

(1967) 11 GAU CK 0005
In the Gauhati High Court
Case No : Writ Petition No. 10 of 1962

Shri Pran Gopal Saha

APPELLANT

Vs

District Magistrate and Collector (Tribal Welfare Section)
Agartala and another

RESPONDENT

Date of Decision : 08-11-1967

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(1), 311(2)
Government of India Act, 1935 — Section 241(7)

Citation : AIR 1967 Guw 56

Hon'ble Judges : C. Jagannadhacharyulu, J.C.

Bench : Single Bench

Advocate : B.C. Dev Barma, for the Appellant; H.C. Nath, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

C. Jagannadhacharyulu, J.C.

1. This is a Writ Petition filed by Shri Pran Gopal Saha, an EX-Amin in the Tribal Welfare Department, Tripura, under Article 226 read with Article 311 (2) of the Constitution of India for a Writ of Certiorari or any other appropriate Writ for quashing the notice, dated 17-2-1961, of Shri L. B. Thanga the then District Magistrate and Collector, Tripura terminating his services under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1949 (hereinafter referred to as the Rules) With effect from the date of expiry of one calendar month from the date of Service of the order on him and the subsequent order dated 29-3-1961 of actual termination of his service in pursuance of the notice.

2. The petitioner was appointed temporarily by an order, dated 17-2-1956, of Shri M. Ramunny the then District Magistrate and Collector, Tripura, for a short period upto 29-2-1956 on the scale of Rs. 55-3-118-4-130/- together with the usual allowances as admissible in Tripura on the condition that his service was liable to be terminated at any time without any notice or assigning any reasons.

His order of appointment was also made subject to his being found fit on medical examination and verification of his character and antecedents. Vide Ext. A(1). He continued to be in service. After a lapse of 5 years he was served with a notice, dated 17-2-1961 signed by Shri L. B. Thanga the then Additional District Magistrate and Collector, Tripura, under Rule 5 of the Rules, that his service would be terminated with effect from the date of expiry of one calendar month from the date of service of the notice on him. Vide Ext. A(4). In pursuance of the said notice the Sub-Divisional Officer, Dharmanagar, under whom the petitioner was then working as Amin, Tribal Welfare Section. Dharmanagar, released him from duty with effect from the afternoon of 29-3-1961. Vide Ext. A(5). The petitioner filed an appeal before the second respondent Chief Commissioner against the order of termination of his service, without any success. Vide Exts. A(6). A(8) and A(9). The petitioner thereupon issued a registered notice of demand to the Chief Secretary, Tripura Administration and also the first respondent District Magistrate and Collector threatening to file a Writ Petition. If he was not reinstated. Vide Ext. A(7) But as he was not reinstated, he filed the present Writ Petition.

3. The Central Government framed the Central Civil Services (Temporary Service) Rules of 1949 (under Section 241 (7) of the Govt. of India Act of 1935). The petitioner, who was appointed temporarily and whose services were liable to be terminated without any notice or any reasons, did not acquire the status of a quasi permanent Government servant Within the meaning of R. 3 of the aforesaid Rules, though he was in continuous Government service for more than 3 years. A Government servant would be deemed to be in quasi-permanent service under the said rule, provided, firstly, he is in continuous Government service for more than 3 years and secondly if the appointing authority, being satisfied as to his suitability in respect of age, qualification, work and character for employment in a quasi-permanent capacity, has issued a declaration to that effect in accordance with such instructions as the President may issue from time to time. But, in the case of the petitioner no such declaration was issued. So he remained to be purely a temporary Government servant.

