

(1957) 06 BOM CK 0004

In the Bombay High Court

Case No : Misc. Petition No. 156 of 1956

Waman Balkrishna Bokare

APPELLANT

Vs

The Collector, Central Excise, Nagpur

RESPONDENT

Date of Decision : 27-06-1957

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(2)

Citation : AIR 1959 Bom 142 : (1958) 60 BOMLR 55 : (1958) ILR (Bom) 184

Hon'ble Judges : Y.S. Tambe, J;J.R. Mudholkar, J

Bench : Division Bench

Advocate : V.L. Prabhune, for the Appellant; W.K. Sheorey, Addl. Special Govt. Pleader, for the Respondent

Judgement

J.R. Mudholkar, J.—The petitioner was appointed as a temporary Inspector of Central Excise by the Collector, Central Excise, Bombay on 1-3-49 and was probation. After completion of the probationary period o he was placed in the regular time-scale for the post. On 11-4-1953 he was served with an order of the Collector dismissing him from service. He appealed from that order to the Central Board of Revenue. His appeal was allowed and he was reinstated in his post immediately. The decision of the Board of Revenue was communicated to the petitioner on 29-11-1954. On the same date a notice terminating his services within one month was served upon him. From the date of the expiry of the period stated in the notice, the petitioner ceased to function in his post.

2. He has now come up to this Court under Article 226 of the Constitution on the ground that the action taken against him amounts to his removal or dismissal from service and as such the provisions of Article 311 of the Constitution are attracted. It is pointed out on his behalf that he was not given any opportunity of being heard before the aforesaid action was taken against him. In our opinion, there is no substance in this argument.

3. The petitioner's service was of a contractual nature. One of the terms of the contract is that the petitioner has to give the following declaration before he

takes up his appointment.

"I understand that my appointment under Government is temporary and that my service may be terminated at any time after notice for a period of not less than one month but without any reason being assigned. I agree that if I wish to resign my appointment, I shall give notice in writing for a period of not less than one month, of my intention of resign."

We may attention that nothing has been set out in the notice for terminating the petitioner's services. Therefore the notice conforms to one of the terms of the contract.

4. It is, however, argued by Shri Prabhune on behalf of the petitioner that we must take into consideration the previous action taken against the petitioner and read the notice along with the order of dismissal from service which was passed by the Collector on 11-4-1953. According to him, if the two are read together the inference is irresistible that the action taken against the petitioner was of a disciplinary nature and that the termination of his service amounts to a punishment and as such the provisions of Article 311 of the Constitution are attracted. He refers to pages 485-486 of Basu's Commentary on the Constitution under the head "Discharge in terms of contract or conditions of service" and relies upon the view expressed by the learned author that where the intention is to punish an employee for some misconduct, the contractual power cannot be used to discharge him without complying with the requirements of Article 311(2) of the Constitution. As the learned author points out there is a divergence of views in the High Courts as to the applicability of Article 311(2) of the Constitution, where services have been terminated by resort to a term in the contract, and where reasons also have been given for the termination of services. It is not necessary for us to consider the two views because in the instant case it cannot be said that any stigma attaches against the petitioner by reason of the termination of his service. As already pointed out the notice does not give any reason for the termination of the petitioner's services. It may be that for certain reasons the Collector had taken action against the petitioner earlier and dismissed him from service but that order having been set aside and the petitioner having been reinstated the matter must be considered to have ended there. None of the cases cited in Basu's Commentary goes to the length of saying that where an employee was dismissed at a prior time but his dismissal was set aside and he was reinstated his services could not be terminated by resort to a term in the contract. The right of an employer to enforce a term in the contract is not in any way taken away because that employer sometime before that thought it fit to dismiss the employee for some misconduct. We may reiterate that the alleged misconduct is not set out as a ground for termination of the services nor can we read anything of that kind in the notice itself.

5. For these reasons, we dismiss the petition. There will be no order as to costs. The outstanding amount of security will be refunded to the petitioner.

6. Petition dismissed.