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Court : Guwahati

Decided On : Dec-07-2000

Judge : A.K. Patnaik, J.

Acts : [Constitution of India](#) - Articles 14, 16 and 226;;Tripura Co-operative Societies Act;;Central Civil Services (Temporary Service) Rules, 1965 - Rule 5(1), 13, 15 and 23

Appeal No. : Civil Rule No. 3 of 1994

Appellant : Ashis Kumar Banik

Respondent : Tripura Co-operative Land Development Bank Ltd. and ors.

Advocate for Pet/Ap. : Mr. K.N. Bhattacharjee, ;Mr. S.B. Dutta and ;Mr. S. Bhattacharjee, Advs.

Disposition : Writ petition is dismissed

Judgement :

JUDGMENT

1. In this application under Article 226 of the [Constitution of India](#), the petitioner has prayed for quashing the order dated 13.12.1993 terminating his services as a

Junior Grade Stenographer in the Tripura Co-operative Land Development Bank Limited, (hereinafter referred to as "the Co-operative Bank").

2. The relevant facts for the purpose of disposal of this writ petition briefly are that by Memorandum dated 15.12.1992 issued by the Administrator of the Co-operative Bank, the petitioner was offered appointment to a temporary post of Junior Grade Stenographer in the Co-operative Bank on the terms and conditions indicated therein. The petitioner accepted the said offer and by order dated 23.12.1992 of the Administrator of the Co-operative Bank the petitioner was temporarily appointed as Junior Grade Stenographer in the Co-operative Societies. Tripura, then addressed a letter dated 2.11.1993 to the General Manager of the Co-operative Bank. The petitioner joined in the said post of Junior Grade Stenographer on 23.12.1992. The Registrar of Co-operative Bank stating, inter alia, that the Government has examined and found serious irregularities in the appointment given to the petitioner in the post of Junior Grade Stenographer and that it has been decided by the Government that the services of the petitioner should be terminated. By the said letter, the Registrar of Co-operative Societies requested the General Manager of the Co-operative Bank to take immediate action in the matter. The services of the petitioner were thereafter terminated by the Chairman of the Co-operative Bank by order dated 13.12.1993. In the said order dated 13.12.1993. In the said order dated 13.12.1993, it was however stated that the petitioner was entitled to one month's salary in lieu of one month's notice. The petitioner submitted a representation before the Chairman of the Co-operative Bank requesting him to cancel the said order of termination dated 13.12.1993. When the order of termination was not cancelled, the petitioner filed the present writ petition for appropriate relief.

3. Mr. K.N. Bhattacharjee, learned counsel appearing for the petitioner, submitted that the impugned order of termination is liable to be quashed because no show cause notice had been issued to the petitioner before the same was passed and the principles of natural justice had been violated. He submitted that although the petitioner was a probationer and his services were liable to be terminated during the period of probation, this was not a termination simpliciter but a termination with stigma inasmuch as the services of the petitioner had been terminated on the

ground that his appointment was irregular. In support of this submission, Mr. Bhattacharjee cited the decisions of the Supreme Court in *Shrawan Kumar Jha v. State of Bihar*, AIR 1991 SC 309, *Karnataka State Road Transport Corporation v. S. Manjunath*, (2000) 5 SCC 250, and *V.P. Ahuja v. State of Punjab*, AIR 2000 SC 1080, and the decision of a Division Bench of this court in *Managing Director Trifed v. Ashok Kumar Choudhury*, 1998 (II) GLT 85.

