

The Director of Panchayat Raj and Another

Vs

Babu Singh Gaur

State of U. P.

Vs

Jugal Kishore Bhatt

Civil Appeals Nos. 1011 and 1012 of 1966

(K.S. Hegde, A.N. Grover, H.R. Khanna JJ)

18.11.1971

JUDGMENT

HEGDE, J. -

1. These are appeals by special leave. A common question of law arises for decision in these two appeals. Hence it is convenient to consider them together. The material facts are more fully set out in Civil Appeal No. 1012 of 1966. We shall set out those facts in detail. We shall refer to the facts of Civil Appeal No. 1011 of 1966, thereafter, briefly.

2. The respondent in Civil Appeal No. 1012 of 1966, Jugal Kishore Bhatt was appointed as the Sales-tax Officer on June 29, 1948, by the Governor of U.P. At the time of his appointment the posts of Sales-tax Officers were temporary posts. He joined the service in the Sales-tax department at Bareilly on July 15, 1948. His appointment was on temporary basis. He continued to serve in that department as Sales-tax Officer until the year 1951 on temporary basis. In that year the Government issued G.O. No. ST-419/X-941. Paragraph 4 of that order provided that as the posts detailed in the list annexed to the G.O. are likely to last for more than three years, the Governor is pleased to declare that the appointments made to those posts will be deemed to have been made in a substantive capacity and the incumbents thereof (shown in the list) other than those who are appointed to officiate in leave vacancies shall be treated as holders of those posts in a substantive capacity within the meaning of the order of the Governor regarding Fundamental Rule 26(d) of the Financial Handbook, Volume II, Part II with retrospective effect from the date of their first appointments to those posts. The respondent continued in the department as Sales-tax Officer until 1953. In that year the Governor of U.P. in exercise of the powers conferred upon him by the provisions of Article 309 of the Constitution made the following rule :

"(1) Notwithstanding anything to the contrary in any existing rules and orders on the subject, the services of a Government servant in temporary service shall be liable to termination at any time by notice in writing given either by the Government servant to the appointment authority or by the appointing authority to the Government servant.

(2) The period of such notice shall be one month given either by appointing authority to the Government servant, or by the Government to the appointing authority, provided that in the case of notice by the appointing authority, the latter may substitute for the whole or part of this period of notice, pay in lieu thereof; provided further that it shall be open to the appointing authority to relieve a Government servant without any notice or accept notice for a shorter period without requiring the Government servant to pay any penalty in lieu of notice.

(3) This rule shall take immediate effect and shall apply to all persons who are appointed hereafter in a civil post in connection with the affairs of Uttar Pradesh and who are under the rule making control of the Governor, but who do not hold a lien on any permanent Government post.

(4) In this rule "temporary service" means officiating and substantive service in a temporary post, and officiating service in a permanent post, under the U.P. Government.

(5) Nothing in this rule shall apply to -

(a) Government servant engaged on contract;

(b) Government servant not in whole time employment;

(c) Government servant paid out of contingencies;

(d) Persons employed in work-charged establishments."

3. Sometime in February, 1953, the respondent was informed by the Commissioner of Sales-tax, U.P., that his appointment would terminate on March 31, 1953; but he could be re-employed in the post but he will be subject to the rule set out earlier. The respondent was asked to intimate to the Government by March 23, 1953, whether he was prepared to be re-employed from April 1, 1953, on the said terms. The respondent signified his consent for re-appointment on the terms mentioned in the letter. Thereafter he continued in service up to March 31, 1954. Subsequently his appointment was extended for a period of one year from April 1, 1954 to March 31, 1955.

4. Meanwhile by G.O. No. ST-896/X-911, D-55, dated April 27, 1955, the Governor was pleased to sanction the extension of the posts of Sales-tax Officers up to March 31, 1956.

5. On May 22, 1956, the Governor was pleased to issue G.O. No. ST-2562/X-911-A. This G.O. is important. Hence we shall quote the same in full :

"G.O. No. ST-2562/X-911, dated May 22, 1956, from the Deputy Secretary to Government to Commissioner Sales Tax.

Subject : Conversion of sixty-one temporary posts of S.T.O., into permanent one.

With reference to your letter No. E-1 - Cent-13 - 13814/ST, dated February 13, 1956, I am directed to convey the sanction of the Governor to the conversion, w.e.f., April 1, 1955 of, sixty-one temporary posts of S.T.Os., in the scale of Rs. 250-25-600 sanctioned for the S.T. Department, the term of which was last extended upto March

31, 1956, in G.O. No. ST-896/X-911/55, dated April 26, 1955, into permanent ones. That G.O. should be deemed to have been modified accordingly. Orders regarding the confirmation of individual officers in these posts will issue separately.

