

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

**HON'BLE JUSTICE SUBRATA TALUKDAR
AND
HON'BLE JUSTICE ANIRUDDHA ROY**

***FMA 1030 of 2013
With
CAN 1 of 2012 (Old No. CAN 10496 of 2012)***

***Union of India & Ors.
-Vs.-
Kashinath Porey***

For the Appellants	: Ms. Susmita Saha Dutta Mr. Niladri Saha Mr. Subhajit Das
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For the Respondent	: Mr. Mujibar Rahaman
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Heard on	: 21/12/2020
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Judgment on	: 17/03/2021
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Subrata Talukdar, J:

Under challenge in this appeal is the order dated 23rd August 2012 in WP No. 20396 (W) of 2009 as passed by the Hon'ble Single Bench. The Hon'ble Single Bench, *inter alia*, held as follows:

“In these circumstances, in my opinion, the finding of the Enquiry Officer and the Disciplinary Authority that the petitioner had disobeyed the order of superior is not based on evidence led before such authorities. There is no

material to show that the petitioner was actually directed to report to Mandapam. The impugned order of the disciplinary authority cannot be sustained and the petitioner ought to be re-employed in the same post in which he was serving. Considering the fact that the petitioner was engaged as a 'casual labour' holding temporary status, I do not direct payment of back wages for the entire period. In my opinion, a sum of Rs.75,000/- (rupees seventy five thousand only) would sufficiently compensate the petitioner in this regard.

The impugned order of the disciplinary authority passed on 21st August, 2009 and the report of the Enquiry Officer are accordingly quashed. The petitioner shall be re-inducted in the post of 'casual labour' having temporary status, in the location he was serving, if there is vacancy in the said post. If there is no vacancy subsisting in the same post, then the petitioner shall be engaged in the said capacity in any other place of the Coast Guard Organisation. Such engagement shall be given within a period of eight weeks from the date of communication of this order.

The writ petition is allowed in the above terms."

Challenging the findings of the Hon'ble Single Bench, the present appellants/ the Union of India, who were respondents in the writ petition, have filed the instant appeal on, *inter alia*, the following grounds:

"IV. For that while passing the impugned order the Hon'ble Judge incorrectly held that the present respondent was appointed by the Coast Guard Organisation whereas all through the said respondent was engaged as a Casual Labourer only and question of his appointment did not take place at all.

V. For that the Hon'ble Judge failed to appreciate that at the time when the offer was made, the respondent herein was serving as a casual labourer having temporary status and a written order vide Coast Guard RHQ (East) letter No. CP/0226/1 dated 18 Dec 2006 was issued to the respondent to report at Mandapam on or before 29 Dec 2006.

VI. for that the Hon'ble Judge erroneously hold that "In the absence of there being a specific directive requiring the petitioner to join at Mandapam, his subsisting

employment in temporary status cannot be held ought to have been terminated on its own”, whereas the Hon’ble Judge should have considered that casual labourer cannot be held to be of a subsisting employment under the present Appellants.

VIII. For that although the Hon’ble Judge held that the procedure adopted by the present appellants broadly corresponds to the requirement for compliance of Principles of Natural Justice and could not find any fatal flaw on that count by which the proceeding was conducted, the Hon’ble Judge without any justifiable grounds compensated the respondent by directing your appellant/petitioner to pay a sum of Rs. 75,000/- (Rupees Seventy five thousand only), which is based on no reason and by further quashing the report filed by the enquiry officer.

IX. For that the Hon’ble Judge by quashing the enquiry proceeding directed for re-induction of the respondent herein to the post of casual labour vacancy in the said post or be engaged in the same category in any other post in the Coast Guard Organisation if no vacancy is subsisting, within the period of eight weeks from the date of communication of the order.”

Mrs. Susmita Saha Dutta, Ld. Counsel appearing for the appellants, submits that the Hon’ble Single Bench erred in directing the appellants to pay a sum of Rs. 75,000/- as compensation to the writ petitioner/ the private respondent in the appeal although there is no denial of the fact that the private respondent was all along engaged in temporary status under the appellants/ the Union of India. It is submitted that facts being admitted *qua* the direction upon the private respondents to report for duties at Coast Guard Station Mandapam and, such direction having been accepted by the private respondent, the Hon’ble Single Bench could not have directed the appellants to re-induct the private respondent into service re-conferring upon him the status of a temporary worker.

