

**Pradeep Singh Vs. State and ors.**

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**Court :** Rajasthan

**Decided On :** Sep-17-1985

**Reported in :** 1985(2)WLN741

**Judge :** Kishan Mal Lodha and; Jas Raj Chopra, JJ.

**Appeal No. :** D.B. Civil Special Appeal No. 296 of 1985

**Appellant :** Pradeep Singh

**Respondent :** State and ors.

**Disposition :** Appeal dismissed

**Judgement :**

**Kishan Mal Lodha, J.**

1. This appeal under Section 18 of the Rajasthan High Court Ordinance, 1949 is directed against the order dated August 29, 1985 passed by the learned single Judge, by which he dismissed the writ petition of the appellant.

2. We may briefly state the facts which have given rise to this appeal. The petitioner-appellant was appointed by means of order Anx. 3 dated May 1, 1985. It was, amongst others, mentioned that he is being appointed temporary (sic) period of six months. By the same order, besides the petitioner appellant, 19 more persons were appointed. Subsequently, it appears that by means of Anx. 4 dated

August 17, 1985, the appointment order which was issued in favour of the petitioner-appellant was cancelled and his services were terminated under Rule 23-A of the Rajasthan Service Rules, 1951 (for short 'the Rules'). It is further mentioned therein that he is being given notice from August 17, 1985 and his services shall stand terminated from September 17, 1965. The petitioner-appellant filed a writ petition in this Court on August 26, 1985 seeking to quash the order Anx. 4 dated August 17, 1985. Along with the writ petition, the petitioner-appellant submitted Anx. 1 dated July 13, 1981; Anx. 2 dated April 30, 1985 Anx. 3 dated May 1, 1985 and Anx. 4 dated August 17, 1985. It may be mentioned that Anx. 1 dated July 13, 1981 is a Circular issued by the State Government and that was for the purpose of making selection of Class IV Servants. A Committee was constituted consisting of Regional Deputy Director, District Ayurvedic Officer and Senior Medical Officer. Annexure 2 is the copy of the letter dated April 30, 1985 for the purpose of selecting Ward Boy. The learned single Judge, by his order dated August 29, 1985, after considering the contentions that were raised before him, dismissed the writ petition. Hence, this appeal as aforesaid.

3. It may be stated that before, the learned single Judge, the order Anx. 4 relating to termination of the services of the petitioner appellant under Rule 23-A of the Rules was assailed as illegal on the grounds (1) that it is not a speaking order; (2) that no opportunity of hearing was given before terminating the services of the petitioner; and (3) that the petitioner-appellant was selected by a regular Committee for a period of six months, and therefore, the termination could not be made under Rule 23-A of the Rules.

4. It appears from the impugned order that the learned single Judge held that the appointment of the petitioner appellant was purely on temporary basis for a period of six months and, therefore, his services when sought to be terminated by giving one month's notice under Rule 23-A of the Rules, is legal and there cannot be said to be any illegality committed by issuing the termination order. He repelled the contention that in this case, the order should have been a speaking one or that it was necessary to have afforded any opportunity of hearing to the petitioner-appellant before passing the order under Rule 23-A of the Rules.

5. We have heard learned counsel for the appellant as well as learned Addl. Govt. Advocate. Having heard them, we have come to the conclusion that this appeal has no merit.

6. Learned counsel for the appellant has reiterated the three arguments that were raised before the learned single Judge, before us. We have considered the order Anx. 3, by which the petitioner-appellant and 19 other persons were appointed temporarily for a period of six months and also the order Anx. 4 dated August 17, 1985. The petitioner-appellant was appointed temporarily for a period of six months, and so his service could be terminated in accordance with Rule 23-A of the Rules and in these circumstances, we agree with the learned single Judge that neither any speaking order was required nor any opportunity was required to be afforded to the petitioner-appellant before terminating his services.

7. As regards the third contention that was raised before the learned single Judge that the petitioner-appellant was appointed by the Selection Committee against a substantive vacancy for a period of six months, and as such his services could not be terminated under Rule 23-A of the Rules, it may be stated that this contention was also rightly rejected by the learned single Judge. It may be stated that Rule 14 of the Rajasthan Class IV Services (Recruitment and Other Service Conditions) Rules, 1963 ('the Rules' here in) deals with the source of recruitment and it occurs in Part IV which provides the procedure for direct recruitments. Rule 18 of the Rules provides for urgent temporary appointment laying down, inter-alia, that the person eligible for appointment to the post for direct recruitment to the service, may be directly appointed in accordance with the provisions of the Rules, The Selection Committee, which was appointed for making selection of Class IV employees had selected in accordance with the provisions of the Rules and after that the selected persons were appointed for a period of six months. That by itself would not show that the petitioner-appellant was appointed against a substantive vacancy and when the appointment was made temporary for six months, it is not open to the petitioner-appellant to say when he accepted the appointment on the terms contained in the order that as he was regularly appointed by a selection committee, his services could not be terminated under Rule 23-A of the Rules.

