

(1980) 08 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No. 15 of 1973

Sachida Nand Sharma

APPELLANT

Vs

The State of H.P. and Another

RESPONDENT

Date of Decision : 21-08-1980

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 1, 1(3), 5(1)
Constitution of India, 1950 — Article 311(2)

Citation : (1980) 9 ILR HP 528

Hon'ble Judges : V.P. Gupta, J;T.R. Handa, J

Bench : Division Bench

Advocate : Arun Goel, for the Appellant; H.K. Paul, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

V.P. Gupta, J.—The Appellant in this appeal has challenged the order, dated 7th May, 1973, passed by his Lordship the Hon'ble Chief Justice in the C.W.P. No. 145 of 1971, by which the writ petition of the Appellant was dismissed.

2. The brief facts of the case are that the Appellant was appointed as a teacher against an additional post in the year 1960 on purely temporary basis, vide order, dated 8th June, 1960 (Annexure A). The appointment of the Appellant was liable to be terminated on 24 hours notice. Afterwards the Appellant had some training as a Language Teacher and was appointed as a Language Teacher in the year 1964. In the year 1970, the Appellant was serving as a Language Teacher in the Government High School, Saigaloo, District Mandi, and his services were terminated by order, dated 29th July, 1970, under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965. The Appellant filed an appeal, but the same was also rejected.

3. The Appellant thereafter filed a writ petition in this Court and alleged that he was a Government servant and that the termination of his services could not be effected by a mere notice because he was a confirmed Government servant and

as such was a permanent employee of the Government. It was further alleged that the termination of the Appellant's services is by way of punishment, and as the Appellant has not been given any opportunity of showing cause against the proposed order of termination of services, therefore, the said order is violative of Article 311(2) of the Constitution of India. The Appellant also alleged that he was senior to certain other persons and as such his services should not have been terminated by ignoring his claims

4. The Hon"ble R.S. Pathak, Chief Justice (as his Lordship then was) dismissed the writ petition of the Appellant by his order, dated 7th May, 1973, after repelling all the contentions raised by the Appellant.

5. In this appeal the learned Counsel appearing on behalf of the Appellant has challenged the order, dated 29th July, 1970, by which his services have been terminated and has also contended that the order of the learned single Judge, dated 7th May, 1973, is liable to be set aside.

6. We have heard Shri A.K. Goel learned Counsel for the Appellant and Shri H.K. Paul, Assistant to the Advocate-General for the State, and have also perused the records.

7. The contention of the learned Counsel for the Appellant is that the services of the Appellant could not be terminated by order, dated 29th July, 1970, because the Appellant was a confirmed Government employee and held the status of a permanent employee. The learned Counsel referred to Annexure B-1, appended to the writ petition, and contended that in Annexure B-1, which is the final seniority list of S. Vs. and L.Ts., as it stood on 1st November, 1966, the Appellant is shown to have been appointed for the first time on 5th June, 1960, and was confirmed in that grade from 1st November, 1966. This document, Annexure B-1, clearly mentions that in the final senioriy list, the Appellant was a confirmed teacher with effect from 1st November, 1966.

8. The next question that arises for consideration is as to whether the services of the Appellant can be terminated under the Central Civil Services (Temporary Service) Rules, 1965 (hereinafter shortly called the Rules of 1965) or not.

9. The Hon"ble single Judge in his order, dated 7th May, 1973 has observed as follows:

"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 was pointed out that the seniority list of teachers shows the name of the Petitioner, and annexure B-1 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.

10. We respectfully disagree with the observations made by the Hon''ble single Judge for the following reasons:

F.R. 12-A of the Fundamental Rules and the Supplementary Rules reads as follows:

"F.R. 12-A-Unless in any case it be otherwise provided in these rules, a Government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post.

The Government of India''s Order pertaining to F.R. 12-A is as follows:

"(I) Confirmation in a service or cadre is tantamount to acquiring a lien on a post. A question arose whether lien is acquired on confirmation of a Government servant in a "service" or "cadre". The intention of the rules relating to lien is to provide every person substantively appointed to Government service his own substantive niche in the appropriate cadre. In certain organised services like the General Secretariat Service, the Indian Economic Service and the Indian Statistical Service the members are confirmed in a particular grade of the service/ cadre as such and not against any specific post. Confirmation of a Government servant in a "service" in such cases, is tantamount to acquiring a lien on a post (although not specified) in the appropriate cadre of that service.[G.I., M.F., G.M. No. 2 (2)-E. IV (A)/67, dated the 15th May, 1967].

10. Rule 1 of the Rules of 1965 reads as follows:

1. (1) These rules may be called the Central Civil Services (Temporary Service) Rules, 1965.

(2) They shall come into force at once.

