(1977) 08 RAJ CK 0023

In the Rajasthan High Court

Case No : Civil Writ Petition No. 602 of 1973

Vijayendra Singh Hera APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 02-08-1977

Acts Referred:

Rajasthan Civil Services (Absoruption of Surplus Personnel) Rules, 1969 — Rule 22

Citation : (1977) WLN 610

Hon'ble Judges : A.P. Sen, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sen, J.—This writ petition by Vijayendra Singh Hera challenges the validity of the order of the State Govern orient dated December 15, 1972, terminating his services under Rule 23-A of the Rajasthan Service Rules.

2. The petitioner who was appointed as the Regional Inspector, Local Bodies, on a temporary basis, was declared surplus on the abolition of the post of Regional Inspector, Local Bodies, with effect from July 31, 1962, The petitioner was temporarily appointed, by transfer, as Assistant Sales-tax Officer for a period of six months, on the basis of the recommendations made by the Absorption Committee. Later on the post of Assistant Sales-tax Officer was re-designated as Assistant Commercial Taxes Officer.

3. The Rajasthan Civil Services (Departmental Examinations) Rules, 1959. was made applicable to the post of Assistant Commercial Taxes Officer vide Notification Mo. F. 15(4) & M/60 dated March 13, 1962, published in the Rajasthan Gazette dated March 30, 1961, i.e. before his absorption. The petitioner being a temporary employee as Assistant Commercial Taxes Officer was, therefore, required to pass the Departmental examination before being confirmed on that post under Rule 22 of the said Rules, which reads:

22. Penalty for not passing the Departmental Examinations: A Government

servant appointed on probation will not be confirmed unless he passes, in not more than 3 attempts the Departmental Examinations prescribed for the service to which the belongs unless he is exempted under Rule 18

4. The Departmental Examinations of Assistant Commercial Taxes Officer were held in May 1965, and the petitioner appeared therein but failed. He did not avail of all the opportunities of appearing in the Departmental Examinations held in May 1965 May 1967 and June 1968. Though he made an application for appearing in Departmental Examination held in May 1969, he remained absent. Thereafter, the examinations were held in May 1970, May 1971 and May 1972, but the petitioner did not avail of any of the opportunities. Thus, the petitioner had, in all, as many as 8 opportunities of passing the Departmental Examination of Assistant Commercial Taxes Officer, but he failed to avail of any one of them and he failed once, in the other he absented himself and in six other Departmental Examinations, he failed to appear in them.

5. The Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, L969, provided, inter alia, by Rule 12 that an ad hoc or temporary-surplus employee covered by Sub-rule (2) or Sub-rule (5) of Rule 11, on appointment, shall have to pass the Departmental Examination within the period prescribed therein in the same manner as provided for a direct recruit. The case of the petitioner is admittedly covered be Sub-rule (5) of Rule 11 of the Rules. A direct recruit is requited to pass the Departmental Examination by December 11, 1971 i.e. within a period of two years from December 11, 1969, the day on which the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 come into force. The petitioner alleges that he could not take the examination held after December 11, 1909 because he was involved in serious family troubles and illness, on account of which he had to remain on leave.

6. The Rajasthan Commercial Taxes Service Rules. 1971, which were brought it to force with effect from October 14. 1971, provided by Rules 22 arid 24(1) that all persons, on their first appointment shall be on probation for a period of 2 years and that a probationer shall be confirmed in his appointment at the end of his period of probation, if he has passed the Departmental Examination, if am, completely. Thus a direct recruit'' on appointment as an Assistant Commercial Taxes Officer, placed on probation for a period of two years, had to pass the Departmental Examination within two years from the date of his first appointment by virtue of Rule 12 of the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969.

7. The petitioner having failed to pass the Departmental Examination, the State Government by its letter dated June 3, 1972, served him with a notice the he should pass the Departmental Examination within a period or of 2 years from December 11, 1969, but the date could be further extended by a period of one year provided he passed the Departmental Examination within the extended period i.e. 11-12-1972, the date when the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, were brought into force. It reads:

Letter No. F. 11 (101) ET/62., Jaipur, dated 3rd June 1972 from the Dy. Secretary to the Government, Finance Department (Revenue and Accounts II), Rajasthan, Jaipur.

Sub: Temporary appointment of Shri V.S. Hera as A.C.T.O.

Shri V.S. Hera, A C.T.O., is informed that he has failed to pass the departmental examination of A.C.T.Os. as required by Rule 12 of the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969 within a period of two years from the date of publication of said Rules (i.e. 11-12-1969). A direct recruit to the post of A.C.T.O. is required to pass the departmental examination within a period of two years from the date of his appointment as such. This period ran be further extended b\\ a period of one year. In the case of Shri Hera this extended period expires on 11-12-72 He is, therefore, informed that if he fails to pass the departmental Examination before the said date, necessary action for termination of his services will be, taken by the Government

As ill-luck would have it, no Departmental Examination was held till Dec. 1972. Thereafter, the State Government served the petitioner an order dated December 15, 1972, terminating his services with immediate effect, on account of his having failed to pass the Departmental Examination as required within the time allowed by Rule 12 of the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969, to the effect:

GOVERNMENT OF RAJASTHAN

FINANCE DEPARTMENT

(Revenue & Accounts II)

No. F. 11 (101) ET/62 dated Jaipur the Dec. 15, 1972

ORDER

The services of Shri V.S. Hera, a surplus temporary Regional Inspector of Local Bodies appointed temporarily as Assistant Sales Tax Officer (subsequently re-designated as Assistant Commercial Taxes Officer) in the Commercial Taxes Department are hereby terminated, with immediate effect, as he failed to pass the departmental examination as required, and within the time allowed, by Rule 12 of the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969.

