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Court : Rajasthan

Decided On : Dec-19-1969

Reported in : 1969WLN607

Judge : P.N. Shinghal, J.

Appeal No. : S.B. Civil Second Appeal No. 534 of 1962

Appellant : State of Rajasthan

Respondent : Prem Nath

Disposition : Appeal allowed

Judgement :

P.N. Shinghal, J.

1. This second appeal is by the defendant, the State of Rajasthan, and it is directed against the appellate judgment and decree of District Judge, Ganganagar, dated June 2, 1962. The facts of the case are quite simple and to the extent they are stated in this judgment they are not in controversy before me. The plaintiff last held the post of lower division clerk in the office of Block Development Officer, Padampur, Ganganagar District, as a temporary employee. A charge sheet was served on him on June 5, 1958. and he was required to file a reply by June 19, 1958. It was received by the plaintiff on June 10, 1958 and he sent his reply on

June 18, 1958. But before the receipt of his reply he was removed in pursuance of an order of the Collector of Ganganagar dated June 12, 1958, which was conveyed by the District Development Officer vide order Ex. 7 dated June 19, 1958. That order merely stated that the temporary services of Shri Premnath L.D.C. of your office are terminated'. The plaintiff preferred an appeal against that order and the Deputy Development Commissioner passed an order on 28-1-1959 upholding the termination of the plaintiff's service but directing payment of one month's salary to him. The plaintiff then instituted the present suit. He based it on the plea that he was a permanent employee and the order terminating has service was made without giving him a hearing or making any enquiry. It was also pleaded that the plaintiff was not given a month's notice in accordance with the service rules.

2. The defendant denied the claim and took the plea that the plaintiff was a temporary employee and that even though a charge sheet was served on him, his temporary service was terminated without making an enquiry. It was also pleaded that the Deputy Commissioner having made an order, on the the plaintiff's appeal, for the payment of a month's salary to him, the plaintiff's claim in the suit was quite unjustified. Some other defences were also taken, but it is not necessary to refer to them.

3. The trial court dismissed the suit but its judgment and decree have been set aside by the lower appellate court The appellate court took the view that it was necessary for the defendant to pay one month's salary to the plaintiff before the termination of his service, and that for non-compliance of this provision of Rule 23 A of the Rajasthan Service Rules the plaintiff was entitled to succeed in his claim in the suit. That court therefore gave the declaration that the order of the Collector terminating the plaintiff's service was illegal and invalid. The defendant has now preferred the present second appeal.

4. It has been argued by Mr. Rajnarain, Additional Government Advocate, that the learned Judge of the lower appellate court committed an error in understanding and applying the provisions of Rule 23A of the Rajasthan Service Rules, and that the impugned order (Ex. 7) is in accordance with the law. He has therefore argued

that the plaintiff could only claim the pay and allowance for a period of one month and no more. The learned Counsel has relied on Union of India v. Kartar Singh and Anr. 1968 SLR 619. On the other hand, Mr. Dutt has argued that even though the plaintiff was a temporary employee, Article 311 of the Constitution was attracted because he was served with a charge sheet and his removal could be made only after a regular enquiry and an adverse finding on the basis of the charge sheet. The learned Counsel has supported his argument by a reference to the State of Uttar Pradesh v. Shri Madan Mohan Nagar 1967 1967SLR 147. In the alternative, he has argued that the payment of one month's pay and allowances was a condition precedent to the termination of the plaintiff's service in terms of Rule 23A of the Rajasthan Service Rules and that as this was not done, the order terminating his service is illegal and inoperative. For this latter submission, the learned Counsel has placed reliance on K.V. Gopinath v. Senior Superintendent R.M.S. and 1969 SLR 494 and Balagopalan v. State of Kerala 1963 KLT 1167.

