
(2000) 07 RAJ CK 0023
In the Rajasthan High Court
Case No : Special Appeal No. 840 of 1998

Shambhoo Kumar

APPELLANT

Vs

District and Sessions Judge and Others

RESPONDENT

Date of Decision : 25-07-2000

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (2000) 2 LLJ 1563 : (2000) 3 RLW 1401 : (2000) 3 WLC 113 : (2000) 3 WLN 25

Hon'ble Judges : A.R. Lakshmanan, C.J.;Rajesh Balia, J

Bench : Division Bench

Advocate : M. Mridul and Sumit Mehta, for the Appellant; B.S. Bhati, AGA, for the Respondent

Final Decision : Dismissed

Judgement

AR. Lakshmanan, C.J.—This appeal is directed against the judgment passed by Dr. D.S. CHAUHAN, J. dated July 27, 1998 in S.B. Civil Writ Petition No. 144/1998. The unsuccessful petitioner is the appellant in this appeal. The writ petition was filed praying for a direction that the respondents may be directed to continue the petitioner in service in pursuance to his appointment order dated August 22, 1996 and he be treated continued in service as if his services are never brought to an end.

2. The short facts of the case are as follows:

In pursuance to the advertisement issued by the respondents the appellant was appointed to the post of L.D.C. as per the provisions of the Rajasthan Subordinate Court Ministerial Establishment Rules, 1986. Alongwith the appellant 17 other L.D.Cs. were appointed initially for a period of 4 months and, thereafter, extension was made vide Annexure-2 dated May 20, 1997 whereby the services of the appellant were also extended upto December 31, 1997 upon terms and conditions mentioned in Annexure-1, According to the appellant, all the L.D.Cs

who were appointed alongwith him were allowed extension but the appellant was not allowed extension after December 31, 1997. The appellant was given to understand that the vacancies were substantive and appointments were given against the substantive vacancies and, that, a panel was prepared for a period of one year. However, the services of the appellant were terminated without following due process of law and the period of his extension was not extended. No opportunity of hearing was given to the appellant before refusing him to come on duty though even as per the conditions of the appointment order the appellants services could not have been brought to an end inasmuch as neither any surplus employee has been made available to the respondents nor the work, conduct and behaviour etc. of the appellant was unsatisfactory. In such circumstances the services could not have been brought to an end. Aggrieved with the order of termination of services the appellant preferred a writ petition. Alongwith the writ petition, the appellant filed Annexures-1 to 7.

3. A reply was filed on behalf of the respondents. In the reply, it is stated as follows:

A. The appellant was given appointment on purely temporary basis and for a fixed period with certain conditions.

B. The appointment order given to the appellant is placed on record and marked as Annexure-R/1. However, the appellant seems to have wilfully and knowingly omitted some words from condition No. 3 of the appointment order with an intention to mislead this Court. The omitted words are:

The omission of these words has changed the very condition No. 3 of the appointment order. The appellant has not come with clean hands and he is not entitled to any discretionary relief.

C. The allegation that there were no complaints against the appellant as to his working conduct, behaviour is not correct. There were complaints against his conduct and behaviour and his work was not found satisfactory and he has failed to improve even after warnings.

D. As there were no adverse reports against the appellant till May 20, 1997 his employment period was ordered to be extended upto December 31, 1997 vide order Annexure-2.

E. As per condition No. 3 of the appointment order before further extension of the employment period of the appellant, performance- report was called for from the Presiding Officer under whom the appellant remained posted and worked. The appellant worked under the Civil Judge (Jr. Dn.), Gogunda and Civil Judge (Sr. Dn.) & A.C.J.M., Jhadol. Both the Officers submitted reports against the appellant and as his performance was not found satisfactory there was no occasion to extend the employment period of the appellant.

F. The appellant's employment was tenure employment and it automatically came to an end with effect from December 31, 1997 i.e., on the expiry of the

employment period. No formal order was required to be passed terminating the services of the appellant as the appellants services automatically came to an end in the absence of an extension order on December 31, 1997.

G. As there were no adverse reports against the remaining L.D.Cs they were given extension of employment.

H. The appellant did not attend the office of the Civil Judge (Sr.Dn)-cum-A.C.J.M., Jhadol on 5th, 6th and 7th of November, 1997 without any intimation and on November 10, 1997, he marked presence for all the three dates viz., November 5, 1997, November 6, 1997 and November 7, 1997 by putting his initials in the attendance register which was also reported to the Presiding Officer. A notice was issued to him on November 10, 1997 to explain the above conduct. Though the appellant sought time to submit a reply in the first instance, but, ultimately did not submit any reply.

