

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
&
HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

W.P.No.5594 of 2002

Date : 26-10-2017

Between:

D. Solomon Amruth Raj

.. Petitioner

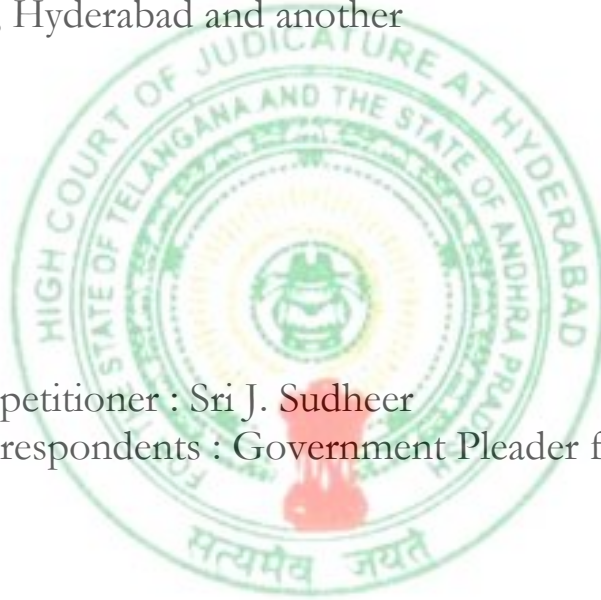
And

The Principal Secretary to Governor,
Raj Bhavan, Hyderabad and another

.. Respondents

Counsel for petitioner : Sri J. Sudheer

Counsel for respondents : Government Pleader for Services (TS)



The Court made the following :

ORDER: (per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

This Writ Petition is filed for a certiorari to quash order dated 11-11-1998 in O.A.No.54397/1990 and order dated 13-3-2001 in Review M.A. No.785 of 2000 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad.

The post of Superintendent, Household, was created in the Raj Bhavan for a period of one year vide G.O.Rt.No.3700 GA (Poll-A), dated 20-09-1986. The appointment order of the petitioner issued pursuant to the said G.O. reads as under :

“Sri D. Solomon Amrutha Raj is appointed as Superintendent, Household, with effect from 19th January 1987 in the post sanctioned in the Government first read above. The appointment is purely temporary and liable to be terminated at any time without notice and without assigning any reasons.”

On 6-9-1990, the services of the petitioner were terminated. Feeling aggrieved by the said order of termination, the petitioner filed the aforementioned O.A. The main ground of attack of the order of termination raised by the petitioner before the Tribunal was that the termination was not preceded by an enquiry and an opportunity of being heard. It was contended by the learned Counsel for the petitioner before the Tribunal that since the disciplinary proceedings were initiated against a regular employee

by name D. Vijay Kumar for an alleged misconduct, the services of the petitioner were terminated without holding an enquiry as he is a temporary employee as a measure of punishment and therefore as misconduct is the foundation for termination of the services, the order of termination without holding an enquiry is unsustainable and the same runs contrary to Article 311 of the Constitution of India. In support of his submission, the learned Counsel has cited various Judgments of the Supreme Court including **Shamsher Singh Vs. State of Punjab¹**, **H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior Vs. Union of India²**, **State of Bihar Vs. Shiva Bhikshuk Mishra³**, **Anoop Jaiswal Vs. Government of India⁴**, **Olga Tellis Vs. Municipal Corporation of Bombay⁵**, **Central Inland Water Transport Corporation Ltd. Vs. Brojo Nath Ganguly⁶**, **Dr. Mrs. Sumati P. Shere Vs. Union of India⁷**, **Basudeo Tiwary Vs. Sidokanhu University⁸**, **Sona Devi Vs. State of Haryana⁹** and **W.T.A.**

¹ AIR 1974 SC 2192

² AIR 1971 SC 530

³ AIR 1971 SC 1011

⁴ AIR 1984 SC 636

⁵ (1985) 3 SCC 545

⁶ AIR 1986 SC 1571

⁷ AIR 1989 SC 1431

⁸ 1998(7) SUPREME 361

⁹ 1986 (2) SLR 440

Manoranjan Vs. Government of A.P.¹⁰. The plea of the petitioner was opposed by the respondents by stating that the petitioner being a temporary employee, a right was reserved by the respondents in the appointment order itself that his services are liable to be terminated at any time without notice and without assigning any reasons and that the impugned order being termination simpliciter which does not cast a stigma on the petitioner, the same cannot be interfered with. It was also submitted that at no point of time any enquiry was initiated and that therefore it cannot be said that misconduct is the foundation for the termination of the petitioner's services. After a detailed discussion of the factual and legal position, the Tribunal has dismissed the O.A. The review application filed against the said order was also dismissed by the Tribunal. Assailing the both the said orders, the unsuccessful applicant has filed this Writ Petition.

