

(2002) 07 GAU CK 0011
In the Gauhati High Court
Case No : Civil Rule No. 1083 of 1995

Sangamsel Maring

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 08-07-2002

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5, 5(1)
Constitution of India, 1950 — Article 226, 309, 311(2)
Police Act, 1861 — Section 46, 7

Citation : (2003) 3 GLT 258

Hon'ble Judges : H.K.K. Singh, J

Bench : Single Bench

Advocate : T. Nandakumar Singh and A. Mohendro, for the Appellant; R.K. Jayanta Singh, for the Respondent

Final Decision : Allowed

Judgement

H.K.K. Singh, J.—Petitioner was appointed as Rifleman in the Manipur Rifles, Government of Manipur on 8.3.78 and he joined service on 21.3.78 and he was posted as Rifleman in the 6th Bn. Manipur Rifles. While he was so continuing in service, under order dated 5.6.84 passed by the commandant, 6th Bn. Manipur Rifles, service of the Petitioner was terminated under proviso to Sub Rule 1 of Rule 5 of Central Civil Services (Temporary Services) Rules, 1965 as in Annexure-A/1 to the writ petition. The Petitioner filed departmental appeal seeking for his reinstatement in his confirmed post which was rejected by the Dy. I.G. of Police(OPs). Hence, the present writ petition under Article 226 of the Constitution of India challenging the aforesaid order of termination from service.

2. Mr. T. Nandakumar Singh, learned Sr. Counsel has urged many grounds including that the order of termination is on the ground of misconduct which is the foundation of the order of termination and as such the termination order is liable to be quashed for not complying with the Article 311(2) of the Constitution of India. Again, in the course of argument learned Sr. Counsel has raised an

important point in the present case that the service condition of the Petitioner is regulated by statutory rules under which the Petitioner shall be deemed to have been confirmed in service and as such service of the Petitioner cannot be terminated under Rule 5 of the CCS (Temporary Services) Rules, 1965 as the said provision of Temporary Service Rules is not applicable in the present case.

3. Admittedly, though the Petitioner was appointed as Rifleman in the Manipur Rifles, he is the member of the Manipur Police and as such conditions of service and other service laws of Manipur Police apply in case of the Rifleman serving in various Battalions of Manipur Rifles. In the course of hearing Mr. T. Nandakumar Singh as well as Mr. R.K. Jayanta, learned Government Advocate submitted that earlier there was some doubt with regard to the applicability of the provisions of Assam Police Manual (hereinafter A.P. Manual) and as such person appointed in the Manipur Police were terminated under the provisions of CCS(Temporary Services) Rules, 1965 and again some provisions of the A.P. Manual were also followed. In this regard Mr. T. Nandakumar has produced a copy of the Gazette Notification dated 7.9.74 wherein it is found that under order dated 6.9.74 the Governor of Manipur clarified that A.P. Manual Part-I to V will be applicable to Manipur Police force. The aforesaid order of the Governor is reproduced below:

MANIPUR GAZETTE EXTRAORDINARY PUBLISHED BY AUTHORITY

No. 134 Imphal, Saturday, Sept. 7,1974 (Bhadra 16,1896).

GOVERNMENT OF MANIPUR SECRETARIAT: HOME DEPARTMENT ORDERS BY THE GOVERNOR OF MANIPUR

Imphal, the 6th Sept. 1974.

No. 7/41/73 POL.I- In exercise of the powers conferred by Section 7 read with Section 46 of the Police Act, 1861 (V of 1861), the Govt. of Manipur is pleased to order that the rules laid down in the Assam Police Manual parts I to V shall be deemed to be the rules framed by the State Government of Manipur for application to the Manipur Police Force, with such alterations and modifications, not affecting the substance, as may be necessary having regard to the existing Administrative Set-up in the State.

2. Further, the Governor of Manipur is pleased to order that for the aforesaid purpose the Manipur Rifles shall be deemed to be a part of the Manipur Police Force.

3. This order will take effect immediately.

(Emphasised). Sd/- A. Dwijamani Singh Under Secy. to the Govt. of Manipur.

