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Court : Himachal Pradesh

Decided On : Apr-13-1972

Reported in : AIR1973HP14

Judge : Chet Ram Thakur, J.

Acts : Constitution of India - Articles 226 and 311; ;Central Civil Services (Temporary Service) Rules, 1949 - Rule 5

Appeal No. : Civil Writ Petn. No. 104 of 1970

Appellant : Roop Lal

Respondent : State

Advocate for Def. : C.L. Kapila, Adv.

Advocate for Pet/Ap. : H.S. Thakur, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

Chet Ram Thakur, J.

1. The petitioner was appointed as a Patwari in the Consolidation of Holdings Department at Arki on 1st May, 1960, but due to the retrenchment of the post his

services were terminated and on a request by the Director of Consolidation of Holdings to all the Deputy Commissioners the petitioner was selected for appointment as & Patwari and on the 4th March. 1963. an offer was made to him for being appointed as a Patwari within Mahasu district, vide Annexure B. He joined his duty as Patwari on 8th March, 1963, but on the 15th September, 1965, he received a copy of an office order, dated 15th September, 1965, terminating his services along with some other employees mentioned in that office order. Thereafter the petitioner represented to the Collector. Mahasu, but he did not get any reply. He again sent his reminders and on 18th May, 1966, he was told that his representation has been rejected. Thereafter he made further representation to the Financial Commissioner, Himachal Pradesh in the month of June. 1966. The petitioner also represented to the Lt. Governor on the 27th December, 1966 who forwarded his representation to the Chief Secretary and informed him by a letter, dated 12th July, 1967, to get in touch with the Chief Secretary. During the month of July 1967, he was informed by the Under Secretary (Revenue) that the matter was under consideration and that certain information had been sought from the Deputy Commissioner, Mahasu. When he did not receive any reply he made a representation to the Chief Se-cretary by the end of December, 1967, requesting him to expedite his case. On the 29th October. 1968 and the 1st November, 1968 the petitioner was called by the Commissioner (Revenue) and he was given personal hearing in the matter and he was assured that his case would be finally decided in due course of time and the result of the representation made by him would be conveyed to him. The petitioner being a resident of an interior part of District Mahasu was waiting for the reply, as assured. But he did not get any reply and he finally sent reminder to the Chief Secretary on 11th August, 1970. and to that also no reply was received and the last reminder by the petitioner is marked Annexure E. It was further averred that respondents 4 to 7 were appointed as Patwaris in the Revenue Department after the appointment of the petitioner and accordingly they are junior to the petitioner in service, their services have been retained whereas the services of the petitioner, who was senior, had been terminated and the order, therefore, was in contravention of law and rules and contrary to the principle of natural justice and fair play. In the case of the petitioner the well recognised principle which has assumed the colour of law. i. e. 'First come

last go' has been completely ignored and violated and thereby the petitioner has been discriminated against in the matter of service. The order of termination of the services of the petitioner being contrary to the law and rules as also being in violation of the principle of natural justice and fair play is liable to be quashed and he, therefore, prayed for quashing the order of respondent No. 3, whereby his services were terminated and also prayed for a writ of mandamus to be issued directing respondents 1 to 3 to hold the petitioner entitled to emoluments and other benefits of the post, treating the order of termination of his services as ineffective,

2. The respondents 1 to 3 in their return raised preliminary objections that the petition suffers from the defect of laches, as it has been filed after a long lapse of time from the passing of the impugned order, dated 15-9-1965. The futile representation for which there was no statutory provision cited by petitioner could not condone the delay. That there was an alternate and effective remedy open to the petitioner by a civil suit for which he had served a notice under Section 80 of the Civil Procedure Code. There was no infringement of any rights of the petitioner much less any breach of fundamental right calling for the institution of the writ petition. The services of the petitioner were not terminated unjustly or inequitably. The post was temporary and his services were no longer required, hence these were dispensed with. It was submitted that a notice under Section 80 of the Civil Procedure Code was received but as the same was without any force so it required no action in the matter. The petitioner had not given any date of appointment of respondents 4 to 7 either with the Consolidation Department or their absorption in the Revenue Department or how they were junior to the petitioner. Therefore, the averment as made in para. 8 of the petition was vague and uncertain. There had been. no departure from the rules or any established practice having the force of rule nor there was any violation of the rules of natural justice and the order dispensing with the services of the petitioner is not liable to be quashed and it was on these averments that the petition was opposed.

