

(2007) 01 DEL CK 0132

In the Delhi High Court

Case No : Writ Petition (Civil) No"s. 23128-30 of 2005

The Chairman Canteen and Others

APPELLANT

Vs

LT. Col. Raj Singh (Retd.) and Another

RESPONDENT

Date of Decision : 25-01-2007

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Constitution of India, 1950 — Article 226, 227, 311(1), 311(2)

Citation : (2007) 137 DLT 215

Hon'ble Judges : P.K. Bhasin, J;Mukul Mudgal, J

Bench : Division Bench

Advocate : Manish Sharma, for the Appellant; G.C. Nagar and Mona Varshney, Proxy Counsel for Maninder Acharya, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Bhasin, J.—By way of this writ petition under Articles 226 and 227 of the Constitution of India the petitioners are seeking setting aside of the order dated 9th September, 2005 passed by the Central Administrative Tribunal, Principal Bench, New Delhi(hereinafter referred to as "the Tribunal") in O.A. No. 1819/2005 whereby the tribunal allowed the petition of respondent No. 1 Lt. Col. Raj Singh(retd.) who had challenged the termination of his services as Manager, Non-CSD Canteen by the petitioners herein with effect from 18th August 2005. The tribunal while setting aside the termination order dated 30th July, 2005 directed reinstatement of the respondent No. 1. Feeling dissatisfied with the decision of the tribunal the petitioners have approached this Court for its reversal.

2. The relevant facts leading to the filing of the petition u/s 19 of the Administrative Tribunals Act, 1985 before the tribunal by the respondent No. 1 are as under:

(a) After his retirement from Indian Army, the respondent No. 1 applied for the post of Manager in (Non-CSD) Station Canteen. He was interviewed by the Selection Board and on being found suitable was appointed as Manager in the

Station Canteen(Non-CSD) at Delhi Cantt. with effect from 1st August 2003 by an appointment letter dated 28th July 2003.

(b) By a letter dated 21st August 2003, terms & conditions of his appointment were communicated to the respondent No. 1 by the petitioners wherein it was stated that he was to be on probation for a period of one year which could be extended to two years, if considered appropriate. The Chairman of the Station Canteen's Management Committee had the right to terminate his services without assigning any reason after giving one month's notice or pay and allowances in lieu thereof. It was also stated in the said letter that the respondent No. 1 was liable to serve in any of the Unit Run Canteens within the Command if the circumstances so warranted. The respondent No. 1 was to be bound by the rules and instructions contained in the HQ Delhi Area Standing Orders dated 1st April 1987.

(c) After the expiry of first year, the tenure of the respondent No. 1 was extended up to 31st January 2005 by the petitioners by a communication dated 15th July 2004 which was given in response to his application dated 28th June 2004 and then it was further extended up to 31st July 2005 in response to his application dated 11th January 2005 by the petitioners' communication dated 8th February 2005. Every time the tenure of the respondent No. 1 was extended, he was required to sign a fresh contract document.

(d) When his services were no longer required no further extension was granted to the respondent No. 1 and the petitioners vide their communication dated 30th July 2005 terminated his services with effect from 1st August 2005 by tendering one month's salary as per the terms & conditions contained in his initial appointment letter.

(e) The respondent No. 1 made a representation dated 31st July 2005 to the petitioners requesting for continuation of his services for a further period of six months or one year.

(f) On getting no response the respondent No. 1 made another representation dated 03-08-2005 requesting for the same relief of extension of his services but the petitioners did not accede to his request and, in fact, did not even give any reply to his representations.

(g) The respondent No. 1 filed a petition u/s 19 of the Administrative Tribunals Act, 1985 before the tribunal on 23rd August 2005 with a prayer for quashing the termination order dated 30th July, 2005 and for his reinstatement in service.

(h) The respondent No. 1 had claimed in his petition before the tribunal that the termination of his services without assigning any reasons and without affording any opportunity to him to show cause was resorted to by the petitioners with a view to appoint other persons of their own choice who did not even fulfill the eligibility criteria for the said post. It was also pleaded by the respondent No. 1 that as per para 3(c) of the Rules and Regulations applicable to the Civilian

Employees of Unit Run Canteens paid out of non public fund, the superannuation age was 60 years . He had also claimed that his performance was excellent and that is why instead of extending the probation period from one to two years he was allowed to continue in the service on regular basis.