4. Mr. U.B. Saha, learned counsel appearing for the respondents, on the other hand, referred to the averments in the counter-affidavit filed on behalf of respondent Nos. 1 and 2 and submitted that the appointment of the petitioner was without any advertisement and selection and without the approval of the Registrar of Co-operative Societies. He submitted that under the Service Rules for the Employees of Tripura Co-operative Land Development Bank Ltd. as approved by the Registrar of Co-operative Societies, no appointment by direct recruitment in Grade - I to IV posts can be made except by inviting applications by advertisement in the newspapers and under the provision's of the Tripura Co-operative Societies Act and the Rules made there under creation of posts and appointment to posts in the Co-operative Bank can only be made with the approval of the Registrar of Co-operative Societies. Mr. Saha submitted that the petitioner was the son of the General Manager of the Co-operative Bank and it was for this reason that he was appointed by the Administrator of the Co-operative Bank without any advertisement, without any selection and without the approval of the Registrar of Co-operative Societies. Mr. Saha further submitted that when an appointment is made contrary to the procedure laid down in the relevant Rules and the appointment is illegal, the authority is competent to terminate the service of the person appointed illegally, and the principles of natural justice are not required to be followed in such a case. He submitted that the petitioner was a probationer and his services could be terminated at any time during the period of probation without following the principles of natural justice. He cited the decision of this court in *Aditi Choudhury v. State of Tripura & Others*, (1999) 2 GLR 242.

5. The petitioner was appointed on probation for a period of two years as would be clear from the offer of appointment given to the petitioner in the Memorandum dated 15.12.1992. The said offer of appointment further stipulated that conditions

of service would be governed by the relevant Rules of the Co-operative Bank and orders in force from time to time. The said offer of appointment was accepted by the petitioner, and only upon such acceptance of the said offer of appointment, the petitioner was appointed by order dated 23.12.1992 of the Administrator of the Co-operative Bank. Thus, the relevant provisions of the Service Rules for the Employees of Tripura Co-operative Land Development Bank Limited (for short, "the rules"), applicable to a probationer, are applicable to the petitioner. The said relevant provisions are quoted hereinbelow :

"Probationer" means an employee who is provisionally employed to fill a permanent vacancy or post and has not completed at least one year's service in that post and is not confirmed by the Board of Directors or Executive Committee.

13. No appointment by direct recruitment in grades I to IV shall be made except by inviting applications by advertisement in the newspapers approved by the Board of the Bank, provided that this restriction shall not apply to the appointment of any officer or person whose services are borrowed from Government or who are recruited on contracts.

15. A person appointed to any post in the Bank's service shall ordinarily be on probation for the 1st year. The staff committee may, however, in its discretion, extend such period to another year on the completion of which, he shall either be confirmed in the post, if his work and conduct are found to be satisfactory, or his services shall be terminated, if his work and conduct are found to be unsatisfactory. The staff committee may terminate the services of an employee during the period of this trial without assigning any reason for the same. The decision of the staff committee in this regard shall be final and conclusive."

It would thus be clear that under the Rules as quoted above, a probationer is only provisionally employed to fill up a permanent vacancy or post and is one who has not completed one year's service in that post and is not confirmed by the Board of Directors or Executive Committee. It would further be clear from rule 13 of the Rules that no appointment recruitment in grades I to IV can be made except by inviting application by advertisement in the newspapers approved by the Board of the Co-operative Bank. Rule 15 of the Rules quoted above further states that the

staff Committee may terminate the service of an employee on probation during the period of his trial without assigning any reason for the same. Since the petitioner was appointed on probation and on such appointment he joined on 23.12.1992, his appointment was only provisional under the Rules until confirmed by the Board of Directors of Executive Committee of the Co-operative Bank. Till such time the appointment of the petitioner was confirmed, his appointment, being only provisional, could be terminated by Cooperative Bank during the period of probation.

6. The contention of Mr. Bhattacharjee, learned counsel for the petitioner, however, was that the termination of service of the petitioner during the period of probation though permissible under the Rules, the termination was liable to be quashed as it was stigmatic. Mr. Bhattacharjee further submitted that the services of the petitioner were terminated on the sole ground that his appointment was irregular, and had an opportunity been given to the petitioner to show cause against the proposed termination, he would have satisfied the authorities that his appointment was regular, and not illegal. Mr. Bhattacharjee therefore, sought to persuade the court to quash the order of termination and direct the authorities to give an opportunity to the petitioner to show cause against the proposed termination on the ground that his appointment was contrary to the Rules.

