

Madan Mohan Prasad

Vs

State of Bihar and Others

Writ Petition No. 121 of 1972,

(CJI S.M. Sikri, A.N. Ray, D.G. Palekar, M.H. Beg, S. N. Dwivedi JJ)

23.02.1973

JUDGMENT

SIKRI, C.J. :-

1. In this petition under Article 32 of the Constitution, the petitioner, Madan Mohan Prasad, challenges the order of the Government of Bihar, dated January 15, 1972, terminating his services. He urges that this order violates Article 311(2) of the Constitution and also violates his fundamental right under Articles 19(1)(f) and 31(1) of the Constitution because the order, in effect, amounts to forfeiture of the pension earned by him.

2. The relevant facts are these. In response to an advertisement in the Bihar Gazette, dated April 28, 1954, the petitioner applied for one of the posts of Munsifs. The relevant portion of the advertisement runs as follows :

"The appointment will be made for a period of one year terminable at one month's notice on either side but the candidate appointed will have prospects of being absorbed later in permanent cadre of the Bihar Civil Service (Judicial Branch)".

3. By notification, dated January 5, 1955, the petitioner, along with others, was appointed as a temporary Munsif. In Para 2 of the notification it was stated as follows :

"These appointments have been made against the temporary posts sanctioned in Government Order No. ICI-502/54-A - 1197, dated February 9, 1954. The term of appointment of these temporary Munsifs can be terminated at any time by either party giving notice of one month."

4. These posts have since been made permanent and the petitioner continued to serve against a permanent post till his services were terminated.

5. The petitioner, in due course, passed all the Departmental Examinations. He also passed the examination of tribal language and received Rs. 1,000/- as reward.

6. The petitioner became eligible for pension under Rule 59 of the Bihar Pension Rules, 1950. It is stated under Rule 59 as follows :

"(3) The State Government after careful consideration have, therefore, been pleased to decide that, if the service of the temporary or officiating Government servant who is not confirmed in any post is continuous and is more than fifteen years it will be

considered as pensionable under Rule 59 of the Bihar Pension Rules."

7. Under Rule 46 "no pension may be granted to a Government servant dismissed or removed, for misconduct, insolvency or inefficiency, but to Government servants so dismissed or removed compassionate allowances may be granted when they are deserving of special consideration, provided that the allowance granted to any Government servant shall not exceed two-thirds of the pension which would have been admissible to him if he had retired on medical certificate."

8. In answer to a question in the Bihar Legislative Assembly relating to the petitioner the Chief Minister, Shri Kedar Pandey, stated :

"It is true that having put in fifteen years of temporary service he is entitled to pension but on the other hand since his service was not satisfactory he can be removed on one month's notice. On reconsideration of the matter the Government feels that he should be served show-cause notice. Therefore the Government is reconsidering the matter."

9. In the affidavit in reply filed on behalf of the State it is stated that the petitioner remained a temporary Munsif and was not absorbed at any time in a permanent cadre and his employment all along had continued on the basis of his original appointment. It is further stated that "the petitioner's contention that he acquired a right of pension or that he was getting increments in due course, is entirely irrelevant for the purpose of determining the character of his appointment inasmuch as increments are allowable also to a person holding a temporary post, and on his own showing in certain circumstances a continuous service for fifteen years might qualify the holder of a temporary post for pension."

10. With reference to the petitioner's claim that the impugned order had resulted in penal consequences, it was stated :

"The High Court and the State indeed took into consideration the quality of the petitioner's service with a view to decide whether he should be retained or not and since it was decided to terminate his services in terms of his conditions of service without visiting him any penal consequences, or casting any stigma it was necessary to draw up any proceedings against the petitioner."

11. It seems to us that on the facts of this case, the order, dated January 15, 1972, violates Article 311(2) of the Constitution. The petitioner had first been holding a temporary post and then a permanent post for nearly seventeen years. The Chief Minister's statement in the Assembly that his service were not satisfactory and the Government was considering serving show-cause notice and the fact that his service were terminated without any enquiry being held would inevitably lead the public to believe that his services had been terminated on account of inefficiency or misconduct. This did cast a stigma on his character.

12. It may be mentioned that it has been contended that the petitioner would lose his pension because pension which he had earned after more than fifteen years' service could only be granted under Rules 59 if he retired and not if his service were terminated.

13. The Additional Solicitor General brought to our notice the decision of this Court in *State of Nagaland v. G. Vasantha*, (AIR 1970 SC 537.) The facts in that case were quite different and the Court came to the conclusion on those facts that the termination was not by way of punishment.

14. In view of this conclusion we need not go into the question whether the petitioner should be deemed to have been confirmed because he held a permanent post for such a long period. We also need not consider whether the condition set out above in the notification, dated January 5, 1955, that "the term of appointment of these temporary Munsifs can be terminated at any time by either party giving notice of one month" had ceased to operate when the post were made permanent.

15. In the result the petition is allowed and the order, dated February 15, 1972, is quashed. The petitioner will have his costs.

</html