
(2011) 05 DEL CK 0171

In the Delhi High Court

Case No : Writ Petition (C) No's. 22740-43 of 2005

Union of India (UOI) and Others

APPELLANT

Vs

Sh. Mohan Chander Joshi

RESPONDENT

Date of Decision : 10-05-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Central Civil Services (Temporary Service) Rules, 1965 — Rule 5
Constitution of India, 1950 — Article 141

Citation : (2011) 05 DEL CK 0171

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Raghvendra Pandey and M.K. Bhardwaj, for the Appellant; Nemo, for the Respondent

Judgement

Anil Kumar, J.—The Petitioners, UOI through the Secretary, Ministry of Defence, South Block and Ors., have challenged the order dated 6th October, 2005 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 1827/2005 titled as "Sh. Mohan Chander Joshi v. UOI through Secretary, Ministry of Defence and Ors.?", allowing the original application of the Respondent and setting aside the order of his termination and directing the Petitioners to reinstate the Respondent in service with all consequential benefits including back wages.

2. Brief facts to comprehend the controversies are that the Respondent filed an application before the Central Administrative Tribunal, Principal Bench u/s 19 of the Administrative Tribunals Act, 1985 seeking the quashing of order dated 19th August, 2005 terminating the services of the Respondent without any inquiry or show cause notice. The Respondent had rendered regular and continuous service as a salesman.

3. The Respondent contended that National Defence College, Ministry of Defence, which imparts in-service training to the officers of Ministry of Defence, and also

other ministries, has a unit run canteen which is under the canteen store department. The Respondent is alleged to be a graduate from Kumaon University and was appointed as a salesman in the National Defence College(NDC) on the basis of an interview. The Respondent was placed on probation for one month and his pay was fixed at Rs. 1500/- per month. According to the Respondent, his regularization to the post of salesman was dependent on his performance during the period of one month from 1st March, 1997. After one month, seeing his performance, the Respondent was appointed as a salesman in the pay scale of Rs. 2000-200-3000 with effect from 1st April, 1997. The Respondent was also directed to get himself acquainted with the procedure and maintenance of accounts in the canteen and for this purpose, he was put on further probation of three months and after the expiry of the said period and his depositing Rs. 2000/- as security money with the canteen officer, he was appointed on regular basis. The Respondent asserted that at the time of filing the original application, his pay was Rs. 3750/-. His duties included, sale counter duty, billing duty, data entry on computer, frisking at the exit point etc. He also pleaded that he was allotted a one room accommodation on sharing basis with effect from 4th September, 1997 and later on the room was allotted solely to him.

4. The Respondent asserted that his performance was found to be satisfactory, which was also appreciated in various assessments by various officials and that he had been working on a regular basis.

5. The Respondent contended that canteen employees are govt. servants and relied on Union of India and Others Vs. M. Aslam and Others etc,

6. The services of the Respondent were terminated by order dated 19th August, 2005 on the ground that his services are no longer required, which letter was received by the Respondent on 22nd August, 2005. The Respondent challenged the order on the ground that he had been holding the post of salesman of NDC canteen on regular basis and he had not committed any misconduct and that his services could not be terminated merely on the ground that his services are no more required.

7. The original application was contested by the Petitioners contending, inter alia, that the decision of termination of the Respondent on the ground that his services were no more required was not based on the decision of the Apex Court in the case of Union of India and Others Vs. M. Aslam and Others etc, . It was also contended that the Respondent is not a govt. servant and that the Petitioners were within their power in passing the order dated 19th August, 2005. The Petitioners asserted that the services of the Respondent were not regularized on 3rd April, 1997 as alleged by the Respondent. The Petitioners further asserted that termination of the service of the Respondent was necessitated by the requirement of the organization and in the interest of the National Defence College and that the Petitioners had exercised their power vide para (6), para (13) and para (49) of the "Terms and Conditions of Service of URC Employees?. The Petitioners admitted that termination of the service of the

Respondent is not on account of misconduct and, therefore, the procedure to inquire into his conduct was not followed.

8. The Tribunal, after considering the pleas and contentions of the parties and relying on the decision of the Apex Court in *Union of India and Others Vs. M. Aslam and Others* etc, held that canteen employees even though paid from non public fund would be govt. servants. Reliance was also placed on (2004) 10 SCC 609 *Dharma Nand and Anr. v. UOI*, holding that employees of canteens under the Defence Ministry are Govt. Servants. The Tribunal further held that since the Respondent had completed more than one year as on 1st April, 2001 under probation, he is deemed to be a permanent employee and to dispense with the service as per the clauses of condition, the only resort that could have been taken by the Petitioner was to hold the disciplinary proceedings. The non-holding of disciplinary proceedings in the case of a permanent employee would be the denial of reasonable opportunity. The Tribunal relied on the ratio of *Mohd. Aslam's* case (supra) while noting that though the order has been referred to a Larger Bench, however, unless the order is modified or annulled, the ratio of the judgment of *Mohd. Aslam* still holds precedent value under Article 141 of the Constitution of India and thus it shall be applicable.

