The Manager, Government Branch Press and Another

Vs

D. B. Belliappa

Civil Appeal No. 290 of 1969

(A. P. Sen, V. D. Tulzapurkar, R. S. Sarkaria JJ)

30.11.1978

JUDGMENT

SARKARIA, J. –

1. The respondent, Belliappa, was appointed temporary Junior Compositor in the Grade of Rs. 65-1-72-2-90 in the Government Branch Press, Mercara. The post was non-gazetted Class IV as defined in clause (IV) of sub-rule (3) of Rule 5 of the Mysore Civil Services (Classification, Control and Appeal) Rules, 1957. The employment was temporary and was to continue until further orders.

2. The Branch Manager, Mercara, appellant 1 (herein), served a notice on the respondent on December 29, 1966, stating that the respondent had taken outside the Press some copies of the ballot papers relating to the Director's election of Coorg Cardamom Co-operative Societies, Mercara. The respondent was required to show cause before 2.00 p.m. of December 30, 1966, why disciplinary action be not taken against him as per rules. It was further stated in the notice that failure to comply with the notice will result in the respondent's suspension and further disciplinary action against him.

3. Thereafter on January 3, 1967, an order was served on the respondent, terminating his services. This order (hereinafter called the impugned order) runs as under :

Office of the Manager, Government Branch Press, Mercara.

Memoranda

As per instructions contained in Head Office Order No. 570/66-67, dated January 3, 1967, Sri D. B. Belliappa, Junior Compositor of this Office is hereby informed that your appointment is purely temporary and terminable at any time without any previous notice and without reasons being assigned therefor are not required. Therefore your services are hereby terminated with immediate effect.

Sd/- Government Branch Press, Mercara.##

4. On January 7, 1967, Belliappa submitted a representation, dated January 6, 1967, to the Branch Manager against termination on his service, but without success, attributing motives to his immediate superior officer that his relations with the respondent were not cordial for the preceding three months. He also prayed for permission to continue to work and requested for disbursement of his pay.

5. On February 4, 1967, Belliappa instituted a writ petition in the High Court of Mysore with a

prayer to quash the order terminating his service. He further prayed for a direction that the Manager of the Press (appellant) be directed to appoint him a regular candidate to the post of the Junior Compositor in accordance with the provisions of the Mysore State Civil Services (Recruitment of Local Candidates to Class III) Rules, 1966, with consequential benefits.

6. The Manager filed a counter-affidavit stating that the respondent's appointment was purely temporary governed by the conditions in the contract of his service, and was liable to be terminated without notice at any time; that the 1966 Rules relied upon by the writ petitioner were not applicable to him because he was a Class IV employee.

7. Subsequently, Belliappa filed a further affidavit urging additional grounds for impugning the order of his discharge. The High Court, by its order dated January 30, 1968, allowed the respondent to take up these additional grounds, to the effect, that three other persons, namely, S/Shri B. S. Vittala, N. B. Achiah and Patric D'Souza who were appointed as temporary Junior Compositors subsequent to the respondent's appointment, had been retained and continued in service, while a discriminatory treatment was meted out to the respondent, without any reason. It was urged that in these circumstances, the termination of the respondent's service, while continuing three others similarly situated, was violative of Article 16 of the Constitution. At the stage of arguments, the respondent gave up his claim for regularisation of service.

8. The High Court by its order dated June 20, 1968, allowed the writ petition, holding that the impugned order contravened the guarantee of equal treatment embodied in Article 16. The High Court did not give reasons in his order, but stated therein that the reasons given in the decision of that Court in Writ Petition 153 of 1965, were applicable. In the result, the impugned order, by which the respondent's services were terminated, was set aside and it was declared that he will be entitled to all the benefits flowing from the Court's order, including reinstatement and the like.

9. Hence, this appeal by special leave.

10. Mr. Veerappa, learned Counsel for the appellant, contends that the respondent, Belliappa was appointed in a temporary capacity and his services could be terminated at any time without notice. The proposition propounded is that Articles 14 and 16 are not attracted in a case where the services of a temporary employee are terminated in accordance with the conditions of his service. In the alternative, it is submitted that the principle of 'first come and last go' may apply only when there is a general retrenchment and not where there is some special reason for terminating the services of one employee while continuing his juniors in the temporary service. It is maintained that the show-cause notice which was served on the respondent on December 29, 1966, furnishes the motive or the cause for terminating the respondent's services, while retaining his juniors in service. Mr. Veerappa contends that in spite of the fact the position taken by the appellants in the impugned order was that the service of the respondent was being terminated without assigning any reason in accordance with the conditions of his service, it could be spelled out from the show-cause notice that the real cause of terminating the respondent's service was his unsuitability for the job or unsatisfactory conduct.