4. The plaintiff, it is now admitted, was at temporary employee. He was served with a charge sheet dated June 5, 1958 and was called upon to make a reply by June 19, 1258. The charge sheet was received by him and he sent his reply on June 18, 1958, But it is admitted that no formal enquiry was at all made in pursuance of the charge sheet and no finding was recorded on the charge sheet. The plaintiff's service was not therefore terminated as a result of any finding on the charge sheet. On other hand, his service was terminated in pursuance of Rule 23A of the Rajasthan Service Rules which admittedly governed the conditions of his service. A perusal of order Ex. 7 shows that it does not refer to the charge sheet or the imposition of any penalty on the plaintiff. It also does not cast any stigma on him and merely states that the plaintiff's temporary services were terminated. In these facts and circumstances, there could be no question of the application of Article 311 of the Constitution. I am fortified in this view by the decisions of their Lordship of the Supreme Court in Champaklal Chimanlal Shah v. The Union of India and State of Punjab.and Anr. v. Sukh Raj Bahadur : (1970)ILLJ373SC . State of Utter Pradesh v. Shri Madan Nagar 1967 SLR 147 cited by Mr. Dutt was different case for a clear statement appeared in it, on the face of the order, that the service of the incumbant had been terminated because he had outlived his usefulness. That decisions has no relevance for purposes of the present case.

6. It is true that the Collector of Ganganagar recorded an order (Ex. 1) on June 12, 1958 to the effect that the plaintiff did not like any place, any officer or any work and that this showed that he was not keen to serve. The Collector therefore decided to terminate the temporary service of the plaintiff, and it has been argued by Mr. Dutt that the order casts a stigma and will attract Art. 311 of the Constitution. I am however unable to agree with this contention. The order of the Collector does not purport to cast an stigma on the plaintiff, but even if it is assumed that it has any such odour, it is admitted that the order was not conyeved to the plaintiff so that it remained' on the file and formed the basis for the issue of order Ex. 7 dated June 19, 1958. As has been stated, no mention was made in Ex. 7 of the termination of the plaintiff's service as it merely stated that his temporary services were terminated with effect from the date of the order.

7. It has next been argued by Mr. Rajnarain that the learned Judge of the lower appellate court committed an error of law in taking the view that the service of the plaintiff could not be terminated without paying him a month's salary at the time of terminating his service. The learned Counsel has frankly conceded that in considering the correctness of his argument I may leave out of consideration the appellate order of the Deputy Development Commissioner dated January 28, 1959. The argument of Mr. Rajnarain therefore is that the impugned order (Ex. 7) cannot be said to be invalid merely because that it did not state that the plaintiff should be paid a month's salary in lieu of notice or because that salary was not paid to him at the time of the termination of his service. Rule 23A as it stood at the relevant time dealt with the termination of the service of temporary employee. It provided for such termination by one month's notice in a case like the present where it is admitted that the employee was not in quasi-permanent service and there was no agreement between the parties to the contrary. It read as follows:

23. A. (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 appointing authority or by the appointing authority to the Government servant.

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

Provided that the service of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice, or, as the case may be, for the period by which such notice falls short of one month or any agreed longer period. The payment of allowances shall be subject to the conditions under which such allowances are admissible.

It was therefore permissible to terminate the service of a temporary employee 'forthwith', but the condition of payment of his pay and allowances for the period of notice. There was however nothing in the rule to require that the payment shall be a condition precedent to the termination of the service of the employee or that it shall be made at the time of the termination of the service. I have therefore no doubt that the learned Judge of the lower appellate court committed an error of law in interpreting the rule.

8. It is true that a different view has been taken in Balagopalan v. State of Kerala 1963 KLT 1167, which has been followed in K.V. Gopinath v. Senior Superintendent R.M.S and Anr. 1969SLR 494. The decision in Balagopalan's 1963 KLT 1167 turned on two considerations. Firstly, there was the fact that the Government did not offer a month's salary in lieu of notice to the employee even during the course of the hearing of the case in the High Court. There is no such allegation in the present case Secondly, their Lordships took into consideration the decision of their Loardships of the Supreme Court in State of Bombay and others v. Hospital Mazdoor Sabha and Ors. : (1960)ILLJ251SC . The decision of their Loardships of the Supreme Court was however based on a consideration of the wordings of section 25 of the Industrial Disputes Act, 1947, which was worded quite differently inasmuch as it provided that no workman shall be retrenched untill he had been paid at the time of retrenchment compensation which shall be equivalent to fifteen days average pay for every completed year of service or any part thereof in excess of six months This was why their Lordships of the Supreme Court took the view that it was difficult to accede to the agreement that when the