4. In the Writ Petition three grounds were taken by the petitioner impugning the orders of termination of his service. The first ground is that he was appointed by Shri M. Ramunny, the then District Magistrate and Collector, but that his service was terminated by the Additional District Magistrate and Collector, an authority subordinate to the Appointing Authority and that, therefore the order is in violation of Art. 311 (1) of the Constitution of India. The second ground mentioned in the Writ Petition is that no notice was given to him and no enquiry was made as required by Article 311 (2) of the Constitution of India and that therefore, the order of termination of his service is illegal. But when the matter came up for arguments the petitioner's learned Counsel did not rely (rightly) on the above two provisions of Article 311 of the Constitution of India. For, the petitioner was neither "dismissed" nor "removed from service" nor "reduced in rank" by way of punishment. Clause (1) of Article 311 of the Constitution of India

comes into play only when there is "dismissal" or "removal" of a Government servant from service, while Clause (2) of Article 311 comes into play when there is "dismissal" or "removal" or "reduction in rank" of a Government servant and both the clauses will apply only when such an order is passed by way of punishment. This position of law is also clear from a number of rulings. Vide the well-known Dhingra's case in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, , *Bhagwat Saran Srivastava Vs. Collector and District Magistrate, Jaunpur and Others*, . *J.S. Varma Vs. State of U.P.*, and a decision of this Court in *Prafulla Chandra Bhowmik v. Union Territory of Tripura*, AIR 1963 Tri 38.

5. The only point (which was the third ground in the Writ Petition) that was urged by the petitioner's Counsel and which arises for determination is whether the notice of termination of service (vide Ext. A(4) dated 17-2-1961) signed by Shri L. B. Thanga, Additional District Magistrate and Collector, Tripura is a valid notice under Rule 5 of the Rules which could validly terminate the temporary service of the petitioner. Rule 5, which is relevant for the purpose of the present case, runs as follows:--

5. (a) The service of a temporary Government servant, who is not in quasi-permanent service, shall be liable to termination at any time by notice in writing given either by the Government servant to the Appointing Authority, or by the Appointing Authority to the Government servant.

(b) The period of such notice shall be one month unless otherwise agreed to by the Government and by the Government servant.

Provided that the service of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice or, as the case may be, for the period by which such notice falls short of one month or any agreed longer period.

Provided further that the Compensatory (City) and House Rent allowances, where admissible, shall be payable on the expiry of the notice period and after it is certified by the competent authority that the Government servant continued to reside during the period of notice at the station where he was last employed, notwithstanding the fact that he was not expected to return to duty at that station.

Sub-rule (a), thus, contemplates that the notice in writing, which has to be given to the Government servant, should be given by the Appointing Authority. In the present case, the first respondent District Magistrate was the appointing authority. So, evidently, the original of Ext. A (4) notice by itself is not a valid one, because it was not given by the District Magistrate. But, it was given by the Additional District Magistrate. However, the office note file Ext. B(2) shows that the order of termination of service of the petitioner was passed by the then District Magistrate Shri H. S. Butalia. Ext. B(2) is a continuous note-sheet. An office note was put up on 15-2-1961 that the petitioner entered service on 22-2-1956, that he was still temporary and that if desired, Rule 5 might be

applied in his case. There is another office note dated 16-2-1961 that the "Additional District Magistrate" might kindly see the office note mentioned above. Then, there is a short order of Shri H. S. Butalia, District Magistrate and Collector dated 16-2-1961 "apply". The notice of termination of service was drafted on 17-2-1961 and the signature of the Additional District Magistrate was obtained in the office copy. So, in fact, the notice of termination of service was issued and signed by Shri H. S. Butalia, the then District Magistrate, while copy of the order served on the petitioner was signed by the Additional District Magistrate. The contention of the petitioner's Counsel that the original of Ext. A (4) does not mention that Shri L. B. Thanga signed the notice on behalf of or for Shri H. S. Butalia is correct. But, the original notice in the note-file of the office shows that as a matter of fact the order of termination of service of the petitioner was passed and initialled by Shri H. S. Butalia. So, this is only a clerical mistake, which cannot invalidate the notice issued under Rule 5 (a).