(i) The petitioners herein had opposed the claim of the respondent No. 1 before the tribunal, inter-alia, on the grounds that Non-CSD Canteen, for which the respondent No. 1 was appointed as Manager as per the laid down rules, regulations and directions from the Head Quarters, was a private shop run by Civilian Contractors on contract basis and the same had nothing to do with the Canteens run by Canteen Stores Department(CSD) and, Therefore, the Rules applicable to the Unit Run Canteens were not applicable to the employees of Non-CSD Canteens. It was also claimed by the petitioners in their counter affidavit before the tribunal that on the completion of one year of probation the tenure of the respondent No. 1 was extended for a period of six months and then it was further extended for another six months where after the contract was not extended. It was also pleaded that in an identical case, the Delhi High Court had refused extension of service up to the age of 60 years even to those ex-Army Officers who were appointed in the Unit Run Canteens on the ground that their appointments were contractual in nature. It was further claimed that the action of the Management in not extending the tenure of respondent No. 1 herein and terminating the same by paying one month's salary to him was in accordance with the existing Rules and the respondent No. 1 had accepted the payment without any protest.

(j) In his rejoinder the respondent No. 1 herein had refuted the stand taken by the petitioners herein in their counter affidavit and it was claimed by him that there was no difference between the CSD and Non-CSD Canteens and the Management of the Non-CSD Canteens was also under the control of the present petitioners and salaries of the employees of Non-CSD Canteens also were paid out of non-public fund and, Therefore, the employees of Non-CSD Canteens were governed by the Rules regulating the terms & conditions of service of civilian employees in the Unit Run Canteens as per the order dated 7th April 2004 of the petitioners herein. The respondent No. 1 had also claimed that he had been, in any case, working for months together as Manager of CSD Canteen also. He also claimed that he had protested the termination of his services on payment of one month's pay vide his representation dated 31st July 2005.

(k) The Tribunal by its judgment dated 9th November, 2005 allowed the petition of respondent No. 1 herein and while holding that he was not a contractual employee and was, in fact, to be treated as an employee of a Unit Run Canteen ordered his reinstatement with all consequential benefits.

It is against this order of the Tribunal dated 9th November, 2005 that the present writ petition has been filed.

3. The learned Counsel for the petitioner submitted as follows:

(a) The petitioners are running two different kinds of Canteens, namely, CSD Canteens the employees of which on completing one year of probation are considered as regular employees if their service is continued and Non-CSD Canteens for which there has never been any provision of regularization of service of the employees after a period of one year of service, whether on probation or otherwise.

(b) In respect of CSD Canteen employees, Rules and Regulations governing the conditions of service of the employees were framed on 28th April 2003 pursuant to the directions of the Hon"ble Supreme Court in a case of Union of India and Others Vs. M. Aslam and Others etc, , in which the employees of CSD Canteens(Unit Run Canteens) had claimed their status as Government servants and various service benefits which were available to the Civilian Employees in the Ministry of defense which was controlling the CSD Canteens and whose employees were being paid out of non-public funds. As far as Non-CSD Canteens are concerned no Rules were prepared since there was never any intention of treating Non-CSD Canteen employees as regular employees of the Government and they were always treated as contractual employees.

(c) The appointment of respondent No. 1 was, in fact, a contractual appointment pursuant to the Government"s decision to rehabilitate ex-Army Personnel whose age of retirement is less than that of civilian employees and, Therefore, respondent No. 1 could not be considered as a regular employee or a Government servant.

(d) Even though there were rules governing the conditions of service of Civilian Employees of Unit Run Canteens(CSD Canteens) which were paid out of the non-public funds but no rules have been prepared for the Non-CSD Canteens since there was never any intention of treating Non-CSD employees as regular employees and consequently they have always been treated purely contractual employees. Therefore, the services of respondent No. 1 being purely contractual in nature his contractual appointment could be brought to an end at any time by the petitioners as per the terms of the appointment although his services were, in fact, terminated on the expiry of full contractual period.

(e) Every time the contractual service period of the respondent No. 1 was extended a fresh contract was signed by him without any objection or a claim of regular status and when his services were no more required the same were terminated with effect from 1st August 2005 by paying him one month"s salary as per the terms & conditions of his contractual appointment.