The charge on the above account should be debited to the relevant primary Units under the head "13-other taxes and Duties - C. Charges in connection with the U.P. Sales Tax Act, 1948 in the budget."

6. On May 1, 1958, the State Government terminated the services of the respondent by giving him one month's notice. The respondent represented against the notice terminating his service but his representation was rejected. Thereafter he challenged the order of his termination before the Allahabad High Court by means of a writ petition under Article 226 of the Constitution. His writ petition was accepted by the learned single Judge and the impugned order was set aside. That order was affirmed by a division bench. Aggrieved by that order, the Government has brought this appeal.

7. Now turning to the facts in Civil Appeal No. 1011 of 1966, the respondent therein was appointed as a temporary Panchayat Raj Inspector on June 6, 1949. Officers appointed temporarily under the Panchayat Raj Scheme were also declared to hold their temporary posts in substantive capacity, within the meaning of the order of the Governor regarding Fundamental Rule 26(d) of the Financial Handbook, Volume II, Part II, with retrospective effect from the date of their first appointment to those posts. They were also made subject to the rule made under Article 309 referred to earlier. The temporary posts under the Panchayat Raj Scheme were converted into permanent posts subsequently. The services of the respondent Babu Singh Gaur were terminated, by giving him one month's notice, on September 12, 1958. Babu Singh Gaur also challenged his termination by means of a writ petition under Article 226 of the Constitution before Allahabad High Court. His writ petition was dismissed by a single Judge but in appeal the Letters Patent Bench allowed his plea and set aside the impugned order. The Government has appealed against that order.

8. It is admitted that the respondent in both these appeals were appointed temporarily. At the time of their initial appointment, the posts to which they were appointed were also temporary. Sometime after their appointment, their appointments though temporary were declared to be on substantive capacity within the meaning of the order of the Governor, regarding Fundamental Rule 26(d), Financial Handbook, Volume II, Part II, with retrospective effect from the date of their first appointments to their posts. Fundamental Rule 26(d) says :

"If a Government servant's tenure of a temporary post is interrupted by duty in another post or by leave other than extraordinary leave or by foreign service, such duty, leave or foreign service counts for increments in the time-scale applicable to the temporary post if the Government servants returns to the temporary post :

Provided that the Government may, in any case where they are satisfied that the leave was taken on account of illness or for any other cause beyond the Government servants' control, direct, that extraordinary leave shall be counted for increments under this clause."

9. The order of the Governor regarding Rules 26(d) reads thus :

"Under this rule if a Government servant's tenure of a temporary post is interrupted by leave, the leave counts for increments to the time-scale applicable to the

temporary post, but under clause (b) of this rule if a Government servant officiating in a permanent post takes leave and returns to his officiating tenure of that post on the expiry of the leave, the leave does not count for increments in the time-scale applicable to that post as during such leave he is treated as having reverted to his substantive post, if any. The difference in the treatment accorded to leave granted under similar circumstances arises from the fact that appointments to temporary posts, even of short duration, are usually made in a substantive capacity. But neither the practice of making almost all appointments to temporary post in a substantive capacity nor the difference of treatment to which it gives rise is justified. Therefore, although these rules as they stand admit of both a substantive appointments to temporary posts should be made only in a limited number of cases, as for example, when posts are to all intents and purposes quasi-permanent or when they have been sanctioned for a period of not less than three years, or there is reason to believe that they will not terminate within that period. In all other cases, appointment to temporary posts should be made in an officiating capacity only."

10. It is clear from the rules as well as the order of the Governor that they merely dealt with leave and increment. That order has nothing to do with the nature of the appointment. The fact that for certain specified purposes those temporary appointments were to be considered to be in a substantive capacity, does not mean that the appointees were holding the posts in question in a substantive capacity for all purposes. For purposes other than mentioned in the order, their appointments continue to be temporary.

11. The learned Judges of the Letters Patent Bench thought that as Babu Singh Gaur and Jugal Kishore Bhatt were holding their posts in a substantive capacity, though temporarily, after the posts held by them were made permanent, they must be held to have been holding those permanent posts in a substantive capacity. In our opinion this is an erroneous reasoning. The order which converted those temporary posts into permanent posts specifically stated that "order regarding the confirmation of individual officers in these posts will issue separately". At the time of the conversion of temporary posts into permanent posts, the Government did not consider the question as to who all should be confirmed. Obviously the Government wanted to consider that question separately.

