

Harish Kumar Verma Vs. Union of India (Uoi) and ors.

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Court : Central Administrative Tribunal CAT Delhi

Decided On : Dec-08-1998

Judge : L Swaminathan, M A K.

Appellant : Harish Kumar Verma

Respondent : Union of India (Uoi) and ors.

Judgement :

1. The appellant is aggrieved by the order dated 9.11.1995 terminating his services under the proviso to Sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 (hereinafter referred to as 'Temporary Service Rules') with immediate effect on payment of one month's pay and allowances in lieu of notice.

2. The brief facts of the case are that the applicant was appointed as a direct recruit Stenographer Grade 'III' by letter dated 19.10.1982.

One of the conditions in the appointment letter is that he will remain on probation for a period of two years which may be extended or curtailed at the discretion of the appointing authority. According to the applicant, he had successfully completed the probation period on 22.9.1984 i.e. after two years service as Stenographer Grade-III.

Learned Counsel has submitted that since the respondents have not extended the probationary period, the applicant is deemed to have been confirmed in the post of

Stenographer at the end of two years' period of probation. He has stated that junior persons to the applicant have since been confirmed as Stenographer Grade-III w.e.f. 1.4.1988, whereas no such order has been passed in respect of the applicant. He, however, submits that as the applicant is deemed to have been confirmed after two years satisfactory probation period, he is no more a temporary Government servant and the Temporary Service Rules cannot be applied.

The applicant relies on Ashok V. David and Anr. v. Union of India (1996(2) SLJ 1), 3. The brief facts of the present case are that the applicant was detained in police custody on 11.6.1986 for a period exceeding 48 hours and a criminal case was under investigation by the DCP Women Cell, Delhi. The applicant has stated that his wife had committed suicide on 9.6.1986 and he along with his mother and brother were arrested in that connection. He was subsequently granted bail and released from judicial lock-up on 28.6.1988. As the applicant had remained in police custody for more than 48 hours he had been placed under suspension w.e.f.

11.6.1988 by order dated 23.7.1986 under Rule 10(2) of the CCS (CCA) Rules, 1965 (hereinafter referred to as 'the 1965 Rules'). According to the applicant, his case for revocation of suspension was not reviewed, excepting for in raise of the subsistence allowance later on.

Thereafter, the impugned order dated 9.11.1995 terminating his services was passed. Mr. B.B. Srivastava, learned Counsel has submitted that since the applicant has acquired the status of a confirmed direct recruit, the provisions of the Temporary Service Rules do not apply and hence the impugned order is void ab initio. He has also submitted that termination of the applicant's services without revoking the suspension order is ultravires the provisions of Rule 10(5) of the 1965 Rules. He has submitted that the applicant has rendered more than 13 years of service, which includes the suspension period and he, therefore, cannot be treated as a temporary Government servant not the respondents can refuse to confirm him when juniors have been confirmed.

Learned Counsel has also very vehemently submitted that the impugned termination order is punitive in nature and is based on the criminal proceedings

which were pending against the applicant and, therefore, it could not have been passed under the proviso to Rule 5 of the Temporary Service Rules. He has submitted that the respondents had kept quiet for more than 9 years and suddenly woke up and passed the impugned order which is illegal and should be set aside. The learned Counsel has relied on *Jarnail Singh v. State of Punjab* (AIR 1986 SC 1626), *Krishna Digamber Deshpandey v. Commissioner of Income-tax and Anr.* (1993(1) SLJ 505 (CAT), *Om Prakash Goel v. H.P. Development Corpn.* (1991 (3) SCC 291) and other cases given in the list, placed on record, to support his case that the impugned termination order is punitive in nature. He has submitted that in the facts and circumstances of the case, as held by the Supreme Court in *Jarnail Singh 's case* (supra), the Tribunal should lift the veil to see the real status as well as the foundation of the impugned order dated 9.11.1995 which, according to him, is nothing but based on the criminal case which was then pending against the applicant. Thereafter while this O.A. was pending in the Tribunal, the Addl. Sessions Judge, Delhi, by order dated 17.7.1998 has acquitted the accused, including the applicant, of the charges framed against them. According to Mr. B.B. Srivastava, learned Counsel, for the respondents have passed the impugned termination order, on the ground that the criminal case was pending against him and in view of the fact that the applicant has now been, acquitted, the basis for the impugned termination order again is no longer there. He has, therefore, submitted that the impugned termination order should be quashed and set aside and the applicant should be reinstated in service with all consequential benefits.

