

(2006) 05 OHC CK 0055
In the Orissa High Court
Case No : O.J.C. No. 6571 of 1998

Sarata Chandra Dash

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-05-2006

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11
Central Civil Services (Temporary Service) Rules, 1965 — Rule 5, 5(1)
Constitution of India, 1950 — Article 311, 311(2)
Penal Code, 1860 (IPC) — Section 420, 468, 471
Probation of Offenders Act, 1958 — Section 12, 4

Citation : (2006) 05 OHC CK 0055

Hon'ble Judges : Pradip Mohanty, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : B.S. Tripathy and M.K. Rath, for the Appellant; J.K. Mishra, Asst. Solicitor General, for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—This writ petition has been filed against the judgment and order dated 23.4.1998 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 679 of 1992 dismissing the O.A. which was filed by the Petitioner.

2. At the very outset it is pertinent to mention that for the recruitment examination for the post of Postal Clerk under opposite party No. 3 the Petitioner made an application and submitted forged mark sheet etc. for securing an employment. In the application, he described stating himself to be a 1st Division student by securing 498 marks in the aggregate in the High School Examination but actually he had secured only 336 marks and was placed in 3rd Division. Learned Asst. Solicitor General Mr. J.K. Mishra appearing for the opposite parties submitted that the selection was based on the percentage of marks obtained in the High School Certificate Examination and, therefore, the Petitioner was selected on the basis of the forged mark sheet but when it was revealed the

C.B.I. investigated into the matter and prosecuted the Petitioner for the offences punishable under Sections 420/468/471 I.P.C. Charge-sheet was filed in the Court of Addl. Chief Judicial Magistrate, Bhubaneswar, thereafter, the trial commenced. On conclusion of the trial, the Petitioner was found guilty of the offences punishable under Sections 420/471 I.P.C. and convicted accordingly but instead of sentencing him he was released u/s 4 of the Probation of Offenders Act vide judgment and order dated 10.5.1977. Consequent upon his conviction in his services were terminated in the criminal case vide impugned order dated 12.5.1977. The Petitioner preferred an appeal on 28.9.1977. When the appeal was not disposed of since long, he approached the Tribunal by filing O.A. No. 99 of 1989 which was disposed of on 22.3.1989. Thereafter Review Application No. 27 of 1990 was started suo motu by the Tribunal which was disposed vide order dated 20.12.1990 with the observation that the Petitioner may file a representation before the Director General, Posts, for consideration of the matter. Accordingly the representation was filed on 6.5.1991 which was disposed of and rejected vide order dated 26.3.1992. Aggrieved, the Petitioner filed O.A. No. 679 of 1992, the same having been dismissed by the Tribunal the impugned judgment and order dated 23.4.1998, he has filed the instant writ petition.

3. Learned Counsel for the Petitioner Mr B.S. Tripathy has submitted that the impugned order of termination from service was passed without affording any opportunity to the Petitioner and thus is violative of Article 311(2) of the Constitution. He also contended that since the Petitioner was released on probation in view of Section 12 of the Probation of Offenders Act, his service career should not have been affected because of the conviction.

4. It is a fact that the Petitioner was a temporary Government servant and his services could be terminated by an innocuous order under Rule 5 of the Central Civil Services (Temporary Service) Rules 1965. It was not necessary for the opposite parties to consider his conduct which has led to his conviction. Had the forced mark sheet showing 498 marks to have been obtained by the Petitioner in the High School Certificate Examination not been considered, he would not have been appointed on the post. Therefore, once it was established that the Petitioner had not secured 498 marks in the High School Certificate Examination and had secured only 336 marks and was placed in 3rd Division, his initial selection was null and void. But since he had rendered services, the opposite parties preferred to terminate his services. In the explanation given under Rule 11 of the Central Civil Services (Classification Control and Appeal) Rules, 1965, termination of the services of a temporary Government servant in accordance with the provisions of Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 does not amount to punishment. The relevant portion of the explanation to Rule 11 is quoted as under:

Explanation - The following shall not amount to a penalty within the meaning of this rule, namely:

xxx....xxxx

...XXX

...XXX

(viii) termination of the services -

XXX....XXXX

...XXX

...XXX

(b) of a temporary Government servant in accordance with the provisions of Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1956.

Rule 5(1) of the CCS (Temporary Service) Rules, 1965 is also quoted as under:

5. Termination of temporary service - (1) (a) The services of a temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the Appointing Authority or by the Appointing Authority to the Government servant:

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

Provided that the service of any such Government servant may be terminated forthwith and on such termination the Government servant shall be entitled to claim 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.

Note - The following procedure shall be adopted by the appointing authority while serving notice on such Government under Clause (a)-

(i) The notice shall be delivered or tendered to the Government servant in person.

(ii) Where personal service is not practicable, the notice shall be served on such Government servant by Registered post acknowledgement due at the address of the Government servant available with the Appointing Authority.