4. Sections 7 and 46 of the Indian Police Act, 1861 confer powers upon the State Government to make Rules and the respective sections indicate the field on which the rules may be made. In the present case the above order of the Government dated 6.9.74 indicates that the Governor of Manipur declares that those provisions in A.P. Manual shall be the rules framed by the State

Government of Manipur. If an Act confers upon the State Government to make rules for the purpose of carrying out all or certain provisions of the Act, State Government can make independent rules in exercise of the rule making power as conferred by the Act, or the delegated authority may adopt any Rules framed by any other State with certain alteration or modification not affecting the substance considering the local situation. Here, it may be mentioned that legislation may be made by reference or by adoption. The above order of the Governor of Manipur indicates that provisions in the A.P. Manual shall be deemed to be the Rules framed by the State Government of Manipur. Here 2(two) points are involved. The first point being that the Rules has not been shown to have been framed by the State Government, but it has been made by the Governor of Manipur and secondly the Governor declares that those rules in A.P. Manual (Part I to V) shall be deemed to be the Rules framed by the State Government of Manipur.

5. The Rule making power conferred upon the State Government or any other authority as delegated by an Act or if so enable by the Act, further, by the delegated authority, is equal legislative function of the executives. Under the Constitution executive powers of the State is vested in the Governor and as such even if the aforesaid order of the Governor has not been happily, worded, considering from all angles I am of the opinion that the aforesaid order of the Governor clarifies that A.P. Manual (Part I to V) as in force on the date of order i.e. 6.9.74 came to be the rules framed under the provisions of Sections 7 and 46 of the Police Act for the State of Manipur.

6. Sub rule (I) of Rule 20 of A.P. Manual (Part-III) prescribes for appointment, probation and confirmation of constable. The aforesaid Rule is reproduced below:

20. Enlistment of Constables- (1) Superintendents of Police will make all appointments of constables on probation. They will remain so for a year, extensible by the Deputy Inspector General (for reasons to be stated) to him by the Superintendent of Police) to two years and then be confirmed only if they are considered likely to be efficient.

7. Riflemen are constables in Manipur Police Department. Petitioner was appointed as Rifleman on 8.3.78 and he joined in service on 21.3.78 and his services was terminated on 5.6.84. Under the aforesaid rules normally period of probation is one year which can be extended to two years. Thus, the maximum period of probation (including extended period) is two years. But the Petitioner continued in the service much more than two years. Question now to be determined is whether the Petitioner will be deemed to have been confirmed or not.

8. In this regard Mr. R.K. Jayanta for the State Respondents has submitted that the provision reading as- "and then be confirmed only if they are considered likely to be efficient" indicates that they are confirmed only when they are found efficient and likely to be efficient and thus a speaking order of confirmation is necessary and called for. The learned Government Advocate has relied upon a

decision in the case of Jai Kishan Vs. Commissioner of Police and another, to impress the Court that confirmation is not automatic. In this case Petitioner was appointed as temporary constable on 9.9.82 and the continued upto 14.9.88 on which date Respondents issued and served an order of termination under Rule 5 of the Temporary Services Rule. Relevant Rule being Rule 5 is reproduced below:

5. Termination of temporary service- (1)(a) The Services of a temporary Government Servant shall be liable to termination at any time by a notice in writing given either by the Government Servant to the appointing authority to the Government servant;

(b) The period of such notice shall be one month.

Provided that the services of any such Government Servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month.

The Apex Court held that as per the Service Rule, during the period of probation, the probationer is required to complete successfully the probation complying with the conditions of passing tests etc. Thereafter, they need be confirmed in the Delhi Police Service. In that case as the constable failed to improve his performance, in spite of repeated opportunity to improve himself, notice of termination was issued. The Apex Court held that confirmation into the service, therefore, is a condition precedent to continue as a member of Delhi Police Service and the Apex Court did not interfere with the order of termination.

9. In this regard, Mr. T. Nandakumar has submitted that as the rules prescribe for maximum period of probation, Petitioner cannot be continued in service as a probationer indefinitely and according to the learned Sr. Counsel the Petitioner was allowed to continue in service for more than six years. Thus, the Petitioner shall be deemed to have been confirmed as Rifleman. Learned Counsel has relied upon a decision reported in State of Punjab Vs. Dharam Singh, . In the aforesaid constitution Bench decision of the State of Punja v. Dharam Singh (supra) relied upon by Mr. T. Nandakumar Singh the relevant Service Rule prohibits extension of period of probation beyond three years and the Petitioner in that case was allowed to continue beyond the period of three years, and the Apex Court held that Petitioner must be deemed to have been confirmed in that post. In the case of State of Gujarat Vs. Akhilesh C. Bhargav and Others, the Apex Court, considering the relevant service Rules, namely, Indian Police Service (Probation) and the administrative instructions issued by the Ministry of Home Affairs, Govt. of India, followed aforesaid case of Dharam Singh (supra), held that a person allowed to continue in service for more than four years would be deemed to have been confirmed.