6. The learned Counsel for the respondents drew my attention to the following decisions arising under Art. 311(1) of the Constitution of India. In *Bhagwat Saran Srivastava Vs. Collector and District Magistrate, Jaunpur and Others*, it was held that, if the services of a temporary employee are terminated not as punishment but under the contract, then his removal by an authority subordinate to the Appointing Authority cannot be questioned. In *J.S. Varma Vs. State of U.P.*, a proposal for termination of service together with the draft order was put up for approval before the competent authority. That authority wrote the word "seen" on the proposal. It was held that the word "seen" indicated approval of the proposal of the competent authority for issuing the order of termination of service and that there was no violation of the provisions of Article 311 (1) of the Constitution of India. These two decisions arose under Article 311 (1) of the Constitution of India. They cannot directly apply to the facts of the present case, because Rule 5(a) lays down that the notice shall be given in writing by the Appointing Authority. But, the facts of this case show that the actual notice was signed and given by the Appointing Authority, while a copy of it was issued in the usual routine by the Additional District Magistrate. Though the decision in AIR 1963 Tri 38 of this Court has no direct bearing on this point, It throws some light on it. In that case a Government servant was appointed by the Chief Commissioner of Tripura temporarily. But, under Rule 5 his appointment was terminated not by the Chief Commissioner but by the Director of the Department, in which the Government servant was employed. It was held that the Director of the Department, if he was the Appointing Authority for Class III employees on the relevant date and if the Government servant was a Class III employee, could validly terminate the services of the employee, even though the employee was appointed by the Chief Commissioner. As Ext. B(2) shows that the actual order of termination of service of the petitioner under Rule 5 of the Rules was passed by Shri H. S. Butalia, the Appointing Authority, the fact that the original of Ext. A(4) does not bear his signature, but that it bears the signature of the Additional District Magistrate and Collector does not, in my opinion,

invalidate the notice issued to the petitioner under the circumstances of this case.

7. The learned Counsel for the petitioner stated that a copy of Ext. B(2) was filed very late in the Court on 25-9-1967 and that no reliance should be placed on it. Though he did not expressly state that Ext. B(2) was got up for the purpose of the present Writ Petition, he faintly suggested the same. But, that Ext B(2) note file did exist before the Writ Petition was filed is clear from paragraphs 19 and 24 of the written statement filed by the respondents. In paragraph 19 the respondents stated that the order of applying Rule 5 of the Rules for terminating the service of the petitioner was passed by Shri H. S. Butalia, the then District Magistrate and Collector, Tripura and that his order was communicated under the signature of Shri L. B. Thanga as per the direction of Shri H. S. Butalia. In paragraph 24 the respondents clearly mentioned the existence of the note-sheet. In that paragraph the respondents alleged that the order of termination of service was passed by Shri H. S. Butalia and that his order was communicated under the signature of Shri L. B. Thanga, as per the direction in the note-sheet. Ext. B (2) contains several initials signatures and handwritings of a number of officers bearing several dates. There is absolutely no doubt about the genuineness of the note-sheet and it cannot be said that it was got up by the respondents to substantiate their defence in the Writ Petition.

8. It was finally contended by the learned Counsel for the petitioner that the affidavit, filed on behalf of the respondents, was not sworn to either by Shri H. S. Butalia or Shri L. B. Thanga and that much reliance cannot be placed upon it. He relied on Moinuddin Vs. Divisional Mechanical Engineer, N.R. Rly. and Another, , where it was held that the tendency among some Government Officials to depute their clerks or pairokars to swear to affidavits in regard to the facts, which are within their own knowledge, is to be deprecated, that the practice is contrary to law and improper and that it smells of discourtesy to the High Court. But, in this case the affidavit was sworn to by Shri Naresh Chandra, Cultural Research Officer, in charge of Tribal Welfare Section. So he is a competent officer to swear to the affidavit in the present case.

9. In the result, the Writ Petition fails. It is accordingly dismissed, but under the circumstances without costs.