By Order of the Governor.

Sd/-

(S.L. Joshi) Deputy Secretary to Government.

8. The learned Counsel for the petitioner contends firstly, that the Departmental Examinations are prescribed for promotion and confirmation only and not (or making any substantive appointment and the before the failure to pass such examination could not be a ground for termination of service; secondly, although

the State Government, by its notice dated 3-6-1972, called upon the petitioner to pass the Departmental Examination by December 11, 1972, no opportunity was given to him to take the examination and therefore, the order of termination of his service is bad; and thirdly, the petitioner having been selected by the Public Service Commission, the termination of his service can be only in accordance with Rule 23A of the Rajasthan Service Rules. Even if treated as an temporary employee, he was entitled to one month''s notice or one month''s pay in lieu of such notice and unless this condition is satisfied, the order of the termination of his service was void.

9. While it is true that Rule 22 of the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969, enjoins the passing of a Departmental Examination by a Government servant appointed in promoter, in not more than 3 attempts, as a condition for confirmation, it does not imply that the Government has no power to discharge the services of a temporary servant appointed, by transfer, on his absorption due to his post being declared surplus, on account of his failure to pass such examination. That would be a patent absurdity. After all, the Government must have the light to weed out the dead wood.

10. Nothing really turns on the direction contained in the notice dated June 3, 1972. that the period of two years from December 11, 1969, the date when the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969, could be further extended by a period of one year and unless the petitioner fails to pass the Departmental Examination before December 11, 1972, necessary action would be taken for the termination of the of services of the petitioner. That was but an act of grace. Unfortunately, no Departmental Examination was held during he extended period and therefore the petitioner cannot claim benefit thereunder. The petitioner was appointed temporarily, by transfer, as Assistant Sales-tax Officer on November 13, 1962 for a period of six months. He appeared in the Departmental Examination only once, held in May 1965. Thereafter, he made an application for appearing at the Departmental Examination which was held in May 1969, but remained absent, and thereafter in all the Departmental Examinations held in May 1970. May 1971 and May 1972, the petitioner did not avail of the opportunities. He had no right to appear in the Departmental Examination after 5 years.

11. That takes me to the question whether the termination was rot in accordance with Rule 23-A of the Rajasthan Service Rules, which reads:

23A (1) Except as otherwise provided in sub Rule (2), the service 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 The period of such notice shall be one month unless otherwise agreed to by the Government and by the Government servant:

Provided that service of any such Government servant may be terminated to the with by payment to him of a sum equivalent to the amount of his pay for the period by which such notice or as the case may be, for the period of notice falls short of the month or any agreed longer period. The payment of allowances shall be subject to the condition under which such allowances are admissible.

There ran be no doubt that the services of the petitioner could not be terminated except in accordance with Rule 23 A. The requirements of Rule 23-A are mandatory. In Senior Superintendent, R.M.S., Cochin and Another Vs. K.V. Gopinath, Sorter, Mitter J., speaking on behalf of their Lordships while interpreting the corresponding provisions of the Central Civil Services (Temporary Service) Rules, 1965, observed:

Rule 5(1)(a) gives the Government as well as the employee a right to put an end to the service by a notice in writing. Under Rule 1(b the period prescribed for such notice is one month. The proviso to sub Rule (b) however give the Government an additional right in that it gives an option to the Government not to retain the services of the employee till the expiry of the period of the notice; if it so chooses to terminate the service at any time it can do so 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 rate 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''. At the risk of repetition, we may note that the operative words of the proviso are ''the services of any such Government servant may be terminated forthwith by payment''. To put the matter in a nut shell, to be si simultaneous with the payment to the employee of what ever is due to him.

In Parsha Ram v. Hon''ble the Chief Justice High Court of Madhya Pradesh, Jabalpur and State, of Madhya Pradesh (2): 1974 (2) SLR 291-, while interpreting Rule 12 of the Madhya Pradesh, Government Servants (Temporary and Quasi Permanent Service) Rules, 1960, I had in a Division Bench taken the same view. It therefore follows that there can be no valid termination of the services of a temporary Government servant except by one month''s notice in writing or by payment of one month''s salary in lieu thereof i.e. in conformity with the requirements of Rule 23-A of the Rajasthan Service Rules.

12. In the present case, however, there was substantial compliance of the requirements of Rule 23-A of the Rajasthan Service Rules in as much as the petitioner was served with six months'' notice, and thereafter his services were terminated. The letter of the State Government dated 3-6-1972 addressed to the petitioner was nothing but a notice that action would be taken for the termination of his services after the lapse of period of six months, if he failed to pass the Departmental examination. The petitioner undoubtedly incurred the liability of having his services terminated due to his failure to pass the Departmental Examination under Rule 12 of the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969, within a period of two years from December 11, 1969 the date when the said Rules came into force No

Departmental Examination having been held till December, 1972, the benefit of the extended period could not, however, be had. The words "necessary action for termination of services will be taken" cannot be construed to mean that a notice had to be given before the termination of the services. The impugned order of termination had been preceded by a notice. In fact, the petitioner was given six months'' salary.

13. The result therefore is that the writ petition fails and it is hereby dismissed. No order as to costs.

