

(1984) 05 GAU CK 0014
In the Gauhati High Court
Case No : Civil Rule No. 391 of 1979

Sekhar Roy

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-05-1984

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 2, 3, 5, 5(1), 5(2)
Constitution of India, 1950 — Article 14, 16, 226, 311(2)

Citation : (1984) 1 GLR 500

Hon'ble Judges : T.S. Misra, C.J.; K.N. Saikia, J

Bench : Division Bench

Advocate : B. Acharyya, for the Appellant; S.N. Chetia, Addl, Central Govt. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Misra, C.J.—This petition under Article 226 of the Constitution is directed against an order terminating the employment of the Petitioner under proviso to Sub-rule (1) of Rule 5 of the Central Civil, Services (Temporary Service) Rules, (hereinafter called "the Rules")

2. The Petitioner was appointed on 8th April, 1970 on a temporary basis vide Annexure 2 to the petition. After about six years the services of Petitioner were terminated. He filed a representation against the said order which was rejected by the Director General, Posts and Telegraphs, New Delhi, and the Petitioner was informed of the same vide Annexure 6. He again made a representation to the Minister of Communication, New Delhi vide Annexure 7 but to no avail. Hence, he filed the instant petition which has been opposed by the Union of India and an affidavit-in-opposition has been filed by the Senior Superintendent of Post Offices wherein it has been averred that the services of the Petitioner had been terminated in terms of Rule 5(2) of the Rules inasmuch as his service was not found to be satisfactory by the Department. Further, it has been averred that as the services of the Petitioner were terminated not by way of punishment and

without attaching any stigma on him the order of termination was not violative of the provisions of Article 311(2) of the Constitution of India nor was it violative of Articles 14 and 16, as alleged by the Petitioner, The Petitioner had also alleged in his petition that he had served for six years he had become a quasi-permanent employee, hence, his service could not be terminated under Rule 5 of the Rules. This fact has also been repudiated in the affidavit-in-opposition by pointing out that the Petitioner was never declared quasi-permanent. The Petitioner has filed his affidavit-in-reply reiterating his averments made in the petition.

3. We have heard the learned Counsel for the Petitioner as also the learned Counsel for the Union of India.

4. At the outset it was submitted on behalf of the Petitioner that though initially he was appointed on a temporary basis, he became quasi-permanent after completion of three years' continuous service. The submission was that he had rendered six years' continuous service as a temporary servant and as his service in temporary capacity had extended beyond three years, he became entitled to be declared quasi-permanent as enjoined by the Rules. The learned Counsel for the Union of India on, the other hand, submitted that as the Petitioner was never declared quasi-permanent, he was not entitled to claim that status.

5. Now, the law on the points at issue is by now well settled. The rights of a Government employee to hold a post were examined thread-bare by the Supreme Court in its classical judgment in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, After dealing with the nature of the various appointments the Supreme Court in that case observed:

In the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years' service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, Inefficiency or any other disqualification found against him on proper enquiry after due notice to him. An appointment to a temporary post for a certain specified period also gives the servant appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put to an end during that period unless he is, by way of punishment, dismissed or removed from the service, Except in these two cases the appointment to a post, permanent or temporary, on probation or on an officiating basis or a substantive appointment to a temporary post given to the servant so appointed no right to the post and his service may be terminated unless his service had ripened into what is, in the service rules, called a quasi-permanent service.

6. "Quasi-permanent service" has been defined in Rule 2 of the Central Civil Services (Temporary Service) Rules, 1965 as meaning temporary service commencing from the date on which a declaration made under Rule 3 takes effect and consists of periods of duty and leave (other than extraordinary leave)

after that dates. Rule 3 says:

A Government servant shall be deemed to be in quasi-permanent service-

- (i) if he has been in continuous temporary service for more than three years; and
- (ii) if the appointing authority, being satisfied having regard to the, quality of his work, conduct and character as to his suitability for employment in if a quasi-permanent capacity under the Government of India, has made a declaration to that effect.