7. In *Aligarh Muslim University v. Mansoor Ali Khan*, AIR 2000 SC 2783, the Supreme Court has held that there can be certain situation in which an order passed in violation of natural justice need not be set aside under Article 226 of the [Constitution of India](#). Paragraphs 20, 21 and 22 of the Judgment of the Supreme Court in the said case of *Aligarh Muslim University v. Mansoor Ali Khan*, (supra), are quoted hereinbelow :

"20. As pointed recently in *M.C. Mehta v. Union of India*, (1999) 6 SCC 237; 1999 AIR SCW 2754; (AJR 1999SC2583), there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the [Constitution of India](#). For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result In

revival of another order which is in itself illegal as in *Gadde Benekateswara Rao v. Government of Andhra Pradesh*. (1965) 2 SCR 172; (AIR 1996 SC 828), It is not necessary to quash the order merely because of violation of principles of natural justice.

21. In *M.C. Mehta* it was pointed out that at one time, it was held in *Ridge v. Baldwin*. (1964) AC 40, that breach of principles of natural justice was in itself treated as prejudice and that no other 'de facto' prejudice needed to be proved. But since then the rigour of the rule has been relaxed not only in England but also in our country. In *S.L. Kapoor v. Jagmohan*, (1980) 4 SCC 379; (AIR 1981 SC 736). Chinnappa Reddy, J. followed *Ridge v. Baldwin* and set aside the order of super session of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were laid down to which we shall presently refer.

22. Chinnappa Reddy, J. in *S.L Kapoor's case* (AIR 1981 SC 136), laid two exception (at p. 395 of SCC); (at pp. 147 and 148 of AIR) namely, "if upon admitted or indisputable facts only one conclusion was possible", then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or Indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an applying this exception."

As per the aforesaid law laid down by the Supreme Court, one exception where an order or proceeding should not be quashed on the ground of violation of the principles natural justice is when on admitted or indisputable facts only one conclusion was possible. Applying the aforesaid law laid down by the Apex Court to the facts of the present case, the admitted or indisputable fact in the present case is that no advertisement in the newspapers was issued inviting applications for appointment to the post of Junior Grade Stenographer before the petitioner was appointed although rule 13 of the Rule quoted above provided that no appointment by direct recruitment in grades I to IV shall be made except by inviting applications by advertisement in the newspapers. Further, the admitted and

indisputable fact in this case is that for the said post the petitioner was the sole applicant. The admitted or indisputable fact in the present case is that the petitioner was the son of the General Manager of the Co-operative Bank when he applied and he was appointed by the Administrator of the Co-operative Bank. On these admitted or indisputable facts, only one conclusion is possible that the appointment of the petitioner was irregular, contrary to the Rules, and was illegal. In the aforesaid case of *Aligarh Muslim University v. Mansoor Ali Khan*, (supra), the Supreme Court has pointed out that still another situation in which an order passed in violation of natural justice need not be set aside under Article 226 of the [Constitution of India](#) is where quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal.

Assuming that impugned order of termination was passed in breach of natural justice, if the same is quashed it will result in the revival of the order of appointment of the petitioner which was itself illegal. Thus, even if the court holds that the impugned order was passed in violation of the principles of natural justice, the court need not set aside the impugned order under Article 226 of the Constitution.

8. It was however submitted by Mr. Bhattacharjee, learned counsel for the petitioner, that the petitioner's appointment was not the only case of irregular or illegal appointment in the Cooperative Bank. He submitted that appointments of different members to the staff named in Annexure - 4 to the writ petition right from 1960 were made without any advertisement and without any interview, and by following almost the same procedure as was followed in the case of the petitioner. According to Mr. Bhattacharjee, therefore, the termination of the petitioner only on the ground that his appointment was irregular was discriminatory, arbitrary and violative of his right under Article 14 and 16 of the Constitution. Mr. U.B. Saha, learned counsel appearing for the respondents, however, submitted referring to the averments in the counter-affidavit filed by the respondents 1 and 2 that all the staff of the Co-operative Bank were duly interviewed except serials 38 and 58 mentioned in Annexure - 4 to the writ petition. But so far as the petitioner was concerned, no interview whatsoever was held.