3. The first preliminary point raised by the respondents is about laches. The petitioner himself has admitted in para. 12 of the petition that there had been delay in filing the writ petition, but according to him. the delay was caused because of the reasons as stated by him in the petition and the reasons, according to him. are

that after the termination of his services he had been making representations against the order of termination of his services. The services of a temporary Government servant, like the petitioner, are governed by the Central Civil Services (Temporary Service) Rules, 1949. These rules do not provide for any appeal, revision, etc., against the order of termination of services nor it envisages any representation, etc, to be made by the person whose services have been terminated. But the contention of the petitioner is that he had been pursuing his case by making repeated representations to the authorities concerned for granting him relief for the unjust termination of his services.

There is no limitation prescribed for filing a writ of certiorari. but as a rule a person who feels aggrieved against an order of a Tribunal or any other authority must take action with the least possible delay and if there is delay he must give adequate explanation for the same end if the explanation offered is by no means satisfactory, the High Court is justified in refusing to entertain the writ petition on the ground that it was a belated one. and this is supported by Bankhandi Lal v. Asst Supdt. of Police. AIR 1962 All 114. Similarly this view finds support from Roopsingh Devisingh v. Sanchalak. Panchayat and Samaj Sewa M. P., Indore. AIR 1962 Madh Pra 50 wherein it has been stated that though there is no limitation for an application for relief under Article 226. and the Court will not call upon the petitioner under Article 226. to give a strict arithmetical account of every day. delay that is considerable and unexplained disqualifies the petitioner to any assistance. It is certainly a principle of prudence and diligence to be applied reasonably, and further, the explanation of the delay, if any, should be considered sympathetically. But this does not mean that delay, especially of several months, should be overlooked as a matter of course.

So, in order to apply this principle we have got to see whether the petitioner has offered any reasonable explanation. He has stated that he had been making representations against his termination of service. The order of termination, as stated in para. 4 of his petition, was passed on 15th September, 1965 and thereafter he made his representation on 2nd November, 1965 (Annexure C). There-after he says that he sent several re-minders and he received a letter from the office of the Deputy Commissioner on 18th May, 1966. saving that his

representation has been rejected and this is not denied by the respondents also in their reply to para. 4. Thereafter the petitioner made a further representation, as stated in para. 5. in the month of June. 1966 and after numerous reminders, he received a copy of communication (Annexure D), dated 24th August, 1966. This Annexure D was. in fact, a letter written by the Under Secretary (Revenue) to the Deputy Commissioner, Mahasu, calling for his parawise comments on the representation of the petitioner and a copy of the letter was endorsed to the petitioner on the same date, According to him. he further represented to the Financial Commissioner to convey decision on Ms earlier representation, but no reply was received. Then he represented to the Lt. Governor on 27th December. 1966 and he was inform-ed on 12th July, 1967 to get in touch with the Chief Secretary, This fact Is not denied by the respondents. Later on he was informed in the month of July. 1967, by the Under Secretary (Revenue that his matter was under consideration and certain information had been sought from the Deputy Commissioner and when, no reply was received he represented to the Chief Secretary by the end of December, 1967. requesting him to expe-dite has case. This fact is also not denied by the respondents. Again he says that on the 29th October and on 1st November, 1968 he was given a personal hearing in the matter. This is also not specifically denied and according to him, he was given assurance. Thereafter it appears that he did not move in the matter at all till the 11th August 1970, when he sent a reminder (Annexure E) to the Chief Secretary. Himachal Pra-desh.

Undoubtedly there is no provision for any representation, etc. to the rules under which the services of a temporary Government servant are governed, but even then it may be said that the petitioner rightly or wrongly had been making consistent efforts through his re-presentations to the authorities concerned to set aside the order of termination and the lest representation in this behalf was made on 27th December, 1966. However, according to the petitioner he had been given assurance by the authorities concerned that his case was being considered and the last time that this assurance was held out to him was in November, 1968. But thereafter there is nothing on the record to show if he had been making any representation or pursuing his case, except that on 11th August, 1970, he sent a notice (Annexure E) to the Chief Secretary to send him a reply within a week's

time positively, failing which he will be compelled to pursue the case through the Court and this notice it appears was made by him simply to make a ground for covers Ing delay in filing the writ.

After November. 1968, there is no explanation whatsoever tendered by the petitioner, excepting his bald assertion, and. therefore, the petition is definitely hit by laches. The Supreme Court authority Chandra Bhushan v. Dy. Director of Consolidation. U. P., AIR 1967 SC 1272 is not applicable to the facts of the present case, inasmuch as in that case a revision application under Section 48 of the U. P. Consolidation of Holdings Act filed by -the appellants against the order or the Settlement Officer Consolidation, was dismissed by the Deputy Director of Consolidation. Allahabad, by order, dated July 15, 1961. The appellant then moved on Nov-ember 13, 1961, the High, Court of Allahabad for the issue of a writ of certiorari quashing the orders, inter alia, of the Consolidation Officer and the Settlement Officer. The petition was sum-manly rejected by a Single Judge, ob-serving that the period of limitation expired on 7th November, 1961 and no explanation had been furnished why the writ petition could not be filed on November 7. 1971.