I. The appellant was warned more than once to improve the standard and efficiency of his working by the authorities under whom he worked; but, he failed to do so.

J. No opportunity of hearing was required to be given in the present case since his services were not extended in accordance with the terms of the appointment order.

K. The appellant was not refused employment but his services were not ordered to be extended for the reasons stated supra.

4. The appellant filed rejoinder to the reply filed by the respondents reiterating the same contentions. A reply to the rejoinder on behalf of the respondents was also filed.

5. Dr. Justice B.S. CHAUHAN has passed a very detailed judgment after considering the pleadings and the judgments cited on either side. The learned single Judge has rejected the writ petition by observing in the concluding paragraph of his judgment as follows:

"The initial appointment of the petitioner vide order dated August 22, 1996 provided that his appointment was purely on ad hoc and temporary basis liable to be terminated without notice and it was only upto December 31, 1996. Petitioner's services were extended vide order dated May 20, 1997 only upto December 31, 1997. The petitioner's services were governed not by the recruitment rules but merely by the terms of the contract, i.e., appointment letter and, thus, his services came to an end automatically by efflux of time, i.e. after December 31, 1997 and, therefore, the question of termination of his services did not arise."

6. Being aggrieved, the petitioner-appellant has questioned the correctness of the judgment in this appeal. We have heard Mr. M. Mridul, Senior advocate assisted by Mr. Sumit Mehta for the appellant and Mr. B.S. Bhati Additional

Government Advocate for the respondents.

7. Shri Mridul submitted that if a person is appointed against substantive vacancy after following due process of law as provided under the relevant service-rules then his appointment will be treated as substantive one and, merely on the ground that a tenure has been fixed in the appointment order, his services cannot be snatched by not treating him a substantive employee. It is further submitted that the case on hand is not a case of ad hoc or temporary appointment or the time-bound appointment; but, it is a case of substantive appointment as the appellant was appointed after following due process of law but initially it was for a period of 4 months and, thereafter, extension was granted. It is also urged that the appellant was kept on probation and, therefore, for taking any action like the impugned one a detailed enquiry ought to have been held in the matter and, therefore, the judgment under appeal is liable to be set aside. It is submitted that the whole basis of the reply filed by the respondents is that work of the appellant was not satisfactory, therefore, extension was not granted. According to the learned senior advocate, this least stigma upon the career of the appellant and, therefore, a regular enquiry has to be held if any adverse report is against the appellant which is the basis for non-grant of extension which has not been done in this case and, therefore the appellant is entitled to continue in service.

8. The learned senior advocate for the appellant placed strong reliance upon AIR 2000 1706 (SC) in support of his contention that temporary government servants and probationers are entitled to protection under Article 311 and since there has been total non-compliance of the regulations of service of the appellant whose services were terminated without ever issuing him any notice intimating the grounds on which his services were proposed to be terminated nor was his explanation ever obtained his services deserve to be continued.

9. Per contra, Mr. Bhati, Additional Government Advocate, for the respondents reiterated the contentions raised in the reply. The learned counsel, at the time of hearing, invited our attention to Annexure-1 (which is a typed copy) in order to show that the appellant has wilfully and knowingly omitted some words from condition No. 3 of the appointment order with an intention to mislead this Court. The omitted words are: (Vernacular matter omitted) which are very much relevant according to him and the omission of these words has changed the very purport of the condition No. 3 of the appointment order. Our attention was also further invited to Annexure-2 the extension order and Annexure-R/1. Annexure-R/1 was filed for specific purpose of comparison of the omitted words in Annexure-1 and to show the correct version and condition mentioned in Annexure-1. Condition No. 3 as mentioned both in Annexure-1 and Annexure-R/1 is extracted hereunder :

Annexure - 1: Vernacular matter omitted. Annexure - R/1: Vernacular matter omitted.

English translation of Annexure-1, Annexure-2 and Annexure-R/1 was also provided by the learned Government counsel for our perusal. We have perused the same and found that there is omission of the words as pointed out by learned counsel for the respondents which has changed the very sense of condition No. 3 of the appointment order. The counsel for the appellant has not denied such omission in Annexure-1. It is thus clear that the appellant has come to this Court with unclean hands. In our opinion, the appellant is not entitled for any indulgence or sympathy from this Court and such a person is not entitled to any discretionary relief under Article 226 of the Constitution of India.

