

(2022) 12 OHC CK 0063
In the Orissa High Court
Case No : Writ Appeal No. 331 Of 2019

Union Of India And Others

APPELLANT

Vs

Pradeep Majhi

RESPONDENT

Date of Decision : 06-12-2022

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 304B, 498A

Dowry Prohibition Act, 1961 — Section 4

Central Civil Services (Temporary Service) Rules, 1965 — Rule 2(d), 5, 5(1)

Citation : (2022) 12 OHC CK 0063

Hon'ble Judges : Dr. S. Muralidhar, CJ; M.S. Raman, J

Bench : Division Bench

Advocate : P.K. Parhi, Chandrakanta Pradhan, S. Sourav

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, CJ.

1. The challenge in the present writ appeal is to a judgment dated 30 th April, 2019 passed by the learned Single Judge allowing W.P.(C) No.17262 of 2012 filed by the Respondent seeking the quashing of the order dated 9th November, 2010 issued under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 terminating his services. By the impugned order, the learned Single Judge has proceeded to set aside the above termination order, and directed that the Respondent be reinstated in service with consequential service and financial benefits.

2. While directing notice to issue in the present appeal on 18th February, 2021 this Court stayed the impugned judgment.

3. The background facts are that after joining the Central Reserve Police Force (CRPF) as a Recruit (General Duty) on 18th April, 2012 the Respondent underwent training. Thereafter, he was dispatched to the Recruit Training Center, CRPF, Avadi (Tamilnadu). In the meanwhile, the verification roll in Form No.25

filled up by the Respondent was sent to the District Magistrate, Sonepur, Odisha under information to the Superintendent of Police (SP), Sonepur for verification of his character and antecedents.

4. In terms of the said verification, it is found that the Respondent was involved in Rampur P.S. Case No.9 dated 6th March, 2017 under Sections 498A/304B/302/34 IPC and Section 4 of the Dowry Prohibition Act in which the Respondent had been arrested and forwarded to the Court along with other co-accused and a chargesheet had also been submitted. At the time when the Respondent filled up verification form in para 12(a) and 12(b), he did not disclose the above fact and, therefore, was found unsuitable for being continued in employment in a government job. Accordingly, on 9th November, 2010 an order was issued under the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 terminating his services due to suppression of factual information in the verification roll.

5. The learned Single Judge came to the conclusion that the expression 'temporary service' as defined in Rule 2(d) of the CCS (Temporary Service) Rules, 1965 would mean the temporary government servant in a temporary post of officiating service in a permanent post and, therefore, since he was selected and appointed as RT/GD and had undergone training, "his services cannot be termed as temporary service". It was further held that the Respondent was neither holding a temporary post nor in officiating service in a permanent post and, therefore, Rule 5(1) cannot have any application.

6. Secondly, the learned Single Judge held that the reasons assigned in paras 4 and 5 of the counter affidavit were not to be found in the termination order dated 9th November, 2010 and, therefore, the subsequent explanation could not be taken into consideration. Reliance was placed on the decisions in *Mohinder Singh Gill v. The Chief Election Officer, New Delhi* AIR 1978 SC 851 and *Bhikubhai Vitthalbhai Patel v. State of Gujarat* (2008) 4 SCC 144. Further, the learned Judge distinguished the decision dated 15th October, 2008 of the Supreme Court in Civil Appeal No.6110 of 2008 (*Union of India v. Sukhen Chandra Das*) as having been decided in the facts and circumstances of the present case.

7. This Court has heard the submissions of Mr. P.K.Parhi, learned Deputy Solicitor General along with Mr. Chandra Kanta Pradhan, learned Senior Panel Counsel for the Appellant and Mr. S. Sourav, learned counsel for the Respondent.

8. It must be noticed at the outset that the fact that the Respondent in his verification form did not disclose the pendency of the above criminal case was unable to be denied even by the Respondent. The specific questions in "Column 12(a) and 12(b)" are reproduced as under:

"(a) Have you ever been arrested, prosecuted, kept under detention or bounded down/fined, convicted, by a court of law for any offence or debarred/disqualified by any Public Service Commission from appearing at its examination/selection, or debarred from taking any examination/restricted by any University or any

other education authority/institution ?

(b) Is any case pending against you in any court follow, University or any other education authority/Institution at the time of filling up this Verification Roll ? If answer to (a) or (b) is 'Yes' then give details of prosecution, detention, fine, conviction, and punishment, etc. and state about the case pending with the Court/University/education authority at the time of filling in this form."

