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

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Date of Decision: 29.03.2019

% **W.P.(C) 7415/2016 & C.M. No. 30463/2016**

GOVT OF NCT OF DELHI AND ANR

..... Petitioner

Through: Mrs. Avnish Ahlawat, standing
counsel with Mr. N.K. Singh and Ms.
Ankita Ahuja, Advs.

versus

AMARJEET SINGH

..... Respondent

Through: Mr. K. Singhal with Mr. Rohit
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The Government of NCT of Delhi has preferred the present writ petition to assail the order dated 27.01.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 4077/2015 (OA) preferred by the respondent/applicant.

2. The respondent, in his OA, had assailed the show-cause notice dated 30.09.2015 issued to him by the Deputy Commissioner of Police, West District, New Delhi asking him to show cause as to why his services should not be terminated under rule 5(1) of Central Civil Service (Temporary Service) Rules, 1965.

3. The respondent was appointed as a Sub-Inspector (Executive) in Delhi Police vide appointment order dated 29.09.2009. The offer of appointment duly accepted by him clearly stated that the competent

authority was pleased to appoint him “as a temporary Sub-Inspector (Executive) in Delhi Police in the pay scale of PB.2. Rs. 9300-34800 + Grade Pay Rs. 4200/- plus usual allowances as admissible for the post in an existing vacancy. You are allocated to North District for the purpose of pay & allowances only till you complete your basic training. You are allotted Range No. D-4964”. It was made clear that the appointment of the respondent was being made under the Delhi Police Act, 1978 and that the same would be governed by the Rules made thereunder. He was also informed that he would be governed by the Central Civil Service (Temporary Service) Rules, 1965 and the relevant extracts of his offer of appointment read as under:

“You will also be governed by the Central Civil Service (Temporary Services) Rules – 1986 and CCS (Conduct) Rules – 1964. Your appointment will also be subjected to the following terms and conditions.

1. You will be deemed to be on probation for a period of two years from the date of your appointment.

2. Your appointment is purely temporary and liable for termination without assigning any reasons thereof.”

4. At this stage, we may also take note of Rule 5(e)(i) of the Delhi Police (Appointment and Recruitment) Rules, 1980 which reads as under:

“(e) (i) All direct appointments of employees shall be made initially on purely temporary basis. All employees appointed to the Delhi Police shall be on probation for a period of two years:

Provided that the competent authority may extend the period of probation but in no case shall the period of probation extend beyond three years in all.

(ii) The services of an employee appointed on probation are liable to be terminated without assigning any reason.

(iii) After successful completion of period of probation, the employee shall be confirmed in the Delhi Police by the competent authority, subject to the availability of permanent post.”

5. While the respondent was serving in the capacity in which he was appointed, he was involved in a serious criminal case under Section 302 IPC and was arrested on 22.07.2011. Upon conclusion of the trial, he was convicted by the Trial Court during the pendency of the present proceedings.

6. While the criminal trial against the respondent was underway, the petitioners from time to time issued orders in relation to confirmation/non-confirmation of similarly appointed officers. In all these orders issued by the petitioners, the name of the respondent figures in the list of those officers who had not been confirmed. In these orders, a specific endorsement was made against the respondent's name to the effect that he was not being confirmed on account of the pendency of the criminal case.

7. On 30.09.2005, the petitioner issued the aforesaid show-cause notice to the respondent by invoking Rule 5(1) of the Central Civil Service (Temporary Service) Rules, 1965. The said show-cause notice referred to the incident which led to the registration of the FIR against the respondent under Section 302 IPC. The show-cause notice took note of the fact that the respondent had been granted interim bail on 16.07.2015 till 19.10.2015 by this Court. Charge had been framed against the respondent on 02.06.2014 by the Court of Sh. Naresh Kumar Malhotra, ASJ (West), Tiz Hazari Court Delhi. The show-cause notice further went on to state that—

“ Delhi Police is a disciplined force and there is no room for indiscipline. As the SI has killed his colleague officer in police station premises without any reason/cause or fear. Hence, if a person, being the member of disciplined force, behaves in the manner as SI (Exe) Amarjeet Singh No. D-4964 did by killing his fellow colleague, he does not deserve to be continued in the force.

The above act of SI(Exe) Amarjeet Singh No. D-4964 establishes that he has no respect for law and he can go to the extent of killing his fellow colleague without any temptation and provocation and which amounts to gross misconduct and unbecoming of a police officer of a disciplined force.

SI Amarjeet Singh was enlisted in Delhi Police on 30/09/2009, but before completion of his probation period of two years, he was involved & arrested in case FIR No.211/11 dated 21.07.11 u/s 302 IPC, PS Nihal vihar, hence, his case of confirmation under Delhi Police (Promotion & Confirmation) Rules 1980 was deferred twice by PHQ vide orders No. 71994-72065/CB-II/PHQ dated 08.12.2014 and 37755-825/CB-II/PHQ dated 01.07.2015. Hence the SI was not confirmed in the service. He cannot be confirmed till the above said criminal case is pending against him.

Moreover Rule 5 (e) (i) of D.P. (Appointment of Recruitment) Rules provides that "All direct appointments of employees shall be made initially on purely temporary basis. All employees appointed to the Delhi Police shall be on probation for a period of two years, provided that the competent authority may extend the period of probation but in no case shall the period of probation extend beyond three years in all".

As per Rule 5(1) of Central Civil Service (Temporary Service) Rules-1965 "The services 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."

