not be taken and the Petitioner should not be spared, and that instead of transferring him his services should be terminated. If the order terminating the Petitioner's services had been passed on the basis of that note it may have been possible to say that the order was passed by way of punishment. But the records disclose that thereafter the Additional Director of Education, who perused the note, although agreeing with the measure proposed, adopted a different approach. He took the view that the Petitioner was a clinger to young female students and, therefore, he should be got rid of, otherwise it was possible that he could engage in similar misconduct in any other school. In other words, in the opinion of the Additional Director the Petitioner was not a fit person to remain on the staff and it was expedient that his services should be terminated. Clearly, what was contemplated by the Additional Director was a termination of the Petitioner's services on the basis that he was not a suitable person to be continued in service. He did not intend the order of termination by way of punishment. The Director of Education, according to the records, apparently accepted the recommendation of the Additional Director and noted that the Petitioner "cannot be kept in service". I am satisfied that the order terminating the Petitioner's services was passed in the view that he was not a suitable person to be kept in service. It was not passed by way of punishment. While the misconduct of the Petitioner supplied the motive for terminating his services, it was not the foundation of the order of termination. The order was in accordance with Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965. The second ground must also fail.

6. The last ground in support of the petition is that when it was decided to terminate the services of the Petitioner the principle of "last come first go" should have been followed, and the services of one of those who were junior to the Petitioner should have been terminated while the Petitioner should have been retained. Plainly, that principle cannot be invoked in the present case. It is a principle which applies in cases where a post is abolished and consequential retrenchment becomes necessary. In that event, the incumbent holding that post is not retrenched, but a person junior to him in the cadre G.S. Ramaswamy and Others Vs. Inspector-general of Police, Mysore, on which the Petitioner relies, is a case where officers holding certain posts had returned from deputation and the question arose of reverting those who had meanwhile been appointed to those posts in an officiating capacity. It is not a case where the services of a government servant were terminated because his misconduct provided the motive for such termination.

7. No other contention was raised before me.

8. In my judgment, the petition fails and is dismissed, but in the circumstances there is no order as to costs.