

(1971) 06 KAR CK 0014
In the Karnataka High Court
Case No : W.Ps. 3886 and 3887 of 1968

V. Ramaprasad

APPELLANT

Vs

The Director, Atomic Minerals Division and Others

RESPONDENT

Date of Decision : 16-06-1971

Acts Referred:

Central Civil Services (Temporary Services) Rules, 1949 — Rule 3, 8 (2), 8 (3)
Constitution of India, 1950 — Article 14, 16, 226

Citation : (1972) 1 LLJ 310

Hon'ble Judges : A. Narayana Pai, C.J; M.S. Nesargi, J

Bench : Division Bench

Judgement

A. Narayana Pai, C.J.—These two writ petitions are taken up for consideration and disposal together, because the question raised in them is the same and arises out of the same set of facts.

2. The petitioner in W.P. 3886 of 1968, the petitioner in W.P. 3887 of 1968 and the respondents 3 to 25 in W.P. 3886 of 1968, are all persons who entered the service of the Central Government as temporary employees and were governed by the Central Civil Service (Temporary Service) Rules, 1949, since replaced by the rules of the same promulgated in the year 1965.

3. Under Rule 3, the services of a temporary employee may be declared as quasi-permanent by the appointing authority after a lapse of at least three years of continuous service. It is now clear law that quasi-permanency is acquired not merely by rendering continuous service of not less than three years, but that after such period the appointing authority should make an express declaration to that effect : vide Champaklal Chimanlal Shah Vs. The Union of India (UOI),

4. Rule 8 dealing with permanent appointment of Government servant already in quasi-permanent service says that subject to the provisions of the said rule, a Government servant, in respect of whom a declaration of quasi-permanency has been made under Rule 3, shall be eligible for permanent appointment, although it is explained that no such declaration shall confer upon such Government

servant a right to claim permanent appointment. Sub-rules (2) and (3) of Rule 8 reads as follows :

"(2) Every appointing authority shall, after consultation with the appropriate departmental promotions committee, prepare from time to time a list, in order of precedence, of Government servants in quasi-permanent service who are eligible for permanent appointment and in preparing such list, the appointing authority shall consider both the seniority and the merit of the Government servants concerned.

(3) All permanent appointments to posts which are reserved under sub-rule (1) under the control of any appointing authority shall be made in accordance with such lists :

Provided that the Government may order that permanent appointment to any grade or post may be made purely in order of seniority."

5. The clear picture that emerges from the provisions of Rules 3 and 8 of the Central Civil Services (Temporary Service) Rules, 1965, is that, with regard to persons taken into temporary service under the Central Government, the process of declaration of quasi-permanency and of subsequent confirmation is a substitute for the regular process of recruitment by advertisement, competition, etc., and is clearly and obviously intended to subserve the fundamental right of equality of opportunity guaranteed under Arts. 14 and 16 of the Constitution.

6. It will also be noticed that the appointing authority is obliged to make appointments to permanent posts only on the basis and in the order of priority set out in the list prepared under sub-rule (2) of Rule 8. Even the discretion given to the Government is limited to giving directions to obey seniority in preference to merit. It is not given the power to depart from the procedure prescribed under Rule 8.

7. It follows, therefore, that two steps are obligatory before a temporary Government servant can secure permanency in service. He must first secure a declaration of quasi-permanency under Rule 3 and then pass through the screening process provided in Rule 8.

8. The grievance of the petitioners in these cases is that the said process has been departed from and that the said departure is illegal and should, therefore, be set right by appropriate orders issued under Art. 226 of the Constitution.

