

(1982) 10 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No"s. 37 and 38 of 1981

The General Manager, Beas Project and Member Bhakra Beas
Management Board

APPELLANT

Vs

Mohan Singh and Others

RESPONDENT

Date of Decision : 20-10-1982

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 1, 1(3), 1(4), 2, 3
Constitution of India, 1950 — Article 299, 299(1), 309
Contract Act, 1872 — Section 230(3)
Government of India Act, 1935 — Section 175(3), 241(2)
Punjab Civil Services Rules, 1953 — Rule 1.3, 1.4

Citation : (1982) 11 ILR HP 604

Hon'ble Judges : V.D. Misra, C.J;H.S. Thakur, J

Bench : Division Bench

Advocate : Kapil Dev Sood, for the Appellant; P.A. Sharma, Central Government
Standing Counsel and Kamlesh Sharma, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Misra, C.J.—This judgment will dispose of Letters Patent Appeal Nos. 37 and 38 of 1981, since they arise out of the same judgment.

2. It was in the year 1960 that the then State of Punjab and the State of Rajasthan undertook the construction of Beas Project by mutual agreement. The Central Government in consultation with these States constituted the Beas Control Board. It was presided over by the Governor of Punjab. The decision of the Board used to be implemented by the Punjab Government which was administering and executing the works of the Project.

3. The General Manager, Beas Project, Talwara Township, issued an advertisement on 27th February, 1965, for 12 Junior Specialists on contract for 3 to 5 years. They were required to hold "charge of Sub-Divisions on Beas-Sutlej Link Project". Their salaries were to be fixed according to their experience and

qualifications in the grade of Rs. 250-25-550/25-750 plus allowances as may be admissible to the "Officers of Sub-Divisional Officers rank from time to time". Mohan Singh, Inder Singh and Jagdish Singh (referred to as the Petitioners) were selected for these posts. They were appointed for a period of two years in the first instance. Contracts were executed by the Petitioners and the Governor of Punjab. One of the contracts dated 11th February, 1966, is Annexure P-4. We will advert to it a little later.

4. The re-organisation of the erstwhile State of Punjab took place on 1-11-1966. It was on 1-10-1967 that Beas Construction Board (the Board) was constituted by the Central Government. The terms of employment of the Petitioners were extended from time to time by the Chairman, Beas Construction Board.

5. Even after the re-organisation of the State of Punjab, it appears, the employees continued to consider themselves as the employees of the State of Punjab. The Petitioners approached the Government of Punjab for regularisation of their services in March, 1973. The State of Punjab informed the Petitioners that their employer is the General Manager, Beas Project and only he could regularise their services. The General Manager informed the Petitioners that "Beas Project had no cadre of its own and they having been appointed on contract basis cannot be adjusted on their cadre". The services of the Petitioners were terminated on 30-6-1981 as the period of service was not extended. The Petitioners filed a writ petition claiming that they were the employees of the Central Government and that their services could not be terminated. The Respondents contended that the Petitioners were not in fact Government servants and had no right to claim themselves as regular temporary employees of the Central Government since they were employed on contract basis against specified posts. A learned single Judge of this Court came to the conclusion that the Petitioners were indeed employees of the Central Government and they had the status of regular temporary employees. The Union of India as well as the General Manager, Beas Project, now challenge this decision by these Letters Patent Appeals.

6. Mr. P.A. Sharma, Central Government Standing Counsel, contends that the Petitioners are not the employees of the Central Government. We find that the Supreme Court in *Jaswant Singh and Others Vs. Union of India (UOI) and Others*, considered the status of the employees of the Beas Construction Board. The Union of India as well as the Board had raised contentions similar to the ones which are being raised before us. It is contended that there is no permanent independent cadre, that the services of the Petitioners were governed by the express terms mentioned in their letters of appointment, and that they have been appointed for a fixed term under a contract. After scrutinising the ambit of Section 80 of the Punjab Re-organisation Act, 1966, the Supreme Court ruled that persons appointed by the Beas Control Board became the employees of the Beas Construction Board by virtue of the first proviso to Section 80(3). It was held that the employees of the Beas Construction Board were in fact the

employees of the Central Government. It was observed that the conditions of service of the employees appointed temporarily will be primarily governed by the terms of their appointment but if they were entitled to the benefits of any of the rules of the Central Civil Services (Temporary Service) Rules, 1965, they may make representations in that behalf to the appropriate authorities. In view of this decision of the Supreme Court it does not lie in the mouth of the Union of India to contend that the Petitioners in this case are not the employees of the Central Government.

