ishwari Prasad Atri Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Oct-12-1964

Reported in : AIR1965Raj147

Judge : D.S. Dave, C.J. and; Kan Singh, J.

Acts : Constitution of India - Article 311(2); Rajasthan Service Rules, 1951 - Rule 23A; Rajasthan Subordinate Service (Recruitment and other Service Conditions) Rules, 1960 - Rule 19

Appeal No. : Civil Writ Petn. No. 154 of 1963

Appellant : ishwari Prasad Atri

Respondent : The State of Rajasthan and ors.

Advocate for Def. : Government Adv.

Advocate for Pet/Ap. : N.M. Kashilawal, Adv.

Disposition : Petition dismissed

Judgement :

Kan Singh, J.

1. This is a writ petition under Article 226 of the Constitution filed by petitioner Ishwari Prasad Atri, who was holding the post of an Overseer on a temporary basis, challenging the order of his termination of services dated 31-12-1962, on the ground that the same is violative of Article 311(2) of the Constitution.

2. The petitioner was in the service of the former Jaipur State as an Overseer in the Public Works Department. Sometime in the year 1946, he was involved in a case of bribery and as a result of the prosecution, launched against him, he was sentenced to imprisonment for one year in January, 1949. It seems that when Rajasthan was formed he was serving out the sentence of imprisonment. On his release from jail sometime in the year 1950, the petitioner started working as a Public Works Contractor and continued to work as a Contractor till 12-4-1956, when he was appointed as an Overseer in the Civil Division of the Electrical and Mechanical Department, Rajasthan. He worked in that capacity till 23-4-1957, when he left the job to join the Sugar Mills at Ganganagar. There, he was appointed on a salary of Rs. 295/-. On account of his domestic difficulties, however, he had to leave the job. He then joined the Public Works Department, Rajasthan on daily wage basis, as a Mistri. Thereafter, after obtaining recommendation from the inspector General of Prisons

about his good conduct he secured the job of an Overseer in the office of the Executive Engineer (Building and Roads) Planning Division, Jaipur. The rule about the age for first entry into Government service was also relaxed in favour of the petitioner, and on account of his past experience he was given four advance increments as an Overseer. While he was working as an Overseer, a question was raised in the Rajasthan Legislative Assembly about the advisability of his appointment under the State on the ground that he had been convicted of an offence of bribery while he was working as an Overseer in the former Jaipur State. It appears that, thereafter the Government decided to terminate his services, as they realised that it was not proper to have employed a man convicted for corruption. Accordingly, the Chief Engineer (Building and Roads), Rajasthan, who was the appointing authority, terminated the services of the petitioner on 31-12-62 (vide Ex. 5). The petitioner challenges the validity of this order on the ground that this order is really one of dismissal as it nuts a stigma on his character and debars him from further employment under the State. It is urged that, though in outward shape and form the order is one of termination of services, but in reality it is one of dismissal and consequently bad.

3. The writ petition has been opposed by the State and it is submitted that the impugned order is one of termination of services of a temporary employee and the action has been taken in accordance with Rule 23 (a) of the Rajasthan Service Rules.

4. The only point that, therefore, arises for consideration in the case is, whether the impugned order Ex. 5, is one of termination of services of a temporary employee under Rule 23 (a) of the Rajasthan Service Rules, or is one of dismissal as contended by the petitioner, passed in violation of the provisions of Article 311(2) of the Constitution. The order is a short one, and may be reproduced hereunder :

'The services of Shri I.P. Atri, Overseer, Assistant Engineer's Office B & R, City Sub-Division No. VI, Jaipur are hereby terminated with effect from 31-12-1962 afternoon.'