10. Question now to be decided is whether Constitution Bench decision in Dharam Singh or the case of Jai Kishan (supra) will be applicable. At this

juncture, it may be mentioned here that an important order of the Government has been produced by the Ld. Sr. Counsel being order dated 21.9.83 passed by the Governor of Manipur which is reproduced below:

GOVERNMENT OF MANIPUR SECRETARIAT: HOME DEPARTMENT ORDER BY THE GOVERNOR: MANIPUR

Imphal, the 21st September, 1983

No. 13(1) 79/81-H: In pursuance of this Government order No. 7/41 /73-Pol(I) dated the 4/6th Sept., 1974, the Governor of Manipur is pleased to order the modification in Rule 66 of the Assam Police Manual Part III as follows with immediate effect until further orders:

Rule 66-II of Part III of A.P. Manual.

A new Sub-clause (a)(a) and (d)(d) be added as "(a)(a) fine not exceeding 1/3 of the pay for Head Constables and above only and (d)(d) termination of service (in respect of temporary hands) and compulsory retirement (in respect of permanent hands as per rules).

Schedule to Rule 66 of Part III of A.P. Manual.

Following punishments are to be added and treated as Minor Punishments:

(a) . . .

(o) . . .

(g) . . .

(h) . . .

By order and in the name of Governor Sd/- Kh. Mohendro Singh Under Secy. (H) Govt. of Manipur.

Rule 66 prescribes regarding proceedings to be drawn up in case of major punishments and major penalties are indicated so also minor penalties are indicated. As per the above order of the Governor dated 21.9.83 termination of service in respect of temporary hands has become a major punishment Again, the procedure prescribed in the A.P. Manual regarding award of penalties has to be followed. The above order of the Governor will be deemed to be the Rules framed under Rule making powers of the Indian Police Act, 1861 as noticed above. In view of the above notification dated 21.9.83 the question as to whether continuing of a constable in service after probationary period of two years will be deemed to have been confirmed or not is not necessary to be decided in the present case. In a recent decision of the Supreme Court in Chandra Prakash Tiwari and Ors., Appellants v. Shakuntala Shukla and Ors., Respondents reported in AIR 2002 SCW 2457 the Apex Court held that rules framed under the provisions of the Police Act cannot be superseded by any Rules framed by the Governor under Article 309 of the Constitution on the principles

"occupied field" and "Generalia specialibus non derogant". In our present case provision of A.P. Manual being Rules framed under the Indian Police Act, 1861 are to be followed. And the provision of Temporary Service Rules, 1965 is not applicable in the present case in respect of the Police service of Manipur.

11. As the termination of a temporary hand in Manipur Police is statutorily declared as a punishment, the impugned order of termination is not tenable in law for violation of Article 311(2) of the Constitution.

12. Learned Government Advocate submitted that the Petitioner approached this Court at the belated stage, thus, the petition may be rejected even on this ground. On perusal of the records, I find that Petitioner's termination order was passed on 5.6.84, his appeal was rejected only on 5.9.95 and soon thereafter Petitioner approached this Court filing the present writ petition on 8.12.95.

13. For the aforesaid reasons and conclusion, termination order dated 5.6.84 (Annexure-A/1) and also the order dated 5.8.95 are set aside. Authority concerned is directed to reinstate the Petitioner forthwith. However, authority concerned may proceed against the Petitioner in accordance with provisions of law. Regarding back wages, authority shall pass necessary orders in accordance with provisions of law. But, it is clarified that if any amount is found payable on enquiry, the maximum amount of back wages shall be restricted to 1/4(one fourth) of the full back wages. This restriction is made considering the fact that Petitioner has not approached the authority for appeal/reinstatement at the earliest.

Petition is allowed and is disposed of. No costs.