9. The Petitioners challenged the order of the Tribunal on the ground that URC canteen is a small canteen and the Petitioner could not be compelled to keep excess strength of its staff and since the services of the Respondent was not required, his service could be terminated. The Petitioners also contended that on completion of one year service, the Respondent could not have become a permanent employee though he had completed his probation period as the confirmation is made after due procedure and by a specific order.

10. The Respondent, before this Court, filed a reply contending, inter alia, that he was confirmed in the service and was also allotted accommodation w.e.f. 4th September, 1997. Reliance was also placed on "Rules Regulating The Terms And Conditions Of Services Of Civilian Employees Of Unit Run Canteen Paid Out Of Non Public Fund? framed by the Ministry of Defence, which came into force on 4th January, 2001. Reliance was categorically placed on Rule 5 of the said Rules which is as under:

5. CLASSIFICATION OF EMPLOYEES:

(b). All the employees who have completed one year of probation as on 04-January, 2001 will be treated as permanent employees.

Therefore, since the Respondent had completed more than three years of service as on 4-01-2001, he was also confirmed as a permanent employee, as per the rules.

11. The Respondent also contended that the Petitioners have admitted in para 4.9 of the reply filed to the original application that "Terms and Conditions of Service of URC Employees" are being followed in letter and spirit. It was also

emphasized that the Petitioners never took the plea that the Respondent is a temporary govt. servant and therefore, the provisions of CCS (Temporary Service) Rules, 1965 could not be invoked nor could the services of the Respondent be terminated at any time, by payment of one month's salary without establishing their case.

12. Reliance was also placed on Dharma and Ors. (Supra), where appointment was made on temporary basis in a canteen under the Defence Ministry and after a period of five years, service was terminated on the ground that the services were no longer required. The plea on behalf of UOI was that termination was under Rules framed for canteen employees. The Supreme Court had held that the employees of canteen under the Defence Ministry are entitled to be treated as Govt. Servant and that their termination on the ground that their services are not required shall be illegal and in the circumstances, directed the reinstatement of such canteen employees with consequential benefits.

13. The present petition came up for hearing on 3rd May, 2011. However, no one appeared on behalf of the parties. However, no adverse order was passed and the matter was allowed to continue on board in the category of "Regular Matters". The matter was again taken up for hearing on 9th May, 2005 and again, no one appeared on behalf of the parties. No adverse order was again passed and the matter was allowed to remain on board in the category of "Regular Matters".

14. Today, Mr. Raghvendra Pandey, Advocate, has appeared. The learned Counsel states that he is appearing on behalf of Mr. M.K. Bhardwaj, Advocate. He further states that even Mr. M.K. Bhardwaj, Advocate, has not been entrusted this brief. The learned Counsel appearing on behalf of the Petitioner is, however, unable to assist this Court and has declined to argue the matter on the ground that he neither has the file nor does he know anything about the matter and that he was instructed to appear by Mr. M.K. Bhardwaj, Advocate. The learned Counsel is also unable to give any satisfactory explanation for non-appearance on 3rd May, 2011 and 9th May, 2011. The learned Counsel was asked to ask Mr. Bhardwaj to appear, however, he has shown his inability on the ground that Mr. Bhardwaj is unable to appear in the matter today.

15. In the circumstances, this Court has no other option but to sustain the order of the Tribunal and dismiss the writ petition in the present facts and circumstances. An interim order dated 7th December, 2005 was passed in the writ petition staying the operation of the order of the Tribunal dated 6th October, 2005 in OA 1827/2005. The stay order was modified by order dated 18th April, 2006 holding that under Rule 5 of "Rules Regulating Terms and Conditions of Service of Civil Employees of Unit Run Canteen Paid Out Of Non Public Fund?", the Respondent ought to be treated as permanent and had thus held that the Respondent will continue in service subject to final result of the writ petition and the Respondent was directed to report for duty on or before 1st May, 2006. Since the writ petition has been dismissed, therefore, in terms of order dated 18th

April, 2006 passed in CM 14898/2005, Respondent will continue in service of the Petitioners and is to be treated as a permanent employee in accordance with the order of the Tribunal.

With these directions, the writ petition is disposed of.