The legal position regarding the necessity of holding an enquiry before such termination of services of a public servant has been well settled.

¹⁰ 1985(3) SLR 681

In **Parshottam Lal Dhingra Vs. Union of India**¹¹, the

Supreme Court held as under :

“In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with.”

In **State of Punjab Vs. Sukh Raj Bahadur**¹² the Supreme Court held that if the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.

In **Shamsher Singh Vs. State of Punjab (1-supra)**, a seven-Judge Bench of the Supreme Court considered the legality of the discharge of two Judicial Officers of the Punjab Judicial Service who were serving as probationers, and held:

¹¹ AIR 1958 SC 38

¹² AIR 1968 SC 1089

“No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution.”

In Radhe Shyam Gupta Vs. U.P. State Agro Industries

Corporation Limited¹³, Jagannadha Rao, J, speaking for the two judge Bench, referred to seven Constitution Bench judgments and a judgment of seven Judges which include judgments in **Parshottam Lal Dingra (11-supra)**, **State of Bihar Vs. Gopi Kishore Prasad¹⁴**, **State of Orissa Vs. Ram Narayan Das¹⁵**, and **Madan Gopal Vs. State of Punjab¹⁶** and various other subsequent judgments and summed up the legal position to the effect that where termination of a temporary employee or probationer is simpliciter and misconduct was the motive behind such termination, no enquiry is necessary, but where misconduct constitutes foundation of the termination order, regular departmental enquiry must precede such termination.

¹³ (1999) 2 SCC 21

¹⁴ AIR 1960 SC 689

¹⁵ AIR 1961 SC 177

¹⁶ AIR 1963 SC 531

Singhvi, J, speaking for a two-Judge Bench in **State Bank of India Vs. Palak Modi**¹⁷ has extensively referred to the case law reflected in the various Constitution Bench judgments, including those referred to above and reiterated the above settled legal position.

In **Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others**¹⁸, the Supreme Court held that if an exparte enquiry is held behind the back of the delinquent employee and the order contains stigmatic remarks, the same would constitute the foundation for terminating the employee. The Supreme Court, however, drew a distinction between the said set of cases and cases where disciplinary proceedings were initiated and subsequent thereto an order of termination simpliciter was passed, and held that in the latter category of cases, misconduct could be said to be the motive and not the foundation for termination.

In the present case on hand, it is not in dispute that the petitioner was a temporary employee appointed without facing any selection process. As rightly pleaded by the respondents before the Tribunal and also before us, no allegation of misconduct has been

¹⁷ (2013) 3 SCC 607

¹⁸ 2015(15) SCC 151

attributed to the petitioner. Therefore, the order terminating the services of the petitioner is not stigmatic. However, what needs to be seen is whether the order of termination simpliciter is a cloak for punishing the petitioner for the alleged misconduct.

It needs to be noted that in the order dated 13-3-2001 passed in the Review petition, the Tribunal has specifically observed that the petitioner failed to file any material to show that disciplinary action was initiated against him before terminating his services. It is also not the pleaded case of the petitioner that any enquiry, either preliminary or otherwise, was commenced behind his back and without concluding such enquiry, his services were terminated. If in the backdrop of suspension of D. Vijay Kumar, a regular employee, the petitioner's services have been terminated, at the most, it can be said that misconduct is the motive for such termination and not the foundation.

On the analysis as above, we are of the opinion that the impugned order of termination being one in simpliciter and not stigmatic and misconduct not being the foundation, there was no need for holding any enquiry before terminating the services of the petitioner and the Tribunal has rightly dismissed the O.A.

During the hearing, the learned Counsel for the petitioner has informed the Court that the petitioner has crossed the age of superannuation. Even on this ground also, the petitioner is not entitled to any relief.

For the aforementioned reasons, the Writ Petition is without any merit and the same is accordingly dismissed.

Justice C.V. Nagarjuna Reddy

Justice Kongara Vijaya Lakshmi

Date : 26-10-2017

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