7. It is then contended that since the Petitioners were appointed on contract basis they could not be governed by the Central Civil Services (Temporary Service) Rules, 1965, since they will continue to remain as contract employees. It is submitted that under Sub-rule (4) of Rule 1 of these rules it is expressly laid down that these rules do not apply, amongst others, to Government servants engaged on contract basis.

8. Now the Petitioners were appointed for a period of two years (Annexure P-2) in the first instance on the terms and conditions set-forth in the draft agreement which the Petitioners were called upon to execute. The contract (Annexure P-4) specifically states that the employees "shall remain in service for two years or such longer period, not exceeding the total of five years, as the Government shall require". The agreement gave a gazetted rank to the Petitioners and made them eligible to allowances as are sanctioned from time to time to Sub-Divisional Officers/Executive Engineers employed on Beas Project. They were also permitted to subscribe to the General Provident Fund and, unless otherwise decided by the Government, were entitled to "the benefits of any charge favourable to the employees that maybe made by the Government subsequent to the date of these presents in the terms and conditions of the service of the members of the branch of the public service to which he may for the time being belong and the decisions of the Government in respect of such improvement in terms and conditions of service of the party of the first part shall operate to modify to that extent the provisions of these presents." Clause (15) of the contract reads:

In respect of any matter for which no provision has been made in this agreement, the provisions of the Civil Services (Classification, Control and Appeal) Rules, any rules made thereunder, and any other rules made or deemed to be made under Clause (b) of Sub-section (2) of Section 241 of the Government of India Act (1935) read with the Indian Provisional Constitution which are in force or those made under Article 309 of the Constitution of India shall apply to the extent to which they are applicable to the service hereby provided for and the decision of the Government as to their applicability shall be final.

It may be noticed that though this contract was entered into between the Petitioners and the Governor of Punjab, the period of service of the Petitioners was extended by the Chairman of the Board from time to time. The first order

extending the period of service for two years is dated 13th June, 1968. By various orders the period of service of the Petitioners was extended till 30th June, 1981. All the orders extending the period of service specifically stated that the period was being extended "on the existing terms and conditions".

9. It is contended on behalf of the Petitioners that there has been a discrimination between the Petitioners and persons similarly situated. A reference is made to Annexures P-30 to P-35 to show that other persons had been treated differently. A bare look at Annexure P-30, which relates to the appointment of one Hari Mohan Gupta as Shift Engineer/Junior Design Engineer by the General Manager Beas Project, vide order dated 30th March, 1972, shows that the appointment was temporary and not on contract basis. The appointment was for a period of six months in the first instance but was likely to continue. There after by an order dated 14th June, 1973, (Annexure P-31) the services of 44 Shift Engineers/Junior Design Engineers were extended "till their services are required by the Beas Project instead of 6 months". By an order dated 1st January, 1981, Hari Mohan Gupta was appointed in a quasi-permanent capacity in pursuant to Rules 2 and 3 of the Central Civil Services (Temporary Service) Rules, 1965.

10. Our attention has also been drawn to the decisions taken by the Government of India after the decision of the Supreme Court in Jaswant Singh's case. By a letter dated 16th January, 1980, (Annexure PR-1A in L.P.A. No. 37 of 1981) the following opinion of the Ministry of Home Affairs was conveyed:

(i) All the employees recruited by the Beas Project are employees of the Central Government.

(ii) The terms and conditions of the service of these employees shall be regulated by the contract/undertaking which has been signed by individual employees.

(iii) In cases where the employees have not signed such contract/undertaking, their terms and conditions shall be regulated by the offer of appointment.

(iv) Provisions of the Central Civil Services (Temporary Service) Rules, 1965, will not be applicable in these cases;

xx xx xx xx xx.