section imposed in mandatory terms a condition precedent, non-compliance with that condition would not render the impugned retrenchment invalid. With utmost respect to the learned Judges who decided Balagoyalan's case 1963KLT 1167, it appears to me that the view taken by their Lordships could not be justified by a reference to the decision of their Lordships of the Supreme Court in State of Bombay and Ors. v. The Hospital Mazaoor Sabha and Ors. : (1960)ILLJ251SC . As the decision in Balagopalan's case was made the basis of the decision in K.V. Gopinath v. Senior Superintendent R. M. S. and Anr. : (1960)ILLJ251SC it is not necessary for me to consider it separately.

9. The view taken by me regarding the wordings of Rule 23A of the Rajasthan Service Rules is in fact fortified by the High authority of their Loardships of the Supreme Court in State of Utter Pradesh v. Gopi Nath Rai 1969 SLR 646. In that case their Lordships were considering provisions almost similar to those of Rule 23A of the Rajasthsn Service Rules. They held that the rule gives the option to the Government to 'either give a month's notice or or to substitute for the whole or part of this period of notice pay in lieu thereof. Their Lordships made the further observation on that the rule does not say that the pay should be given in cash or by cheque at the time of the notice is issued, and that it entitled the government servant to receive the pay in lieu of the notice 'in the ordinary course.

10. In the present case, there is however the further fact that order Ex. 7 does not at all speak of the payment of salary in lieu of the notice, and the question is whether the omission invalidates the order? Mr. Dutt has argued that if the Collector purported to terminate the service of the of the plaintiff under rule 23A. of the Rajasthan Service Rules, he could do so only in accordance with the requirement of that rule, namely, by giving the notice or by paying the salary in lieu of it. Since this was not done, the learned Counsel has argued that it was not at all open to the Collector to invoke Rule 23A of the Rajasthan Service Rules for the purpose of terminating the service. He has further pointed out that, as a matter of fact, order Ex. 7 does not at all make a reference to that rule. Reference has been made to Nazir Ahmad v. King Emperor AIR 1936 IPC 253(2) for the submission that any other method of termination of the plaintiff's employment must be taken to have been forbidden by the law.

11. I have gone through the decision in Nazir Ahmad's case AIR 1936 IPC 253 (2). It was quite a different case as it related to the recording of the confession of an accused under Section 164 Cr.P.C, and nothing was tendered in evidence for the purpose of showing that there was compliance with the requirements of Section 164 or Section 364 Cr.P.C. It was in that connection that their Lordships made the observation that the rule which applied was that where power is given to do a certain thing in a certain way the thing must be done in that way or not all. The observation of their Lordships cannot have any application to a case like the present.

12. A perusal of the aforesaid proviso to Rule 23A shows that in a case where the appointing authority terminates the service of temporary employee forth with, the employee is entitled to payment of a sum equivalent to the amount of his pay and allowances for the period of notice. He can therefore maintain a claim for the recovery of the money according to law, but it cannot be said the mere failure to make a positive statement in the order terminating the employee's service that he will be so. entitled, will invalidate the order. This view finds support from the decision in Union of India v. Kartar Singh and Anr. 1968 SLR 619.

13. It will thus suppear that that the learned Judge the lower appellate court committed an error of law in taking the view that the order terminating the plaintiff's service was invalid because salary in lieu of the period of the notice was not given to the plaintiff before his service was terminated. Mr. Rajnarain has stated that the appellant is always willing to pay that salary and that the plaintiff had in fact obtained an order from the Deputy Development Commissioner to that effect as far back as on January 28, 1959.

14. The appeal is allowed, the impugned judgment and decree are set aside and the plaintiff's suit is dismissed with costs. This will however not preclude the plaintiff from receiving the salary in lieu of the notice contemplated under the proviso to Rule 23A of the Rajasthan Service Rules. Leave to appeal is prayed for but is refused.

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