(3) Subject to the provisions of Sub-rule (4), these rules shall apply to all persons-

(i) who holds a civil post including all civilians paid from the defence services estimates under the Government of India and who are under the rule making control of the President, but who do not hold a lien or a suspended lien on any post under the Government of India or any State Government;

(ii) who are employed temporarily in work-charged establishments and who have opted for pensionary benefits.

(4) Nothing in these rules shall apply to-

(a) railway servants;

- (b) Government servant not in whole time employment;
- (c) Government servants engaged on contract;
- (d) Government servants paid out of contingencies;
- (e) persons employed in extra temporary establishments or in work-charged establishment; "other than the persons employed temporarily and who have opted for pensionary benefits";
- (f) non-departmental telegraphists and telegraph men employed in the Posts and Telegraphs Department;
- (g) such other categories of employees as may be specified by the Central Government by notification published in the official gazette

The Appellant in the present case was a confirmed employee and, therefore, he had a lien on the post as prescribed under F.R. 12-A. This being the case the Rules of 1965 were not applicable to the Appellant [see-Rule 1(3)(i)]. The services of the Appellant, therefore, could not be terminated under these Rules of 1965.

11. The confirmation of a temporary employee will only mean that he has been put in the permanent sanctioned cadre. The meaning of the word "confirmed" as given in the Concise Oxford Dictionary also means, "permanent", "unlikely to change".

12. There are also some authorities, which are referred to presently from which it can be inferred that a confirmed employee is not a temporary servant.

13. In *Beni Madhab Pal Choudhari v. State of Assam and Ors.* 1968 S.L.R. 616, a Division Bench of the Assam and Nagaland High Court observed as follows:

"It is common knowledge that confirmation gives certain rights to the Government servant who is confirmed, the rights being that he cannot be removed from service except on disciplinary grounds or on medical unfitness. Here there is no question of any disciplinary grounds, nor any question of medical unfitness. Such being the case and there being no power under the rules to set aside the confirmation of a Government servant, we must hold that the Government has no such power. It would be most dangerous to assume that such a power exists in the Government; for, then there will be absolutely no certainty to the service of a Government servant. Any such stand on behalf of the Government will certainly be contrary to all recognised principles of Government employment. It is because confirmation gives a permanent footing in the service that employees are anxious to get themselves confirmed and in the Central Government service there is the system of quasi permanency in regard to the officers and employees, who have done three years of continuous service.

14. In *Municipal Committee Rohtak v. Shri Johri Mal Mitter, Ex-Municipal Engineer* 1970 S.L.R. 29, it has been observed as follows:

"The learned Counsel for the Defendant Municipality has pressed that the learned Judge in the first appellate Court was wrong in reaching the conclusion that the Plaintiff had been confirmed, but all that the State Government did in its communication, copy Exhibit PX, was to point out to the administrator of the Defendant Municipality that the only mistake he had made with regard to the confirmation of the Plaintiff was to give effect to the same retrospectively from October 27, 1952. The communication pointed out that the confirmation was operative only from October 27, 1953. The Administrator was asked to rectify the mistake. The mistake being only with regard to the date of confirmation, the communication of the State Government could not possibly have been read by the learned Judge to say that there was no confirmation of the Plaintiff or rather there was no approval of the confirmation of the Plaintiff by the State Government. Subsequent three communications of the State Government extending the probationary period of the Plaintiff have had no meaning because once confirmed, the Plaintiff could not be deconfirmed as deconfirmation would obviously amount to removal or dismissal from service as a permanent servant of the Defendant Municipality. Even if he was permitted to continue in the service of the Defendant Municipality on further period of probation, the order of deconfirmation would have the effect of depriving him of the status of a permanent Engineer of the Defendant Municipality. So an order of deconfirmation could not be made in the manner in which the State Government made it in this case. The Plaintiff was confirmed as Municipal Engineer on October 27, 1953 and it has met the approval of the State Government as appears from its communication, copy Exhibit PX.

15. In *Dr. Binoy Kumar Das v. State of Orissa and Anr.* 1974 (1) S.L.R. 320 a Division Bench of the Orissa High Court observed as follows:

"Confirmation is a necessary incidence of service and is perhaps the most eventful landmark in the career of a Government servant. It earns him title to the post in respect whereof he earns confirmation, and thus brings security to his employment. Until confirmation comes, a lot of advantage in service cannot be earned.

16. In such circumstances we hold that Rule 5(1) of the Rules of 1965 will be inapplicable and the result of the same will be that the services of the Appellant could not be terminated under Rule 5(1) supra. The order of termination of services by order, dated 29th July, 1970, is, therefore, clearly without jurisdiction and as such has to be quashed.

17. In view of the above discussion, the order, dated 7th May, 1973, passed by the learned single Judge is hereby set aside, the appeal is accepted and as a consequence the writ petition filed by the Appellant is accepted and the order, dated 29th July, 1970, terminating the services of the Appellant is quashed. The Appellant shall also be entitled to costs of these proceedings, assessed at Rs. 200/-.