

Narendra Kumar Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Dec-15-1977

Reported in : 1977WLN(UC)502

Judge : D.P. Gupta, J.

Appeal No. : S.B. Writ Petition No. 1932 of 1973

Appellant : Narendra Kumar

Respondent : State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

D.P. Gupta, J.

1. The question which arises for consideration in this case is as to whether the termination of the service of the petitioner from the post of a Lower Division Clerk by the order of the Chief Engineer, Rajasthan Canal Project, Bikaner dated February 23, 1973, without giving him one month's notice or without simultaneously paying him one month's salary in lieu of notice, is void in view of the provisions of Rule 23-A of the Rajasthan Service Rules (hereinafter referred to as 'the Rules') The petitioner was initially employed as a work-charge Timekeeper in the Rajasthan Canal Project on February 1, 1971. He was made semi

permanent on the aforesaid post by the order dated February 26, 1971 with effect from February 15, 1971. Thereafter, he was appointed as a temporary Lower Division Clerk for a period of three months in the first instance against a leave vacancy by the Superintending Engineer, Rajasthan Canal Project, Mechanical Sub-Division, Suratgarh Junction, dated May 14, 1971. As the petitioner was appointed on the post of a Lower Division Clerk, although in a temporary capacity, he resigned from his post of Timekeeper and his resignation was accepted on July 3, 1971 which effect from May 14, 1971. The temporary employment of the petitioner as Lower Division Clerk was continued as he was transferred by the order of the Chief Engineer, Rajasthan Canal Project, Bikaner, dated July 3, 1971 from the Mechanical Circle to 11th Division. Rajasthan Canal Project at Chhatargarh in the interest of Government work. The petitioner was subsequently again transferred from Chhatargarh to Sub-Rectangulation Division No. II, Bikaner by the order of the Superintending Engineer, Rajasthan Canal Project, Survey, Investigation, Design and Research Circle. Bikaner, dated June 7, 1972. The last-mentioned transfer of course appears to have been obtained by the petitioner at his own request. The petitioner's temporary employment continued till June 7, 1973 when the Superintending Engineer, Mechanical Circle, Rajasthan Canal Project, Bikaner intimated him that his services were dispensed with 'with immediate effect' in pursuance of the Chief Engineer's order dated February 23, 1973.

2. The only submission advanced by the learned Counsel for the petitioner in this case is that the termination of the service of the petitioner was void being contrary to the provisions of Rule 23-A of the Rules. Rule 23-A provides that the service of a temporary Government servant, not coming within Sub-rule (2) thereof, can be terminated at any time by a notice in writing given by the Appointing Authority for a period one month or by payment to him of a sum equivalent to the amount of his pay for the period of notice, if it is not in dispute that the petitioner was neither given one month's notice nor he was paid a sum equivalent to the amount of his one month's emoluments. In *Senior Superintendent. R.M.S. Cochin and Ors. v. K.V. Gopinath Sorter* 1972 S.L.R. 390 their Lordships of the Supreme Court, dealing with a similar provision contained in Rule 5 of the Central Service (Temporary Service) Rules, 1965, observed as under:..it appears to us that the rule

is capable of the only interpretation that the order of termination can be upheld if the requisite amount in terms of the rule was paid into the hands of the employee or made available to him at the same time as he was served with the order. Rule 5(1)(a) gives the Government as well as the employee a right to put an end to the service by a notice in writing. Under Rule 1(b) the period prescribed for such notice is one month. The proviso to Sub-rule (b) however gives the Government an additional right in that it gives an option to the Government not to retain the service of the employee till the expiry of the period of the notice; if it so chooses to terminate the service as any time it can do so forthwith 'by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rate at which he was drawing them immediately before the termination of his services or, as the case may be for the period by which such notice falls short of one month.

In the aforesaid case, it was held that if a notice for a period of one month was not given to the Government servant concerned or his emoluments for a period of one month were not paid or made available to him, the termination of service was invalid. It was also held that when the service of a Government servant was terminated forthwith, payment of one month's pay and allowances was a necessary condition of termination of service forthwith.

3. The submission of the learned Counsel for the State is that the petitioner was appointed for a fixed term of three months as against a leave vacancy and thus his employment on the post of a Lower Division Clerk was made in a fortuitous capacity. It is not possible to accept this contention of the learned Deputy Government Advocate because it is apparent from the fact narrated above that although the petitioner was appointed in the first instance for three months as Lower Division Clerk against a leave vacancy, his appointment on that post was continued on the ground that he was a good typist and his services were required 'in the interest of Government work' and further the petitioner was transferred to 11th Division, Chhatargarh and subsequently to sub-Rectangulation Division No. II at Bikaner. Thus as a matter of fact, the temporary employment of the petitioner continued for a period of over two years beginning from May 14, 1971. It cannot, therefore, be held that the appointment of the petitioner as a Lower Division Clerk

was not in a temporary capacity and was not governed by the provisions of Rule 23A(1) of the Rules but was merely of fortuitous nature. It was also argued by learned Deputy Government Advocate that there was no order extending the employment of the petitioner in a temporary capacity on the post of a Lower Division Clerk. That may be so, as there was no express order of continuance of the employment of the petitioner beyond the period of three months, but the two orders of his transfer, firstly to Chhatargarh and then to the Sub-Rectangulation Division No. II at Bikaner, go to show that the temporary service of the petitioner on the post of a Lower Division Clerk was continued by implication for over two years.

4. It is also not in dispute that the petitioner was paid his salary for the period from May 14, 1971 to June 6, 1973 during which he held the post of a Lower Division Clerk in a temporary capacity. The fact of payment of salary for a period of over two years to the petitioner, relating to the post of a Lower Division Clerk, also supports the view that the temporary employment of the petitioner on the said post was continued by the respondents by implication and the petitioner cannot be deprived of the benefit of the provisions of Rule 23A. only on the ground that his initial employment as a Lower Division Clerk was for a fixed term of three months.

5. In these circumstances, I am of the view that the writ petition must succeed. Consequently, the writ petition is allowed and the order of termination of service of the petitioner dated June 7, 1973 (Ex. 1) as also the order of the Chief Engineer, Rajasthan Canal Project, Bikaner dated February 23, 1973 are quashed. The petitioner shall be deemed to continue in service of the State Government as a Lower Division Clerk in a temporary capacity and he shall also be entitled to all consequential benefits, monetary or otherwise. In the circumstances, the parties are left to bear their own costs.