

(1996) 03 GUJ CK 0031
In the Gujarat High Court

Savitaben M. Patel and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 13-03-1996

Acts Referred:

Bombay Civil Services Rules, 1959 — Rule 33(1)(b)

Citation : (1997) 2 GLR 1567

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Judgement

S.K. Keshote, J.—All these writ petitions proceed on common facts and as such they are being disposed of by this common order.

2. In these petitions the petitioners have made the challenge to the order of termination of their services. It is not in dispute that the petitioners were given the appointment on temporary basis on different occasions on fixed term of 29 days. The learned Counsel for the petitioners made three-fold submissions in this Spl. Civil Application challenging the order of termination of the services of the petitioners. Firstly, he urged that the petitioners have worked though with some artificial break for more than three years and as such the break which has been given in their services should be declared to be illegal, invalid and inoperative. It has next been contended that even if it is appointment on temporary basis, then too, the termination of services of the petitioners is void and it is made in violation of Rule 33(1)(b) of the Bombay Civil Services Rules. Lastly, relying on the decision of the Supreme Court in the case of State of Haryana and others Vs. Piara Singh and others etc. etc., it has been contended that ignoring the artificial break the respondents should be directed to regulate the services of the petitioners. The respondents have filed the reply in Spl. Civil Application No. 230 of 1986. All the three Spl. Civil Applications are identical and hence the reply filed in Spl. Civil Application No. 230 of 1986 has been considered in all the Spl. Civil Applications. The Counsel for the respondents has taken the preliminary objection that these writ petitions are not maintainable as the petitioners have

earlier filed Spl. Civil Application No. 5394 of 1985 in the same subject-matter before this Court and this writ petition has been withdrawn by them on 17-10-1985. The writ petition was dismissed as withdrawn and no opportunity was given to the petitioners to file fresh writ petition and as such these writ petitions are barred by the principle of *res judicata*. In support of this contention, Miss Sejal Mandavia, learned Counsel for the respondents placed reliance on the decision of this Court in the case of *Natwar Textiles Processors Pvt. Ltd. v. Union of India*, reported in 1990(1) GLR 338. She has further relied on the decision of the Supreme Court in the case of *State of U.P. and another Vs. Labh Chand*, . In reply to the contention of the learned Counsel for the petitioners regarding giving notice before terminating their services Miss Mandavia urged that no specific ground has been taken in the writ petition on this ground and as such this ground is not available. Secondly, Miss Mandavia contended that it is a case of termination of temporary services of the petitioners by efflux of time. The petitioners were given the fixed term temporary appointment and it has come to an end on the expiry of the term of appointment and as such the provisions of Rule 33(1)(b) of the Bombay Civil Services Rules are not applicable to the present case. Thirdly, Miss Sejal Mandavia urged that *Pyara Sing's* case (*supra*) is not applicable to the present case. The posts on which the petitioners were given temporary appointment are to be filled up by selection. The posts fall within the purview of the centralised recruitment scheme and the appointments to these posts are required to be made by allocating the persons selected for appointment to such posts by the Collector. The petitioners have not been selected in the centralised recruitment scheme. Lastly, it is contended that the petitioners' services were terminated as the regularly selected candidates are made available. I have considered the submissions made by the learned Counsels for the parties. Counsel for the petitioners has given out the translation version of the appointment order of one of the petitioners. The appointment of the petitioners were made only for 29 days, i.e., a fixed term appointment. It was a temporary appointment with condition that the services are liable to be terminated without any notice. The further condition was that the services are liable to be terminated on availability of the candidates from the Collector. These averments made by the respondents in reply to one of the writ petitions have not been controverted. In the rejoinder, the petitioners tried to make out a case that the work which the petitioners are doing is being taken by the employees who have been appointed on daily wages basis and on temporary basis. But these averments are difficult to accept because the petitioners have not given out the details of those employees. From the appointment order of the petitioners, it is clear that it was a contractual appointment. The condition that the appointment is likely to be terminated without notice has been accepted by the petitioners and this term excludes the applicability of the provisions of Rule 33 of the Bombay Civil Services Rules and no notice is required to be given to the petitioners by the respondents before terminating their services. Reference may have to the decision of the Apex Court in the case of *State of Gujarat and another Vs. P.J. Kampavat and others*, . This case has been considered by this Court in the case

of Bhanmati Tapubhai Muliya Vs. State of Gujarat and Another, . In paragraph 7 of this case, this Court held:

Before concluding, reference may have to the decision of the Supreme Court in the case of State of Gujarat and another Vs. P.J. Kampavat and others, , wherein it was held that persons appointed on a specific condition that their services will be purely temporary and liable to be terminated forthwith without any notice cannot seek any protection. In that case, the appointment was made for a limited period upto tenure of the Minister's establishment and the Supreme Court held that with the tenure of the Minister coming to an end, the services of the employee also ended simultaneously and that no order of termination as such was necessary for putting an end to their service, much less a prior notice. In the present case also, when the appointment is for fixed period, i.e., upto 31st of July, 1985 the legal effect is that the appointment would automatically come to an end after 31st of July, 1985 and even a formal order terminating the appointment would not be necessary.

