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Court : Kerala

Decided On : Aug-21-1957

Reported in : (1958)IILLJ82Ker

Judge : M.S. Menon, J.

Appellant : Krishnan

Respondent : Divisional Engineer of Telegraphs

Judgement :

M.S. Menon, J.

1. The petitioner was a temporary telephone operator attached to the Telephone Exchange at Cochin. His services were terminated by Ex. B, a memorandum dated 27 September 1956, which reads as follows:

You are hereby informed that your services are not required from the afternoon of 30 September 1956. In lieu of one month's notice required to be served on you under rule 5 of the Central Civil Services (Temporary Services) Rules, 1949, you will be paid one month's pay and allowances, i.e., for the month October 1956. It will be disbursed to you on 1 October 1956 along with your pay and allowances, for the month of September.

2. It is agreed that the petitioner's employment is governed by the Central Civil Services (Temporary Services) Rules, 1949. Rule 5 of the said rules is in the following terras:

(a) The service of a temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by notice in writing given either by the Government servant to the appointing authority, or by the appointing authority to the Government servant.

(b) The period of such notice shall be one month, unless otherwise agreed to by the Government and by the Government servant.

I am not prepared to accept the contention that the granting of one month's pay and allowances in lieu of one month's notice (as was done by Ex. B) was not a proper or sufficient compliance with the stipulation embodied in rule 5.

3. The only other contention urged before me is that the termination of the petitioner's services violates Article 311 of the Constitution and should be set aside on that ground. As pointed out in : AIR1954 Cal495 Article 311 makes no distinction between permanent and temporary employees and I propose to assume that the petitioner is entitled to the safeguards provided therein.

In order to attract Article 311, however, there must be a dismissal or removal or reduction in rank. In other words, Ex. B must spell a punishment and not a mere termination of service in accordance with the contract of employment. Basu puts the matter thus:

It is now settled that Article 311(2) is attracted only when a civil servant is 'reduced in rank,' or dismissed or re- moved, that is to say, his services are terminated before the normal period of his service and against his will by way of penalty. [Commentary on the Constitution of India, Vol. II, p. 476.]

On the evidence before me it is impossible to say that there has been a dismissal, removal or reduction in rank within the meaning of Article 311 of the Constitution.

5. In a similar situation the Supreme Court said:

In our opinion, Article 311 has no application because this is neither a dismissal nor a removal from service, nor is it a reduction in rank. It is an ordinary case of a contract being terminated by notice under one of its clauses.

and dismissed the petition : [1953]4SCR655 .

6. In that case the Supreme Court sketched the background of Article 311 as follows:

The services in India have long been afforded certain statutory guarantees and safeguards against arbitrary dismissal or reduction in rank. Under Section 240, Government of India Act, 1935, the safeguards were limited to those two cases. Under the present Constitution, a third was added, namely, removal from service.

The basis for the assumption that under Section 240 of the Government of India Act, 1935, the safeguards were limited to dismissal and reduction in rank and did not include removal from service is not clear to me. Sections 240 and 277 occurred in Part X of the Government of India Act, 1935, and Section 277(1) said :

In this part of this Act . . . references to dismissal from His Majesty's service include references to removal from His Majesty's service. [See 1953 Supreme Court Appeals, Notes Section, pp. 66 and 67.]

7. As stated by the Bombay High Court in : (1957)11LLJ189Bom :

In the case of temporary servant the tenure of his service may be regulated by a written contract, it may be regulated by rules, and in the absence of a contract or the rules it would be regulated by the principles of common law. If the contract between the Government and the temporary servant permits the Government to dispense with his services without notice and at any time, the Government is as much entitled to do so as any other private employer.

What has got to be borne in mind is that it is only in cases falling within Article 311 or Section 240(3) that the Government as an employer is bound to conform to certain rules of natural justice indicated in that article and that section. But if the case does not fall either within the ambit of Act. 311 or Section 240(3), then the

relationship of master and servant is governed by the rules if there are any which would constitute the contract of employment, or it would be governed by common law if the rules do not provide for the employment of the particular person.

8. As Ex. B is in conformity with the rules governing the petitioner's employment and as Article 311 of the Constitution is not attracted, this petition must fail and should be dismissed. Judgment accordingly.

9. In the circumstances of the case, I make no order as to costs.

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