
(2001) 02 RAJ CK 0037
In the Rajasthan High Court
Case No : Civil Writ Petition No. 505 of 2001

Samunder Singh	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 12-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 2 RLW 914 : (2001) 2 WLC 453 : (2001) 2 WLN 336

Hon'ble Judges : Prakash Tatia, J;B.J. Shethna, J

Bench : Division Bench

Advocate : J.K. Kaushik, for the Appellant; V.K. Mathur, for the Respondent

Judgement

Shethna, J.

(1). Notice to the respondents.

(2). Mr. V.K. Mathur, who appeared before the CAT and who is also standing counsel for the respondents, is directed to accept notice.

(3). At the request of learned counsel Mr. Kaushik, this matter is beard and disposed of finally.

(4). By now, law is very well settled by umpteen number of judgments of the Hon'ble Supreme Court regarding the doctrine of legitimate expection. The person who joins the service will definitely expect himself to be confirmed after the period of probation is over, if nothing wrong is found against him during the period of probalion.

(5). In the instant case, the petitioner/original applicant was appointed on the post of Wash Boy on probation for a period of 2 years way pack on 12.4.89. Similarly, one Devdas was appointed on the post of Wash Boy on probation for a period of 2 years way back on 2.9.3.89. Their services were terminated by an order dated 2.6.95 with effect from 31.5.95. Both of them filed separate original applications No. 239/95. However, the learned CAT by its common judgment and

order dated 13.1.2000 dismissed their applications. Therefore, the petitioner Samunder. Singh has filed this petition and Devdas has also filed separate writ petition.

(6). It is strange that the respondents came out with the plea before the Tribunal that both the applicants were appointed on the post of Wash Boy though no such posts were available. After appointing them, they applied for creation of the posts of Wash Boy but their proposal was rejected, therefore, the respondents had terminated their services.

(7). On behalf of the original applicant, reliance was placed on the judgment and order dated 9.12.99 passed by the Jaipur Bench of Tribunal in case of Vinod Kumar Sharma vs. Union of India & Ors. (1). The relevant observations made in paras No. 9 and 10 by the Jaipur Bench of the CAT have been reproduced by the Jodhpur Bench of the CAT in para 6 of its order. However, the learned Tribunal refused to rely on that judgment in view of the Hon"ble Supreme Court's judgment in case of Himachal Road Transport Corporation vs. Dinesh Kumar (2). The relevant portion of this judgment has been reproduced by the Tribunal in para 6 of its order. After reproducing the same, the learned CAT observed "that the appoinment of the applicants on probalion gives an impression that they were appointed on permanent post. The fact remains that there was no post on which the applicants were appointed. The applicants were appointed in anticipation of creation of posts which ultimately did not materialise. Apparently, there has been a mistake on the part of the respondents in using the word "on probation" in the offer of appointment to the applicants." Accordingly, the learned Tribunal refused to follow the order dated 9.12.99 passed in O.A. No.646/96 by the Co-ordinate bench of the CAT at Jaipur Bench and dismissed both the applications.

(8). We strongly condemn the approach of the Tribunal in dismissing both the applications, in this manner. When there is a judgment of the co-ordinate bench of the Tribunal at Jaipur, then in our considered opinion, it was not proper on the part of the Jodhpur bench of CAT not to follow the same, Judicial propriety demands that the co-ordinate bench must give respect to the judgments of other co-ordinate bench. If the other Bench is not approving, then only course left open to them is to refer the matter to the larger bench but it cannot dismiss the petition like this.

(9). From the record of the case and the averments made in the petition, it is clear that both the original applicants were appointed on the post of Wash Boy in Group-D. On the requisition made by the respondent No.2, the local employment exchange sponsor the names of both the applicants for filling up the sanctioned posts of Wash Boy in Group-D in pay scale of Rs. 750- 940 in the year 1989. They were interviewed and they were duly selected. After undergoing the medical test, they were given appointment way back in the year 1989 as they were found fit and suitable to be appointed on the post of Wash Boy. In their appointment orders itself, it has been mentioned that their appointment was on

probation. Their appointments were extended from time to time nearly for a period of six years. During this period of six years, nothing wrong was found against them, therefore, in our considered opinion their services could not have been terminated in this manner on the ground that the proposal made by them for creation of posts of Wash Boy was rejected by the higher authorities. It is to be stated that nowadays it is so difficult for anyone to get job. While remaining in service for six years, they must have become over age and now they will not be able to get employment in the Government. By remaining in service for a long period of six years, they would definitely expect that sooner or later they will be confirmed on the post.

(10). Under the circumstances, we are of the opinion that the Jaipur Bench of the CAT rightly allowed the O.A. No. 646/96 filed by Vinod Kumar. Once that judgment has become final, then there was no option for the Jodhpur Bench of CAT but to follow that judgment. Unfortunately, without applying its mind, the Jodhpur Bench of the Tribunal dismissed both the applications of the applicants relying on the judgment of Hon"ble Supreme Court in case of Dinesh Kumar (supra) which has no application whatsoever. In fact, in its latest decision in the case of Rudra Kumar Sain and ors. vs. Union of India and ors. (3), the constitutional bench of the Hon"ble Supreme Court has held that, if the appointments are made after approval and consultation with the appropriate authorities and if the persons are continuing in service for fairly long period, then their appointment can be said to be stop gap or fortuitous.

(11). In view of the above, this petition is allowed. The impugned judgment and order dated 13.1.2000 (Annex. 5) passed by the CAT dismissing both the original applications No. 238/95 and 239/95 is hereby quashed and set aside. The original application No. 239/95 filed by the present petitioner is accepted and it is declared that his termination order dated 2.6.95 is bad in law and illegal and accordingly, it is quashed and set aside. It is further declared that the respondents shall treat the petitioner in continuous service as if the impugned order of termination was never passed and they shall give all other benefits of service to the petitioner including the back wages etc. and adjust the petitioner against any Group D post as ordered earlier by the Jaipur Bench of CAT in Original Application No. 646/96 decided on 9.12.99.