11. The relevant part of the letter dated 19th May, 1980, of Director (E) to the Department of Personnel and A.R. Estt. (D) (Annexure PR-2/A in L.P.A. No. 37 of 1981) reads:

The various points raised by the Petitioners in the Beas Project have been considered and our advice on these issues is given below:

(A) In view of the Supreme Court decision that the directly recruited officials of the Beas Project are Central Government employees and taking into account the nature of individual orders of appointment, we agree that these officials should be treated as temporary employees of the Central Government to whom the provisions of the Central Civil Services (Temporary Service) Rules, 1965, will

apply.

This has the approval of the Home Minister.

12. The question which now falls for decision is whether the Petitioners continue to be the contract employees till 1981 or shall be deemed to be temporary employees as contended by them. To recapitulate, the Petitioners were on two years contract when the re-organisation of the erstwhile State of Punjab took place. The contract shows that it could be extended for a maximum period of five years. The first proviso to Sub-section (3) of Section 80 of the Punjab Re-organisation Act, 1966, reads:

(3) The notification constituting a Board under Clause (a) of Sub-section (2) may empower the Board to appoint such staff as may be necessary for the efficient discharge of its functions:

Provided that every person who immediately before the constitution of the Board was engaged in the construction or any work relating to the Beas Project shall continue to be so employed by the Board in connection with the said works on the same terms and conditions of service as were applicable to him before such constitution until the Central Government by order directs otherwise.

13. By virtue of this provision the Petitioners, after the re-organisation of the State of Punjab, became the employees of the Board (i.e. the Central Government) as contract employees since they were appointed, under a contract. After the expiry of a period of two years, for which they were employed under the contract, the contract could be extended for a maximum period of five years. Since the new employers were the Central Government, the contract, which was entered into by the Governor of Punjab could be extended by the President of India. It was admittedly not extended by the President of India but was extended by the Chairman of the Board.

14. It is contended on behalf of the Petitioners that the extension by the Chairman of the Board was nothing but a fresh appointment since the Chairman could not extend the period of contract on behalf of the President of India. It is also contended that irrespective of the powers of the Chairman of the Board to extend the period of contract on behalf of the President of India, the original contract expired after a period of five years since that was the maximum period for which that contract could be extended, and thereafter no fresh contract having been entered into between the Petitioners and the President of India, the so called extensions have to be treated as temporary appointments.

15. In view of Jaswant Singh's case, it is no more in doubt that the Board is not a legal entity and is merely a department or a limb or an agent of the Central Government. The aforementioned proviso to Sub-section (3) as well as Sub-section (3) of Section 80 of the Punjab Re-organisation Act show that the Board was empowered to appoint persons but it was not empowered to extend the contract on behalf of the President of India; or enter into a contract on his behalf.

16. The Supreme Court in Union of India (UOI) and Others Vs. N.K. Private Limited and Another, while interpreting Article 299 of the Constitution of India, ruled that a contract whether by a formal deed or otherwise by persons not authorised by the President cannot be binding and is absolutely void.

17. In K.P. Chowdhary Vs. State of Madhya Pradesh and Others, , the Supreme Court ruled that because of Article 299(1) of the Constitution there could be no implied contract between the Government and any other person, and that no implied contract should be inferred by the facts and circumstances of a particular case. The same view was taken by the Supreme Court in Mulamchand Vs. State of Madhya Pradesh, , the The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, .

18. It is contended by the Appellants that Article 299 of the Constitution is not applicable to service contracts. Reference is made to the decision of a Division Bench of this Court in Suhash Chander etc. v. The State of H.P. etc. ILR 1978 H.P. 18, in which the ambit of Article 299 of the Constitution came to be considered. It has no relevance to the present question. In that case services of some of the employees of the Government were transferred to the University of Himachal Pradesh. In these circumstances it was held that an agreement to transfer administrative services on certain terms and conditions does not amount to a contract which could be enforced in law.