10. It is well settled proposition of law that it is duty of a person invoking the special writ jurisdiction of the Court to make a full and true disclosure of all relevant facts. He should not suppress any facts. The applicant for a writ under Article 226 of the Constitution must come in the manner prescribed and must be perfectly frank and open with the Court. If he conceals something which is relevant from the Court the Court will refuse to go into the matter. In this case, the appellant has filed a typed copy Annexure-1 which does not contain the material condition No. 3 of the appointment order which was pointed out by the counsel for the respondents and as could be seen from Annexure-R/1 on comparison of Annexure-1 and Annexure-R/1. Though this Court for its own protection and to prevent the abuse of its process may refuse to proceed any further with the examination of the merits, we refrain from doing so and we proceed to consider the case of the appellant on merits as well.

11. In this case, the appellant, invoking the special jurisdiction of this Court under Article 226 of the Constitution of India, is bound to make a full and true disclosure of all relevant facts however, the appellant has not done so. The appellant has not been as frank and candid as he is under a duty to be and has suppressed material facts relevant to the issues involved. We are, therefore, of the opinion that he is disentitled to any relief from the Court on this ground. The appellant was not justified in doing so. The learned counsel for the respondents submitted that since the employment of the appellant was a tenure employment it automatically came to an end with effect from December 31, 1997 and, therefore, the appellant is not entitled to any relief. The appellant is also not entitled to any relief as the services of the appellant were not ordered to be extended on the ground of his inefficiency and a perusal of the appointment order dated August 22, 1996 shows that it is very much specific and clear stipulating that the services are liable not to be extended if the performance is not satisfactory.

12. It was also stated in the reply that the appellant was warned more than once to improve the standard and efficiency of his working but he failed to do so. In such circumstances, we are of the opinion that his services were rightly not ordered to be extended and the action of the respondents cannot at all be said to be arbitrary or discretionary as alleged, it is also not a case of refusal of employment but a case of non-extension of the services on the ground of

inefficiency, that too, within the period of probation.

13. The law on the subject is well settled. It is not in dispute that the appellant was given appointment on temporary basis. It is settled by a catena of decisions that a daily rated employee or a temporary employee cannot claim that he was having any right to the post. Under the service-jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the terms of the contract of service. The appellant has no lien on the post and such a lien can be held on a post only when an employee has been confirmed and made permanent on that post and not earlier. The Supreme Court has taken the same view in many of its judgments that a Government-servant holding a post temporarily does not have any right to hold the said post. We have already referred to the terms and conditions of the contract. Under the terms and conditions, the services of the appellant are liable to be terminated without assigning any reason. The Hon'ble Supreme Court has considered the difference of a permanent employee and an employee holding the post on probation in *LIC of India v. Raghavendra Sheshgiri Rao Kulkarni* 1998 (1) S.C.C. 460 : 1998 II LLJ 1161. A permanent employee and an employee holding the post on probation cannot be equated. A permanent employee is entitled to retain his post and his services cannot be terminated abruptly without any notice or a reasonable cause which is based on the principle that a substantive appointment on a permanent post in a public service confers substantive right to the post and a person appointed on that post becomes entitled to hold a lien on that post.

In the instant case, the services of the appellant - a probationer were discharged as per the terms and conditions of his appointment letter. Therefore, the argument of Shri Mridul that the appellant was appointed on a substantive vacancy cannot hold water and in our view, the termination of the appellant was in consonance with the terms and conditions of his appointment order and, therefore, the appellant cannot be heard raising any grievance.

14. We shall now consider the judgment cited by Shri Mridul in *Chandra Prakash Shahi v. State of U.P. and Ors.* (supra) In that case, the Supreme Court allowed the appeal filed by the employee of the State of U.P. on the ground that there had been total non-compliance with the provisions of para 541 of the U.P. Police Regulations and the services of the appellant were terminated without ever issuing him any notice intimating the grounds on which his services were proposed to be terminated nor was his explanation ever obtained. The services were terminated because he was found involved in a quarrel between two other constables. For the above reasons, the Supreme Court has allowed the appeal and set aside the judgment passed by the High Court and restored the judgment of the U.P. Public Service Tribunal. In the above case, the appellant was recruited on October 1, 1985 as a Constable. He completed his training and, thereafter, was placed on probation for a period of 2 years. He completed his period of probation on September 5, 1988; but, a year later, his services were terminated

by a notice in terms of Rule 3, U.P. Temporary Government Servants (Termination of Services) Rules, 1975. The order of termination was challenged and the Service Tribunal allowed the claim and the writ petition filed by the respondents No. 1 and 2 was allowed and the judgment passed by the Tribunal was set aside. Before the Supreme Court it was submitted that the services were terminated without any enquiry and, therefore, punitive in nature.

