

(1958) 11 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No. 622 of 1955

Suryadevarajya Rama Rao

APPELLANT

Vs

Superintendent of Post Offices, Krishna Division

RESPONDENT

Date of Decision : 07-11-1958

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (1959) 1 LLJ 245

Hon'ble Judges : Satyanarayana Raju, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satyanarayana Raju, J.—This is a petition, under Art. 226 of the Constitution, for issuing a writ of certiorari to quash the order of the Superintendent of Post Offices, Krishna Division, terminating the services of the petitioner.

2. The petitioner was drafted to war service and after the termination of the war in 1946, he was discharged; subsequently, on 27 September 1948, he was appointed as a temporary clerk in the Krishna Postal Division. On 26 August 1955, he was informed by the Superintendent of Post Offices that his services would be terminated after a month from the date of receipt of the notice. It is the propriety of this order of termination that is challenged by the petitioner in this writ petition.

3. Mr. Subrahmanyam, the learned counsel for the petitioner, has raised several contentions : firstly, that the petitioner has completed his probation and that the contention of the department that he is only a temporary clerk governed by the Central Civil Services (Temporary Service) Rules, 1949, is not valid; secondly, even if the rules are applicable to him, he must be deemed to have been declared as a quasi-permanent servant of the Government in the year 1952 itself; and thirdly, that the Central Civil Services (Temporary Service) Rules, 1949, are not applicable to him by reason of the fact that he commenced his

service in the year 1948.

4. The contention of the petitioner that he has completed the period of Probation and that he must therefore be deemed to be a quasi-permanent servant of the Government, has been denied by the department. Under Para. 5 of the Temporary Service Rules of 1949, the petitioner was served with the prescribed notice of termination after one month from the date of service of the notice and the petitioner received the said notice. He was thereafter discharged from service. The notice sent to him on 26 August 1955 described him as a temporary clerk officiating at the Vijayawada Head Office of the Krishna Division. The notice, dated 11 May 1954, described him as "officiating clerk, Jaggayyapet." The memorandum, dated 12 May 1953, also described him as a "temporary clerk." It does not appear that this designation was objected to by the petitioner at any time. From the correspondence placed before us, it is clear that he was at all material times treated as a temporary employee of the Government. Apart from the description, there was no order at any time declaring that the petitioner had completed his period of probation. The only ground on which this result, according to the learned counsel for the petitioner, follows is that he has completed the period necessary for declaring a person's probation to have been completed, and not that actually any such order has been made by the appropriate authorities. That, however, will not help him. The next contention urged on behalf of the petitioner is that he had been shown as a probationer in a leave reserve post and that would give him the status of a quasi-permanent Government servant. As has been pointed out by the Supreme Court in *Harwell Prescott Singh v. State of Uttar Pradesh* 1958 S.C.J. 148, where a person is employed in a temporary capacity and on probation and his conditions of service are governed by rules, framed, the termination of his services thereunder does not amount to a dismissal or removal from service within the meaning of Art. 311 of the Constitution. This is so because the appointment to a permanent post in Government service (we are now assuming that a leave reserve post is such a permanent post), either on probation or on an officiating basis, is, from the very nature of such employment itself, of a transitory character and, in the absence of any special contract or specific rule, regulating the conditions of the service, the implied term of any such appointment, under the ordinary law of master and servant, is that it is terminable at any time. In *Parshotam Lal Dhingra Vs. Union of India (UOI)*, their lordships of the Supreme Court, after an exhaustive consideration of the relevant provisions governing the conditions of service of Government servants, stated thus :

"In short, in the case of an appointment to a permanent post in a Government service on probation or on an officiating basis, the servant so appointed does not acquire any substantive right to the post and consequently cannot complain, any more than a private servant employed on probation or on an officiating basis can do, if his service is terminated at any time. Likewise an appointment to a temporary post in a Government service may be substantive or on probation or on an officiating basis. Here also, in the absence of any special stipulation or any

specific service rule, the servant so appointed acquires no right to the post and his service can be terminated at any time except in one case, namely, when the appointment to a temporary post is for a definite period." It is not the petitioner's case that he was appointed to the post for a definite period. When the service of a Government servant holding a post temporarily ripens into quasi-permanent service, as defined in the Temporary Service Rules of 1949, he acquires a right to the post although his appointment was initially temporary and, therefore, the termination of his employment otherwise than in accordance with those rules will deprive him of his right to that post which he acquired under the rules. On a perusal of the relevant orders placed before us, there is no difficulty in reaching the conclusion that the petitioner's service has not ripened into a quasi-permanent service as defined in Temporary Service Rules. This is made clear even under rule 5 of the rules which reads :

"(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 the Government servant."

