

(1999) 08 DEL CK 0079

In the Delhi High Court

Case No : Letters Patent Appeal No. 77 of 1985

Union of India and Others

APPELLANT

Vs

Shri Ram Parvesh Ram

RESPONDENT

Date of Decision : 09-08-1999

Acts Referred:

Citation : (1999) 6 AD 540 : (1999) 51 DRJ 344

Hon'ble Judges : Usha Mehra, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Ms. Avnish Ahlawat, for the Appellant; Mr. R.P. Kathuria, for the Respondent

Judgement

Madan B. Lokur, J.—The Appellants have preferred an appeal under Clause X of the Letters Patent impugning the judgment and order dated 14th February, 1985 passed by a learned Single Judge of this Court in Civil Writ Petition No.141/1972. By the impugned judgment and order, the learned Single Judge quashed the order terminating the services of the Respondent (Writ Petitioner) with all consequential benefits.

2. The Respondent - Writ Petitioner was directly recruited as a temporary Sub-Inspector in the Delhi Police with effect from the forenoon of 25th March, 1966. He was issued an appointment order dated 21st March, 1966 to this effect by Shri M.L. Bhanot, Assistant Inspector General of Police, Delhi. The relevant extract of the order dated 21st March, 1966 reads as follows :

"Shri Ram Parvesh Ram son of Shri Bachu Ram resident of Biram Pur, P.S. Koilwar, Distt. Shahabad, Bihar is appointed as a temporary Sub-Inspector in the Delhi Police with effect from the forenoon of 25.3.1966 in the scale of pay of Rs. 168-8-240 plus the usual allowances admissible to officers of that rank....."

3. In another order No. 8553/Est. APPOINTMENT, dated 6th April, 1966 issued by Shri Krishan Kumar, Assistant Inspector General of Police, Delhi, it was stated as follows :

"The following candidates are appointed a Temporary Sub-Inspectors in Delhi Police, in the pay scale of Rs. 168-8-240, plus dual allowances admissible to officers of that rank against the temporary posts of Sub Inspectors sanctioned vide the Government of India, Ministry of Home Affairs letter No. 14/69/62-P. I, dated 28.5.1963, with effect from the date noted against each and allotted range numbers as shown against them."

4. There were 100 such candidates and the Writ Petitioner appeared at Sr. No. 52 of the list and his date of appointment was shown as 25th March, 1966 (FN).

5. It was alleged by the Writ Petitioner in his writ petition that on 8th June, 1968 Sub-Inspector Roochi Ram had misbehaved with him. Consequently, the Writ Petitioner reported the incident which was recorded in the Daily Diary on 8th June, 1968. Apparently to save his skin, Roochi Ram also recorded a report against the Writ Petitioner. According to the Writ Petitioner, his services were suddenly terminated by an order dated 12th June, 1968 issued under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. The order terminating the services of the Writ Petitioner was issued by Shri Mahender Singh, Superintendent of Police, Central District. This order was challenged by the Writ Petitioner by a petition under Article 226 of the Constitution.

6. Before the learned Single Judge, it was contended by the Writ Petitioner that his services had been terminated by an officer inferior in rank to the appointing authority and that this was violative of Article 311(1) of the Constitution. The learned Single Judge accepted the contention of the Writ Petitioner because the Appellants had not been able to show that an Assistant Inspector General of Police was of the same rank as a Superintendent of Police. In the absence of any such material, the contention of the Writ Petitioner that the Assistant Inspector General of Police was acting as an assistant to the Inspector General of Police had to be accepted with the result that the order of termination having been passed by an authority inferior to the appointing authority was violative of Article 311(1) of the Constitution.

7. The Appellants have challenged the correctness of this decision and contend that the appointing authority of the Respondent-Writ Petitioner was the Assistant Inspector General of Police (hereinafter referred to as the AIG). It was further contended that a Superintendent of Police (hereinafter referred to as SP) is of the same rank and status as an AIG and Therefore the order of termination passed by an SP did not violate the mandate of Article 311(1) of the Constitution.

8. Learned counsel for the Appellants has produced the original appointment order issued by Shri M.L. Bhanot, AIG dated 21st March, 1966. She has also produced the original appointment letter dated 6th April, 1966 whereby 100 candidates (including the Respondent) were appointed as temporary sub inspector by an order passed by Shri Krishan Kumar AIG. In view of this, we have no doubt in our mind that the appointment of the Respondent was made by the AIG and not by any other officer.

