
(1984) 03 OHC CK 0024
In the Orissa High Court
Case No : O.J.C. No. 878 of 1979

Sri Ishwar Chandra Sahu

APPELLANT

Vs

Sri Saroj Raj Choudhury and Others

RESPONDENT

Date of Decision : 15-03-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 311

Citation : (1984) 57 CLT 365

Hon'ble Judges : P.K. Mohanti, J;P.C. Misra, J

Bench : Division Bench

Advocate : B.K. Patnaik, for the Appellant; Bijan Ray, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanti, J.—Petitioner was appointed temporarily to officiate as a gate-guard in the office of the Field Director, Similipal Tiger Reserve in the scale of pay of Rs. 215-265/- as per order dated 9th March, 1978 - vide Annexure-1. His service was terminated with effect from 1-4-1979 as per the order in Annexure-2. He challenges the order of termination of service as being vitiated by malafides and violative of Articles 16 and 311 of the Constitution of India. It is alleged that the service of O.P. No. 3 Ramesh Chandra Hembram who was junior to the Petitioner in service has been retained while terminating the service of the Petitioner.

2. The stand taken by the Field Director, Similipal Tiger Reserve is that the service of the Petitioner was terminated as he was not found suitable for work for which he was engaged. It is contended that the nature of work which the Petitioner was to discharge was in relation to the research work being done on the tigress "Khairi". This is a very sensitive and important work requiring close watch on the tigress through out the day. The observations are carefully recorded and on the basis of the data collected, the research work proceeds. Unless a person is found absolutely suitable for the work in question the entire Research

Project is likely to suffer. Keeping this requirement in view, the work of the Petitioner was closely watched and he was not found suitable for the work.

3. The order of appointment of the Petitioner (Annexure-1) clearly shows that it was made with an express stipulation that the appointment was purely temporary and terminable at any time without any notice and without assigning any reason. The impugned order (Annexure-2) is an order of termination simpliciter passed in accordance with the terms of appointment. It neither casts any stigma against the Petitioner nor does it visit him with any penal consequence. Where the termination is under the powers recognised in the terms of appointment, the provisions of Article 311 of the Constitution will not be attracted.

4. The Field Director has asserted that he passed the order of termination bona fide in due discharge of his duties and he had no malice or ill-will against the Petitioner. The Petitioner has not made out a prima facie case to show that the order of termination is an outcome of malice.

5. As regards the Petitioner's contention that the service of O.P. No. 3 Ramesh Chandra Hembram, a junior, was retained while terminating his service, it appears that the service of the Petitioner was terminated on the ground of his unsuitability. It is not a case of retrenchment of service on the ground of abolition of post. Hence, the question of retaining the service of the Petitioner and terminating service of the junior-most employee does not arise. When the termination of service of a temporary Government servant is not on the ground of retrenchment no question of offending Articles 14 and 16 of the Constitution will arise from the mere fact that he was not the junior-most in the particular category of temporary employees. It is only in a case of retrenchment the question will arise as to who should be retrenched when one out of several temporary employees is being retrenched from one post. In the present case, the Petitioner's service was terminated because he was not found suitable for the post. In such a case, there can, in our opinion, be no question of any discrimination. Therefore, even though O.P. No. 3 was junior to the Petitioner, does not follow that the action taken against the Petitioner terminating his service was discriminatory if that action was taken on the ground of his unsuitability. In the case of *The Manager, Government Branch Press and Another Vs. D.B. Belliappa*, their Lordships held that if the service of a temporary Government servant is terminated in accordance with the conditions of service on the ground of unsatisfactory work or his unsuitability" for the job and/or for his work being unsatisfactory or for a like reason which mark him off a class apart from other temporary servants who have been retained in service, there is no question of the applicability of Article 16.

6. There is, therefore, no merit in this writ application and it is accordingly dismissed, but without any order as to costs.

P.C. Misra, J.

7. I agree.