12. The substantive capacity conferred on the officers holding temporary posts in the Sales-tax department as well as in the Panchayat Raj department was for a specific purpose, i.e., counting leave for increment purpose, and for no other purpose. That order did not convert the appointments of the temporary Government servants in those departments either into permanent appointments or into temporary appointments in substantive capacity in permanent posts.

13. A temporary Government servant does not become a permanent Government servant unless he gets that capacity either under some rule or he is declared or appointed by the Government as a permanent Government servant. Our attention has not been invited to any rule under which respondents in these appeals can be considered as having been appointed either permanently or in a substantive capacity to permanent posts. All along they continued to be temporary Government servants whether the posts held by them were temporary posts or permanent posts.

14. This Court in *Purshotam Lal Dhingra v. The Union of India*, [1958 SCR 828 : AIR 1958 SC 36 : 1958 SCJ 217] considered in detail the nature of posts held by Government servants. Dealing with the question of substantive appointment of a person to a temporary post, this Court observed at pp. 842 and 843 of the report :

"The substantive appointment to a temporary post, under the rules, used to give the servant so appointed certain benefits regarding pay and leave, but was otherwise on the same footing as appointment to a temporary post on probation or on an officiating basis, that is to say, terminable by notice except where under the rules promulgated in 1949 to which reference will hereafter be made, his service had ripened into what is called a quasi-permanent service."

15. It may be noted that in that case this Court was considering the effect of Fundamental Rules. In these appeals also we are concerned with those Rules. After dealing with the nature of the various appointments, this Court observed :

"The position may, therefore, be summarised as follows : In the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years' service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice to him. An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to during that period unless he is, by way of punishment, dismissed or removed from the service. Except in these two cases, the appointment to a post, permanent or temporary, on probation or on an officiating basis or a substantive appointment to a temporary post gives to the servant so appointed no right to the post and his service may be terminated unless his service had ripened into what is, in the service rules, called a quasi-permanent service."

16. In *State of Nagaland v. G. Vasantha*, [AIR 1970 SC 537] this Court was called upon to decide the validity of termination of service of a Government servant by giving him notice of termination as prescribed in the relevant Rules. Therein, the concerned Government servant had been appointed purely on temporary basis. The post to which he was appointed was also a temporary first. Sometime after his appointment that post was converted into a permanent post. But his services were terminated. The question was whether because of the conversion of the post into a permanent post, he ceased to be a temporary Government servant. Reversing the decision of the High Court of Assam and Nagaland, this Court held that the fact that the post which he was holding was converted into a permanent post did not confer on him any additional right. His service was terminable by giving him the prescribed notice under the Rules.

17. A question similar to the one before us came up for consideration before this Court in *State of U.P. v. Abdul Khalik*. [C. As. Nos. 782 and 783 of 1966, decided on April 30, 1969 : (1969) 2 SCA 124]. The facts of that case were substantially similar to the facts in these appeals. Therein this Court reversing the decision of the Allahabad High Court held that the service of the respondent therein was validly terminated by giving him one month's notice. Speaking for the Court Sikri, J. (our present chief Justice) observed :

"The learned counsel for the State contends that the plaintiff was a temporary servant and his services were liable to be terminated on a month's notice and the fact that he was holding appointment as temporary substantive does not make the plaintiff a permanent Government servant. There is force in this contention. The learned

counsel for the plaintiff was not able to point out any material to show that a person who is appointed temporary substantive can be equated with a permanent Government servant. It is clear from the order, dated May 22, 1956, that only certain posts were made permanent while by the order, dated December 12, 1957, certain other persons were made permanent Government servants. The plaintiff cannot claim to be a permanent Government servant till he is declared or appointed as such."

18. In that case this Court had to consider the scope of the rule framed by the Governor under Article 309 of the Constitution. In our opinion, the ratio of that decision completely covers the point under consideration. That decision was tried to be distinguished on the ground that in that case, only some out of the several temporary posts had been converted into permanent posts, whereas in the cases before us all the temporary posts had been converted into permanent posts. We do not think this difference has any bearing on the ratio of that decision. The ratio of that decision is that a Government servant temporarily appointed does not get a right to the post merely because the post held by him is converted into a permanent post.

19. For the reasons mentioned above, we allow these appeals, set aside the orders of the High Court and dismiss the writ petitions but in the circumstances of the case, we direct the parties to bear their own costs both in this Court as well as in the High Court.

20. Before leaving these cases, we would like to impress on the Government the hardship that is likely to be caused to the respondents in these appeals. Babu Singh Gaur was appointed as far back as 1949 and Jugal Kishore Bhatt in the year 1948. They have served the Government for a very long time. At this late stage in their lives, it would be very difficult for them to seek other employment. These are eminently fit cases where the Government should find a way to absorb them in its service.

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