9. The manner in which the confirmations were made in these cases is described as follows in the counter-affidavit of one S. Ranganathan working as Administrative and Accounts Officer, on behalf of the respondents :

"(6) As regards the averments in paragraph 6 of the petitioner's affidavit, it may be submitted that an administrative decision was taken by the Atomic Energy Commission at its meeting held in Bombay in September 1966, to confirm about 50 per cent of the officers and staff of the Atomic Minerals Division on the basis

of merit-cum-seniority and that officers and staff who were not confirmed should be declared quasi-permanent subject to their satisfying the conditions under Rule 3. In accordance with the said decision, the cases of all Scientific and Technical Officers were reviewed by the departmental promotion committee which consisted of seven persons of high status Thereafter, for the remaining 17 vacancies in the S.B. Grade, the committee considered those persons actually working in that grade including the petitioners and interviewed them with a view to determine their suitability for confirmation. The said 43 officers who were working in S.B. Grade (including the two petitioner in these writ petitions) were interviewed by the departmental promotion committee on 25th & 26th September, 1967, and the departmental promotion committee recommended confirmation of 27 officers, and of them, 19 were also recommended for promotion. The said departmental promotion committee did not recommend the case of the petitioners in these two writ petitions for either confirmation or promotion, but were recommended, among others, for declaration of quasi-permanency"

10. It is seen from one of the annexures to the petition that the committee mentioned above issued notices to persons concerned including the parties to these writ petitions, on 12th September, 1967, to appear before them for an interview on 25th and 26th September, 1967 for the purpose of assessing their suitability for confirmation in the grade of Scientific Officers (Geology) Grade S.B. In the case of the petitioners, declaration of quasi-permanency was made by communication dated 18th November, 1967.

11. The averments in the counter-affidavit extracted above and the annexure produced by the petitioners leave no room for doubt that the question whether the persons in the position of the petitioners and the contesting respondents were fit to receive the declaration of quasi-permanency under Rule 3 and confirmation or permanency under Rule 8 was considered simultaneously. Indeed, the process appears to have been an assessment of merit regarded sufficient for confirmation above a particular standard and sufficient for only quasi-permanency below that standard. The consideration, therefore, cannot be regarded as an independent consideration of the question of quasi-permanency in obedience to Rule 3, but a competition by persons for one or other of the two benefits, viz., quasi-permanency and permanency.

12. If it is remembered that the acquisition of quasi-permanency in the first instance is a necessary condition precedent for acquiring eligibility for consideration for confirmation under Rule 8, it becomes obvious that the procedure followed is clear and flagrant departure from the scheme provided under the Central Civil Services (Temporary Service) Rules, 1965.

13. We have already pointed out that the object which the scheme under the rules subserves, is the constitutional necessity of extending quality of opportunity to all persons under Art. 16 of the Constitution in respect of Government service. Hence, there can be no doubt whatever that complete

obedience to rules is quite essential from the point of view of avoiding violation of Arts. 14 and 16 of the Constitution by a process of recruitment otherwise than through advertisement and competition.

14. The counter-affidavit, however, suggests that, whereas persons declared quasi-permanent acquire only the right to be considered for being made permanent, there is no prohibition in the rules for a person who has not been declared quasi-permanent being made permanent. The first part of the statement is correct. But the second part, if accepted as a legitimate working rule, will certainly involve and encourage a departure from constitutional rules framed with the deliberate purpose of obeying the guarantee of equality of opportunity enshrined in Art. 16 of the Constitution. We do not think that any interpretation of the rules which involves such a departure and actual disobedience of the Constitution can be accepted.

15. The next question is, how and in what manner the departure from the rules may now be cured or set right.

16. It is found from the averments contained in the additional affidavit that out of respondents 3 to 25, some, viz., respondents 3, 5, 6, 7, 9 to 13, 16, 21, 23, 24 and 25, have since been promoted to a higher grade. Mr. Rama Jois, learned counsel for the petitioners, also tells us now that his clients, the petitioners, were also subsequently confirmed and later promoted to the higher grade.

17. In these circumstances, the only proper order to be made, in our opinion, is to direct that the appointing authority do first consider the case of the petitioners in these two writ petitions and respondents 3 to 25 in W.P. 3886 of 1968, for declaration of quasi-permanency and make such a declaration clearly indicating the date from which such quasi-permanency should count, and then examine or get examined through appropriate departmental committee the case of each one of them for confirmation in the light of Rule 8 of the Central Civil Services (Temporary Service) Rules, 1965, and thereafter examine their cases for promotion in the order of merit in respect of promotional vacancies arising in order of time and give each one of them the deemed date of promotion and make consequent adjustments in seniority accordingly, and extend to those who improve their position additional monetary benefits consequential thereon.

18. We make such a direction. Time for compliance four months.