9. Learned counsel for the respondent however, submitted that at the time of his direct recruitment, the Selection Board was presided over by an officer superior in rank to the AIG. Assuming it to be so, we are of opinion that the participation of an officer superior in rank to the AIG. does not make that superior officer the appointing authority of the Respondent. As held by the Supreme Court in the case of Om Prakash Gupta Swadheen Vs. Union of India and Ors. 1975 (2) SLR 226. For the purposes of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 the term "appointing authority" must be understood in its plain and natural meaning, namely, the authority which appointed the officer. This decision of the Supreme Court has been followed by the Himachal Pradesh High Court in the case of Mohinder Singh Vs. State of Himachal Pradesh and Ors. 1976 (1) SLR 555.

10. In the case of Jarnail Singh Vs. Superintendent of Police and Others, a learned Single Judge of this Court has taken the view that if the appointment is made by the AIG, it is of no consequence that the Selection Board was chaired by a Deputy Inspector General of Police.

11. Consequently, we are of the view that it is the AIG who was the appointing authority of the Respondent.

12. The next question that arises for consideration is whether the order of termination passed by an SP, Central District is an order passed by an officer inferior in rank to an AIG.

13. Learned counsel for the Appellants drew our attention to the letter dated 14th April, 1955 from the Ministry of Home Affairs, Government of India, to the Home Secretary to the Delhi State Government and the letter dated 12th May, 1955 from the Home Secretary to the Delhi State Government to the Ministry of Home Affairs, Government of India. These letters show that the post of SP Headquarters was redesignated as AIG of Police with effect from 1st May, 1985. The redesignation was acceptable to the Ministry of Home Affairs, Government of India, provided that it entailed no financial or other implications. The fact that this proposal was accepted without any financial or other implications shows that it was merely a case of redesignation of the post. In the written synopsis filed on behalf of the Appellants it has been mentioned that an SP while assisting the Inspector General or Deputy Inspector General in the Headquarters is given the rank of AIG. In other words, it is nothing more nor less than a mere change of nomenclature.

14. Learned counsel for the Appellants drew our attention to Schedule 3 of the Delhi Police Act, 1978. As per this Schedule, an SP is deemed to be appointed to the post of Deputy Commissioner of Police; an Assistant Inspector General of Police is also deemed to be appointed to the post of Deputy Commissioner of Police. Consequently, it appears to us that statutory recognition has been given to the fact that the post of Superintendent of Police and Assistant Inspector General of Police and Deputy Commissioner of Police are all equal status posts.

15. In *Jarnail Singh Vs. Superintendent of Police (supra)* it was held in paragraph 9 that "The rank and grade of an Assistant Inspector General of Police, Headquarter is equal to that of a Superintendent of Police and, therefore, if the Petitioner's services were terminated by the District Superintendent of Police, it cannot be said that his services were terminated by an officer below the rank of the appointing authority".

16. It may be mentioned here that learned counsel for the Respondent very fairly brought to our notice a Notification dated 19th September, 1963 whereby the Chief Commissioner, Delhi was pleased to appoint, inter alia, the SP(Central District) to exercise all the powers and perform all the duties of a District Superintendent of Police.

17. In view of the above, we hold that an officer of the rank of AIG is equivalent in rank to an SP and since the appointing authority of the Respondent is the AIG, his services could be terminated by an SP.

18. Consequently, we are in respectful disagreement with the findings of the learned Single Judge and accordingly we set aside the impugned judgment and order dated 14th February, 1985.

19. Learned counsel for the Respondent submitted that two other questions had arisen in the writ petition, but they were not dealt with by the learned Single Judge since it was not necessary to do so in view of her findings. The two additional submission are that the order of termination is not at termination implicate but is by way of punishment for the incident which occurred on 8th June, 1968; secondly, that since one month's pay in lieu of notice was not paid simultaneously with the termination letter, there was a violation of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 and consequently the order of termination was bad.

20. The law is very well settled that even if an order of termination is seemingly innocuous, the Court can go behind the order to see if it is a camouflage for an order of dismissal for misconduct. [See for example *Radhey Shyam Gupta Vs. U.P State Agro Industries Corporation Ltd. and Another*,]. In fact, this well settled legal position was not even disputed by the learned counsel for the Appellants.

21. According to the learned counsel for the Respondent the foundation for his termination was the incident of 8th June, 1968. From what is stated in the writ petition it appears that the Respondent and Sub-Inspector Roochi Ram were involved in argument during which Roochi Ram beat up the Respondent in the presence of one Moti Lal, a member of the public. This incident was reported by the Respondent and is recorded in the Daily Diary of 8th June, 1968. The Respondent has stated that Roochi Ram realised the gravity of his misconduct and to save his skin he also recorded a report and it is only thereafter that the services of the Respondent were terminated on 12th June, 1968.

