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**N. Jayaseelan Vs. State of Tamil Nadu Represented by Secretary to Government, Department of Tamil Development and Culture,**

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**SooperKanoon Citation : [sooperkanoon.com/829672](http://sooperkanoon.com/829672)**

**Court : Chennai**

**Decided On : Jun-09-2009**

**Reported in : (2009)5MLJ113**

**Judge : K. Chandru, J.**

**Acts : [Constitution of India](#) - Articles 309, 310, 310(2) and 311**

**Appeal No. : W.P. No. 29926 of 2006**

**Appellant : N. Jayaseelan**

**Respondent : State of Tamil Nadu Represented by Secretary to Government, Department of Tamil Development and Cult**

**Advocate for Def. : P. Gurunathan, GA for RR1 and 2**

**Advocate for Pet/Ap. : M. Ravi, Adv.**

**Disposition : Petition allowed**

**Judgement :**

**ORDER**

**K. Chandru, J.**

1. The petitioner filed O.A. No. 6603 of 1996, seeking to challenge the letter, dated 4.11.1996 of the second respondent and communicated by the letter of the third respondent, dated 5.11.1996 and for reinstating the petitioner with consequential benefits. Pending the O.A., the Tribunal granted an interim stay of termination on the ground that the petitioner has been working for long a period and there was recommendation for regularizing his service. The said order came to be extended until further orders.

2. On notice from the Tribunal, the first respondent has filed a detailed reply affidavit, dated 28.7.97. On the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as W.P. No. 29926 of 2006.

3. The petitioner was appointed as an Instructor on an annual contract basis by the Director of Technical Education, Chennai, dated 18.10.90. As per the terms and conditions of the agreement, his service was terminated at the end of the academic year and he was re-appointed for the next academic year. The first respondent issued G.O.Ms. No. 526, Education, dated 28.5.93 and took up a policy decision to consider the regularization of teachers, who were employed on contract basis. Therefore, such of those teachers, whose services were liable to be terminated on 31.5.93, were directed to be continued. Insofar as the reason for termination of the petitioner is concerned, the same has been explained in paragraphs 11, 12 and 15 of the reply affidavit, which are as follows:

11. ...The third respondent had clearly stated that the Memorandum No. 2214/A2/96 dated 24.10.96, that the applicant had been instigating the students to enter into strike directly and indirectly. The applicant was not available in the class rooms on many occasions. Further the applicant has been spreading wrong information among the students about a diploma course conducted in the college. In addition to that, the applicant was asked to explain as to whether he had involved himself in undertaking any private job of construction of temples and earn money, thereby. Above all, the applicant has a major role on the mishappenings on 18.10.96 at the opening celebration of Sculpture Sales Section by the Honourable Minister. The applicant has been instigating the students and created trouble to the peaceful smooth function of the celebration. The allegations levelled

against the applicant are very clear.

12. ...it is submitted that the reply submitted by the applicant to the show cause notice issued on 24.10.96 is neither satisfactory nor acceptable. Further, subsequent to the issue of show cause notice i.e., on 28.10.96 only due to the instigation of the applicant, students of his class has approached the Principal and demanded him for the withdrawal of the memorandum issued to the teacher. The Principal in-turn answered the students that the students should not involve themselves in the administrative activities which are carried out in the interest of the smooth running of the college. This evidently shows that he has been rootcause. The third respondent here has enquired the students regarding the untoward activities that took place on 28.10.96 with the students as well as the staff members. The applicant has instigated the students for breaking the things in the college such as electrical lights, cement jolly, chairs, benches, typewriter machine etc. The total cost of the damage works out to a lakh of rupees. The agitation of the students and the instant of the damages to the property led to the indefinite closure of the college and the students were asked to vacate the campus and hostel. Therefore the statement of the applicant are far from facts.