(f) The non-CSD Canteens were being run by civilian contractors on contract basis and were like private shops and had nothing to do with the Unit Run Canteens and the rules applicable to their employees are not applicable to non-CSD Canteen employees.

4. The learned Counsel for the respondent No. 1 submitted as follows:

(a) The appointment letter of the respondent No. 1 clearly stipulated that he was put on probation for a period of one year to begin with and the same could be extended up to two years and since there is no document showing that the period of probation of respondent No. 1 was extended it is clear that on completion of the initial period of probation of one year he became a regular employee.

(b) The very fact that in the appointment letter of respondent No. 1 probation period was prescribed, the submission of the petitioners that it is a case of contractual appointment gets negated since a contractual employee is never put on probation.

(c) Reliance was placed on para 5(a) of the Rules & Regulations dated 28th April 2003 governing the conditions of service of Civilian Employees of Unit Run Canteens paid out of non-public fund whereunder it is provided that all employees shall be under probation during their first year of service and on successful completion of probation they would be termed as permanent.

(d) Reliance was also placed on para 3(c) of the order dated 15th July 2003 issued by the Quartermaster General Branch, Army Headquarters, whereby certain clarifications in respect of the Rules & Regulations dated 28th April 2003 (reference to which has already been made) were given. As per para 3(c) of the said clarificatory order, the superannuation age of the permanent employees was shown to be sixty years. Learned Counsel contended that if the appointment of the respondent No. 1 was really contractual for a period of maximum two years only then there was no necessity of terminating his services by giving him one month's salary.

(e) In any case, the nature of duties of Managers in the CSD and non-CSD Canteens was identical and their appointment letters were also identical and both the categories were paid out of the non-public fund. Since the respondent No. 1 was doing the job of a Manager of a CSD Canteen also on certain occasions during the period of two years of his service, his services were liable to be continued up to the age of 60 years as was being done in case of the Managers of CSD Canteens (Unit Run Canteens). Therefore, the termination of his services before the superannuation age of 60 years without attributing any misconduct was illegal. Thus, the respondent No. 1 was entitled to the relief of continuation of his services up to the age of 60 years with all the financial benefits.

5. In this matter no counter affidavit was filed by the respondents since it was ordered by this Court while issuing notice to the respondents on 7th December, 2005 that the Court shall be looking into the pleadings of the parties which they had filed before the Tribunal and that is why we have referred in detail the stands taken by the parties before the tribunal in their respective pleadings. We have bestowed our thoughtful consideration to the rival contentions made at the bar. On behalf of the petitioners and respondent No. 1 brief written submissions were also filed in which the afore-said contentions already taken during the course of

hearing were reiterated. The main controversy between the parties, as noticed by the tribunal also in its impugned order, is whether respondent No. 1 on his appointment as a Manager of Non-CSD Canteen meant for defense personnel became a Government servant and whether his services could be terminated without adhering to the principles of natural justice treating the same as a contractual appointment. The initial appointment letter dated 28th July 2003 had been issued by the Delhi area Headquarter and the signatory of that letter was one Colonel. Similarly the letter dated 21st August 2003 whereby the respondent No. 1 had been informed of the terms & conditions applicable to him as Manager of the Station Canteen was issued by the Delhi area Headquarters and signed by the same Colonel who had signed the letter dated 28th July 2003. As noticed already, the stand of the petitioners regarding the Non-CSD Canteen before the tribunal was that Non-CSD Canteen is a private shop run by civilian contractors on contract basis. However, nothing has been placed on record to show that Non-CSD Canteens were being run by civilian contractors. In any case it is not even the case of the petitioners that respondent No. 1 was appointed by a civilian contractor. As noticed by us, the appointment letter of the respondent No. 1 was issued by the Delhi area Headquarters of the Army. The petitioners are also not claiming that respondent No. 1 was paid his salary etc. by a civil contractor and not by the Canteen Management. The petitioners have also not brought on record anything to show that it had no control over the employees of Non-CSD Canteens or in their Management. In these circumstances, the stand taken by the petitioners in respect of the employees of Non-CSD Canteens that they are not Government servants cannot be accepted.

