

(1995) 03 RAJ CK 0030
In the Rajasthan High Court
Case No : C.W.P. No. 2406 of 1989

Satish Kumar Porwa

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 22-03-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (1996) 1 LLJ 621 : (1996) 2 RLW 112 : (1995) 3 WLC 93 : (1995) 1 WLN 584

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Madan, J.—The petitioner who was appointed as L.D.C. on temporary basis in the office of Director, Gram Vikas and Panchayatraj Department in panchayat samiti, Atru on daily wages, had last served in the capacity of junior accountant in the said panchayat samiti. He has challenged the impugned order of termination, dated May 24, 1989 by way of this writ petition under Article 226 of the Constitution of India on the ground that the impugned retrenchment of the petitioner from service could not be done without complying the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). The short question which arises for consideration of the Court in this writ petition is as to whether the petitioner who is a temporary appointee of the panchayat samiti and appointed for working in a particular project, can claim benefit of regularisation in service on completion of the Project on the ground that he had completed 240 days of service as on the date termination order is passed?

2. The facts giving rise to the filing of this writ petition briefly stated are that the petitioner was appointed as daily wager on the post of L.D.C. on June 22, 1988 vide Annexure 1. This appointment of the petitioner was done by respondent No. 2 i.e., Vikas Adhikari, Panchayat Smaiti, Atru District Kota, against a confirmed

vacancy. On March 24, 1989 respondent No. 1, i.e., the Director and Special Administration Secretary, Gramin Vikas and Panchayatraj Dept., Rajasthan, Jaipur issued a circular containing administration guidelines vide Annexure 2, dated March 24, 1989 to various panchayat samities and Zila Parishads in the State of Rajasthan, specifically prohibiting panchayat samities and Zila Parishads from appointing any person on temporary basis or on daily wages basis on the ground that it is not proper to appoint the candidates on temporary basis since when their services are terminated by the department, they move to the High Court by filing writ petitions and directions are issued by the High Court to take them back to service which results in enormous financial constraint to the department and hence appointments in future should be made only against confirmed vacancies, since otherwise any termination of an employee would attract the penal provisions of the Industrial Disputes Act, i.e. Section 25B and F of the Act. It was further directed by the said circular that those persons who were already serving on temporary basis, their termination should not be done without resort to the provisions of Section 25F of the Act. That in view of the aforesaid directions issued by the State Government contained in Circular dated March 24, 1989 as referred to above, services of the petitioner were terminated by Vikas Adhikari, Panchayat Samiti, Atru (respondent No. 2) vide impugned order dated May 24, 1989 vide Annex.3. It is the said impugned order of termination which has been challenged by the petitioner in this writ petition on the various grounds inter alia (1) that the termination of the services of the petitioner has been brought about without following the principles of natural justice, since the petitioner was appointed after due selection on the basis of interview, (2) the impugned Circular, dated March 24, 1989 confers legal right on the petitioner to be considered for regular appointment through District Establishment Committee, (3) that there has been violation of directions issued by the respondent in case of the petitioner by not having resort to the provisions of Section 25F of the Act as the same has not been complied with hence the order of termination of service of the petitioner is illegal and deserves to be quashed, (4) that no show cause notice was served on the petitioner prior to termination of his service resulting in gross injustice and (5) the order of termination amounts to retrenchment which could only be done after compliance with the provisions of Section 25F of the Act.

3. In the reply to show cause notice filed on behalf of respondent Nos. 1 and 2 it has been contended that the petitioner was appointed as junior accountant vide Annex. 1 under Special Scheme, i.e., "Jeevandhara and other Famine Scheme" which were being carried out under Panchayat Samiti, Atru. The appointment of the petitioner was purely temporary as a daily wager @ Rs. 25/- per day and the petitioner cannot gain any legal right to get his service regularised on the post of daily wager. It has been further contended in the reply that it has been wrongly stated in the petition that the petitioner was given appointment on the post of L.D.C. and thus the claim made by the petitioner even otherwise does not stand to reason since his appointment was never made on the post of L.D.C. and hence

there is no reason to grant any relief to the petitioner. This fact is fully fortified from the perusal of Annex. 1 which is appointment order of the petitioner as junior accountant and in which there is no mention of the petitioner's appointment as L.D.C. and thus the claim of the petitioner is even otherwise falsified from the perusal of said annexure as well as other documents filed on the record. It has been further contended in para 5 of the reply that this court as well as the Apex Court have already taken the view that services of the project based employees who are appointed or employed against any particular project, come to an end immediately on completion of the said project unless they are absorbed in any project or scheme by the concerned department, hence no legal right or authority vests with the appointee to claim any regularisation or confirmation, since the appointment is only continued till the demand exists.