7. In order to claim the status of a quasi-permanent servant a Government servant must satisfy both the conditions namely, (i) he has been in continuous temporary service for more than 3 years and (ii) the appointing authority has made a declaration to that effect, While making the declaration the appointing authority has of course to be satisfied as to the suitability in respect of conduct and character and quality of work of the Government servant concerned, Unless there is a declaration to the effect the Government servant concerned shall not be deemed to be in quasi-permanent service. He does not automatically become a quasi-permanent servant on completion of three years continuous service. He gets that capacity only if a declaration to that effect is made by the competent authority under Rule 3 of the said Rules. Learned Counsel for the Petitioner placing on a decision of this Court in AIR 1969 Gau 3, however, submitted that the Petitioner had become quasi -permanent servant of the Government. In our view that case does not help the Petitioner. It was decided on its own facts. The Government of Nagaland had issued certain letters enumerating the circumstances in which a temporary employee having been in continuous service for a number of years would be deemed to be in quasi-permanent service. In the present case no order had been passed declaring the Petitioner a quasi-permanent servant. We, therefore, find no force in the contention that the services of the Petitioner could not be terminated under Rule 5 as he had become a quasi-permanent servant. In our view, the Petitioner though he had served for a continuous period of 6 years had not acquired the capacity and the position of quasi-permanent servant. He in fact, remained a temporary servant and his services were liable to be terminated under Rule 5 of the Rules.

8. It was next urged on behalf of the Petitioner that the impugned order was violative of Article 311(2) of the Constitution. The submission was that though the order did not contain any statement where-from it could be inferred that a stigma was imposed on the Petitioner, the record would show that the order was passed with a view to penalise him. In our opinion, this contention is equally meritless.

9. It was not disputed that the services of a temporary employee could be terminated by giving him one month's notice or one, month's salary in lieu of notice. Nor was it urged that for the purpose of putting an end to the services of a temporary employee a departmental proceeding should invariably be taken. The contention was that, if on scrutiny of record it is found that the services of a

temporary employee were terminated by way of punishment without resorting to departmental proceedings the order would be invalid. The principle that even temporary Government servants are also entitled to the protection of Article 311(2) in the same manner as permanent government servants, If the government takes action against them by meeting out one or more of the three punishments, i.e. dismissal, removal or reduction in rank is well settled. (See: *Purshottamtal Dhingra (supra)* 1 and *Champaklal Chimanlal Shah v. Union of India* AIR 1964 SC 1854) However this protection is available only where discharge, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise. Again, considering the question of discrimination in *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, the Supreme Court has laid down:

The principle that can be deduced from the above analysis is that if the services of a temporary Government servant are terminated in accordance with the conditions of his service on the ground of unsatisfactory conduct or his unsuitability for the job and/or for his work being unsatisfactory or for a like reason which marks him off as a class apart from other temporary servants who have been retained in service, there is no question of the applicability of Article 16.

Conversely, if the service of a temporary Government servant is terminated arbitrarily, and not on the ground of his unsuitability, unsatisfactory conduct or the like which would put him in a class apart from his juniors in the same service, a question of unfair discrimination may arise, notwithstanding the fact that in terminating his service, the appointing authority was purporting to act in accordance with the terms of the employment.

10. The form of the order is not conclusive, It is the substance of the matter that has to be looked into and whether the order is by way of punishment would depend on the facts and circumstances of each case. The essential guidelines are provided in *State of Madhya Pradesh v. Veerappa R. Saboji and Anr.* AIR 1980 SC 42. Referring to the earlier decisions of the Supreme Court. L. Uniwalla, J. summed up:

Even in the case of a temporary or of officiating Government servant his services cannot be terminated by way of punishment casting a stigma on him in violation of the requirement of Article 311(2).

11. Reminding us that the practical or reasonable approach to the problem should never be forgotten, the Supreme Court observed:

As the matter is allowed to be made in all such cases then curious results are likely to follow in a given case there may be a valid reason may be of a serious kind, which led the authority concerned to adopt one course or the other as the (sic) of a particular case demanded. If one were to say in all such cases that the action has been taken by way of punishment then the natural corollary to this would be that such action could be taken if there was no such reason in the

background of the action. Then the argument advanced is that the action was wholly arbitrary, malafide and capricious and, therefore, it was violative of Article 16 of the Constitution, where to draw the line in each cases? Ordinarily and generally the rule would be that you have to look to the order on the face of it and find whether it casts only stigma on the Government servant. In such a case there is no presumption that the order is arbitrary or malafide unless a very strong case is made out and proved by the Government servant who challenges such an order.