11. A number of decisions have been cited : The Union of India v. Pandurang Kashinath More (AIR 1962 sc 630 : (1961) 2 LLJ 427 : (1961-62) 21 FIR 5). Champaklal Chimanlal Shah v. The Union of India ((1964) 5 SCR 190 : AIR 1964 SC 1854 : (1964) 1 LLJ 752), Doddaiah v. State of Mysore (AIR 1967 Mys 223 : (1967) 2 Mys LJ 100). Union of India v. Prem Parkash Midha (1969 SLR 655 (SC)), State of U. P. v. Ram Chandra Trivedi ((1976) 4 SCC 52 : 1976 SCC (L&S) 542 : (1977) 1 SCR 462), Madan Singh Puran Singh v. The union of India (1972 SLR 67 (Delhi)).

12. As against this, it is submitted on behalf of the respondent that in his further affidavit, dated January 25, 1968, the respondent had taken up the plea of hostile discrimination, with particularity, stating that while his three named juniors who were in all respects similarly situated, were continued in service, the respondent was arbitrarily singled out for discriminatory treatment, although the respondent's record of service was good and at no time he gave room for any complaint from his official superiors. It is stressed that these averments in the additional affidavit of the respondent were not rebutted or countered by the opposite side on affidavit, nor was any material produced on record to show that there was any special reason for terminating the respondent's service, and continuing the service of his juniors. It is urged that since the consistent stand taken by the appellant in the impugned order, in their counter-affidavit and at that time of arguments in the High Court was that the service of the respondent has been terminated without any reason, in accordance with the terms and conditions of his service, the appellants should not be allowed to commit a volte-face in his special appeal and take up a different ground which was never set up or pleaded.

13. Before dealing with the contentions canvassed on both sides, it will be useful to notice the relevant undisputed facts for the discussion, emerging from the pleadings and the material on record.

14. The service of the respondent, Belliappa, has been terminated without assigning any reason albeit in accordance with the conditions of his service, while three employees, similarly situated, junior to Belliappa in the same temporary cadre have been retained.

15. A charge of hostile discrimination has been levelled with sufficient particularity against the appellant. Hostile animus was also attributed by Belliappa in his writ petition to his superior officers. In the additional grounds of his further affidavit, Belliappa averred that his service record was good. This fact has not been controverted by the appellant by filling any counter-affidavit. However, there is material on the record to show that the impugned order was preceded by a show-cause notice of proposed disciplinary action against Belliappa. It could, therefore, be presumed that but for this show-cause notice, the service record of Belliappa was good. At any rate, there is nothing on the record to show that the service record of Belliappa was, in any way, inferior to his three juniors who have been retained in service. The impugned order itself says that Belliappa's services are being terminated without assigning any reason, and the same has been reiterated in the counter-affidavit, dated September 22, 1967, filed on behalf of the present appellant in the High Court.

16. In order to satisfy our conscience and appreciate the arguments of Mr. Veerappa that the service of the respondent have been terminated on the ground of unsuitability, we requested him to cause the production of the Head Office Order 570/66-67 dated January 3, 1967, which has been referred to in the impugned order. We granted Mr. Veerappa sufficient time for this purpose. On a subsequent date, he informed us that this Head Office order, also, does not contain any reason for the impugned action. Indeed, the contents of this Head Office order have been substantially reiterated in the impugned order, according to which, the service of Belliappa was terminated. Of course, there is always some reason or cause for terminating the services of a temporary employee. It is not necessary to state that reason in the order of termination communicated to the employee concerned. But where there is a specific charge of arbitrary discrimination, or some hostile motive is imputed to the authority terminating the service, it is incumbent on the authority making the impugned order to explain the same by disclosing the reason for the impugned action. In the instant case, the appellant intransigently withheld that information from the Court. There is not escape from the conclusion that Belliappa was picked out for the impugned action whimsically, without any special reason

which could put him in a class separate from that of his three juniors who have been retained in service.