22. The Appellants have stated in their counter affidavit to the writ petition that the incident was investigated and the contents of the report made by the Respondent were found to be incorrect and that no person by the name of Moti Lal was present in the police station at the relevant time. As such, no action was taken against Roochi Ram. There is no mention of the Report allegedly recorded by Roochi Ram. The Appellants have denied that the incident on 8th June, 1968 had anything to do with the termination of the services of the Respondent. It was stated in the "further affidavit" that the services of the Respondent were terminated because he was a temporary hand and his services were no longer required and he was not found suitable.

23. The Respondent has not been able to substantiate how the incident of 8th June, 1968 resulted in his termination. Only a bald allegation has been made and it has not been explained as to how a Sub-Inspector could have influenced the SP who terminated his services. The pleadings do not suggest that the incident of 8th June, 1968 was the foundation for terminating the services of the Respondent; at best, it could have been only the motive, considering the fact the Appellants were in any case of opinion that the services of the Respondents were no longer required and that he was unsuitable. We are, Therefore, not inclined to read much into the incident of 8th June, 1968 nor are we inclined to accept the contention of learned counsel for the Respondent that this incident was the foundation for his termination from service.

24. The last contention of the learned counsel for the Respondent was that in accordance with the provisions of Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965, the Respondent ought to have been given one month's salary in view of notice simultaneously with the order of termination.

25. Rule 5 of the aforesaid Rules reads as follows :

"5. Termination of temporary service. - (1) (a) The services of a temporary Government servant who is not in quasi-permanent service 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 service of any such Government servant may be terminated forthwith and on such termination the Government servant shall be entitled to claim 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.

(2) xxx xxx xxx"

26. Learned Counsel for the Respondent placed reliance upon a decision of the Kerala High Court in the case of K.V. Gopinath Vs. Senior Superintendent of

Police 1969 S.L.R. 494 to contend that payment of one month's salary in view of notice is a condition precedent for taking action under Rule 5.

27. While the decision of the Kerala High Court does support the contention of the learned counsel for the respondent the Supreme Court has also considered this aspect of the matter in *State of U.P. Vs. Dinanath Rai*, 1969 S.L.R. 646. In that case the Supreme Court held in para 8 as follows :

"8. It seems to us that the meaning of the statutory rule is clear. It gives option to the Government to either give a month's notice or to substitute for the whole or part of this period of notice pay in lieu thereof. The rule does not say that the pay should be given in cash or by cheque at the time the notice is issued. Knowing the way the governments are run, it would be difficult to ascribe this intention to the rule making authority. here is no doubt that the government servant would be entitled to the pay in lieu of notice but this he would get in the ordinary course."

28. Rule 5 as quoted above is the amended version, the amendment having been made in 1971 with retrospective effect from 1st May, 1965.

29. The case of *K.V. Gopinath (supra)* was taken up to the Supreme Court and the decision of the Kerala High Court was affirmed in *Senior Superintendent, R.M.S., Cochin and Another Vs. K.V. Gopinath, Sorter*, .

30. In *Raj Kumar Vs. Union of India (UOI) and Others*, it was held that the decision of the Supreme Court in the case of *K.V. Gopinath (supra)* is no longer good law. This was because the amendment to Rule 5 was overlooked by the Supreme Court. The law as laid down in the case of *Raj Kumar (supra)* has been reaffirmed by the Supreme Court in *Union of India (UOI) and Others Vs. Arun Kumar Roy*, . Consequently, it is not obligatory to tender or make the payment of salary along with the order of termination.

31. In the present case, the order of termination dated 12th June, 1968 terminates the services of the Respondent and a direction is also given "that he shall be paid a sum equivalent to the amount of pay and allowance for a period of one month (in lieu of the period of notice) calculated at the same rate at which he was drawing them immediately before the date on which this order is served or as the case may be tendered to him". Learned counsel of the Appellants rightly contended that in view of the decision of the Supreme Court in the case of *Dinanath Rai (supra)* (and subsequent cases) that there was no obligation on the Appellants to give to the Respondent one month's salary in lieu of notice along with the order of termination.

32. Under the circumstances, we hold that the services of the Respondent were terminated in accordance with law. The appeal is accordingly accepted and the writ petition filed by the Respondent is dismissed.

33. During the pendency of the appeal, the Appellants were directed to deposit a sum of Rs. 10,000/- which could be withdrawn by the Respondent on his

furnishing security.

34. It is not clear whether the Respondent has withdrawn this amount. In case the amount has been withdrawn by the respondent it need not be refunded to the Appellants and the security would stand discharged. If, however, the amount has not been withdrawn by the respondent the Registry will ensure that it is returned to the Appellants.

35. In the circumstances of the case, there will be no order as to costs.