4. It has been further contended by the respondents that the appointments given under the Special Scheme such as NREP/RLEGP and other such relief schemes relate to general welfare of the public, and as such do not confer any legal right on the appointee to claim any benefit under the provisions of the Act, even if the said appointee has completed more than 240 days of service for the purpose of claiming protection under the Act.

5. I have perused the writ petition and the reply filed by the respondents as well as the relevant documents placed on the record and also examined the rival claims and contentions of the parties on the basis of record.

6. I am of the considered opinion that no legal right has accrued to the petitioner, since the petition involves the disputed question of facts and the petitioner was never appointed against a confirmed post of L.D.C. as falsely stated by the petitioner in the writ petition, since from the perusal of Annexure 1, i.e, the appointment order, it is clear that the appointment of the petitioner was made on the post of junior accountant as a daily wager and his services stood terminated by the order dated May 24, 1989 (Annexure 3) passed by Vikas Adhikari, respondent No. 2, on the basis of a decision taken in the meeting of the Panchayat Samiti dated April 15, 1989. In the impugned order of termination as well there is reference of the petitioner as a junior accountant and not as L.D.C. I am further of the considered opinion that petitioner had the alternative remedy of moving to the Labour Court by raising an industrial dispute and since the disputed questions of facts are involved the same could only be decided on the basis of evidence before the Labour Court. Hence there is no justification for the petitioner to have invoked the extraordinary jurisdiction of this court under Article 226 of the Constitution of India.

7. In the matter of Kanwar Singh v. Union of India 1994 (2) WLC 254 similar question had arisen for consideration of this court wherein it was held by this court that termination simpliciter of a temporary employee under Rule 5 of C.R.P.F. is neither arbitrary nor unreasonable and thus not open to challenge.

8. In the matter of Express Newspapers (Private) Ltd. and Another Vs. The Union

of India (UOI) and Others, it was held by the Apex Court that the order of termination simpliciter does not amount to an order of removal from service and as such is not open to challenge and further that if the discharge of an employee has been ordered by the Management in bonafide exercise of powers, the Industrial Tribunal will not interfere with the same.

9. Likewise in the matter of Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, the Apex Court while dealing with a case of a temporary employee of the concerned department who was appointed in the scheme known as "Jawahar Lal Nehru Rojgar Yojna" his services were terminated by the department, since he was given employment under a special scheme meant for rural development. The petitioner claimed regularisation of his services notwithstanding the fact that the scheme had already come to an end. It was held by the Apex Court that to get employment under the scheme and then to claim a right to regularisation under the scheme is to frustrate the scheme itself and that no court can be a party to such an exercise, since these concepts in the context of such scheme are both, unwarranted and misplaced and regularisation of such employees against temporary schemes will be against public interest.

10. In view of the above discussion, I am of the considered opinion that in view of the facts of this case as well as the proposition of law as so authoritatively laid down by the Apex Court in the matter of Delhi Development Horticulture Employees' Union v. Delhi Administration (supra) and the petitioner being a temporary appointee against a temporary scheme has no right to claim regularisation of his service nor he is entitled to any protection under S.25F of the Act, since the appointment of the petitioner was purely temporary against special scheme and after completion of project concerned, the services of the petitioner stood automatically terminated. I am further of the opinion that the appointments under the special scheme are exempted from the provisions of Industrial Disputes Act, 1947 as notified by the State Government of Rajasthan vide its Circulars dated May 21, 1988 and August 5, 1988.

11. In the result, no interference is called for in the order of termination of service of the petitioner, dated May 24, 1989 and the writ petition is consequently dismissed with no order as to costs.

12. Before parting with the case I would like to mention that it is a matter of regret that no assistance has been rendered to this Court by the learned counsel for the parties since neither the counsel nor the parties or any of their representatives were present to assist the court when the matter was heard and hence the court had to seek assistance from the record itself in deciding this writ petition. Since the State of Rajasthan is a party as respondent No. I it is directed that State should make proper provision in future to depute counsel representing the concerned department before this court whenever the matters are listed and notified in the cause list for hearing. Copy of this order be sent to the Director, Special Administration Secretary, Gram Vikas and Panchayat Raj Department

Rajasthan, Jaipur for information.