19. A Division Bench of the Calcutta High Court in Union of India (UOI) Vs. Jyotirmoyee Sharma, , came to the conclusion that the contract of service with Government officers cannot be struck down for non-compliance with the provisions of Section 175(3) of the Government of India Act, 1935, and/or Article 299 of the Constitution of India. It also observed that the correspondence between the Government servant and the Government could be reasonably construed in accordance with the letter and spirit of Section 175(3) of the Act and that, in any case, show that the contract of employment was duly ratified u/s 230(3) of the Contract Act. We are afraid that this does not lay down a good law in view of the aforementioned decisions of the Supreme Court. Once it is found that the contract is governed by Article 299 of the Constitution of India, then it has to be signed by a person duly authorised on behalf of the President of India or the Governor of the State and the question of ratification or estoppel does not arise.

20. A Division Bench of the Patna High Court in P.N. Sarkar Vs. State of Bihar and Others, observed thus:

I do not consider that the employment of a Government servant requires a formal document in writing as prescribed by Article 299 of the Constitution. The reason is that the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. It is true that the origin of Government service is contractual. There is an

offer and acceptance in every case.

But once appointed the Government servant acquire a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. The important point to be noticed is that the emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee.

This decision refers only to one class of Government service. The Central Civil Services (Temporary Service) Rules, 1965, (the Rules) contemplate: (i) Government servants not in whole time employment; (ii) Government servants engaged on contracts; (iii) Government servants paid out of contingencies; (iv) persons employed in extra-temporary establishments or in work-charged establishment; etc. in addition to persons who are employed temporarily in temporary posts under the Government of India. It is true that in one sense Government service is based on an offer and acceptance, that is contractual, but governed by the statutory rules which are the hall-mark of a status. But then is it so in the case of "Government servants engaged on contracts" [Rule (1)(iv)(c) of the Rules]? This is obviously a separate class. Contracts have to be executed formally because this class of Government servants are not to be governed by these Rules. In other words, there is no hallmark of status. It appears to us that the class contemplated by the Rules is such where contracts are entered into by the Government with the employee. These may be cases where some experts, Indian or Foreign, are employed by the Government for specified periods for specified purposes and their services are to be governed only by terms and conditions of contracts. In the instant case the initial employment of the Petitioners was of a special type as envisaged for "Government servants engaged on contracts". It was for this reason that a formal contract was entered into by the Governor of Punjab with the Petitioners for a specified purpose and for a specified period. It is true that it was provided under Clause (15) of the agreement that "in respect of any matter for which no provision has been made in this agreement, the provisions of Civil Services (Classification, Control and Appeal) Rules, any rules made there under and any other rules made or deemed to be made under Clause (b) of Sub-section (2) of Section 241 of the Government of India Act, 1935, read with the Indian Provisional Constitution which are in force or those made under Article 309 of the Constitution shall apply to the extent to which they are applicable to the services hereby provided for". But then it does not follow from this clause that the services of the Petitioners were governed by a statute. The parties to a contract may adopt various statutory rules as a term of contract. The statutory rules will thus become applicable not because of their inherent force but because of having been specifically adopted by the contract. In other words, if a contract does not make a particular statutory rules as a term of contract, these rules will not govern the service of an employee. These rules, would, therefore, have to be treated as

contractual for the purpose of contract adopting statutory rules.

21. We are, therefore, of the opinion that after the Petitioners became Central Government servants on the reorganisation of the erstwhile State of Punjab, their services could be said to be contractual in terms of Rule 1(4)(c) of the Central Civil Services (Temporary Service) Rules, 1965, only if a contract as envisaged under Article 299 of the Constitution has been entered into by the President of India with the Petitioners or their existing contracts were extended in terms of the contract by the President of India. Admittedly it has not been done. They would thus be deemed to be temporary government servants.

22. Our attention has been drawn to 1975 edition of "Hand Book for Personnel Officers" published by the Cabinet Secretariat, New Delhi. It is a compilation of the orders and instructions etc. issued by the Government from time to time. Chapter-III deals with mode of recruitment and appointment. On page 41 "contract appointment" is dealt with. It refers to the model agreement forms in respect of, inter alia, initial agreement for recruitment in India. The model agreement form is given in Annexure-IX of this Chapter. The model form shows that a formal agreement as envisaged under Article 299 of the Constitution has to be entered into. In addition to the model form of agreement it also contains the form of memorandum for re-engagement for a further definite period. This memorandum has also to be executed on behalf of the President of India. This also shows that it is not correct to say that Article 299 of the Constitution applies only to business contracts. It will apply also to service contracts as discussed above. Even the memorandum of re-engagement has to be duly executed on behalf of the President of India.

