

Prithwi Raj Bali Raizada Ganda Mal Bali Vs. the State of Delhi and anr.

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Court : Punjab and Haryana

Decided On : Dec-14-1956

Reported in : AIR1957P& H96

Judge : Khosla and; Falshaw, JJ.

Acts : [Constitution of India](#) - Article 311

Appeal No. : Civil Writ No. 257-D of 1954

Appellant : Prithwi Raj Bali Raizada Ganda Mal Bali

Respondent : The State of Delhi and anr.

Advocate for Def. : Bishambar Dayal, Standing Counsel

Advocate for Pet/Ap. : R.R. Chhabra, Adv.

Disposition : Petition dismissed

Judgement :

Khosla, J.

1. This petition under Article 226 of the Constitution has been referred to a Division Bench in pursuance of an order made by Dulat J., before whom it came up in the original instance.

2. The petitioner is Prithvi Raj Ball who was acting as an Assistant Sub-Inspector of Police In the Delhi State. He was found guilty of steal-ing a number of postal orders from a letter which he handled in the Censor's office. Charges were framed against him ana upon these charges an inquiry followed. The report of the Enquiry Officer was that the charges had been proved. Upon this a recommendation was made for the peti-tioner's dismissal and the Superintendent of Police, C.I.D., passed orders of dismissal after giving him a notice to show cause against the proposed punishment.

The petitioner thereafter filed an appeal which was heard by the Inspector-General of Police, Delhi. This appeal was dismissed. and an appeal to the Chief Commissioner of Delhi met the same fate, finally a mercy petition was sent up by the petitioner but this too was dismissed by theinspector-General of Police., Delhi. Thereafter the petitioner filed the present petition in this Court contending that he had been wiongfully dismissed because the officer who dismissed him was subordinate to the officer who appointed him and therefore the provisions of Article 311 of the Constitution had not been observed.

3. The reason why Dulat J. referred this matter to the Division Bench was that there was some doubt as to the post held by the Officer who appointed the petitioner. The petitioner was 'originally 'serving in Sind where he was appointed to the post of a Police Constable by the Superintendent of Police. The case for the State is that although he was recruited afresh to the Delhi Police the appointing authority in Sind was to be deemed the appointing authority for the purposes of Article 311 of the Constitution.

The order recruiting the petitioner to the post of Head Constable was made by the Deputy Inspector-General of Police. The facts are that the petitioner deserted from his original post in Sind and was dismissed from service. He arrived In Delhi and was temporarily recruited in the Delhi Police as a Head Constable with effect from the 25th of September 1947. The order passed by the Deputy Inspector-General of Police was as follows:

'Pri-thvi Raj Ball of Sind Karachi Police istemporarily recruited in the Delhi Police in his substantive rank of Head Constable. He reports that he has been officiating as A.S.I. since 15-9-44.'

This order was substituted by a subsequent order dated the 31st of October 1947 which is as follows:-

'This office order No. 727/EST/27-12 dated 25-9-47 regarding temporary recruitment of Pri-thvi Raj Ball as A.S.I. or Police we from 25-9-47 is cancelled. He is now temporarily recruited in his substantive rank of Head Constable with effect from 25-9-17 and promoted to Offg. Assistant Sub Inspector with effect from 1-10-47.'

Both these orders were issued by the Deputy Inspector-General of Police and it is 'therefore clear that the appointment of the petitioner was made by the Deputy Inspector-General of Police and that no authority subordinate to him was competent to dismiss him. The dismissal in the present case was under the orders of the Superintendent of Police, C.I.D., and therefore the petitioner was dismissed by an authority subordinate to the one which appointed him.

4. The matter, however, does not rest there and this petition must be dismissed on the ground that the petitioner was not a permanent member of the Police Force. He was recruited on a temporary basis only and this Court has consistently taken the view that temporary Government ser-vants in civil employ are not entitled to the protection afforded by Article 311 of the Constitution.

The learned counsel for the petitioner has sought to argue that because the word 'substantive' wss used in the two orders quoted above the petitioner held a permanent and substantive post, but the wording of the orders makes it quite clear that the word 'substantive' refers to the post which the petitioner held in Sind. His appointment was on a temporary bnsis and he was therefore liable to be removed at will. The Nagpur High Court has taken the same view in Laxminarayan Chironjilal v. Union of India, AIR 1956 Nag 113 (A). At p. 114 of the report the following passage appears:-

'A person cannot be deemed to be a member of a service unless he is permanently absorbed therein; nor, in our opinion, can he be deemed to be the holder of such post unless he holds it permanently. For holding a post permanently the post itself must be

permanent and the incumbent must be a permanent employee. If the post itself is temporary then the person who is working thereon cannot be said to 'hold' it. Similarly, where the post is permanent but the holder is only temporarily working on it, he cannot be said to 'hold' the post but to merely officiate in that post.'

The learned Judges referred to a decision of the Privy Council in *Shenton v. Smith*, (1895) 1895 AC 229 (B), which supports the view taken by the Nagpur High Court. With great respect I full agree with this view. There is an unreported case of this High Court to which the same view was expressed.

5. There seems to me nothing unjust in excluding temporary Government servants from the protection of Article 311 of the Constitution. This Article was intended to protect permanent members of the services and not individuals who are recruited temporarily to short term posts, and as long as the service is on a temporary basis it does not matter whether it is for a few weeks or a few years. A temporary Government servant knows that he has no permanent lien on the post to which he has been appointed and can have no grievance if he is removed at short notice and without cause being assigned to him.

Normally temporary Government servants are recruited on a contract basis and the terms of their employment are communicated to them. In the present case the petitioner was told unmistakably that he was being temporarily recruited and he could be under no misapprehension regarding his rights. He was therefore liable to be removed without the procedure contemplated by Article 311 of the Constitution being followed.

6. In the present case the petitioner had the fullest opportunity to defend himself. Charges were framed against him and a detailed enquiry was made. The report of the Enquiry Officer was that he was guilty of these charges. When he appealed to the Inspector-General of Police his appeal was carefully considered and the Inspector-General wrote a lengthy order in which he discussed the petitioner's case from all aspects. In a case of this type I would not be prepared to exercise the extraordinary power given by Article 226 of the Constitution.

7. I. would therefore dismiss this petition with costs.

Falshaw, J.

8. I agree.