12. In the same case R.S. Pathak, J. enunciated the principle as under:

Where the service of a temporary Government servant or a probationer Government servant are terminated by an order which does not ex-facie disclose any stigma or penal consequences against the Government servant and is merely a termination order simpliciter, there is no case ordinarily for assuming that it is anything but what it purports to be where, however, the order discloses on the face of it that a stigma is cast on the Government servant or that it visits him with penal consequences, than plainly the case is one of punishment. There may still be another kind of case where although the termination of services is intended by way of punishment the order is framed as a termination simpliciter. In such a case, if the Government servant is able to establish by material on the record that the order is in fact passed by way of punishment, the innocence of the language in which the order is framed will not protect it if the procedural safeguards contemplated by Article 311(2) of the Constitution have not been satisfied. In a given case, the Government servant may succeed in making out a prima facie case that the order was by way of punishment. In such a case by the authorities may direct sending for the official records for the purpose of determining the truth. It is in such a case generally that the official records may be called for by the Court, It is not open to the Court to send for the official records on a mere allegation by the Government servant that the order is by way of punishment. For unless there is material on the record before the Court in support of that allegation, an attempt by the Court to find out from the record whether the termination of service is based on the unsuitability of the Government servant in relation to the post held by him or is in reality an order by way of punishment will in effect be an unwarranted attempt to delve into the official records for the purpose of determining the nature of the order on the basis of a mere allegation of the Government servant. On a sufficient case being made out on the merits before the Court by the Government servant It is open to the Court to resort to scrutinising of the official records for the purpose of verifying the truth. The Court should not decline to peruse the official records in an appropriate case and where considerations of privilege and confidentiality do not suffer, the information set forth in the records should be made available to the Government servant. The mere possibility that the official records "could confirm what the Government servant had set out to prove and prima facie had, indeed, proved should not shut out disclosure of the information.

13. Now testing the facts and circumstances of the instant case in the light of the principle above noted we find that the allegations of malafide and arbitrariness have not been substantiated by the Petitioner. A bare allegation unsupported by any evidence would not make the order arbitrary or melafide nor would be sufficient to conclude that it was passed with a view to impose stigma or inflict any penalty on the Petitioner. No specific allegation of malice has been made against the authority who passed the impugned order of termination of service. The order in question does not impose any penalty. It has been passed in accordance with it the provisions of Rule 5 of the rules which lays down that tie services of a temporary Govt. 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: the period of any such notice shall be one month: provided that the service of any such Government servant may be terminated forthwith and on such termination the Govt. 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. It is an order simpliciter. The question of scrutinising the official records does not in the instant case arise, because the Petitioner has not made out any case before us warranting scrutiny of the records. The order challenged before us does not cast any stigma on the Petitioner. There is no presumption that the order is arbitrary or mala-fide, unless the Petitioner makes out a very strong case and proves that the order is malafide. The Petitioner has failed to do so. His services were found to be not satisfactory by the Department, inasmuch as he was found responsible for the non-credit of the value of certain V.P. Articles mentioned in para 5 of the affidavit-in-opposition. Further, an amount of Rs. 43.30 p. was also found short when he was working as clerk at Dewanji Bazar Post Office at Silchar. It was also noticed that he bad committed some other irregularities as well, The appointing authority having found the Petitioner not suitable for the job terminated his service by an order simpliciter under Rule 5 of the aforesaid Rules, In these circumstance the order terminating temporary employment of the Petitioner cannot be said to be illegal, null and void.

14. The learned Counsel for the Petitioner, however, submitted that a criminal case had been launched against the Petitioner, hence the order was malafide and arbitrary and was by way of punishment. No doubt, the Petitioner was prosecuted in a criminal Court and during the pendency of that trial his services Were terminated under the provisions of Rule 9 of the rule, it is open to the appointing authority to terminate the service of a temporary employee during the pendency of criminal proceedings if the appointing authority is satisfied that the temporary employee is not suitable to hold the post. There is no rule that on Initiation of a departmental or criminal proceeding services of a temporary employee cannot be terminated by an order of termination simpliciter. In the

case of the The Manager, Government Branch Press and Another Vs. D.B. Belliappa, it was made clear that "it was perhaps open to the Government to say in view of the complaint alluded to in the show cause notice against the integrity and fidelity of the employee, that the former had lost confidence in the latter and considered him unsuitable to be continued in the post which was one of trust and confidence". In the present case also the Govt. has in para 12 of the affidavit in opposition asserted that the services of the Petitioner were not found satisfactory by the department inasmuch as, he was found responsible for shortage of stamps and non-credit of the value of certain V.P. articles. He was also found involved in using defence postage stamps on Registered articles. The order under challenge was obviously passed on account of loss of confidence in him and his unsuitability to the post. It was neither arbitrary nor malafide.

15. No other ground was urged.

16. For the reasons in the foregoing we find no merits in the petition. It is accordingly dismissed and the Rule is discharged. No order as to costs.