

(1956) 02 AHC CK 0017

In the Allahabad High Court

Case No : Special Appeal No. 47 of 1955

Shafiq Ahmad

APPELLANT

Vs

Senior Supdt., Post Offices and Another

RESPONDENT

Date of Decision : 07-02-1956

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1949 — Rule 6
Constitution of India, 1950 — Article 226, 311

Citation : AIR 1956 All 476 : (1956) 26 AWR 786

Hon'ble Judges : Mootham, C.J;Agarwala, J

Bench : Division Bench

Advocate : D. Sanyal, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Agarwala, J.—This is a special appeal against a judgment of a learned single Judge of this Court on a petition under Article 226 of the Constitution.

2. The appellant was employed by the Posts and Telegraphs Department as a telegraph messenger, Bamrauli, in the year 1945. He was declared a quasi-permanent servant with effect from 1-7-1948. Soon after this the District Telegraph, Office at Bamrauli was abolished and the appellant's services were transferred to the combined Post and Telegraph Office, Bamrauli, under orders of the Post Master General dated 15-5-1951.

On 4-11-1952 the appellant received a notice dated 31-10-1952 from the Inspector of Post Offices, Allahabad, informing him that his services would be terminated under Rule 5, Central Civil Services (Temporary Service) Rules, 1949, after a month of the receipt of the notice by him.

The appellant preferred an appeal to the Senior Superintendent of Post Offices, Allahabad, but before it was disposed of he came to this Court with an application under Article 226 of the Constitution praying that a writ of certiorari be issued quashing the order dated 31-10-1952 dispensing with the services of

the appellant. His case was that Rule 5, Central Civil Services (Temporary Service) Rules, 1949, applied only to temporary government servants and not to quasi-permanent servants, and as such the order of termination of his services was illegal.

3. In the counter affidavit filed on behalf of the respondents the termination of the services of the appellant was sought to be justified not under Rule 5, but under Rule 6 which is in the following terms :

"The service of a Government servant in. quasi-permanent service shall be liable to termination :

"(i) in the same circumstances and in the-same manner as a Government servant in permanent service, or

"(ii) when the appointing authority concerned has certified that a reduction has occurred in the number of posts available for Government servants not in permanent service:

"Provided that the service of a Government, servant in quasi-permanent service shall not be liable to termination under Clause (ii) so long as any post of the same grade and under the same appointing authority as the specified post held by him, continues to be held by a Government servant not in permanent or quasi-permanent service:

"Provided further that as among Government servants in quasi-permanent service whose specified posts are of the same grade and under the same appointing authority, termination of service consequent on reduction of posts shall ordinarily take place in order of juniority in the list referred to in Rule 7."

4. The case of the respondent was that the Telegraph Office at Bamrauli was closed on 31-5-1951 and the appellant's services were transferred to the Bamrauli Post Office where a new telegraph branch was also opened with effect from 1-6-1951 and at that time two temporary posts of messengers were created, that these temporary posts at Bamrauli were subsequently abolished and the appellant was then served with a month's notice on 3-11-1952, and his case fell under the second clause of Rule 6.

5. In the rejoinder affidavit filed on behalf of the appellant it was not alleged that there was any post of the same grade to which he could be appointed under the same appointing authority at the time of the termination of his services.

6. The learned single Judge held that the appellant's services were validly terminated and that the power to do so was to be found in Rule 6, Clause (ii) of the aforesaid Rules.

7. In this appeal the appellant's main contention is that the appellant was not properly discharged from service under Clause (ii) of Rule 6 of the Rules, firstly because the appointing authority concerned had not certified that a reduction had occurred in the number of posts available for Government servants not in

permanent service, and secondly because the Inspector of Post Offices who served the notice dispensing with the appellant's services was not the appointing authority inasmuch as on the abolition of the Telegraph Office at Bamrauli, the appellant was transferred to the combined Post and Telegraph Office, Bamrauli, by the Post Master General, U. P. Circle, and that therefore the said officer became the appointing authority, so far as the appellant was concerned and the Inspector of Post Offices could not terminate his services.

8. It is not disputed that the temporary post in the combined Post and Telegraph Office at Bamrauli to which the appellant was transferred was abolished before the appellant's services were dispensed with. The Inspector of Post Offices who served the notice dispensing with the appellant's services has himself sworn an affidavit that the posts were abolished and this has not been challenged by the appellant.

It is true that before the services of a quasi-permanent servant are terminated under Clause (ii) of Rule 6 there ought to be a certificate by the appointing authority as required by that clause. It is also true that in the present case no such certificate was issued by the appointing authority prior to the discharge of the appellant from service, and in that sense the provisions of Clause (ii) of Rule 6 were not technically complied with.

But in our judgment this was an irregularity merely and did not prejudice the appellant. A certificate having been now given, and we being satisfied as to its correctness, we may not exercise our discretion in quashing the order of the Inspector of Post Offices on this ground merely.

9. As regards the contention that the Inspector of Post Offices who passed the order of termination of the services of the appellant was not the appointing authority and the Post Master General was the appointing authority, we think it to be clear that the mere fact that the Post Master General transferred the appellant to the postal department on the abolition of the District Telegraph Office at Bamrauli does not make the Post Master General the appointing authority.

When a Government servant has been finally assigned to a particular post without retaining a lien on a previous post to which he was originally appointed, the appointing authority in his case is the person who has the authority to make appointments to the new post. It has not been contended before us that the Inspector of Post Offices who served the notice of termination of services on the appellant was not the appointing authority in relation to the post which the appellant was holding when his services were terminated. The termination of the appellant's services there-fore is not open to question on any valid ground.

10. The result is that the appeal fails and it is dismissed, but in the circumstances of the case we make no order as to costs.