

+IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) Nos.6897/2003, 6944-45/2004 & 15682/2006.

DATE OF HEARING: 18.03.2008

DATE OF DECISION : 02.05.2008

IN THE MATTERS OF :

Shri Sher Singh

Bishan Lal & Ors.

Hukum Chand

..... Petitioner in WP(C)No.6897/2003.

..... Petitioners in WP(C)No.6944-45/2004.

..... Petitioner in WP(C)No.15682/2006.

Thru. Ms.Rekha Palli, counsel for the
petitioner in WP(C)Nos.6897/03, 15682/06.

Major K. Ramesh, counsel for the
petitioner in WP(C)No.6944/04.

- Versus -

Union of India & Ors.

.....Respondents.

Thru. Mr.Rajeev Mehra, counsel for the
respondent in WP(C)No.6897/03 .

Mr.Gaurav Duggal, counsel for the
respondent in WP(C)No.6944-45/04.

Mr.Rajan Sabharwal, counsel for the
respondent in WP(C)No.15682/06.

CORAM :-

THE HON'BLE MR.JUSTICE A.K.SIKRI

THE HON'BLE MR.JUSTICE J.M.MALIK

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

A.K. SIKRI, J.

A very short but interesting question arises for consideration in these petitions. All these petitioners who were ex-servicemen were re-employed in Special Protection Group in different ranks for specific period. Their services were sought to be terminated on the completion of tenure for which termination order was passed. However, they filed writ petitions in this Court and obtained stay of their termination. By virtue of the stay order granted in their favour they continued in the employment of the respondent. However, the said petitions were ultimately dismissed by this Court. The issue now relates to the grant of pension to these petitioners. If the period of service is counted till the date when the termination orders were to be effective, none of these petitioners have minimum qualifying service to enable them to earn pension. On the other hand, if the period for which they worked under the umbrella of interim order granted by this court in the writ petition, they become entitled to the grant of pension. The petitioners want this period to be included on the premise that they have worked during this period. On the other hand, the respondents are denying the benefit of this period on the ground that termination orders are found to be valid and proper by this Court and thus, the service rendered by them by virtue of interim

orders of this Court should not inure to their benefit. Who is correct is the question before us.

2. Before we discuss the issue with reference to the facts of a particular case, it would be necessary to keep in mind the peculiarity of the organization known as Special Protection Group (SPG). The origin of this organization is traced and discussed in the judgment of this Court in **V.H.K. Murthy v. Special Protection Group, 2000 (87) DLT 37**, as is clear from the following paragraph in the said judgment:-

“Security of the persons holding high positions has become a matter of concern. This country has witnessed in last few years gory instances of assassination of such highly placed persons in the society and it includes Smt. Indira Gandhi, and Shri Rajiv Gandhi former Prime Ministers of India. There have been instances of attempt on the life of such VIPs. In fact Smt. Indira Gandhi was assassinated by none-else but her own Guards who were supposed to protect her from any outside attacks. It is a matter common knowledge that after the assassination of Smt.Indira Gandhi at the hands of her own guards in October,1984, a Special Task Force was raised in the intelligence Bureau to provide proximate security to the Prime Minister of India and his family members. The issue of providing high quality security to the Head of the Government was subjected to microscopic analysis by various agencies of the Government, and a high powered committee headed by Shri Birbal Nath was constituted to examine all aspects of VIP security and make necessary recommendations. The recommendations of the Birbal Nath Committee culminated in the of the Special Protection Group under the aegis of Cabinet

Secretariat in March 1985 to provide proximate security to the Prime Minister and his immediate family members. After assassination of Shri Rajiv Gandhi in May,1991, the SPG Act was amended to extend SPG security cover to the former Prime Ministers and their immediate family members for a period of five years from the date of demitting the office of Prime Minister. The period of this cover has been extended to 10 years by yet another amendment of the SPG Act in 1994.”