4. The respondents have filed their reply controverting the above facts. They have denied that the applicant stood automatically confirmed in the post of Stenographer at the end of two years., They state that it requires a specific order to be passed by the competent authority of confirmation. They have also stated that he could not be considered along with his juniors as he was under suspension and his status was that of a temporary Government servant and not a confirmed employee. Learned Counsel for the respondents has very vehemently submitted that since the applicant was involved in a very serious criminal case which has been pending in the Criminal Court and the respondents have waited sufficiently long for more then nine years, it was not improper or illegal for them to have passed the impugned termination order under the Temporary Service Rules. He

was, however, not able to explain as to why and under what provisions the respondents have waited for a period upto nine years and not more or less and how that number of years as such was relevant to the situation. There is also no explanation (sic) as to whether they had conducted any review of the suspension order as required under the relevant Government of India instructions during the intervening period to consider whether the suspension order should be revoked or not. However, the learned Counsel has stressed that the respondents have, terminated the services of the applicant by an order simplicitor as he was only a temporary Government servant under the Temporary Service Rules. He has referred to the DOP&T letter dated 22.6.1987 where it is stated that if a Government servant is arrested in connection with registration of a police case under Section 304-B IPC i.e. "Dowry Death," he shall be placed under suspension immediately. He has also referred to a number of judgments, list of which is placed on record. He has submitted that, as held by the Supreme Court in *Khem Chand v. Union of India and Ors.*

(AIR 1963 SC 687), an order of suspension of a Government servant does not put an end to his service under the Government and he continues to be a member of the service inspite of that order. His contention is that since the applicant was not confirmed in service and he continued to be a temporary Government servant, the impugned termination order is legal and valid. He has also relied on *Union of India and Ors. v. Bihari Lal Sidhana* (1997 (2) SLJ 25 SC). The main thrust of the argument advanced by Mr. R.P. Aggarwal, learned Counsel is that the impugned order being an order simpliciter which has been passed against a temporary Government servant under the Temporary Service Rules is not illegal, especially when the respondents have waited for over nine years for the case to be concluded in the Criminal Court and thereafter passed this order. Learned Counsel also submits that as a temporary Government servant's he has no right to hold the post and his termination by an order which does not cast any stigma, is valid (*State of U.P. v. Kaushal Kishore Shukla* (1991)(1)SCC 691). He also submits that services of the applicant have been terminated in accordance with the terms and conditions of his service. He has also relied on *Farid Ahmed v. Union of India* (1998 (1) SLJ (CAT 530) and *Geesh Kaushik v. The Secretary Ministry of Communications* (1998(2) SLJ 501). In the circumstances, he has submitted that

since there is no illegality in the impugned order of termination, which requires any further consideration as it is an order simpliciter passed under the Temporary Service Rules, there is no merit in the O.A. and the same may be dismissed.

5. We have carefully considered the pleadings, submissions of the learned Counsel for the parties and the cases relied upon by them.