5. In this case the period of one months notice has been admittedly given to the petitioner.

6. Mr. Subrahmanyam has placed strong reliance upon rule 6 of the Central Services (Temporary Service) Rules, 1949. So far as is material, the rule reads : "The service of a Government servant in quasi-permanent service shall be liable to termination -

(i) in the same circumstances and in the same manner as a Government servant; or

(ii) when the appointing authority concerned has certified that reduction has occurred in the number of posts available for Government servants not in permanent service." Before the petitioner can claim the protection of rule 6, he must succeed in establishing that he is a Government servant in quasi-permanent service. As already stated, it is clear that the petitioner had not acquired that status on the date of the termination of his services. It is next contended by the learned counsel for the petitioner that under rule 6(iii) of the rules relating to "Appointments, Penalties and Appeals of Central Services, Class III and Class IV, " where the termination of the employment is for any specific fault or on account of the employee's unsuitability for the service, the probationer shall be apprised of the grounds and given an opportunity to show cause against it, before orders are passed by the authority competent to terminate the employment. It is argued that the material averments made in the counter-affidavit filed by the department show that his employment was terminated for some specific fault or on account of his unsuitability for the

service and that therefore he should have been given the reasonable opportunity provided under that rule before his service was terminated. It has now been ruled by the Supreme Court that even persons holding temporary posts under Government are entitled to the protection of Art. 311 if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification which would then amount to a punishment within the meaning of Art. 311, and the requirements of that article must then be complied with. The reason of this rule is that when the termination is sought to be founded on misconduct or the like, it would leave a stigma on the officer concerned and therefore it is but proper that he must be given a reasonable opportunity of defending himself. Where, however, the services of a temporary servant of the Government are sought to be terminated on no specific ground, the requirements of Art. 311 need not be complied with because the termination of services is of a temporary servant and is not as a measure of punishment. It may be that while terminating the services of a temporary Government servant, certain considerations operate on the mind of the competent authority, but where the termination is not based on those considerations, there is no question of the termination being treated as a punishment. The material orders passed by the Superintendent of Post Offices do not indicate that the petitioner's services were terminated for misconduct, negligence, inefficiency or the like. The orders merely terminated the services of the petitioner without assigning any reasons. Therefore it is not open to the petitioner to canvass the propriety of the orders on the ground of violation of the provisions of Art. 311. This contention is really the result of certain averments made in the counter-affidavit. As already mentioned, the basis of the orders is not any misconduct, negligence or inefficiency on the part of the petitioner. Except by raising this as an additional ground, served on the Government Pleader a day or two back, the petitioner did not raise this contention in the original affidavit. The allegations in the counter-affidavit were made with reference to an allegation made by the petitioner that he was serving in a quasi-permanent post. The respondent sought to show that the petitioner, by reason of certain acts of omission or commission on his part, could not have qualified himself to claim that status. Those allegations, therefore, have absolutely no relevance to the present contention of the petitioner that the termination of his service rested on grounds which would entitle him to the protection of Art. 311. It may also be noted that the order terminating the services of the petitioner made no mention whatsoever about the acts of omission or commission on the part of the petitioner. The last of the contentions urged by the petitioner is that the temporary rules of 1949 were passed long after he was entertained in service and that therefore they are not applicable to him. There is really no substance in this contention. The Temporary Service Rules were made in 1949 and they applied to all temporary Government servants then in service, and it is not open to the petitioner to contend that he is not governed by those rules.

7. All the contentions raised by the petitioner having been negated, this writ

petition must fail and is dismissed. In all the circumstances of the case, we make no order as to costs.