3. It is clear from the above that SPG has no regular force of its own. It draws officers from various other organizations on deputation for a particular period and after that period is over, these officers are sent back to their parent organization. Likewise, ex-servicemen are also employed in the SPG for specific period. The reason because of which the legislature thought not to have its own regular force for providing protection to the Prime Minister and former Prime Minister is not far to seek. The matter of security of these dignitaries is of very sensitive nature. The persons who provide security to Prime Minister cannot be allowed to remain there for all times to come or for that matter even for long periods.

5. With the aforesaid discussion on the special nature of SPG, we revert back to the controversy involved.

6. In order to appreciate the controversy, we take note of facts in WP(C)No.6897 of 2003. The petitioner was enrolled in the Indian Army in the Corps of Electrical and Mechanical Engineering (EME) in July,1968. He was discharged from service in August, 1984 after completing normal tenure and was granted pension and other emoluments. Thus he was receiving his pension from the Indian Army. The petitioner was, however, re-employed in Special Protection Group (SPG) vide Employment Order dated 24.12.1985 and he joined SPG on 13.1.1986.

7. This re-employment was on the basis of one year, in the first instance, extendable up to three years on year to year basis. Employment on these terms was given on strength of Cabinet Secretary's Order No.A-12018/23/85-DO-I dated 8.8.1985. Vide Cabinet Secretary's Order dated 16.12.1991 the tenure of re-employment was further extended to six years. Another extension by one more year was given vide orders dated 8.12.1992 with clear direction that after the expiry of this extended term the officers would be relieved. Thus, on the expiry of 7th year (extended term) and in the absence of any further extension beyond that period, which extension was specifically refused by the Cabinet Secretary's Order dated 20.4.1993, the services of the petitioner were terminated by the respondents on the

completion of that tenure. However, the petitioner filed writ petition in this Court, before he was to be relieved from his duties on the expiry of his tenure, in which interim stay was granted in his favour staying the operation of the termination order. By virtue of the said stay order the petitioner continued in service. The said writ petition was finally heard and dismissed on 24.7.2003. Based on that judgment, services of the petitioner were terminated vide SPG's order No.3593/2003 dated 13.8.2003 .

8. It is clear from the above that the petitioner had rendered 7 years of service, and after the completion of that tenure his services were terminated. However, he continued in service under interim order of this Court for a further period of more than 10 years and rendered total service of 17 years and 7 months. On the basis of his 7 years of service, the petitioner would not be entitled to pension. On the other hand, if entire period is counted which is 17 years and 7 months, the petitioner would be admissible to pension. The issue, therefore, is whether the services rendered by the petitioner on the basis of stay order passed by this Court should be counted or not. Similar is the position in respect of all these petitioners. The case of the petitioners simply is that since they have rendered continued service of more than 10 years, they are entitled to pension. And it is immaterial

whether the services rendered by them is because of interim stay granted by this Court or otherwise. On the other hand, the respondents contend that services rendered by the petitioners under the interim orders of this Court would not confer any right of any nature to the petitioners when the action of the respondents in terminating the services of the petitioners was found to be legal and valid in law. After giving our due consideration to the respective submissions, we find that the plea of the respondents warrants to be accepted.

9. The judgment of the Division Bench vide which writ petitions of these petitioners were ultimately dismissed have been enclosed by the respondents in their counter-affidavit. We find from a copy of the judgment dated 26.8.2002 rendered in CWP.No.2553/97 entitled ***Janardhan Prasad vs. Union of India & Ors.*** is a detailed reasoned order and following this order other writ petitions were also dismissed by passing similar orders on subsequent dates. The relevant portion of that order reads as under:

“Petitioner’s case appears wholly misdirected on the fact of it. He conveniently ignores that he was re-employed under a scheme for ex-servicemen and mistakenly believes that he was appointed under the SPG Group Act with a right to continue till he reached the age of superannuation. He also overlooks that he was governed

by and bound by the terms of his appointment order which stipulated that his term was for one year and extendable up to three years and then maximum six years. If anything he was to sink and swim with the terms of his re-employment order and the question of his imaginary appointment under the Act did not arise. His reliance and claim based on Section 11 of the Act is thus grossly misconceived.