17. The ground is now clear for considering the contentions canvassed by the appellant.

18. Mr. Veerappa's first contention is that Articles 14 and 16(1) of the Constitution have no application, whatever, to the case of a temporary employee whose service is terminated in accordance with the terms and conditions of his service because the tenure or the duration of the employment of such an employee is extremely precarious being dependant upon the pleasure and discretion of the employer-State. In our opinion, no such generalisation can be made. The protection of Articles 14 and 16(1) will be available even to such a temporary Government servant if he has been arbitrarily discriminated against and singled out for harsh treatment in preference to his juniors similarly circumstanced. It is true that the competent authority had a discretion under the conditions of service governing the employee concerned to terminate the latter's employment without notice. But, such discretion has to be exercised in accordance with reason and fair play and not capriciously. Bereft of rationality and fairness, discretion degenerates into arbitrariness which is the very antithesis of the rule of law on which our democratic polity is founded. Arbitrary invocation or enforcement of a service condition terminating the service of a temporary employee may itself constitute denial of equal protection and offend the equality clause in Articles 14 and 16(1). Article 16(1) guarantees "equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State". Moreover, according to the principle underlying Section 16 of the General Clauses Act, the expression "appointment" used in Article 16(1) will include termination of or removal from service, also.

19. It is now well settled that the expression "matters relating to employment" used in Article 16(1) is not confined to initial matters prior to the act of employment, but comprehends all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment and from part of the terms and conditions of such employment, such as, provisions as to salary, increments, leave, gratuity, pension, age of superannuation, promotion and even termination of employment. It is further well established that Articles 14, 15(1) and 16(1) from part of the same constitutional code of guarantees and supplement each other. If any authority is needed for the above enunciation, reference may be made to the observations made by Gajendragadkar, J., as he then was, in General Manager, Southern Railway v. Rangachari (supra).

20. In Union of India v. P. K. More (supra), it was contended before this Court that Article 16 provides that there shall be no inequality of treatment in the termination of the service of any employee of the Government. This interpretation of the article was disputed by the Union of India, who was the appellant in that case. Although the Court thought it unnecessary to pronounce finally on this dispute for the purpose of that case, yet it proceeded on the assumption that Article 16 might be violated by an arbitrary and discriminatory termination of service. In that case, the respondent, P. K. More, had been detained legally under a statute. In view of this fact, the Court held that "the respondent might legitimately have been put in a separate class and treated differently from others not so detained".

21. In the instant case, no special circumstance or reason has been disclosed which would justify discriminatory treatment to Belliappa as a class apart from his juniors who have been retained in service. Mr. Veerappa's frantic efforts to spell out justification for differential treatment to the respondent by reference to the show-cause notice that preceded the impugned action, is entirely futile when the stand tenaciously adhered to throughout by his client is that there is no nexus

between the show-cause notice and the impugned action which was taken without any reason in exercise of the power vested in the competent authority under the conditions of the respondent's employment.

22. In view of this, we have no alternative but to hold that the termination of Belliappa's service was made arbitrarily and not on the ground of unsuitability or other reason, which would warrant discriminatory treatment to him as a class from others in the same cadre.

23. In the view we take, we are further fortified by a decision of the Constitution Bench in Champak Lal's case (supra). That was a case of a temporary Government servant. Rule 5 governing a temporary Government servant, which came up for consideration in that case, gave power to the Government to terminate the service of a temporary Government servant by giving him one month's notice or on payment of one month's pay in lieu of notice. This rule was attacked on the ground that it was hit by Article 16. In the alternative, it was urged that even if Rule 5 is good, the order by which the appellant's services were dispensed with was bad because it was discriminatory. Reference was made to a number of persons whose services were not dispensed with, even though they were junior to the appellant and did not have as good qualifications as he had. Wanchoo, J. (as he then was), speaking for the Court, repelled the alternative argument in these terms :

> We are of opinion that there is no force in this contention. This is not a case where services of a temporary employee are being retrenched because of the abolition of a post. In such a case, a question may arise as to who should be retrenched when one out of several temporary posts is being retrenched in an office. In those circumstances, qualifications and length of service of those holding similar temporary posts may be relevant in considering whether the retrenchment of a particular employee was as a result of discrimination. The present however is a case where the appellant's service were terminated because his work was found to be unsatisfactory . . . . (In such a case) there can, in our opinion, be no question of any discrimination. It would be absurd to say that if the service of one temporary servant is terminated on the ground of unsatisfactory conduct the services of all similar employees must also be terminated along with him, irrespective of what their conduct is. Therefore even though some of those mentioned in the plaint by the appellant were junior to him and did no have as good qualifications as he had and were retained in service, it does not follow that the action taken against the appellant terminating his services was discriminatory, for that action was taken on the basis of his unsatisfactory conduct. A question of discrimination may arise in a case of retrenchment on account of abolition of one of several temporary posts of the same kind in one office but can in our opinion never arise in the case of dispensing with the services of a particular temporary employee on account of his conduct being unsatisfactory.

