
(2005) 08 RAJ CK 0080
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2303 of 2002

Subhash Sharma	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 02-08-2005

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)
Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 16

Citation : (2006) 1 RLW 176 : (2005) WLC 708

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : Sanjeev Prakash Sharma, for the Appellant; H.V. Nandwana, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—Two question springing up for considering in this writ petition is:

- (i) Whether an employee after attaining temporary status, is entitled to constitutional protection envisaged by Article 311 of the Constitution of India?
- (ii) Whether the services of a temporary employee can be terminated without holding a regular departmental enquiry, even if the order of termination is punitive in nature?

2. Contextual facts depict that the petitioner passed Secondary School Examination in the year 1995 and in the marks sheet the date of birth of petitioner was shown as November 27, 1979 in place of November 22, 1977. Accordingly corrected marks sheet dated November 5, 1996 was issued vide letter dated November 18, 1996. The petitioner underwent training on honorary basis in the department of Anesthesiology. The post of Anesthesia Technician was published vide advertisement dated January 23, 1997 for which the petitioner applied and he came to be appointed vide order dated February 25, 1997 and

regularly performing his duties in Mobile Surgical Unit of Medical and Health Department as Anesthesia Technician. The name of the father of the petitioner is Ram Sahai Brahmhatt and he is also called as Ram Sahai Sharma. Since the father of the petitioner being Nursing Superintendent lodged FIR about corruption against the respondent No. 4 Jai Singh, (now holding the post of Director Mobile Surgical Unit) with the Anti Corruption Bureau and contested the matter, the respondent No. 4 with a malafide intention terminated the services of the petitioner vide order dated July 6, 2001. The said order was challenged in writ petition No. 3355/2001. This Court vide order dated July 31, 2001 set aside the termination order and remanded the matter with a direction to pass a fresh order after providing opportunity of hearing to the petitioner. The respondents after serving show cause notice to the petitioner again terminated his services vide order dated March 19, 2002 and relieved the petitioner vide order dated March 30, 2002. In the order dated March 19, 2002 it is stated that Anesthesia training certificate produced by the petitioner at the time of appointment was false. The petitioner has prayed to set aside the orders dated March 19, 2002 and March 30, 2002 on the ground that the said orders were punitive in nature and passed without initiating departmental enquiry.

3. The respondents Nos. 1 & 2 filed return to the writ petition stating therein that the petitioner got the date of birth changed for the purpose of appointment on the Anesthesia Technician. Regarding the certificate issued by Dr. I.P. Garg the respondents stated that it was not a training certificate since it was issued on the letter pad. Regarding change of surname of father of petitioner, the respondents stated that the father of petitioner has not filed the bond as per Rule 9 of the Rajasthan Service Rules read with Government decision No. 5 dated April 10, 1967. Nor it was published in government gazette. The respondents submitted that the audit party raised objection regarding appointment of petitioner on the basis of so called certificate of Dr. I.P. Garg. Regarding the order July 6, 2001 it has been submitted that although the said order was quashed by the High Court but it was left open to respondents to issue show cause notice to petitioner, therefore after giving the opportunity of hearing to petitioner the order dated July 6, 2001 has been confirmed. The respondents also stated that as the petitioner was not holding substantive post therefore there was no necessity to issue charge sheet under Rule 16 of Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (for short "CCA Rules").

4. I have pondered over the rival submissions.

5. In State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla, , their Lordships of the Supreme Court indicated thus: (Para 7)

Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decided to take punitive action against the

temporary government servant. If it decides to take punitive action it may hold a formal inquiry by framing charges and giving opportunity to the government servant in accordance with the provisions of Article 311 of the Constitution.

6. Constitutional Bench of the Hon''ble Supreme Court in Parshotam Lal Dhingra Vs. Union of India (UOI), observed as under: (Para 26)

...Again where a person is appointed to a temporary post for fixed term of say five years his service cannot, in the absence of a contract or a service rule permitting its premature termination be terminated before the expiry of that period unless he has been guilty of some misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the rules read with Article 311(2)....

7. Nar Singh Pal Vs. Union of India and Others, was the case where it was held that once an employee attains "temporary" status, he becomes entitled to certain benefits one of which is that he becomes entitled to the constitutional protection envisaged under Article 311 of the Constitution. If the order of dismissal of such temporary employee is passed on the basis of preliminary inquiry and without holding a regular departmental inquiry, it can not be sustained.

8. Applying the above principles, the impugned punitive order, in the instant case, cannot be sustained because it came to be passed without holding a regular departmental inquiry. In the order of termination, as already noticed, it was stated that certificate of training produced by the petitioner while seeking appointment was false. The order which was stigmatic, passed without complying with the doctrine of natural justice is not sustainable. It is a fundamental requirement of law that the doctrine of natural justice be complied with and the same has, as a matter of fact turned out to be an integral part of administrative jurisprudence. The judicial process itself embraces a fair and reasonable opportunity to defend. The entire chain of events in the instant case smacks of some personal clash and adaptation of a method in hottest haste. Cogent evidence is available on record to come to the conclusion that there exists a bias which resulted in miscarriage of justice.

9. For these reasons, I allow the writ petition and set aside the orders dated March 19, 2002 and March 30, 2002. I direct the respondents to reinstate the petitioner in service with all consequential benefits within thirty days of the receipt of copy of this order. No costs.