3. The contention of the learned Counsel for the petitioners regarding the necessity of the giving of notice under Rule 33 of the Bombay Civil Services Rules before terminating the services of the petitioners has been concluded by the decision of the Apex Court in the case of Natwarlal Textile's case (supra) as also the case of State of U.P. (supra). It is not in dispute that there is a stipulation in the order of appointment of the petitioners that their services are liable to be terminated without notice. This contention of the learned Counsel for the petitioners is of no substance. The services of the petitioners have been terminated. The prayer of the petitioners that the break which has been given in their temporary appointments be declared to be illegal is of no consequence in the present case. The Court has put a question to the Counsel for the petitioners as to how this declaration, even if it is given by this Court, will be of any help to the petitioners. The Counsel for the petitioners is unable to give any reply to the question which has been put to him. I proceeded to examine this issue with assumption that declaration may give a continuity in services to the petitioners and their services may come to more than three years but the question is whether only on this ground the termination of the services of the petitioners become invalid or illegal and the reply to this is obviously in the negative. In 1983 and 1984 as it comes out from the averments made in one of the Spl. Civil Applications No. 225 of 1986 the regular selection has been made for the post of Clerks under the centralised recruitment scheme but the petitioners therein were not called for interview in both the years. The petitioners at the most may be considered to have worked continuously on temporary basis, but merely on their continuation on temporary basis they or any of them do not acquire any right to hold the post. This question has come up for consideration before the Division Bench judgment in Bhanmati's case (supra) and this Court relying on the decision of the Apex Court referred therein in paragraph 8 held as under:

Another case, to which reference may usefully be made, is that of Dr. Arundhati

Ajit Pargaonkar Vs. State of Maharashtra and others, . In that case the appellant was appointed after selection on 16th September, 1978 and the letter of appointment stated that the appointment was "... on a purely temporary basis pending further orders as Lecturer in Dentistry at the B.J. Medical College, Pune from date of taking over charge....". She worked for about 9 years and then, her services were terminated. The appellant sought regularisation of her service and it was observed by the Supreme Court that eligibility and continuous working for howsoever long periods should not be permitted to overreach the law. The appellant was held not entitled to claim regularisation even though she had worked without break for 9 years.

4. In the case of Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. Vs. Devendra Kumar Jain and Others, , the Apex Court held that a temporary Government servant does not become permanent unless it acquires that capacity by force of any Rule or is declared as permanent servant. The learned Counsel for the petitioners has failed to bring to the notice of this Court any provision from the Statutory Rules or any Government Resolution which provides for acquiring of any permanent status by a temporary Government servant on their working in such capacity for a period exceeding three years. The termination of the services of the petitioners in view of these facts and circumstances and the terms of the appointment, is legal and justified and does not call for any interference of this Court. The learned Counsel for the petitioners has cited certain authorities of this Court and the Apex Court but in view of the settled legal position in respect of the rights of the temporary appointees made of recruitment to these posts to be made by selection there is no need to refer and discuss those authorities.

5. Now, I may advert to the preliminary objection which is raised by the learned Counsel for the respondents Ms. Sejal Mandavia. The petitioners have admitted that they have earlier approached this Court by filing Spl. Civil Application No. 5394 of 1985. This writ petition has been withdrawn by the petitioners on 17-10-1985. The order which has been passed by this Court on 17-10-1985 reads as follows:

As the petitioners desire to withdraw this petition, Mr. Joshipura seeks leave to withdraw the same. Permission is granted. Disposed of as withdrawn. Notice and order of I.R. discharged.

6. The pleadings of the aforesaid Spl. Civil Application has not been filed by the petitioners. In the rejoinder to the reply in Spl. Civil Application No. 230 of 1980, the petitioners have replied that they filed the Spl. Civil Application in the apprehension of termination of their services. From reading of the averments made in the rejoinder, it is clear that the subject-matter of challenge in the present writ petition is also the termination of services of the petitioners though at that time owing to apprehension and the order of termination had not been passed. The petitioners are deliberately withholding the pleadings of that Spl. Civil Application. In the present writ petition, the petitioners have certainly challenged the termination though at that time it was an apprehension, however,

it is said now that the matter became different as this petition is filed after the termination of service. The writ petition has been withdrawn and no opportunity has been given to file fresh writ petition. In view of all these facts, I find sufficient merit in the preliminary objection raised by the Counsel for the respondents. The unconditional withdrawal of the previous writ petition and that too after the order of termination has been made debars the petitioners from filing this writ petition. May not be on the question of res judicata but this conduct of the petitioners to approach this Court earlier in apprehension of the termination of temporary services, to withdraw that petition unconditionally and to file this writ petition certainly disentitles them from seeking relief from this Court in this petition.

In the result, all these Spl. Civil Applications fail and the same are dismissed. Rule is discharged in all these Spl. Civil Applications.