

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 1st July, 2010.

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W.P.(C) No.4870/1998

UNION OF INDIA

..... Petitioner

Through: Mr. Jaswinder Singh, Advocate.

Versus

THE PRESIDING OFFICER, CGIT & ANR.

..... Respondents

Through: Mr. S.M. Dalal, Advocate for R-2.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? yes
2. To be referred to the reporter or not? yes
3. Whether the judgment should be reported in the Digest? yes

RAJIV SAHAI ENDLAW, J.

1. The petitioner employer impugns the award dated 29th January, 1998 of the Industrial Tribunal holding the termination of services of the respondent no.2 workman to be bad, illegal, unjustified and unfair and directing reinstatement of the respondent no.2 workman with continuity of service, full back wages and all other consequential benefits. This Court vide *ex-parte* order dated 6th October, 1998 issued Rule in the writ petition and stayed the operation of the award. The respondent no.2 workman applied under Section 17B of the ID Act. The said application was allowed vide order dated 29th July, 2002 and the interim order confirmed till the disposal of the writ petition. Subsequently, on application of the respondent no.2 workman, the order dated 29th July, 2002 under Section 17B of the ID Act was modified on 9th September, 2004.

2. The case of the petitioner employer is that the respondent no.2 workman was employed temporarily, under the Central Civil Services (Temporary Service) Rules, 1965 and his services were terminated under Rule 5 of the said Rules and thus the question of his termination being bad does not arise. The Industrial Tribunal found (and it is not disputed) that the respondent no.2 workman was appointed vide letter dated 21st December, 1987 and his services were terminated vide order dated 2nd November, 1988; it was held that having worked for over 240 days, his services could not have been terminated without complying with Section 25F of the ID Act. Though in the order of termination of the respondent no.2 workman, no reason for termination was mentioned (and no reason is required to be mentioned under Rule 5 aforesaid) but since the petitioner employer before the Industrial Tribunal pleaded that the respondent no.2 workman was rude and undisciplined, the Industrial Tribunal in view of the said plea also held that it was obligatory upon the petitioner employer to hold a domestic inquiry so that the respondent no.2 workman could state and clear his stand. The Industrial Tribunal has also referred to the admission in the cross-examination of the witness of the petitioner employer to the effect that the post of Fork Lift Operator on which the respondent no.2 workman was appointed, was a sanctioned one and that another person had been appointed on that post after the respondent no.2 workman's termination. It was the case of the petitioner employer that the respondent no.2 workman was employed on a purely temporary basis, pending the regular employment.

3. The moot question for adjudication in the present writ petition is as to the applicability of Section 25F of the ID Act to an appointee under the Rules aforesaid.

4. The question is no longer *res-integra*. The Supreme Court in ***Management of MCD Vs. Prem Chand Gupta*** AIR 2000 SC 454 has held that the provision of Section 25F are to be complied with even while terminating employment of a temporary employee in exercise of powers under Rule 5 of CCS (Temporary Service) Rules, 1965. I may notice that a Division Bench of the Patna High Court in ***Mahabir Vs. D.K. Mittal*** MANU/BH/0171/1978 held that in view of Section 25J of the ID Act, notwithstanding Rule 5 (supra), the provisions of Section 25F of the ID Act have to be complied with. Similarly, in ***Union of India Vs. Presiding Officer, CGIT*** 1995 (71) FLR 20, the Madhya Pradesh High Court held that Rule 5 (supra) is not inconsistent with Section 25F and both can be made applicable and are supplementary to each other. The Division Bench of this Court also in ***Delhi Cantonment Board Vs. CGIT*** 129 (2006) DLT 610 held that in industrial law, there is no distinction between a permanent and a temporary employee. A Division Bench of the Bombay High Court in ***Union of India Vs. The Presiding Officer, CGIT*** MANU/MH/1204/2004 however held that a reference under Section 10 of the ID Act on a dispute emanating from termination of service under Rule 5 (supra) is required to be disposed of on the basis of said Rule only framed under Article 309 of the Constitution and not with reference to Section 25F of the ID Act. ***Prem Chand Gupta*** (supra) was sought to be distinguished as relying on cases of corporation, company or undertaking of Central Government and not of Government itself and to whom the Rules aforesaid applied. I am, with respect,

unable to accept the view of the Bombay High Court. The reasoning in *Prem Chand Gupta* that even while terminating service of a temporary employee, provisions of Section 25F have to be complied was not dependent on whether the employment was under Government or MCD.

5. The provisions of Section 25F were not complied in the present case. The termination was thus clearly illegal and there is no error in this respect, requiring interference by this Court.

6. However, the other reasoning of the Industrial Tribunal that a domestic inquiry is required even while terminating the service of a temporary employee under Rule 5 aforesaid is unsustainable.

7. A five Judge Bench of the Supreme Court in *Champaklal Chimanlal Shah Vs. Union of Inida* AIR 1964 SC 1854, in view of the said Rules held that a Government Servant is deemed to be quasi permanent servant if he has been in continuous Government service for more than three years; however, one who has not become quasi permanent can be removed under Rule 5 (supra). It was held that Rule 5 gives power to the Government to terminate the services of a temporary Government servant by giving one month's notice or pay in lieu thereof. The said Rule was held to be not hit by Article 16 of the Constitution of India and was also not held to be discriminatory. It was further held that Article 311 of the Constitution provides protection only where discharge is by way of punishment and not otherwise. However, where the discharge is under Rule 5 and is not stigmatic, Article 311 was held not to apply.