It is further submitted that the principles of natural justice were followed in the Departmental Proceedings (*DP*) initiated by the appellants against the private respondent for his lapses in not reporting for duties at Coast Guard Station Mandapam. It is pointed out that the *DP* arose out of specific disobedience of the order of posting by the writ petitioner. It is argued that the Hon'ble Single Bench could not sit in appeal over a reasoned decision in the *DP* based on admitted facts.

Ld. Counsel for the appellants additionally submits that it was within the domain of the Disciplinary Authority (*DA*) to terminate the service of the private respondent on the grounds of his admitted disobedience to the order of his superior authority. Such termination stands justified by the fact that the private respondent was expected to discharge duties in a disciplined force *akin* to civilian service in the armed forces.

Referring to several stages of the *DP*, Ld. Counsel submits that due process was complied with and the conclusion of the *DA* is based on proper analysis and assessment of evidence. By failing to report for duties at his new posting, the *DA* had rightly concluded that the private respondent was guilty of violating Rule 3 of the Central Civil Service (Conduct) Rules.

For a complete appreciation of the arguments raised by Ld. Counsel, it would be necessary to briefly discuss the central facts.

This appeal arises out of the order of the Hon'ble Single Bench dated 23rd August 2012 in WP No. 20396(W) of 2009.

By the said impugned order, the Hon'ble Single Bench set aside the *DP* terminating the private respondent from service with the Coast Guard. The ground on which the private respondent was terminated from his service was disobedience to the orders of his superior authority by refusing to join his place of posting at Mandapam. The pleadings in the writ petition, *inter alia*, run as follows:-

“That the appellant initially joined the Coast Guard, Kolkata as a casual labourer. He was granted Temporary Status w.e.f. 1st September 1993. His designation therefore became Casual Labourer (Temporary Status or Ty Status).”

By an Office Memorandum (OM) dated 27th February 2004 the Coast Guard Head Quarters at New Delhi confirmed the private respondent to the position of Casual Labourer (Ty Status) on the basis of the following conditions. Namely, that the conferment of the temporary status would be without reference to creation/ availability of regular Group-D posts. Second, that such conferment of temporary status will not involve any change in his duties and responsibilities. His engagement will be on daily rates of pay on need basis. The respondent will be liable to be deployed anywhere within the recruitment unit/station/territorial circle/Coast Guard Region (East) on the basis of availability of work.

It is important for this discussion to set out Clause (C) of the OM dated 27th February 2004 in full:

“(c) The casual labourer who acquires temporary status will not be brought on to the permanent establishment unless he is selected through regular selection process for Group ‘D’ post.”

Regular benefits such as pay scale, DA, HRA, CCA, transport allowance, leave entitlement with further provision for contributing to General Provident Fund (*GPF*) were also part of the *OM* dated 27th February 2004. It was further stated that until the respondent is regularized he will be entitled to productivity linked bonus/ ad hoc bonus and fifty percent office service rendered in temporary status would be counted for the purpose of retirement effect after he is regularized.

It would be finally important to place Clause 4 of the *OM* dated 27th February 2004 in its entirety again, for the benefit of this discussion.

“4. Despite conferment of temporary status, the services of the casual labourer may be dispensed with by giving a notice of one month in writing. A casual labourer with temporary status can also quit service by giving a written notice of one month. The wages for notice period will be payable only for the days on which such casual worker is engaged on work.”

The respondent while continuing to work as Casual Labourer (Ty Status) applied to his higher authorities in August 2006 claiming regularization of service. His claim for regularization was considered by a Board. The Board recommended him for appointment in the regular Group-D post of sweeper at Coast Guard Station, Mandapam. The respondent apparently communicated his willingness to join in the regular Group-D post but subsequently retracted from his willingness by submitting an application on 27th November 2006 claiming a posting at Kolkata or, nearby.