(iii) If the notice sent by registered post is returned unserved it shall be published in the official Gazette and upon such publication, it shall be deemed to have been personally served on such Government servant on the date it was published in the official Gazette.

The language of the impugned order terminating the Petitioner from service is also necessary to be perused here to see whether it is in consonance with the CCS (Temporary Service) Rules, 1965 or not. The same is reproduced as under:

Indian Posts and Telegraphs Department, Office of the Supdt. of Post Office Dhenkanal Division. Memo No. F. Stt/6 dated at Dhenkanal the 11th May 1977.

In pursuance of the proviso to Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I hereby terminate forthwith the services of Sri Sarat Chandra Das clerk under suspension and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of one month at the same rates at which he was drawing them immediately before his suspension.

Dated : 12.3.77

Station : Dhenkanal....

Sd/-

Supdt. of Posts Offices

Dhenkanal Division.

Copy to:

- 1) U/R The Postmaster, Dhenkanal H.O. for information and necessary action.
- 2) The Postmaster General Orissa Circle, Bhubaneswar 751 001 with reference to circle office file No. ST/13/21/73 dated: 25.3.1977.
- 3) Regd A/D Sri Sarat Chandra Das, clerk under suspension at Dera Post, Dera, Dist: Dhenkanal.
- 4) The Dy. Director Accounts (Postal) Cuttack.
- 5) The Sub Postmaster, Dera.

....

Sd/-

Supdt. of Post Offices,

Dhenkanal Division.

5. Perusal of the above quoted order shows that the same is a simplicitor one which shows that the authority concerned did not prefer to consider the conduct of the Petitioner which has led to his conviction. Rather after it was held by the criminal Court that the Petitioner did not secure 498 marks in the High School Certificate Examination, the concerned authority preferred to terminate the services of the Petitioner under the CCS (Temporary Service) Rules, 1965 as he was a temporary employee.

6. In the case of State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, , the Hon"ble apex Court has held that:

a temporary Government servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or

under the relevant statutory rules regulating the terms and conditions of temporary Government servants. A temporary Government servant can, however, be dismissed from service by way of punishment. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary Government servant. If it decides to take punitive action it may hold a formal inquiry by framing charges and giving opportunity to the Government servant in accordance with the provisions of Article 311 of the Constitution. Since a temporary Government servant is also entitled to the protection of Article 311(2) in the same manner as a permanent Government servant, very often the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment. It is now well-settled that the form of the order is not conclusive and it is open to the Court to determine the true nature of the order. In *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , a Constitution Bench of this Court held that the mere use of such expressions like "terminate" or "discharge" is not conclusive and in spite of the use of such expressions, the Court may determine the true nature of the order of ascertain whether the action taken against the Government servant is punitive in nature. The Court further held that in determining the true nature of the order the Court should apply two tests namely: (1) whether the temporary Government servant had a right to the post or the rank or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied it must be held that the order of termination of a temporary Government servant is by way of punishment. It must be borne in mind that a temporary Government servant has no right to hold the post and termination of such a Government servant does not visit him with any evil consequences. The evil consequences as held in *Parshotam Lal Dhingra's* case (supra) do not include the termination of services of a temporary Government servant in accordance with the terms and conditions of service. The view taken by the Constitution Bench in *Dhingra's* case has been reiterated and affirmed by the Constitution Bench decisions of this Court in *The State of Orissa and Another Vs. Ram Narayan Das*, , *R.C. Lacy v. The State of Bihar and Anr.* C.A. No. 590/62 decided on 23.10.1963, *Champaklal Chimanlal Shah Vs. The Union of India (UOI)*, , *Jagdish Mitter v. The Union of India* 1964 AIR SC 449, *A.G. Benjamin v. Union of India* C.A. No. 1341/66 decided on 13.12.1966, *Samsher Singh Vs. State of Punjab and Another*, . These decisions have been discussed and followed by a three Judge Bench in *State of Punjab and Anr. v. Shri Sukh Raj Bahadur* 1968 (3) SCR 243.

7. In the instant case, the Petitioner was undisputedly a temporary Government servant. His selection was based on a mark sheet of the High School Certificate Examination in which it was shown that he secured 498 marks. But, in fact, that

mark sheet was not authentic as he had secured only 336 marks in that examination and the last selected candidate had secured more marks than him. That his selection was based on a false mark sheet was established by the criminal Court. But instead of sentencing him he was released on probation. Although according to the latest decision of the apex Court in Harichand Vs. The Director of School Education, , it cannot be held that, by reason of Section 12 of the Probation of Offenders Act, a conviction for an offence should not be taken into account for the purposes of dismissal of the person convicted from Government service, but that ratio would not be applicable to the instant case as the instant case is not a case of dismissal from service of a Government servant and is a case of termination from service of a temporary Government employee by an innocuous order, which is permissible under the law in view of the ration laid down by the Hon"ble apex Court in State of U.P. v. K.K. Shukla (supra).

In view of the above, the writ petition has no force and is therefore dismissed.

No order as to costs.

Pradip Mohanty, J.

8. I agree.