

Arun Govil Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Sep-13-2010

Judge : Devi Prasad Singh; Vedpal, JJ.

Appeal No. : SERVICE BENCH No. - 1211 of 1994

Appellant : Arun Govil

Respondent : State of U.P. and Another

Advocate for Def. : C.S.C. Adv

Advocate for Pet/Ap. : Manish Mathur; J.N.Mathur, Advs

Judgement :

1. Heard Shri Manish Mathur learned counsel for the petitioner, the learned Standing Counsel for the respondents and perused the record.

2. Petitioner who has been a member of the Indian Air Force was declared unfit on medical ground in the year 1976. Government of India formulated a scheme to provide job to Ex-Military officials which is adopted by the State Government. Under the scheme, Ex-military officials are appointed on contract basis for fixed term which could have been extended from time to time subject to suitability and good conduct but not beyond the age of 58 years. In pursuance of the scheme, the State of U.P. appointed the petitioner on the post of Secretary, Zila Sainik Board, Unnao on 20.8.1979. However, the appointment was on contract basis initially for

the period of one year w.e.f. the date of assumption of duties, in case had not terminated earlier, with one month's notice by the Governor or on payment of one month's salary in lieu thereof or by giving one month's notice by the official/petitioner.

3. The petitioner had accepted the terms and conditions of the appointment and in consequence thereof, he was appointed as Secretary, District Soldier Board, Unnao. The tenure of the appointment was extended retrospectively from 1.8.1982 and then again upto 31.3.1983. Again the term was extended upto 30.6.1985 by an order dated 1.6.1983. All the orders of extension were almost in the same language with same terms and conditions. While extending the services, it was provided that during the extended period of contract, the condition of service of officer will remain same as mentioned in the original appointment order. The letter of acceptance of relevant conditions of service was to be obtained from the officers and submitted to Government on or earlier date. The petitioner with due acceptance of the terms and conditions, resumed duty.

4. Undoubtedly, appointment was in the nature of contract and under the last order of appointment, he was entitled to continue in service in office on the post of Secretary, Zila Sainik Board till 30.8.1985 and not beyond that unless further extension is granted.

5. However, on 29.3.1985, the services of the petitioner were terminated through a notice and on payment of one month's salary. The order was to be given effect from the date of receipt of the termination order. No charges were mentioned in the notice while terminating the services.

6. Feeling aggrieved with the impugned order of termination, the petitioner has filed writ petition No.3164 of 1985. High Court decided the writ petition with finding that the order of termination served on the petitioner was invalid since it was issued on the basis of the vigilance report and no opportunity was given to the respondents to show cause why such action should not be taken against him. High Court allowed the writ petition and also issued direction to the effect that the petitioner was entitled for salary upto the period he was entitled to remain in service i.e. upto 30.8.1985 unless further extension is granted. Operative portion

of the judgment of the High Court is as under :-

"It is open for the opposite parties to consider the claim of the petitioner for continuation in service or of fresh appointment and no observations in this regard are being made by this court."

7. Subject to the conditions set forth as above, High Court allowed the writ petition by judgment and order dated 24.3.1988. Being not satisfied with the judgment of the High Court, the petitioner preferred a review petition contending that he was entitled to be reinstated in service on the pronouncement of the judgment on 24.3.1988 notwithstanding the fact that his termination has come to an end on 30.8.1985 even if no further order of extension was granted. While preferring review, the petitioner has relied upon the interim order dated 8.7.1985 which provides that post shall kept to be vacant and in case the petitioner succeeds in the writ petition, it shall be made available to him forthwith by way of appointment.

8. Review petition was allowed by the judgment and order dated 6.7.1988 and High Court had directed that the petitioner shall be reinstated in service. Aggrieved by the order passed under review, the State of U.P. has approached the Hon'ble Supreme Court through an appeal under Article 136 of the Constitution of India. Hon'ble Supreme Court observed that so far as the nature of appointment of the petitioner on contract basis for specified term and being extended from time to time, is not a disputed question of fact. Accordingly, Supreme Court observed that the nature of appointment of the petitioner was contractual. Their Lordships proceeded to observe as under :

"The true position that emerges from the material on record is that the respondent was employed only under a contract which specified the term of his appointment which extended only upto 30.8.1985. Since it is admitted that no order of extension had been sanctioned by the Governor beyond 30.8.1985, the respondent was entitled to the salary and allowances due to him till 30.8.1985 if the order of termination of service served on him on 29.3.1985 was

found to be an invalid one."

9. Hon'ble Supreme Court subject to the observations(supra), further observed that the petitioner had not urged before the High Court that the order of appointment issued in his case was not in the nature of a contract and the subsequent orders extending his period of appointment till 30.8.1985 were liable to be ignored and that he should be treated as a person regularly appointed in government service entitled to continue till he completed the age of 58 years.

10. Their Lordships further observed that even the order passed on review, on 26.7.1988, does not make out a case that the respondent had put forward at that stage disowning the contractual appointment. The only ground raised by the petitioner under review was that in pursuance of the interim order dated 10.7.1985, the petitioner was entitled for reinstatement in service.