9. A person appointed to any office under the State without any advertisement is appointed in violation of the rights of other citizens to equality of opportunity in matters relating to appointment to any office under the State guaranteed to them under Article 16 of the Constitution. The court cannot hold his appointment to be legal and proper on the ground that others have been similarly appointed without any advertisement. Such a person appointed without an advertisement to any office under the State cannot be allowed to continue in such office by the court on the ground of violation of the right to equality under Article 14 and 16 of the Constitution. In *Harpal Kaur Chahal v. Director, Punjab Instructions*, 1995 Supp. (4) SCC 706, the Supreme Court has held that Article 14 cannot be extended to legalise illegal orders though others had wrongly got the benefit of such illegal orders.

10. It was finally submitted by Mr. Bhattacharjee, learned counsel for the petitioner, that under the offer of appointment as well as rule 23 of the Rules, the services of the petitioner could be terminated either by one month's notice or in lieu thereof one month's pay at the time of termination, but the petitioner has not been given one month's notice nor paid one month's pay at the time of termination. According to Mr. Bhattacharjee, the impugned order terminating the services of the petitioner was liable to be quashed on this ground alone. Mr. U.B. Sana, learned counsel appearing for the respondents, referring to the averments in the counter - affidavit, submitted that along with the order of termination one month's salary was also offered to the petitioner by the authority on 13.12.1993 when the petitioner attended the Co-operative Bank, but he refused to take the termination order and one month's salary. Mr. Saha explained that subsequently the mother of the petitioner received the termination order but refused to accept one month's salary which was offered to her on the ground that the petitioner was not present in house at the relevant time. Mr. Saha however contended that it was not obligatory under rule 23 of the Rules to pay one month's salary along with the termination Order and cited the decision of the Supreme Court in *Union of India v. Arun Kumar Roy*, (1986) 1 SCC 675, in support of this of this submission.

11. Rule 23 of the Rules is quoted hereinbelow :

"23. If after the expiry of his period of probation, the appointment of the employee in the service of the Bank is to be terminated, it shall be incumbent on the Board of the Bank to give him one calendar month's notice thereof in writing or in lieu thereof to pay such employee a sum equivalent to his emoluments for month by way of compensation."

Rule 23 quoted above applies to a case where appointment of an employee is sought to be terminated after the expiry of his period of probation. Since the petitioner was terminated from service before expiry of his period of probation, the said rule 23 does not strictly apply to the case of the petitioner. In any case, the said rule 23 provides that services of an employee can be terminated by giving him one calendar month's notice thereof in writing or in lieu thereof to pay such employee a sum equivalent to his emoluments for month by way of compensation. The said rule therefore does not provide that where the appointment of an employee in the service of the Co-operative Bank is to be terminated without a month's notice, one month's pay is to be paid to the employee at the time of termination. In *Union of India v. Arun Kumar Roy*, (supra) the Supreme Court has held that an employee is appointed on certain terms and conditions which constitute a contract, but once he is appointed he will be governed by the Rules governing the service conditions. Thus, assuming that rule 23 of the Rules will apply to the petitioner who was a probationer, the said rule merely provided that the petitioner would be entitled to one month's notice before termination or in lieu thereof one month's pay by way of compensation. In the said case of *Union of India v. Arun Kumar Roy*, (supra), the Supreme Court construing a similar provision in rule 5(1)(b) of the Central Civil Services (Temporary Service) Rules, 1965, held following its earlier decision in the case of *Raj Kumar v. Union of India*, (1975) 4 SCC 13, that it was not obligatory on the employer to pay the employee a sum equivalent to the amount of his pay and allowances for the period of the notice at the rate at which he was drawing them immediately before the termination of the services or as the case may be for the period by which such notice fell short, and that the employee concerned was only entitled to claim the said sum. In other words, the termination of service of the employee and the payment of one month's emoluments need not be simultaneous, but only by way of compensation. The impugned order of termination dated 13.12.1993 itself states

that the petitioner was entitled to one month's salary in lieu of one month's notice. The petitioner is therefore entitled to the said amount of one month's salary as compensation, and the impugned order dated 13.12.1993 cannot be held to be contrary to rule 23 of the Rules.

12. For the foregoing reasons, the writ petition is dismissed. However, the petitioner shall be entitled to one month's salary which will be paid by the respondents within two months from the date of receipt of a certified copy of this judgment and order by the respondent No. 1 from the petitioner. Considering the entire facts and circumstances of the case, I leave the parties to bear their respective costs.

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