5. The principles that should govern the matter are now well settled by several decisions of the Supreme Court. It has been laid down authoritatively by their Lordships in Parshotam Lal Dhingra v. Union of India, AIR 1958 S C 36 that the words 'dismissed', 'removed' and 'reduced in rank', as used in connection with any action taken against a Government servant denote the three major punishments. The protection of Article 311 is available only when in truth and reality, any of these three punishments are inflicted on a Government servant contrary to the provisions of the law. The protective shield of Article 311 is available both to permanent as well as temporary civil servants. At the same time it has been recognised that where the Government proposes to take action against a civil servant on the basis of the contract with him, or under the Civil Service Rules applicable to him for terminating the employment, then the protection of Article 311 may not be available to the Government servant unless he is able to convince the Court that in truth and reality the Government were inflicting a punishment under the garb of the order under the Civil Service Rules. The following illuminating passage from Parshotam Lal Dhingra's case, AIR 1958 S C 36 may usefully be referred :

'Any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal, as has been held by this Court in Satish Chander v. Union of India, AIR 1953 S C 250. Likewise the termination of service by compulsory

retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Article 311(2), as has also been held by this Court in Shyam Lal v. State of Uttar Pradesh, 1955-1 S C R 26 : (AIR 1954 S C 369). In either of the two above mentioned cases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under Rule 52 of the Fundamental Rules. It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules, to terminate the service the motive operating on the mind of the Government is, as Chagla, C. J., has said in Shrinivas Ganesh v. Union of India, (S) AIR 1956 Bom 455, wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules then prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with. As already stated if the servant has got a right to continue in the post, then unless the contract of employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, inefficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be a punishment and therefore, a dismissal or removal within Article 311, for it operates as a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an idelible stigma, on the officer affecting his future career.'

6. In a later case from Tripura reported as Union Territory of Tripura v. Gopal Chandra Dutta Choudhuri, AIR 1963 S C 601 the position was re-stated in clearer terms. The petitioner Gopal Chandra Dutta was appointed as a constable in the Police Force of Tripura by the Superintendent of Police, Agartala, by his order dated 18-4-54. The appointment was temporary and was liable to be terminated with one month's notice. On 6-12-57, the Superintendent of Police purporting to act under Rule 5 of the Central Services (Temporary Service) Rules, 1949, informed the respondent that his services would stand terminated with effect from 6-1-58. He filed an appeal to the Chief Commissioner complaining against the order of termination. The Chief Commissioner replied to the petitioner that, as he was an ex-convict for an offence of theft nothing could be done for him. Further representations by the petitioner proved to be of no avail and it was made clear to him that he could not be re-employed by the administration as he was an ex-convict in a case of theft.

Gopal Chandra Dutta then moved the Judicial Commissioner of Tripura by a writ petition under Article 226 of the Constitution and the learned Judicial Commissioner quashed the order holding that it was in the nature of a penalty. The administration of Tripura then filed an appeal to the Supreme Court after obtaining a certificate from the Judicial Commissioner. It was contended on behalf of the Government Servant that the order in question was really one in the nature of penalty. Repelling this argument, their Lordships laid down that there was no ground for inferring that the Superintendent of Police was seeking to camouflage an order of dismissal of a temporary police constable by giving it the form of termination of employment in

terms of contract of service. We may observe that their Lordships were not unaware of what the Chief Commissioner had said to the petitioner over and over again that he being an ex-convict for theft could not be re-employed by the administration.

To our mind, this case affords a good parallel to the facts of the present case. One cannot legitimately infer from the order Ex-5 that the termination was ordered on account of any new fault of the petitioner during his employment after he was posted as an Overseer in pursuance of the Chief Engineer's order dated 5-10-60. Learned counsel for the petitioner has laid great stress on the letter of the Government dated 31-12-62, addressed to the Chief Engineer which led the Chief Engineer to issue the order Ex-5. The learned counsel contends that the Government had gone back on their previous decision when they permitted the re-employment of the petitioner in the full knowledge that he was a previous convict. He further argues that Government's letter results in a stigma on the character of the petitioner and also visits him with penal consequences inasmuch as he was not to be re-employed in any capacity in the department again.

