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Court : Karnataka

Decided On : Oct-12-1995

Reported in : ILR1996KAR1274; 1996(2)KarLJ353

Judge : J. Eswara Prasad, J.

Appeal No. : Writ Petition No. 3846 of 1994 (S)

Appellant : Ningappa Lamani

Respondent : Additional Deputy Inspector General of Police, Yelahanka, Bangalore and Another

Judgement :

ORDER

Prasad, J.

1. The petitioner challenges the order of the first respondent dated 31-12-1994 in Annexure-A terminating the services of the petitioner under Rule 5(1) of the Central Civil Services (Temporary Services) Rules, 1965 as illegal and arbitrary and made without jurisdiction.

2. The petitioner is appointed as a Constable in C.R.P.F. (Central Reserve Police Force) and later his services were terminated. The petitioner filed a writ petition challenging the said order and this Court by judgment dated 19-3-1994 in W.P. No. 18841 of 1990 dismissed the writ petition, while observing that the petitioner is at liberty to file fresh application seeking some other suitable post and if such a request is made, the respondents were directed to consider the same. Pursuant to the said order, the petitioner made an application for appointment to suitable post and the petitioner was appointed as Water Carrier by order dated 13-7-1994 vide Annexure-R3. Later, on the representation of the petitioner, he was appointed by the first respondent as Constable by order dated 30-12-1994 in Annexure-R1. During the interregnum, the writ appeal filed by the petitioner against the order in the Writ Petition No. 18841 of 1990 was heard and the appeal was disposed as infructuous on 9-12-1984. Subsequently, the services of the petitioner were terminated by the impugned order by the first respondent which is questioned in this writ Petition.

3. The learned Counsel for the petitioner firstly contended that, the first respondent was not competent to terminated the services of the petitioner, in as much as he was appointed by the Recruitment Board. The second submission was that, the petitioner being a quasi-permanent employee, his services should not have been terminated under Rule 5 of the rules. The last submission was that the impugned order is a result of the mala fide action on the part of the first respondent.

4. The respondents have filed their objection, in which the stand taken is that the services of the petitioner were purely temporary and were liable to be terminated without any notice and that the services of the petitioner having been found not satisfactory, the impugned order was passed as per Rule 5. It was further stated that there were no mala fides on the part of the first respondent in issuing the impugned order and that the first respondent was competent to terminate the services of the petitioner as he was the Appointing Authority.

5. The first contention of the learned Counsel for the petitioner is without any substance, in as much as the first respondent was the Appointing Authority, as Annexure-R1 would show that the petitioner was appointed by the first respondent.

His services were terminated by the first respondent. Therefore, the contention of the Learned Counsel for the petitioner that the Recruitment Board is the Appointing Authority is without any basis.

6. The second submission of the learned Counsel for the petitioner is also devoid of substance. The petitioner was appointed purely on temporary basis under Annexure-B. It was also made clear that the services of the petitioner are liable to be terminated at any time without giving any reason.

7. Rule 5 of the rules lay down the procedure for recruitment to temporary Government servants, who are not in quasi-permanent service. What is contemplated under Rule 5 of the rules is, issuance of one month notice. In lieu of the notice, one month salary plus allowances for the period of notice can be claimed by the Government servant. The contention of the learned Counsel that the services of the petitioner is quasi-permanent service cannot be accepted. Rule 2(b) defines quasi-permanent service as temporary service, commencing from the date on which a declaration made under Rule 3 takes effect and consists of periods of duty and leave after that date; Rule 3 is in the following terms :

'3. A Government servant shall be deemed to be in quasi-permanent service, -

(i) if he has been in continuous temporary service for more than three years; and

(ii) if the Appointing Authority, being satisfied having regard to the quality of his work, conduct and character as to his suitability for employment in a quasi-permanent capacity under the Government of India, has made a declaration to that effect'.

8. A reading of the definition of the quasi-permanent service in Rule 2(b) would show that Government servant should have been in continuous temporary service for more than three years and there should be a declaration by the Appointing Authority to the effect that it is satisfied with the suitability of the Government servant for employment in a quasi-permanent capacity and the Government of India being satisfied having regard to the quality of his work and conduct of work. The petitioner has not been in continuous service for more than three years and

there is no declaration as required by Rule 3(ii). Hence, the claim of the petitioner that under Rule 3 he was a quasi-permanent servant is without any basis.

9. The service of the petitioner was purely temporary and was liable to be terminated in accordance with Rule 5. The petitioner was entitled to claim one month's salary plus allowances.

10. The contention regarding mala fides is also baseless in as much as no material was placed before the Court to show that the first respondent acted with mala fide intention. On the other hand, the fact that the petitioner was immediately appointed as Water Carrier pursuant to the order of this Court in the writ petition and was later appointed as Constable at his request, will clearly show that the first respondent acted bona fide and the allegation of mala fides is totally unwarranted, in the circumstances of the case.

11. The first respondent was entitled to terminate the services of the petitioner, whose appointment was temporary, on the ground that the first respondent was not satisfied with the work of the petitioner. It has to be noted that the petitioner was in a paramilitary force, in which certain discipline and efficiency are required.

12. For all the aforesaid reasons, I do find any good reason to interfere with the impugned order. Hence, this writ petition is dismissed. This order will not preclude consideration of the case of the petitioner for any other appointment.