6. It is also the case of the petitioners that respondent No. 1 cannot be considered as a Government servant since his appointment was contractual in nature governed by the terms & conditions communicated to him by the letter dated 21st August 2003 according to which the respondent No. 1 was to be on probation for a period of one year which could be extended to two years and the petitioners had a right to terminate his services at any time without assigning any reasons after giving him one month's notice or pay and allowances in lieu thereof. We, however, do not find any merit in this stand of the petitioners also. The petitioners themselves have claimed in their counter affidavit submitted before the tribunal that the respondent No. 1 herein was appointed after he had been selected by a Board of Officers as per the "Rules & Regulations" and further that his services were terminated "in accordance with the existing Rules". This stand taken by the petitioners themselves before the tribunal clearly shows that there were Rules governing the service conditions of the employees of Non-CSD Canteens. However, the petitioners have not placed on record those Rules to show that the nature of employment of the employees of Non-CSD Canteens who are selected after undergoing proper selection process was contractual only and not that of a regular Government service. In any case, a bare perusal of the initial appointment letter dated 28th July 2003 given to the respondent No. 1 would show that he was not offered a fix term employment. It was simply

communicated to him that he was being appointed to the post of Manager, Station Canteen(Non-CSD) with effect from 1st August 2003. Later on, when the petitioners served him with a letter dated 21th August 2003 wherein the terms & conditions of his employment were specified it was not claimed by the petitioners in that letter also that the employment of the respondent No. 1 was for a fixed period. On the contrary, it was mentioned that he would be on probation for a period of one year initially and that probation period could be extended up to two years. It was the probation period which could be extended up to two years and not that the maximum service period of respondent No. 1 was fixed for two years. In fact, even if the petitioners' plea that it is a case of contractual employment were to be accepted it would still not mean that the respondent No. 1 was not a Government servant. In this context we may make a useful reference to a decision of the Hon'ble Supreme Court in Union of India (UOI) Vs. M.A. Chowdhary, wherein the respondent was employed in All India Radio as Staff Artist under an agreement for a period of three years and on the expiry of three years he was re-employed and his contract was renewed on yearly basis up to 30th November, 1964. Thereafter he was re-employed on a five years' contract. One of the clauses of the agreement was that the services of the respondent could be terminated on six months' notice from either side. Invoking that clause the Assistant Station Director of All India Radio terminated the services of the respondent before the expiry of period up to which he could remain in service. That termination was challenged by way of a writ petition on the ground that it was in contravention of Article 311(2) of the Constitution of India. The Hon'ble Supreme Court held that even though the authority to terminate the respondent's service on six months' notice emanated from the contract but nonetheless it had the effect of violating Article 311(1) of the Constitution. The respondent was found to holding a civil post under the Government within the meaning of Article 311(1) and also that the relationship between the parties was that of master and servant.

Therefore, in the present case also just because it was mentioned in the initial appointment letter that the service of respondent No. 1 could be terminated by giving him one month's notice or pay in lieu thereof it cannot be said that the respondent No. 1 was not a Government servant. If that be so, the services of respondent No. 1 could not be dispensed with simply by paying him one month's salary. In fact, we are also in agreement with the submission of the learned Counsel for the respondent No. 1 that the termination of his services by paying him one month's salary after the expiry of two years' tenure also negatives the stand of the petitioners that it is a case of contractual employment since if the contract period had expired there was no necessity of payment of one month's salary to the respondent No. 1.

7. We are, Therefore, of the view that since the respondent No. 1 was a Government servant, his services could not be terminated in the manner done by the petitioners and the tribunal was right in quashing the termination order dated 30th July 2005 and directing the reinstatement of respondent No. 1 with

consequential benefits. We are also of the view that the petitioners have not played the role of a model employer by treating the employees of Non-CSD Canteens and CSD Canteens(Unit Run Canteens) differently without justifying the discrimination meted out to the ex-servicemen who are appointed for Non-CSD Canteens by not continuing their services up to the age of 60 years as they are doing in the case of ex-servicemen appointed for the CSD Canteen. Consequently, this writ petition filed by the petitioners is liable to be dismissed.

8. In the result, this writ petition is dismissed. We may, however, clarify that since the respondent No. 1 was claiming the continuation of his service up to the age of sixty years which age he has already attained, he would not be entitled now to the relief of reinstatement in service but only the financial benefits would be paid to him up to the date of attaining the age of sixty years. The petitioners would make the necessary payment to the respondent No. 1 within a period of two months from today.