So is his plea of discrimination untenable. It is not his case that any similarly situated re-employed personnel were retained beyond six years. Nor has he laid down any foundation in this regard. He has only made a generalized statement which falls short of requirement to make out any case of hostile discrimination. Respondents might have allowed some deputationists to continue, but they constituted a separate class altogether.

Petitioner's challenge to Cabinet Order dated 16.12.1991 fixing a maximum term of six years for ex-serviceman is also frivolous. This order is based on the security sensitivity of SPG which dictate the limited tenure of the SPG personnel. Even the term of deputationists is also restricted. Therefore considering the nature of duty to be discharged by the SPG personnel the order could not be held to be arbitrary or unreasonable or violative of petitioner's right of employment."

10. It is quite clear that the petitioners had approached this Court against their termination challenging the said termination order on various grounds. However, after adjudication of the case no merit was found in the writ petitions of these writ petitioners and it was held in no uncertain terms that termination of the petitioners after the expiry of 6/7 years of service was valid. It would clearly mean that the date by which respondents wanted

services of the petitioners to be terminated was proper and the petitioners had no right to work beyond that date. No doubt the petitioners continued in service because of the interim order passed by this Court. However, the petitioners cannot be allowed to take the advantage of the said interim orders when ultimately their challenge to the termination order has failed. To put it otherwise, the respondents cannot be made to pay to the petitioners what they were not liable to pay otherwise only because they had to allow the petitioners to continue to work because of interim orders passed by this Court.

11. In such a case, famous legal maxim “*actus curiae reminem gravabit*” would clearly be attracted which has the eloquent message behind it, that an act of court shall prejudice none. This legal maxim has been applied from time to time on the premise that the same is founded upon justice and good sense. In **A.R. Antulay v. R.S. Nayak & Anr.**, (1998) 2 SCC 602, it has been said long time ago that this maxim is founded upon justice and good sense and affords a safe and certain guide for the administration of the law. In **Calcutta Jute Manufacturing Co & another v. Commercial Tax Officer & others**, AIR 1997 SC 2920, the Apex Court observed that the pristine doctrine couched in the maxim “*actus curiae neminem gravabit*” has ever

remained a salutary and guiding principle. A number of decisions have been rendered by the Apex Court applying the aforesaid principle.

12. Recently the Hon'ble Apex Court in ***State of Gujarat v. Dilipbhai Shaligram Patil*** AIR 2006 SC 3091 dealing with the similar question observed as under:

“It is well settled that an order granting pending disposal of the writ petition/suit or other proceedings, comes to an end with the disposal of the substantive proceedings and that it is the duty of the Court in such a case to put the parties in the same position, they would have been but for the interim orders of the Court. Any other view would result in the act or order of the court prejudicing the party for no fault of his and would also mean rewarding writ petitioner in spite of his failure. Any such unjust consequence cannot be countenanced by the courts. (See Kanoria Chemicals and Industries Ltd. v. U.P. State Electricity Board and Ors. (1997) 5 SCC 772).”

13. Likewise, in ***Secretary, State of Karnataka and Ors. v. Umadevi and Ors.*** AIR 2006 SC 1806, the Supreme Court categorically denied the benefit to those who were working under the interim orders of the Court and refused to count such a period while computing 10 years' service. The following pertinent observations of the Supreme Court be taken note of:

“Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required.”

14. The petitioners had the advantage of interim order because of which they worked, got the salary and other allowances. It is under these circumstances and so as to balance the equities, this Court while dismissing the CWP.No.2553/1997 directed that salary and other benefits received by the petitioners for the service rendered by virtue of interim orders shall be deemed regularized. The following directions were given in the said order:

“This petition accordingly fails and is dismissed. But regard being had to the fact that petitioner had stayed in service till date on the strength of interim stay order of this Court dated 13.6.1997 and had also worked for this period, the salary and other service benefits received by him for this period, shall be deemed regularized.”