9. In reply, the Appellant wrote 'No' in his own hand. In fact, the photocopy of the application form as filled up in hand by the Respondent has been enclosed as Annexure-D1 and was part of the record of the proceedings before the learned 'Single Judge'. The Respondent appears to have first indicated an answer and then scratched it out to write 'No'. Therefore, there was a deliberate attempt by the Respondent to conceal material facts. This verification roll was filled up by the Respondent on 27th April, 2010 whereas the criminal case in which he had been arrested was registered on 6th March, 2007. This was too serious a matter and could not have been condoned by the Appellants. Interestingly, to the counter affidavit filed by the Appellant on 29th November, 2013 enclosing the above documents, no rejoinder was filed by the Respondent to dispute the said fact.

10. Also enclosed with the counter affidavit was the office order dated 26th May, 2010 by which the Respondent was appointed. The relevant portion of the said appointment order reads as under:

"The appointment is purely temporary and likely to continue but can be terminated at any time on one month notice during initial period of service i.e. within two years without assigning any reason. The appointment carries with its liability to serve at any part of India or outside of India if required. In case the candidate so appointed in the force seeks resignation/ discharge from service, he shall be required to refund a sum equal 03 (three) months pay and allowances or cost of training charges whichever is higher as per Rules. In CRPF, they shall be governed by CRPF Act & Rules. Their continued service in CRPF is also subject to satisfactory verification of their Character and antecedents, educational certificates, technical qualification certificates, driving license and caste certificate etc. from the authorities concerned. In case any discrepancy in character and antecedents, date of birth, caste certificate, technical qualification certificates, driving license and educational certificate etc. in respect of any candidate is found at a later stage, services of such candidate will be terminated."

11. The Respondent, therefore, was clearly put a notice that the appointment was purely temporary and further that if there is any discrepancy in the character and antecedents, which was discovered at a later stage "services of such candidates can be terminated."

12. In the above circumstances, the question of the termination order being held to be violation of the principles of the natural justice would simply not arise because even if the Appellant has issued a show cause notice in that regard, he

could not have disputed the fact of suppression of material facts in the verification roll filled up by him in his own hand. It could not have changed one bit the fact that there was a criminal case pending against him on very grave charges in which he had been arrested and chargesheet was filed.

13. The facts in *Union of India v. Sukhen Chandra Das* (supra) were more or less identical to the facts of the present case. There again the services of a constable enrolled in the CRPF was terminated by issuing an order under Rule 5(1) of the CCS (Temporary Service) Rules. At this stage, it is necessary to note the relevant portion of Rule 5 of the CCS (Temporary Service) Rules, which reads as under:

"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 services of any such Government servant may be terminated forthwith by payment to him of 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."

14. The Supreme Court in its decision in *Sukhen Chandra Das* (supra) noticed this very rule and also quoted the mandatory requirement of a candidate having to fill up the verification roll.

In that case also, on the police verification report established "beyond doubt that a criminal case was registered against the Respondent in December, 1990 which was pending in Court in which six more accused were reported as absconders". It was noted that the Respondent there had willfully suppressed true facts at the time of filling up of the verification roll. Upholding an identical termination order in that case, the Supreme Court held as under:

"9. On an independent scrutiny of the relevant documents on record as discussed above, we are of the considered view that the order of termination of the respondent recorded by the competent authority is innocuous on its face and purports to be an order of discharge in accordance with the terms and conditions of the appointment of a temporary Government servant. Such termination is neither punitive nor stigmatic in nature, nor it is, in any event, actuated with any motive. The language of the order clearly and plainly shows that it is termination simpliciter, rightly based under Rule 5 (1) of CCS (Temporary Services) Rules, 1965 during the period when the respondent was a temporary employee of CRPF and it does not cast any stigma to the conduct of the respondent. Thus, the finding of the High Court that the order of termination of services of the respondent will cast stigma and could not have been recorded unless the

respondent is proceeded in the regular departmental proceedings for the alleged misconduct, in our considered view, cannot be sustained. The decisions relied upon by the High Court in support of its order are not applicable in the facts and circumstances of the case in hand.”

15. In the considered view of the Court, the learned Single Judge in the impugned order wrongly distinguished the aforementioned judgment which applied on all fours to the case in hand.

16. Learned counsel for the Respondent sought to rely on the decision in Delhi Transport Corporation v. D.T.C. Mazdoor Congress 1991 Supp (1) SCC 600 where it was held that termination of the services of permanent employees with only on one month’s notice in lieu of pay without any inquiry would be opposed to public policy. The said decision can have no application to the facts of the present case since the Respondent was appointed purely on temporary basis and Rule 5(1) of the CCS (Temporary Service) Rules applied.

17. For all of the aforementioned reasons, the Court is unable to sustain the impugned judgment of the learned Single Judge and it is hereby set aside. The appeal is allowed, but in the circumstances, with no order as to costs.

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