In that case, a preliminary enquiry was conducted and the appellant and few other constables were found guilty of indiscipline and misbehaviour; and, for this reason, the services of the appellant were terminated. It was contended before the Supreme Court by the employee of the State Government that the appellant could not have been legally removed from service except by way of disciplinary action in accordance with the requirements of Article 311 of the Constitution. It was also contended that after completion of the period of probation the appellant had acquired permanent status and, therefore, his services could not have been terminated by a mere notice or a month's pay in lieu thereof. The Supreme Court, on a perusal of the provisions of para 541 of the U.P. Police Regulations, had observed that a permanent status can be acquired only by means of a specific order of confirmation and not after the completion of the period of probation as contended. The above is a case of completion of probation and continuation in service after the completion of the probation period.

In the case on hand, the initial appointment of the appellant was made for a period of 4 months and, thereafter, extension was made vide Annexure-2 dated May 20, 1997 whereby his services were extended upto December 31, 1997. The appointment was on purely temporary basis and for a fixed period with conditions. As his performance was not found satisfactory and since employment was a tenure employment his services were not extended and, therefore, the services came to an end automatically with effect from December 31, 1997 i.e., on the expiry of the employment period.

In the above Supreme Court case, even after the completion of the period of probation, the appellant was continuing in service, however, before confirmation on completion of the period of probation his services were terminated.

15. In our opinion, the services of the temporary employee can be terminated under the terms of the contract of employment and as the termination of the services of the appellant is only a termination simpliciter and therefore, it will not attract operation of Article 311 of the Constitution. Termination of the service of the appellant does not cast an aspersion against his character or integrity and, therefore, cannot be considered to be one by way of punishment. In the instant case, the Judicial Department has weeded out one unsuitable and unfit candidate from service. As the probationer was not suitable to be continued in service no extension was granted and no order was passed terminating his services as the appellant was not allowed to continue in service by efflux of the period. The Supreme Court case as cited by Shri Mridul was thus based on the peculiar facts and circumstances of that case. The Supreme Court in the above judgment in

paragraph 28, has considered the important principles which are deducible on the concept of motive and foundation concerning a probationer. It is observed that a probationer has no right to hold the post and his services can be terminated any time during or at the end of the period of probation on account of general unsuitability for the post in question. The factor which impels the respondents in this case not to extend the services of the appellant beyond the period in question was a factor of general unsuitability of the employee-appellant for the post held by him. Shri Mridul submitted that there is no question of suppression of any material fact from the purview of the Court in filing Annexure-1 and that it is a typographical mistake. We do not appreciate this contention. If that is so, the appellant could have filed the original appointment order issued by the answering respondents; but, he did not choose to do so and, therefore, in our opinion, his intentions are crystal clear.

16. In regard to the submission of Shri Mridul that the appointment of the appellant is for a substantive vacancy we are unable to accept this contention because of the following factual aspects of the case.

17. It is seen from the reply to the rejoinder filed on behalf of the respondents that at the time of making the advertisement by the answering respondents there were total 116 posts of L.D.C. in the judgeship of Udaipur out of which 90 posts were permanent in nature and 26 temporary. Out of 26 temporary posts 4 posts were vacant at the time of appointment and the appellant was appointed on one of these 4 posts. Therefore, there was no occasion on the part of the answering respondents to appoint the appellant substantively when the permanent sanctioned post was not available. It is also not in dispute that as per the proviso of Rule 28 of the Rajasthan Subordinate Courts Ministerial Establishment Rules, 1986 appointments can be made even on temporary basis. For the foregoing reasons, we are of the opinion that the appellant is not entitled for the relief asked for in the appeal.

18. Thus, on consideration of the entire pleadings, annexures and rulings cited by both sides, we find that the appeal has absolutely no merit and is, therefore, liable to be rejected. Accordingly, we do so. However, in the facts and circumstances of the case, we say no cost.