Since the respondent did not join at his transferred place of posting at Mandapam despite repeated directions from the Coast Guard authorities to do so, it was decided by the Coast Guard authorities to institute a Departmental Proceeding (DP) under the CCS (Conduct) Rules as applicable to Government Servants. Of the two Articles of Charges issued against the respondent, Article of Charge I) stood Not Proved. However, the Article of Charges II) held the respondent to have disobeyed instructions by not joining at his transferred place of posting at Mandapam and thereby having acted in a manner unbecoming of a Government Servant.

The respondent thus, stood terminated from his service.

The Hon'ble Single Bench set aside such termination and directed reinstatement of the respondent without back wages but, with compensation.

While holding as above, the Hon'ble Single Bench expressed the following view:-

“In the memorandum dated 31st October, 2006, I find that the offer was conditional one and it was specified therein that if the petitioner accepted the offer, then he was to communicate his acceptance to the Commanding Officer, Coast Guard Station, Mandapam. It was also specified that if the acceptance was not received and the candidate failed to report for duty by the prescribed date, the offer would be treated as cancelled.

At the time the offer was made, the petitioner was serving as ‘casual labourer’ having temporary status. There is no substantive order of transfer requiring him to report to Mandapam. The letter of offer only specified that if he did not accept the order, then the same would be treated as cancelled. Case of the respondents is that such offer was made on the basis of his undertaking given

during the interview that he would serve at any place in India. But the letter by which the post was offered to him does not require him to report for duty at Mandapam. On the other hand, it stipulates that if he does not give his acceptance, the offer would be treated as cancelled. In the absence of there being specific directive requiring the petitioner to report to Mandapam, his subsisting employment in temporary status cannot be held to have been terminated on its own. The offer was conditional and in the event the petitioner did not accept the offer, it could not have been treated to be an act of disobedience of the order of his superior or acting in a manner unbecoming of a government servant. The petitioner has been cleared of the charges of unauthorized absence.”

In the considered view of this Appellate Bench, the principle of law would tritely apply that the service of a Government Servant begins with a contract and rises to a status. In the further view of this Court, the Hon'ble Single Bench was correct in holding that the respondent having merely received an offer to join the transferred place of posting at Mandapam, having resiled from such offer subsequently, the service contract of regularisation and transfer conditional thereto was not complete between the parties, i.e. the Coast Guard and the respondent.

In such view of the matter the respondent, not being willing to convert himself into a regular employee of the Coast Guard on the condition of transfer attached to such regularisation, could not have been treated as a full-fledged Government Servant for the purpose of conducting a DP under the CCS (Conduct) Rules. It is the respondent's case that having refused the offer of transfer on regularisation to join at Mandapam, he wanted to rejoin duties in his previous capacity of Casual Labourer (Ty Status) in Coast

Guard, Kolkata. However, the appellant has alleged that he was not allowed to join his earlier duties on the pretext of a transfer order and the attendant *DP*.

This Court is therefore of the view that the arguments of the Ld. Counsel for the Union of India to the effect that the *DP* has been fairly and squarely conducted, could carry reason only if such *DP* was jurisdictionally permissible. This Court holds that since the respondent, by refusing the conditional offer of regularisation on transfer, opted out of from the contract treating him as a regular Government employee, no *DP* could have been conducted against the appellant treating him as a regular Government Servant who disobeyed an order of transfer. The respondent therefore had a right to claim re-instatement as Casual Labourer (Ty Status).

Having found that the *DP* is jurisdictionally *void qua* the respondent, this Court is not required to examine the merits of the stand taken by Ld. Counsel for the Union of India defending the correctness of the procedure and decision making in the *DP*.

With reference to the above discussion, this Court relies on *AIR 1967 SC 1889 (at 1894), In Re: Roshan Lal Tandon vs. Union of India* of which Paragraph 6 reads as follows:-

“ It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is

more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by Salmond and Williams on Contracts as follows:"

The above legal position has been approved again in *AIR 1985 SC 1416 (at 1437) In Re: Union of India Vs. Tulsiram Patel at Paragraph 43A.*

In the backdrop of the above discussion, the order impugned of the Hon'ble Single Bench requires no intervention.

FMA 1030 of 2013 with CAN 1 of 2012 (Old No. CAN 10496 of 2012) stands dismissed.

There will be no order as to costs.

Parties shall be entitled to act on the basis of a server copy of the Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Aniruddha Roy, J.)

(Subrata Talukdar, J.)