11. Subject to the aforesaid discussions, their Lordships had set aside the order passed under review on 24.3.1988 and observed that the petitioner shall be entitled for salary upto 30.8.1985 and no order could be passed in the review on 26.7.1988 placing reliance on the aforesaid order dated 10.7.1985. The operative portion of the judgment and order of the Hon'ble Supreme Court is as under:

"...We therefore, set aside the order dated 26.7.1988 passed by the High Court on review and restore the judgment dated 24.3.1988 passed in the writ petition. The interim order did not and could not amount to a direction that the respondent was entitled to be reinstated in service irrespective of the merits of the case and the extent of his right. The order passed on review is wholly unsustainable.

We however, make it clear that what we have stated above does not affect in any way what the High Court has stated in the penultimate paragraph of the judgment dated 24.3.1988 which reads thus:

"It is open for the opposite parties to consider the claim of the petitioner for continuation in service or of fresh appointment and no observations in this regard are being made by this court

The appeal is accordingly allowed. No costs."

12. Thus in pursuance to the aforesaid judgment of the Hon'ble Supreme Court by which the original judgment of the High Court was restored and the matter was reconsidered and the representation submitted by the petitioner, has been rejected by the Government on the ground that the appointment being purely on contractual in nature, the petitioner has got no right to claim for continuance of service like regular employees. The Government took a decision not to continue the petitioner in service and rejected the representation.

13. While assailing the impugned order, Shri Manish Mathur learned counsel for the petitioner submits that the original appointment of the petitioner was against regular vacancies and he was appointed through a selection committee hence entitled to continue in service. The petitioner's counsel relied upon the judgment reported in 1986 (3) SCC 156 : Central Inland Water Board v. Brojan Nath Ganguli ; 1986 Vol.4 SCC 337: O.P.Bhandari v. Indian Tourism Development Corpn. Ltd. and Others , 1985 Vol. 3 SCC 116 : West Bengal State Electricity Board and Others v. Desh Bandhu Ghosh and Others and 1979 (1) SCC 477 : The Manager Government Branch v. D.B.Belliappa. The case of Government Branch Press (supra) relates to temporary Government service. Order of termination was challenged on the ground of hostile discrimination. Their Lordships held that the termination could not be resorted in a discriminatory manner and equals cannot be treated unequally. Service could not be terminated without assigning any reason and it may be set aside in case it is challenged on the ground of hostile discrimination. The Judgment in the case of Government Branch Press(supra) seems to be not applicable in the present facts and circumstances of the case where the appointment is purely contractual for a specific period and the terms and conditions of appointment were duly accepted by the petitioner. The case of Desh Bandhu Ghosh(supra) relates to the termination of service of permanent employees by simplicitor order in lieu of three months' notice.

14. Hon'ble Supreme Court ruled that the services of the permanent employees could not be terminated by notice and it shall be violative of Article 311 of the Constitution of India. This judgment also does not seem to be applicable in the facts and circumstances of the present case.

15. Judgement in case of O.P.Bhandari(supra) relied upon by the petitioner's counsel also relates to the termination of services of the confirmed employee by giving 90 days' notice or pay in lieu thereof. This case also does not apply in the facts and circumstances of the present case.

16. Law on the subject has been very well settled with regard to the contractual, temporary, stop gap arrangement/appointments by the Constitution Bench of the Hon'ble Supreme Court in the case of State of Karnataka and others v. Uma Devi and others : 2006 (4) SCC 1 which has been followed by the subsequent judgments of the Hon'ble Supreme Court. Appointment done purely on temporary basis, adhoc or contractual basis does not extend any right to persons who were appointed on contractual basis and shall come to an end after expiry of the period.

17. Once a person does not raise any objection to the terms and conditions contained in the appointment order and joined after accepting the same, then at latter stage such appointee will have got no right to raise grievance in case the terms and conditions given in the appointment order is implemented and the services are dispensed with. As observed, upto the stage of Hon'ble Supreme Court, the petitioner has never challenged the terms and condition contained in the appointment order. Even while filing the review before this court, he has not raised grievance with regard to the conditions provided in the original appointment order and extension given thereof by the Government. Supreme Court observed further that since the petitioner has not raised any grievance to the original appointment either while filing the writ petition or by preferring a review, he cannot take a plea contrary to the pleadings on record.

18. Once Hon'ble Supreme Court by its observation have settled the matter with regard to the nature of appointment, now it is not open either for the petitioner or for this court to enter into dispute raised by the petitioner with regard to the nature of appointment. Judgment and order passed by this Court followed by the

judgment of the Hon'ble Supreme Court deemed to have settled the controversy with regard to the nature of the appointment and as observed, the petitioner cannot raise the issue with regard to the nature of the appointment at this stage.

19. In view of the above, there appears to be no good ground to interfere with the impugned order passed by the respondents rejecting the petitioner's claim. Petition is devoid of merit and is accordingly dismissed.

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