

(2010) 12 SHI CK 0431
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 9043 of 2008

Subhash Sharma

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 24-12-2010

Acts Referred:

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

Citation : (2010) 12 SHI CK 0431

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed on the following prayer:

That the impugned termination notice dated 28th Nov, 2002(Annexure A-1) may kindly be quashed and set aside.

2. In reply on behalf of Respondents No. 1 and 2, the following stand has been taken vide para-3:

That in reply to this para it is submitted that the Department advertised the posts of DPEs in the year 1999 and the requisition was sent to the Employment Exchanges in Himachal Pradesh for batch-wise appointments. The name of the applicant was also sponsored by the Employment Exchange, Kullu for the post of DPE, therefore, he was called for the interview on dated 3-5-1999 in the office of Joint Director Physical Education, Himachal Pradesh, Shimla-171004 in which the applicant appeared accordingly. However, as per the record/list of selected candidates, the applicant was not selected in the interview, since the going on session for batch wise appointments of DPEs was 1990-1991 whereas, the applicant has passed his D.P. Ed. in the year 1996. But the applicant fraudulently managed to get the appointment letter showing his posting at Govt. Senior Secondary School Lote District Lahaul Spiti. The source of getting fraud appointment letter under the signature of the Director of Education, Late Shri Shiv Chand Rai is best know to the applicant that how the applicant managed to

get the appointment under the signature of the then Director of Education, Late Shri Shiv Chand Rai. The Respondent State came to know about the fraud appointment of DPE when a complaint about the same was received. On the receipt of the complaint, the Deptt/Respondent conducted the Preliminary Enquiry after giving full opportunity to the applicant. In the Inquiry, it was fully established that the applicant was neither selected nor the Deptt issued any appointment letter to him. Hence, the services of the applicant were terminated under Rule 5(1) of CCS (Temporary Services) Rule 1965 as he was a temporary employee of the Deptt. So, in view of the facts and submissions the present original application is not maintainable, as his services have rightly been terminated.

3. Rejoinder and sur-rejoinder have also been filed.

4. Some undisputed facts may be noticed first. The Petitioner was appointed as DPE in the Respondent-department vide office order dated 20.12.1999, Annexure A-6. Vide order dated 28.11.2002, Annexure A-1, the services of the Petitioner were terminated under sub rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (in short the Rules), which is as follows:

In pursuance of Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I hereby give notice to Sh. Subhash Sharma, DPE, GSS Lote, Distt. Lahoul & Spiti, H.P. that his services shall stand terminated with effect from the date of expiry of a period of one month from the date on which this notice is served on or, as the case may be, tendered to him.

Sd/-

Place: Shimla (Dr.O.P. Sharma) Date: Director of Education, Himachal Pradesh.

5. Rule 5, supra is extracted below:

5. Termination of Temporary Service

(1) (a) The services of a temporary Government servant 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;

(b) the period of such notice shall be one month:

Provided that the service of any such Government servant may be terminated forthwith and on such termination, the Government 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. Note.- The following procedure shall be adopted by the Appointing Authority while serving notice on such Government servant under Clause (a):

(i) The notice shall be delivered or tendered to the Government servant in person;

(ii) Where personal service is not practicable, the notice shall be served on such Government servant by registered post acknowledgement due at the address of the Government servant available with the Appointing Authority;

(iii) If the notice sent by registered post is returned unserved, it shall be published in the Official Gazette and upon such publication, it shall be deemed to have been personally served on such Government servant on the date it was published in the Official Gazette.

(2) (a) Where a notice is given by the Appointing Authority terminating services of a temporary Government servant, or where the service of any such Government servant is terminated either on the expiry of the period of such notice or forthwith by payment of pay plus allowance, the Central Government or any other authority specified by the Central Government in this behalf or a Head of Department, if the said authority is subordinate to him, may, of its own motion or otherwise, re-open the case, and after making such enquiry as it deems fit,-

(i) confirm the action taken by the Appointing Authority;

(ii) withdraw the notice;

(iii) reinstate the Government servant in service; or

(iv) make such other order in the case as it may consider proper:

Provided that except in special circumstances, which should be recorded in writing, no case shall be reopened under this sub-rule after the expiry of three months-

(i) from the date of notice, in a case where notice is given;

(ii) from the date of termination of service, in a case where no notice is given.

(b) Where a Government servant is reinstated in service under Sub-rule (2), the order or reinstatement shall specify-

(i) the amount or proportion of pay and allowances, if any, to be paid to the Government servant for the period of his absence between the date of termination of his services and the date of his reinstatement; and

(ii) Whether the said period shall be treated as a period spent on duty for any specified purpose or purposes.

6. However, in terms of order dated 28.12.2002 passed by the erstwhile H.P. State Administrative Tribunal (since abolished), when the matter was under adjudication before the said Tribunal, operation of the impugned order dated 28.11.2002, Annexure A-1 was stayed and consequently the Petitioner is still continuing in service.

7. Though the impugned order dated 28.11.2002, Annexure A-1, on the face of it appears to have been passed simplicitor on the ground that the Petitioner was a temporary employee and as per contract of service, his services were liable to be terminated on issuance of one month's notice on either side, yet from the stand taken by Respondents No. 1 and 2 in their reply, as noticed hereinabove, it is apparent that the ground on which the impugned order was passed is that he had obtained the aforesaid employment by fraudulent means. It being so, the impugned order dated 28.11.2002, Annexure A-1, cannot be said to be an order passed under sub rule (1) of Rule 5 of the Rules, supra and instead when the veil is lifted, it would be manifest that it was a punitive order, which could not have been passed without holding a regular enquiry against the Petitioner under the CCS (CCA) Rules read with Article 311 of the Constitution, as has been held by the Hon''ble Apex Court in Jagdish Parsad Vs. Sachiv, Zila Ganna Committee, Muzaffarnagar and Another, and AIR 2000 1706 (SC)

8. In view of the above, the impugned order dated 28.11.2002, Annexure A-1, cannot be sustained and is accordingly quashed. However, it is made clear that it shall be open to the Respondent-department/Competent Authority to proceed against the Petitioner for the alleged misconduct afresh in accordance with law.

9. The petition stands disposed of, so also pending CMP(s), if any.