15. In ***State of U.P. v. Raj Karan Singh***, (1998) 8 SCC 529, the Supreme Court held as under:-

“Merely because a person continues under the interim order of the Court, such continuance on the post cannot and, in this case, does not confer on him any right for continuance, it does not enhance his case for regularisation. It is only an interim arrangement pending decision by the Court and cannot disturb the position in law or equities, as on the date of the petition.”

16. Clear distinction is to be made between the quashing of an order and stay of operation of an order. In the present case, though the interim stay of termination was given, ultimately writ petitions were dismissed, the implication whereof is that the termination order is not quashed but rather upheld. In ***Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association CSI Cinod Secretariat, Madras*** AIR 1992 SC 1439, the Supreme Court drew this distinction in the following words:-

“While considering the effect of an interim order staying the operation of the order under-challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the

stay order and it does not mean that the said order has been wiped out from existence.”

17. Learned counsel for the petitioners argued that this Court had categorically held that the period in question is regularized which means it is to be computed for the purpose of pension as well. We are unable to agree with this submission. The specific direction is that this period is deemed regularized for the purpose of salary and other service benefits received by the petitioner. The objective was to ensure that the respondents do not claim refund of the salary and benefits already received by the petitioners for the period in question as the writ petitions of the petitioners were ultimately dismissed. Merely because this protection was given against the recovery would not mean that the petitioners should start claiming further benefits for the service rendered by them beyond termination orders though they had no right to perform the duties for all this period.

18. It would be necessary to mention at this stage that when the petitioners were not given pension by the respondents, they filed Contempt Case No.515/2003 alleging that as per the aforesaid direction of the Division Bench they were entitled to the benefit of pension as well and non-grant thereof amounted to violation of the aforesaid orders dated 26.8.2002. The learned Single Judge of this Court held that non-grant of pension amounts to

contempt and directed payment of pension. The respondents herein filed Revision Petition which was also dismissed by the learned Single Judge. The respondents then preferred Contempt Appeal (C) No.2/05. The Division Bench vide its judgment dated 23.11.2005 set-aside the order of the learned Single Judge, inter alia, observing as under:

“Moreover, from the extract of the order of the Division Bench as quoted above, no inference of entitlement to pension could be drawn. The order of the Division Bench simply regularized the period of service rendered. Therefore, the question which would arise is whether with the period of service contractual or otherwise rendered with SPG being regularized to be treated as temporary or regular service, would it entitle the concerned employee to pension or not? The answer to this would depend on the prescribed qualifying service period and nature of service for eligibility to pension. As noted earlier, WP(C)No.6897/2003 seeking substantive relief of pension on the basis of service was already withdrawn in view of the directions given in the contempt petition for payment of pension.

After some arguments, it was put to the parties that it would be appropriate if the question of entitlement to pension on the basis of service rendered with SPG, contractual or pursuant to the interim protection granted by the Court, is determined in substantive proceedings. Both the parties are agreeable to this.

Accordingly, we set aside the impugned order dated 23rd March,2004 dismissing the Review Petition No.134/2004 as also impugned order dated 4th February,2004 in contempt petition no.512/2003 whereby directions for personal presence of respondents upon failing to make payment of pensionary benefits to the

petitioner (respondent in this case) were given and the contempt petition stands dismissed accordingly.

With the consent of the parties, we also direct revival of WP(C) 6897/2003 filed by the respondent. WP(C)6897/2003 shall stand revived and be posted for directions before the appropriate bench within 15 days.”

19. It was in these circumstances that present writ petition was revived and after hearing the parties, we are deciding the same on merits. The upshot of the aforesaid discussion would be that the petitioners cannot count the service rendered by them for the purpose of pension under the interim orders of this Court when ultimately writ petitions filed by the petitioners herein were dismissed holding that the action of the respondents in terminating the services of the petitioners was legal and valid in law and consequently they had no such right to perform the duties beyond the date of termination. These writ petitions are accordingly dismissed. However, there shall be no orders as to costs.

(A.K. SIKRI)
JUDGE

May 02, 2008.
skk

(J.M.MALIK)
JUDGE