6. No doubt the impugned order dated 9.11.1995 purports to have been passed under the proviso to sub-rule (1) of Rule 5 of the Temporary Service Rules and does not on the face of it cast any stigma on the applicant and is an order "Simpliciter." However, from the reply filed by the respondents and the submissions made by Mr. R.P. Aggarwal, learned Counsel, it is pertinent to note that the respondents have passed the impugned order of termination on the ground that they had waited long enough and had kept the applicant long enough under suspension on the ground of pendency of the criminal case against him which had still not concluded. The suspension order dated 23.7.1986 has been passed by the respondents under Rule 10(2) of the 1965 Rules in which it has been also stated that a criminal offence was under investigation by the DPC, Women Cell, Delhi. The respondents have not been able to satisfactorily explain as to why they had to wait upto 9 years which they thought was long enough but could not have taken the present impugned action earlier, say after 5 years. The passing of the order on 9.11.1995, while admittedly the criminal case was still pending against the applicant, has been a date which has been arbitrarily picked and the learned Counsel for the respondents has not given any satisfactory explanation for the action taken by them, after waiting several years. However, it is relevant to note that while this O.A. was pending which has been filed on 18.3.1996, the Addl. Sessions Judge, Delhi by order dated 17.7.1998 has acquitted the applicant. No appeal appears to have been filed against this order and this order has, therefore, become final and binding.

7. In Jarnail Singh's case (supra) the Supreme Court has held as follows; "The mere form of the order is not sufficient to hold that the order of termination was innocuous and the order of termination of the services of a probationer or of an ad hoc appointee is a termination simpliciter in accordance with the terms of the

appointment without attaching any stigma to the employee concerned. It is the substance of the order i.e. the attending circumstances as well as the basis of the order that have to be taken into consideration. In other words, when an allegation is made by the employee assailing the order of termination as one based on misconduct, though couched in innocuous terms, it is incumbent on the Court to lift the veil and to see the real circumstances as well as the basis and foundation of the order complained of...."Babu Lal v. The State of Haryana and Ors. (1991 (1) SLJ 221) the Supreme Court has held that a person who was suspended on the ground of pendency of criminal proceedings against him on being acquitted of the criminal charge was entitled to be reinstated. The Court held that the order of suspension made by Respondent 2 is admittedly on the sole ground that criminal proceeding was pending against the appellant. It was held: "... the order of termination had been made illegally during the pendency of the order of suspension and also during the pendency of the criminal proceeding which ultimately ended with the acquittal of the appellant. It is the settled position in law that the appellant who was suspended on the ground of pendency of criminal proceeding against him, on being acquitted of the criminal charge, is entitled to be reinstated in service.... It is well settled by several decisions of this Court that though the order is innocuous on the face of it still then the Court if necessary, for the ends of fair play and justice can lift the veil and find out the real nature of the order and if it is found that the impugned order is penal in nature even though it is couched' with the order of termination in accordance with the terms and conditions of the order of appointment, the order will be set aside. " 9. In the present case, admittedly the respondents have passed the impugned termination order which on the face of it appears to be innocuous but has been passed because of the long pending criminal case against the applicant, for which he cannot be blamed. Therefore, after hearing the learned Counsel for the respondents and on lifting the veil, we find that the order is actually punitive in nature and in the circumstances the same will have to be set aside. The respondents have also issued the impugned termination order without revoking the suspension order dated 23.7.1986, which is contrary to the order of the Tribunal in Krishna Digamber Deshpandey 's case (supra) Further in view of the order passed by the Criminal Court acquitting the applicant of the criminal charges by order dated 17.7.1996,

the other cases relied upon by the respondents will not assist them, particularly taking into account the judgment of the Supreme Court in Babu Lal's case (supra) which is fully applicable to the facts and circumstances of the case.

In the circumstances, we reject the contentions of the learned Counsel for the respondents that the impugned termination order is an order simpliciter or that the applicant has no case.

10. In the result, for the reasons given above, the O.A. is allowed and the impugned termination order dated 9.11.1995 is quashed and set aside. The applicant shall be reinstated in service, as if the termination order has not been passed, within one month from the date of receipt of a copy of this order. The respondents shall pass consequential orders, including his confirmation, and review the suspension order within 3 months from the date of receipt of a copy of this order. In the circumstances, parties to bear their own costs.

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