8. To the same effect, is another five Judge Bench judgment of the Supreme Court in *A.G. Benjamin Vs. Union of India* 1967 (1) LLJ 720 where, during the course of departmental proceedings, inquiry was dropped, dismissal simplicitor was permitted under Rule 5 and Article 311 was held not attracted.

9. Having said so, I may notice another stream of judgments. A two Judge Bench in *Kanhialal Vs. District Judge* AIR 1983 SC 351 was concerned with discharge for the reason of negligence and carelessness of a temporary employee. It was held that even a temporary employee is protected by Article 311 of the Constitution and no penal order could be passed against him without complying with the requirements of that Article. However, as aforesaid in the present case, the order of dismissal of the respondent no.2 workman does not give any reason whatsoever and the reason was stated before the Industrial Tribunal only to demonstrate that dismissal was not whimsical but backed by reason. In this context, *Parshotam Lal Dhingra Vs. Union of India* AIR 1958 SC 36 may also be noticed. It was held that if a right exists under the contract of employment or the service rules to terminate the service, the motive operating in the mind of the Government is wholly irrelevant. It was held that if the termination of service is founded on the right flowing from the contract or the service rules then, *prima-facie* the termination is not a punishment and carries with it no evil consequences consequential and so Article 311 is not attracted.

10. The counsel for the respondent no.2 workman has drawn attention to a judgment of the Division Bench of this Court in *Commissioner of Police Vs.*

Regional Secretary, Board of Secondary Education 117 (2005) DLT 659. In that case even though the order of termination under Rule 5 (supra) did not give any reason but since the reason given before the Tribunal was of the temporary employee having submitted forged certificates, the Division Bench held that notwithstanding the absence of any reason in the order of termination, it was incumbent to give an opportunity to explain as the termination order was found to be not simplicitor but punitive.

11. The counsel for the respondent no.2 workman has also invited attention to ***Mohan Lal Vs. Management of Bharat Electronics Ltd.*** AIR 1981 SC 1253. However, the said judgment is not found relevant. In that case, the appointment was temporary but likely to be made permanent. The Supreme Court found that the appointment was on probation and it continued even after probation period. Such employment after expiry of the probation period was held to be one not capable of termination without compliance of Section 25F of the ID Act. That was not a case of the CCS (Temporary Service) Rules on which the five Judge Benches of the Supreme Court have pronounced as aforesaid.

12. The letter of appointment of the respondent no.2 workman clearly provided that the appointment was temporary. The letter of termination expressly refers to the CCS (Temporary Service) Rules. The counsels have cited case-law on the aspect whether the termination is stigmatic or not. The counsel for petitioner relied on the ***State of U.P. Vs. Ram Chandra Trivedi*** AIR 1976 SC 2547 laying down that when there are no express words in the order of termination throwing a stigma, the Court would not delve into the Secretariat files to discover whether

some kind of stigma could be inferred and that the Court cannot be invited to go into the motive behind the order. The counsel for the respondent no.2 workman on the other hand cites *Chandra Prakash Shahi Vs. State of U.P.* AIR 2000 SC 1706 and *V.P. Ahuja Vs. State of Punjab* AIR 2000 SC 1080 however, both of these are cases of probationer, laying down that if there are allegations of misconduct and an inquiry is held to find out the truth, the order of cessation of probation would be punitive requiring an inquiry. It is not the case of the respondent no.2 workman in the present case that any inquiry was held. Thus, the said judgments are not applicable.

13. In my view, merely because an employer states a reason for termination before the Industrial Adjudicator or before the Court, only so as to meet the contention/allegation of the employee of arbitrariness, it would not convert a case of termination simplicitor to a case of stigmatic termination. To allow so, would tantamount to putting the clock back by subsequent events and which is not permissible. Reference in this regard may be made to *Rajasthan State Road Transport Corporation Vs. Zakir Hussain* (2005) 7 SCC 447 holding that the termination of service of a temporary servant or one on probation on the basis of adverse entries or on the basis of an assessment that his work is not satisfactory will not be punitive inasmuch as the said facts are merely the motive and not the foundation.

14. Be that as it may, Section 25F having not been complied with, the award holding the termination bad is upheld. The question still remains whether a temporary employee should be granted the relief of reinstatement with back wages

for the technical defect in order of his termination, of non compliance with Section 25F. Such non compliance also was limited to non-payment of retrenchment compensation only inasmuch as one month's salary in lieu of notice is payable under Rule 5 (supra) also and was paid. The respondent no.2 workman had worked for one year only and the retrenchment compensation payable was of 15 days' wages only. Even upon reinstatement the status of respondent no.2 workman would have remained as temporary only and the petitioner employer would have been entitled to again terminate his employment by complying with Section 25F. Though the respondent no.2 workman has contended that he was employed after being interviewed and against a post but in view of the letter of appointment clearly providing that the employment was temporary, no credence can be given to such pleas; there can be a procedure for temporary appointment also and merely because such procedure is followed will not change the temporary status.

15. More than twenty three years have elapsed since the order of termination. Considering all the aforesaid facts, the relief granted by the Industrial Tribunal of reinstatement with full back wages is not found appropriate. The award to that extent is modified. Instead of relief of reinstatement with full back wages, the respondent no.2 workman is granted the relief of compensation in lieu of reinstatement and back wages of Rs.1 lakh.

The writ petition is allowed to the said extent only. The said payment be made within six weeks failing which shall incur simple interest at the rate of 7% per annum. It is also clarified that respondent no.2 workman is not liable to refund any amounts received pursuant to orders under Section 17B. The respondent no.2

workman is also awarded costs of Rs.20,000/- payable alongwith amount aforesaid.

The petition is disposed of.

**RAJIV SAHAI ENDLAW
(JUDGE)**

1st July, 20100
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