15. ... The orders terminating the services of the applicant has been issued based on the documentary evidence and the oral enquiries among the students and the staff members, there is no violation of principles of natural justice, equity, fairplay and good conscience. The statement of the applicant is totally incorrect.

4. If a person enters into a contract, whether he can be denied a protection under Article 311 of the Constitution came up for consideration in several judgments of the Supreme Court. The Supreme Court in Roshan Lal Tandon v. Union of India reported in : (1968)ILLJ576SC held that the nature of the right possessed by a Government servant and his status after his appointment to the post under the Government was considered in the said judgment. It is relevant to extract para 6 of the said judgment, which is as follows:

6. We pass on to consider the next contention of the petitioner that there was a contractual right as regards the condition of service applicable to the petitioner at the time he entered Grade 'D' and the condition of service could not be altered to

his disadvantage afterwards by the notification issued by the Railway Board. It was said that the order of the Railway Board dated January 25, 1958, Annexure 'B', laid down that promotion to Grade 'C' from Grade 'D' was to be based on seniority-cum-suitability and this condition of service was contractual and could not be altered thereafter to the prejudice of the petitioner. In our opinion, there is no warrant for this argument. It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by Salmond and Williams on Contracts as follows:

So we may find both contractual and status-obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligations defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that

of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status. (Salmond and Williams on Contracts, 2nd Edn.p. 12).

5. The contention that the relationship between the Government servant and the Government is contractual in nature was not accepted by the Supreme Court in its judgment in *Dinesh Chandra Sangma v. State of Assam* reported in : (1978)ILLJ17SC . It is relevant to refer to the following passages found in paras 11 and 12 of the said judgment and they are as follows:

11. Mr Niren De submits that Article 310(2) supports his submission that the relationship between the government servant and the Government is contractual. Sub-article (2) of Article 310 provides that

notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post. The above is a special provision which deals with a special situation where a contract is entered into between the Government and a person appointed under the Constitution to hold a civil post. But simply because there may be, in a given case, a contractual employment, as envisaged under Article 310(2) of the Constitution, the relationship of all other government servants, as a

class, and the Government, cannot be said to be contractual. It is well-settled that except in the case of a person who has been appointed under a written contract, employment under the Government is a matter of status and not of contract even though it may be said to have started, initially, by a contract in the sense that the offer of appointment is accepted by the employee.

12. ...It goes without saying that in many employments, whether of private limited companies or public companies, contracts of employment are executed containing a term for termination of employment by notice. Such cases of contractual employment are different from those of Government employees whose employment is a matter of status and not of ordinary contract. The conditions of service of a Government servant are regulated by statute or statutory rules made under Article 309 of the Constitution.

6. These two said judgments were referred to by the Supreme court in a subsequent judgment in Union Public Service Commission v. Girish Jaintilal Vaghela and Ors. reported in : AIR 2006 SC1165 . In paragraph 19 , it has been observed as follows:

19. It, therefore, follows that employment under the Government is a matter of status and not a contract even though the acquisition of such a status may be preceded by a contract, namely, an offer of appointment is accepted by the employee. The rights and obligations are not determined by the contract of the two parties but by statutory rules which are framed by the Government in exercise of power conferred by Article 309 of the Constitution and the service rules can be unilaterally altered by the rule-making authority, namely, the Government.

7. In the present case, admittedly there was a policy by the State to regularize the teacher on contract basis and the petitioner but for his termination would have been considered for granting such benefit. In the present case, as admitted in the reply affidavit, the termination is for a misconduct and the petitioner was not heard before the impugned order came to be passed. Though the so-called contract clause was invoked in passing the impugned order of termination, the contents of the reply affidavit, clearly discloses that it was done for the alleged misconduct and for which, no enquiry was held. 8. Therefore, in the light of the above, the

impugned order deserves to be set aside. Accordingly, the writ petition stands allowed. However, there will be no order as to costs. But, it is open to the respondents to initiate fresh action if necessary after complying with the principles of natural justice.

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