Having given our careful consideration to the matter we are not convinced that order Ex-5, which is patently one of termination of service in accordance with Rules on account of the temporary nature of the employment is rendered to be one of punishment on the basis of the Government's letter Ex-4. It appears that the Government realised the impropriety in the matter of petitioner's re-employment and for rectifying that they utilised the fact of the temporary nature of employment for exercising their rights under the Rules. This by itself, to our mind, cannot establish that the Government intended to take any penal action against the petitioner. The mere fact that a civil servant loses his employment and consequently suffers loss of salary is not the test for seeing whether, an order is one under the Rules only, or in reality in the nature of penalty. Loss of employment with loss of income is a common attribute of both. The true test, to our mind, is the underlying intention of the Government. We are satisfied that in the present case the Government were not intending to take any penal action against the petitioner and his conduct, after his appointment on 5-10-60, was not even remotely considered.

7. Learned counsel for the petitioner further submitted that as required by Rule 23 (A) of the Rajasthan Service Rules, no notice of termination of service was given to the petitioner. Nor was the salary of one month paid to him in lieu thereof. As such, he argues, it could not be said that the appointing authority had taken action under Rule 23 (A) of the Rajasthan Service Rules. Learned Deputy Government Advocate has stated before us that the Government shall pay the petitioner one month's salary as required by the Rules. Proviso to Rule 23 (A) permits the Government to terminate the service of a Government servant forthwith by paying to him a sum equivalent to the salary of the notice period. At any rate, it is for the petitioner to claim his salary by a suit if the Government delays the payment or eventually refuses it, but that has nothing to do with the true character of the order under challenge.

8. We have also examined the question whether the petitioner had acquired a valid title to the post by the appointment. Now the Governor has framed rules known as the Rajasthan Subordinate Services (Recruitment and other Service Conditions) Rules 1960, under Article 309 of the Constitution and recruitment to the post of an Overseer, who belongs to the Subordinate Service, falls to be governed by these Rules. It may be mentioned that the petitioner was an employee or the ex-Jaipur State, who was dismissed on account of his conviction on a charge of corruption

before the formation of Rajasthan. As such, he never came to be integrated with the services of Rajasthan and was a first appointee when he was appointed by the Chief Engineer by his order dated 5-10-60 (Ex-2). At that time these Rules had already come into force. Part IV of these rules lays down the procedure for direct recruitment. Direct recruitment as per these Rules could be made only through the agency of the Public Service Commission.

The learned counsel for the petitioner relied on Rule 19 of these Rules for the purpose of showing that the petitioner could be temporarily appointed without the prior concurrence of the Public Service Commission for a period of six months. He contends that all that was required under this rule was that the case had to be referred to the Police Service Commission within six months of the appointment and once the case of a temporary servant is referred to the Public Service Commission the appointment could continue till the refusal of concurrence by the Public Service Commission. We are not satisfied that this course is admissible in the case of a direct recruit. Rule 19 may he reproduced below.

'Rule 19. Temporary appointments.--Any vacant post which is normally to be filled by direct recruitment may lie filled by the appointing authority temporarily by appointing thereto, in an officiating capacity, a suitable official eligible for promotion or appointment to the post concerned under the provisions of these rules, provided that if concurrence of Public Service Commission is required of direct recruitment to a post, no such appointment shall be continued beyond a period of six months without referring it to the Commission for their concurrence and shall be terminated immediately on their refusal to concur.'

According to this rule, when any vacant post has to be filled up temporarily, then, it may be filled up in an officiating capacity and a suitable official who is already in service and who is eligible for promotion or appointment to the post concerned may be appointed. Rule 19 does not empower the appointing authority to make temporary appointments of persons who are not already in service. Prior to the appointment of petitioner as Overseer on 5-10-60, he was not holding any civil post under the State. Employment of the petitioner as a Mistri on daily wage basis shows that he was only a workman at that time and not the holder of a civil post. Thus, we are not satisfied that the appointment of the petitioner as an Overseer without the agency of the Public Service Commission was in accordance with the rules and consequently it cannot be said that he had a title to the post.

9. In the result, we are of the opinion that the writ petition has no substance and we accordingly dismiss it but order the parties to bear their own costs.