8. At the time of admission on September 5, 1985, learned counsel for the appellant invited attention to Dr. Umrao Mal Mathur v. The State of Rajasthan 1975 RLW 552. Here also, before us he submitted that as the order Anx. 3 dated May 1, 1985 is of temporary appointment for six months, Rule 23-A. of the Rules could not have been invoked. We have considered Dr. Umrao Mal Mathur's case 1975 RLW 552 with requisite care and attention. The whole argument has been built by the learned counsel for the appellant on the following observations made by the learned Judge in para 5 of the report:

As I have already observed above, the provisions of Rule 23-A cannot be made applicable to the termination of the services of a temporary Government servant, who was appointed on a fixed term.

The petitioner in that case attained the age of superannuation on July 7, 1969. He was, however, retained in the services of the Govt. and was granted extension on the post he was working upto Feb. 26, 1971. Thereafter, he was reemployed on the post that he held at the time of attaining the age of superannuation for a period of one year by order of the State Govt. dated July 8, 1971 w.e.f. March 1, 1971. Thereafter, during the course of the period of re-employment, an order was passed by the State Govt. dated September 7, 1971, which was served and by which the order of re-employment which was made on July 8, 1971 was cancelled. The petitioner assailed that order cancelling the period of his re-employment. In that connection, the learned Judge considered Rule 23-A of the Rules and observed that according to the contract of re employment, the petitioner in that case was to continue in service until expiry of the period of one year beginning from March 1, 1971 and, therefore, his service period of re-employment could not have been terminated under Rule 23-A of the Rules. However, in that context the learned Judge made the above excerpted observations. A close reading of them shows that they were made while considering Rule 23-A of the Rules as was in vogue. It is distinguishable on facts. Be that as it may, the same learned Judge while sitting in Division Bench while considering the appointment order which was almost identical in State of Rajasthan & Anr. v. Prem Shanker D.B. Civil Special Appeal No. 280/81, decided on October 15, 1981, held that the service of a temporary Govt. Servant, who has not completed three years of continuous

government service, could be terminated by giving one month's notice on account of exigencies of employment. The decision rendered in State of Rajasthan's case (supra) was followed by us in State of Rajasthan and Ors. v. Birbal Ram D.B. Civil Special Appeal No. 273/81, decided on September 16, 1985. The position thus, boils down to this that the services of a temporary government servant, may it be for a fixed period, can be terminated under Rule 23-A of the Rules. Learned counsel sought to argue that the order of termination is penal in character and it has arbitrarily been passed against the petitioner-appellant. In the first instance, it may be stated that no such contention was raised before the learned single Judge and we have not advantage of the views of the learned single Judge on this point. Secondly, it may be stated that no foundation has been laid down in the writ petition by the petitioner-appellant from which it can reasonably be inferred that the order is arbitrary or penal or positive in character. It may be mentioned that merely saying that the order is arbitrary or penal in character, is not sufficient. That averment is to be supported by stating relevant facts or for that matter the documents having bearing on this. This -was not done. Learned counsel submitted that before the learned single Judge, these points were raised as is clear from the memo of appeal. It appears that only three grounds were raised before the learned single Judge while assailing the termination order. Suffice it to mention, that this is not the correct course to be followed in such circumstances. Learned counsel in support of his contentions, invited our attention to State of U.P. v. Singhara Singh : [1964]4SCR485 , B.P. Royappa v. State of T.N. : (1974)ILLJ172SC , Govt. Branch Press v. D.B. Beliloppa : (1979)ILLJ156SC , Ajit Singh v. State of Punjab (1983) 2 SCC (L&B;) 303, Indrapal Gupta v. Model Inter College : [1984]3SCR752 , Anoop v. Govt. of India : (1984)ILLJ337SC , and Nepalsingh v. State of UP : (1986)ILLJ343SC . We have read those decisions. They are beside the point. They have no application to the facts and circumstances of the case on hand.

9. The result is that this appeal has no force and it is, accordingly, dismissed summarily.