A special appeal against that order was also dismissed by a Division Bench of the Allahabad High Court and the Supreme Court in that case held that the High Court of Allahabad had not framed any rule .prescribing a period of limitation for filing petition for writs of certiorari under Article 226 of the Constitution. Ordinarily in the absence of a specific statutory rule, the High Court may be justified in rejecting a petition for a writ of certiorari against the judgment of a subordinate Court or Tribunal, if on a consideration of all the circumstances. It appears that there is undue delay, But the aggrieved party should have a reasonable time within which to move the High Court for certiorari.

The Allahabad High Court has constantly laid down the practice that the period of 90 days, which is the period fixed for appeals to the High Court from the judgment of the lower court should be taken as the period for application for the issue of a writ of certiorari and the time can be extended only when circumstances of a special nature, which are sufficient in the opinion of the Court, are shown to exist

But in the absence of a statutory rule the period prescribed [for preferring an appeal to the High Court is a rough measure: in each case the primary question is whether the applicant has been guilty of laches or undue delay. A rule of practice cannot Prescribe a binding rule of limitation. Hence this authority does not assist the petitioner, rather it assists the respondents. We have seen the facts as asserted by the petitioner, but the assertions remained unsubstantiated beyond November, 1968 and the petitioner had been quite indolent for about one year and mine months and this delay is quite fatal.

4. The other preliminary point raised by the respondents was that the petitioner had not filed the copy of the order which was sought to be quashed. The contention of the petitioner was that there was no copy of the order with him and it was verbally communicated to him. This contention of his stands belied by his own averment in para 4 of the petition, wherein he says that the petitioner continued to serve as a Patwari till 15th September, 1965. when he received a copy of office order, dated 15th September, 1965, terminating his services along with other employees mentioned therein. Therefore, the contention of the petitioner that the order was orally conveyed to him is not correct and without the actual order it is not possible to know as to what were the circumstances leading to his termination and what were the contents of the order. There is no doubt that the record from the office has been called for and the Court can go through the record, but the petitioner is not absolved in such a case from his duty to produce the order which he seeks to set aside or quashed especially when the order has been conveyed to him. Unless the very basis' which is sought to be set aside is placed before the Court, the Court is not in a position to say whether the order is illegal or invalid. Thus the point has got substance in it and must be accepted.

5. The petitioner's contention was that the respondents had terminated his services without complying with the statutory requirements. According to the terms of his service conditions, he was entitled to one month's notice or one month's pay in lieu thereof. Since the respondents failed to comply with the requirements of the statutory rules, i. e. Rule 5 of the Central Civil Services (Temporary Service) Rules. 1949, there-fore, the order is bad. Rule 5 of the aforesaid Rules reads as:--

(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 bythe 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 Govern-ment 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 Ms 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:

Provided further xx xx xx,

6. This averment of the petitioner Is denied by the respondents. I find from the petition that there is no averment to this effect that his services had been terminated without giving one month's notice, and, therefore, the termination was illegal on that account According to the appointment order, the appointment was liable to termination by a month's notice given by either side. The appointing authority, however, reserved the right of terminating the services forthwith or before the expiry of the stipulated period of notice by making payment to him of a sum equivalent to the amount of his pay and allowances for the period of the notice or as the case may be, for the period by which such notice falls short. In sub-para. (3) it was averred that his services were desired to be terminated from the date on which he would be relieved by his substitute and he would be entitled to one month's pay plus allowances. He was relieved by his substitute as has been made clear in the appointment order.

Hence it is admitted that one month's notice on either side was required for termination of the services and the appointing authority, if so desired, could terminate services forthwith by making payment of a sum equivalent to the pay and allowances of the period or of the un-expired portion thereof. But the fact remains that the petitioner has not made any assertion in his petition about this that his services had been terminated without giving him one month's notice and