The principle that can be deducted from the above analysis is that if the services of a temporary Government servant are terminated in accordance with the conditions of his service on the ground of unsatisfactory conduct or his unsuitability for the job and/or for his work being unsatisfactory, or for a like reason which him off in a class apart from other temporary servants who have been retained in services, there is no question of the applicability of Article 16.

24. Conversely, if the services of a temporary Government servant are terminated arbitrarily, and not on the ground of his unsuitability, unsatisfactory conduct or the like which would put him in a

class apart from his juniors in the same service, a question of unfair discrimination may arise, notwithstanding the fact that in terminating his service, the appointing authority was purporting to act in accordance with the terms of the employment. Where a charge of unfair discrimination is levelled with specificity, or improper motives are imputed to the authority making the impugned order of termination of the service, it is the duty of the authority to dispel that charge by disclosing to the Court the reason or motive which impelled it to take the impugned action. Excepting, perhaps, in cases analogous to those covered by Article 311(2), Proviso (c), the authority cannot withhold such information from the Court on the lame excuse that the impugned order is purely administrative and not judicial, having been passed in exercise of its administrative discretion under the rules governing the conditions of the service. "The giving of reasons", as Lord Denning put it in Breen v. Amalgamated Engineering Union ((1971) 1 All ER 114), "is one of the fundamentals of good administration", and, to recalled the words of this Court in Khudiram Das v. State of West Bengal ((1975) 2 SCC 81 : 1975 SCC (Cri) 435 : (1975) 2 SCR 832, 845), in a Government of laws "there is nothing like unfettered discretion immune from judicial reviewability". The executive, no less than the judiciary, is under a general duty to act fairly. Indeed, fairness founded on reason is the essence of the guarantee epitomised in Articles 14 and 16(1).

25. Another facet of Mr. Veerappa's contention is that the respondent had voluntarily entered into a contract of service on the terms of employment offered to him. One of the terms of that contract, embodied in the letter of his appointment is that his service was purely temporary and was liable to termination at the will and pleasure of the appointing authority, without reason and without notice. Having willingly accepted the employment on terms offered to him, the respondent cannot complain against the impugned action taken in accordance with those mutually agreed terms. The argument is wholly misconceived. It is borrowed from the archaic common law concept that employment was a matter between the master and servant only. In the first place, this rule in its original absolute form is not applicable to Government servants. Secondly, even with regard to private employment, much of it had passed into the fossils of time. "This rule held the field at the time when the master and servant were taken more literally than they are now and when, as in early Roman Law, the rights of the servant, like the rights of any other member of the household, were not his own, but those of his pater familias". The overtones of this ancient doctrine are discernible in the Anglo-American jurisprudence of the 18th century and the first half of the 20th century, which rationalised the employer's absolute right to discharge the employee. "Such a philosophy", as pointed out by K. K. Mathew, J. (vide his treatise : "Democracy, Equality and Freedom", page 326), "of the employer's dominion over his employee may have been in tune with the rustic simplicity of bygone days. But that philosophy is incompatible with these days of large, impersonal, corporate employers". To being it in tune with vastly changed and changing socio-economic conditions and mores of the day, much of this old, antiquated and unjust doctrine has been eroded by judicial decisions and legislation, particularly in its application to persons in public employment, to whom the Constitutional protection of Articles, 14, 15, 16 and 311 is available. The argument is therefore overruled.

26. Coming back to the point, we have a vague feeling that it was, perhaps, open to the appellant to say in view of the complaint alluded to in the show-cause notice against the integrity and fidelity of the respondent, that the former had lost confidence in the latter and considered him unsuitable to be continued in the post which was one of trust and confidence. But it will be hazardous for us to base our decision on any such speculation, when the appellant himself, instead of taking any such plea, has, with obdurate persistency stuck to the position that the respondent's service has been terminated without any reason, which comes perilously near to admitting that the power reserved to the employer under the conditions of the employment, has been exercised arbitrarily.

27. In the absence of any information from the appellant indicating that the respondent was marked of for discharge on the basis of an intelligible differentia having a reasonable nexus with the object of maintaining the efficiency and integrity of the public service, we are constrained to hold, in agreement with the High Court, that the impugned order suffers from the vice of unfair discrimination ad is violative of Articles 14 and 16(1) of the Constitution. Accordingly, we uphold the decision of the High Court and dismiss this appeal with costs.

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