23. Now we may refer to the Punjab Civil Services Rules, Volume I, 1953 edition, issued by the Government of Punjab, Chapter-I, Rule 1.3, provides for a contractual service for which a contract may be entered into. Rule 1.4 provides that the rules shall not apply to "any Government servant between whom and the Government, a specific contractor agreement subsists in respect of any matter dealt with herein to the extent upto which specific provision is made in the contract or agreement (see Rule 1.3 above)". Rule 1.4 refers to the model forms of agreement for use in case of Government servants engaged on contracts. It is in this form that the contract was entered into by the Governor of Punjab with the Petitioners. It was duly executed for and on behalf of the Governor of Punjab by the Secretary to the Government of Punjab, Department of Public Works (Irrigation Branch, Punjab). Now the extension of service for a further definite period could only be made for and on behalf of the Governor of Punjab, and after the re-organisation of the erstwhile State of Punjab, by the President of India. No such extension was ever made by the requisite authority. As already stated, it was the Chairman of the Board who kept on extending the period of service of the Petitioners from time to time. This extension cannot be considered to be in continuation of the contract which was first entered into by the Petitioners with the Governor of Punjab. The Petitioners service has,

therefore, to be treated as temporary service in terms of Central Civil Services (Temporary Service) Rules, 1965. The phrase "temporary service" has been defined by Rule 2(d) to mean "the service of a temporary Government servant in a temporary post under the Government of India". It is not disputed before us that the Petitioners were indeed holding civil posts in terms of Rule 1(3) of the Rules. "Brochure on Central Civil Services (Temporary Service) Rules, 1965" issued by the Government of India in November, 1973, contains a Government of India's decision on page 7 in respect of "continuous temporary service" which is one of the conditions to be fulfilled before a Government servant can be deemed to be in quasi-permanent service. Decision at serial No. 3 reads:

Government servants who were originally engaged on contract and who after the expiry of contract continued in temporary employ should be allowed to count their previous service rendered on contract for purpose of computing three years service required, for the grant of quasi-permanency certificates (MHA O.M. No. 55/104/52-TS, dt. 20-2-1953).

It shows that a person who may start his service with the Government on the basis of a contract can be continued after the expiry of a contract in a temporary capacity. In the instant case, as already observed, after the expiry of the contract of the Petitioners' service they were continuously employed by the Chairman of the Board. It may be remembered that admittedly there were no rules for recruitment and promotion nor was there any cadre for the employees of the Board. It is for that reason that the persons were employed either on contracts, like the Petitioners, or for temporary periods which were extended from time to time. The case of Hari Mohan Gupta, already referred to, is that he was appointed for a period of six months in the first instance. Thereafter his period of service was extended from time to time till he was appointed, in a quasi-permanent capacity by an order dated 1st January, 1981, by the General Manager, Beas Project, Talwara (Annexures P-30, P-31 and P-32 in L.P.A. No. 38 of 1981). Another illustrative case is that of one Sunder Lal Saini, Sectional Officer, Mechanical, who was recruited on ad-hoc basis by an order dated 12th February, 1975, (Annexure P-33). The services of various Sectional Officers, including that of Sunder Lal Saini, were terminated for one day, that is 1st December, 1979, and then they were re-appointed on ad-hoc basis. All of them were ultimately appointed in quasi-permanent capacity by an order dated 24th August, 1980, (Annexures P-34 and P-35 in L.P.A. No. 38 of 1981).

24. We have already referred to the meaning of the phrase "temporary service" as the service of a temporary Government servant in a temporary post under the Government of India. The phrase "temporary post" has been defined by the Fundamental Rule 9(30) as "a post carrying a definite rate of pay sanctioned for a limited time". In the instant case after the expiry of the contract of the Petitioners the Chairman of the Board appointed the Petitioners from time to time for defined periods. The posts which the Petitioners were holding were temporary posts. Therefore, they have to be treated as temporary employees.

25. The result is that we find no force in these appeals which are dismissed with costs. One set of costs. Counsel's fee Rs. 500/-.