that there was. therefore, non-compliance on the part of the respondents with the statutory rules or the condition No. 2 of his appointment order. Assuming that he had made assertion, and had also taken a ground in his writ Petition that there was no compliance with the statutory Rule 5 of the rules staled above. still it is evident from sub-para (3) of the order, which I have seen in the original file produced by the respondents in the Court that the services of the petitioner were terminated from the date he was to be relieved by his substitute, which means if Ms substitute was to join earlier than a month from the date of service of the order on the petitioner then he was entitled to the pay and allowances for the unexpired period of the notice of one month and if his substitute was to relieve him after a month then there was full requirement of the statutory rule and he was not to be paid anything and if the relief was to come, say after about a month then also in that case he was only entitled to the actual pay. etc. for the period that, he continued in service and he was not required for any extra notice or emoluments in lieu thereof. It was a notice for all intents and purposes, as would be clear from the order, which I have seen on the record and which the petitioner also admits in para. 4, to have been served upon him. But he failed to make it as an annexure of the writ petition although he sought to have the same set aside. Therefore, the order of the respondents cannot be questioned on the ground that there was non-compliance with the statutory rules.

7. Further, it would be apparent from the record produced by the respondents that the petitioner's services were not terminated by way of punishment In fact the services were not required any longer. The termination of the services of a temporary Government servant by a notice does not attract the provisions of Article 311. as would be evident from the State of Nagaland v. G. Vasantha, (AIR 1970 SC 537). It is purely a question of contract between the parties and the petitioner is governed by the terms of the contract, according to which his services were liable to be terminated by one month's notice or one month's pay in lieu thereof and the proper remedy in such a case was by way of a civil suit. The reminder (Annexure E) dated the 11th August, 1970, was in fact a notice and the petitioner clearly intended to enforce his rights through the Civil Courts. The petitioner cannot seek his relief by way of a writ. The petitioner had been properly served with a notice as required under the terms of his appointment and there is

nothing bad or illegal in the order by way of notices served on the petitioner. Hence his contention that there was non-compliance with the statutory rules is. therefore, without any substance.

8. The learned counsel for the petitioner has also on the strength of R, K. Bhat v. Union of India, 1970 Sery LR 867 (SC) argued that the Court should investigate whether the termination was in the ordinary course or by way of punishment. But as has been found out from the record that the services were purely temporary and he was a Tracer, his services were no longer required, therefore, there was no question of any mala fide motive behind, the order of termination, rather, it was a termination in the ordinary course without any ill-will or without casting any stigma on the petitioner. The petitioner's counsel has also relied on the State of Puniab v. Sukh Rai Bahadur. 1968 Serv LR 701 = (1968) Lab IC 1286 (SC)). But I am afraid, if this authority would at all assist the learned counsel for the petitioner. According to this authority the services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution. The circumstances preceding or at-tendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial, If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant, The instant is a case of a different type. His services had not been dispensed with because of any complaint of inefficiency, dishonesty or on any other ground, but because of the simple fact that his services were no longer required.

9. It had also been contended by the petitioner's learned counsel that there had been discrimination inasmuch as the services of the juniors have been retained but the services of the petitioner, who had been appointed earlier in point of time, have been terminated and the principle, which has assumed the colour of law. that 'last come first go' has been violated and reliance is placed on Papanna Gowda v. State of Mysore. 1969 Serv LR 50 = (1969 Lab IC 730 (Mys)) and on Union of India v. Prem Parkash Midha. 1969 Serv LR 655 = (AIR 1969 NSC 155). In so far as the first authority is concerned, in that case the employee whose services had

been transferred to the University was a permanent-holder of the post. So, it has got no applicability to the case of a temporary Government servant. The latter case, however, pertains to the service of a temporary employee, but this authority also does not assist the petitioner because, according to this, termination of the services of the temporary servant retaining the junior in service does not violate the provisions of Article 16 of the Constitution,

Further I may mention here that the petitioner had averred that the services of respondents 4 to 7 had been retained although they joined service after him. But he has not given the dates, etc., when these persons joined. I have Per-used the record end I find that these persons against whom he says that he has been discriminated against, had been accepted as Patwari candidates, whereas the petitioner was not at all accepted as a candidate and he had been appointed temporarily in the Consolidation Department, where he was retrenched and on a request by the Director of Consolidation of Holdings, he was re-employed by the Collector. Mahasu on temporary basis, and, therefore, his contention that he had been discriminated against is not borne out from the record and the averments made by him are quite vague and indefinite.

These were the only points argued and the result, therefore, is that the petition is belated and no explanation has been given, secondly, a proper notice has been given to the petitioner for termination of his services as required under Rule 5 of the Central Civil Services (Temporary Service) Rules, he has not been discriminated against as the respondents 4 to 7 were the accepted Patwari candidates, whereas the petitioner was not and he was appointed on a purely temporary basis and his services have been terminated because they were no longer required and termination was not by way of punishment. Hence the petition fails and is hereby dismissed. However. I pass no orders as to costs.