Therefore, SI (Exe) Amarjeet Singh No. D-4964 (PIS No. 16090229) is hereby called upon to show cause as to why his services should not be terminated under rules 5(1) of Central Civil Service (Temporary Service) Rules, 1965. The reply to the show cause notice should reach the undersigned within 30 days from the receipt of this notice, failing which it will be presumed that he has nothing to say in his defence and the matter will be decided exparte, on merits."(emphasis supplied)

8. The submission of the respondent before the Tribunal was that the said show-cause notice was incompetent inasmuch, as, the Central Civil Service (Temporary Service) Rules, 1965 were not applicable to him. His contention was that the said rules defined the expression "Temporary Service" to mean service of a temporary Government servant in a temporary post, or officiating service in a permanent post under the Government of India. It was contended that the respondent's appointment not made against a temporary post, nor was he appointed to officiate against a permanent post under Government of India. This submission of the respondent was accepted by the Tribunal and, consequently, the show-cause notice issued by him on 30.09.015 was quashed.

9. Learned counsel for the petitioner while impugning the Tribunal's order submits that once the offer of appointment issued to the respondent made it clear that the Central Civil Service (Temporary Service) Rules, 1965 were applicable to him, the Tribunal could not have held that the provisions of the said rules were not applicable to him. She submits that as the respondent was specifically appointed as a temporary Sub-Inspector and had never been confirmed in the said post, the petitioners were well within their

right to invoke the provisions of Rule 5(1)(a) of the Central Civil Service (Temporary Service) Rules, 1965.

10. She submits that keeping in view the respondent's involvement in a serious criminal case, in which he stands convicted today, the petitioner had taken a considered decision not to confirm him and, therefore, he continued to be a temporary servant, not only under the Central Civil Service (Temporary Service) Rules, 1965 but also under the Delhi Police (Promotion and Confirmation) Rules, 1980.

11. In support of her submissions, Ms. Ahlawat relies on the decision of the Supreme Court in the case of *Jai Kishan v. Commissioner of Police & Anr.* [1995 Supp (3) SCC 364] and submits that as the respondent continued to be on probation, the show-cause notice proposing to terminate his service was rightly issued in accordance with Rule 5(1)(a) of the Central Civil Service (Temporary Service) Rules, 1965. She further submits that the learned Tribunal had erred in being swayed by the definition of the expression "Temporary Service" defined in Rule 2(d) of the CCS (Temporary Service) Rules. She further submits that Rule 5(1)(a) does not use the said expression and uses the expression "services of a temporary Government servant". The respondent's services were as a "temporary Government servant" in the light of this appointment order and Rule 5(e)(i) of the Delhi Police (Appointment and Recruitment) Rules.

12. Mr. K. Singhal, learned counsel for the respondent, supports the impugned order and submits that as the respondent had been appointed against a permanent post, the Tribunal was justified in coming to a conclusion that the respondent was not covered by the Central Civil Service

(Temporary Service) Rules, 1965 and had, therefore, rightly quashed the show-cause notice.

13. In the light of the facts recorded hereinabove, we have carefully considered the submissions of the learned counsels for the parties and are unable to agree with the conclusion arrived at by the Tribunal. The position, as emerges from the record, is that the offer of appointment issued to the respondent made it clear, in no uncertain terms, that his appointment was on a temporary basis and that he would be governed by the Central Civil Service (Temporary Service) Rules, 1965. Merely because the expression “Temporary Service” is defined to mean service of a temporary government service in a temporary post, or officiating service in a permanent post under the Government of India, and the appointment of the respondent was against a permanent post – though expressly stated to be of temporary nature, it does not follow that the nature of appointment of the respondent would change to “permanent”. The intention of the petitioner never was to appoint the respondent on permanent basis. His appointment was expressly stated to be of purely temporary nature, as taken note of hereinabove. It did not lie in the mouth of the respondent to even claim that his appointment was of a permanent nature, since he had accepted the appointment offered to him without protest or demur.

14. At this stage, it may be appropriate to refer to Rule 5(1)(a) of the Central Civil Service (Temporary Service) Rules, 1965, which reads as under:-

“5. Termination of temporary service.

(1) (a) The services 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;”

15. A bare perusal of the aforesaid Rule makes it evident that the same envisages termination of the services of a temporary government servant and does not, in any manner, refer to a temporary post as is sought to be contended by the respondent. Therefore, we are unable to see as to why the said rule would not be applicable to the respondent, as mere definition of the term ‘temporary service’ in Rule 2(d) of the Central Civil Service (Temporary Service) Rules, 1965 cannot lead to the conclusion that the nature of his appointment would change to permanent and the power granted to the appointing authority to terminate the services of a temporary government servant, like the respondent, would be curtailed in any manner.

16. We have also considered the decision of the Supreme Court in ***Jai Kishan*** (*supra*), relied upon by the learned counsel for the petitioners, and find that the same applies squarely to the facts of the present case. In the said case also, a Constable appointed in the Delhi Police was terminated by resort to the same rule, after he had continued to remain in temporary capacity for a period of almost six years without being confirmed. The Supreme Court had observed that, once the employee’s probation was extended without being confirmed, he had to be treated as a temporary employee and, thus, there was no infirmity in the order terminating his services as a probationer under Rule 5(e) of the Delhi Police (Promotion and Confirmation) Rules, 1980 in the light of the aforesaid reasons.

17. In our considered view, the impugned order passed by the Tribunal is liable to be set aside. However, keeping in view the fact that the respondent,

who was granted 30 days time to submit his reply to the show-cause notice dated 30.09.2015 had—instead of filing a reply, assailed the same before the Tribunal which, vide its impugned order, set aside the show-cause notice, we grant further 30 days time to the respondent to submit a reply thereto. Upon receipt of the said reply, the petitioner would be at liberty to take appropriate actions in accordance with law.

18. Accordingly, the impugned order dated 27.01.2016 passed by the Tribunal is set aside and the writ petition is allowed in these terms.

19. The petition is disposed of alongwith pending application.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

MARCH 29 , 2019
n.k/sr