Dhiraj Ghosh

Vs

Union of India and another

Spl. Leave Petn. (Civil) No. 11582 of 1989

(CJI Sabyasachi Mukharji, K.N. Saikia JJ)

10.07.1990

ORDER

1.There is delay in applying for the substitution of the heirs of the original petitioner, Sri Dhiraj Ghosh, who has since died. There was also an application for condonation of delay in making the substitution application. Having heard Sri Chatterjee, learned Counsel for the petitioner, the delay in making the application for substitution is condoned and the heirs of the deceased petitioner are substituted.

2. This is an unfortunate case, unfortunate because of the manner in which the litigation has proceeded. Now, it is not necessary to determine as to who is responsible for such state of affairs. The original petitioner alleged that he was appointed in the Publicity Department of erstwhile Bengal Government, and that from 1944 to 1951 he continued in that position. According to him, he was drawing a salary of Rs. 470 plus usual ,allowances in or about July, 1951. He was indisputably a temporary employee. It is stated that in 1949 Civil Service (Temporary) Rules, 1949 came into being. In March, 1951 the petitioner applied for the post of Regional Tourist Officer to UPSC through the Government of West Bengal.

3. According to the petitioner in July, 1951 the deceased petitioner had joined on deputation the Central Government service and was placed in the Ministry of External Affairs. The original petitioner claimed that he was Press Attache in the Indian High Commission at Dacca. He asserted that his lien in service was retained with the State of West Bengal. According to the original petitioner, the Government of India was pleased to offer to the petitioner the post of Regional Tourist Officer in July, 1951; and that the sanction of the President was conveyed in December, 1951. And the petitioner joined Class 1 post in Calcutta. The original petitioner asserted that on 30th May, 1951 the petitioner's probation period for six months expired and there was no extension thereto thereafter. In September, 1955, the petitioner was informed that his services were no longer required and he was given one month's notice. Later on, this communication was modified stating that the petitioner was granted leave till 29th February, 1956 when his services would be terminated. Therefore, the petitioner's services were terminated w.e.f. Ist March, 1956. The petitioner asserted that he was offered Class II post in Government of India on 20th July, 1956 and that under pressue he had to accept the same. He further alleged that he worked on temporary basis till, July, 1957 at a monthly salary of Rs. 500.

4. According to the petitioner, from Ist August, 1957 to 28th February, 1959 he worked as Seamen's Welfare Officer; and in 1959 the present suit out of which this application under Article 136 of the Constitution of India arises, was filed in the High Court of Calcutta claiming, inter alia, that the termination of services of the petitioner was bad, and the petitioner had continued in the service. It

appears that the suit was ultimately disposed off finally 28 years after its institution on 13th March, 1987. At the time when the suit was decreed, the petitioner was 80 years old.

5. It is necessary to bear in mind the merits of this application under Article 136 of the Constitution and for that one must refer to the order as recorded by learned single Judge of Calcutta High Court on 13th March, 1987. The said order read as follows:-

> "This cause coming on this day for final disposal before the Honourable Mr. Ajit Kumar Sengupta one of the Judges of this Court in the presence of the Advocate for the parties and Mr. Mitra Advocate for the defendant having prayed for a stay of the order and the same having been refused. It is ordered and decreed that the defendant do-by the twentyfourth day of March one thousand nine hundred and eightyseven pay to the plaintiff the sum of Rupees ten thousand and that the defendant do also pay to the plaintiff a further sum of Rupees ten thousand as assessed cost of this suit."

On 21 st August, 1988 the petitioner filed an appeal before the Division Bench of the High Court and on 15th September, 1988 the order was passed as minuted below:

> "It is ordered and decreed that the said appeal be and the same is hereby dismissed and that the decree of this Court in its ordinary Original Civil Jurisdiction made in this suit and dated the thirteenth day of March, One thousand nine hundred and eighty seven be and the same is hereby affirmed. And this Court does not think fit to make any order as to costs of this appeal.

6. This is an application under Art. 136 of the Constitution of India challenging the order of the Division Bench dismissing the appeal. It is correct that there is no evidence on record, no further reasons were recorded but there is no evidence at all that the petitioner wanted to tender any evidence and advance any further submission which was not recorded before the Court. In that background the respondent was directed to be paid by the petitioner by 24-3-1987 a sum of Rs. 10,000 as damages and arrears plus Rs. 10,000 as assessed costs of the suit. It was apparently and indubitably an order which was passed by the learned single Judge to settle the matter in view of the set of evidence available and contentions raised. There is no evidence as to whether the aforesaid amounts have been paid by the respondent or received by the original petitioner. Despite all the protests by the petitioner in the original special leave petition, it was clearly mentioned, it appears, that from the appointment order that the post to which the petitioner was appointed. Was temporary but was likely to continue for an indefinite period. In those circumstances, the confirmation of temporary appointee was not alltomatic after non extension or termination of the period of probation. If that is so then the dismissal or termination of the services of the petitioner was in order as per Civil Services (Temporary) Rules, 1949. The petitioner's contention was that inferentially it was not extended and, therefore, he continued but there was no evidence adduced or made submission made to that effect.

7. In the aforesaid view of the matter it was abundantly clear that there was no merit in the appeal before the Division Bench and the Division Bench in those circumstances had no other alternative but to dismiss the appeal. We could not persuade ourselves to find any more materials as were on record and hold that the evidence was there and despite the contentions and points being urged before the learned single Judge, the order as indicated before, was passed. In light of the state of law and the evidence, it is apparent that there was nothing on record to show that the petitioner had retained his lien in his original service when he obtained subsequent employment. Also, there was

nothing to show nor any evidence was adduced to show that when the petitioner accepted the subsequent employment it was under an alleged coercion. The original petitioner admitted that in the appointment letter it was mentioned that the post was temporary and was likely to continue for an indefinite period. A temporary post in the Government can be extended for an indefinite period but that does not necessarily mean that the services of the incumbent holding the post which is automatically governed by the statutory rules, namely, Civil Service (Temporary) Rules, 1949 would be extended. The subsequent offer which was made to the petitioner, as indicated above, must have been a temporary one.

8. In that light it appears to us that it can be safely inferred that in order to help the parties, learned single Judge had passed the order and the amount mentioned therein has been realised and paid by the respondent. If not, the respondents should pay the same with interest at the rate of 9% to the substituted petitioner.

9. In that view of. the matter and after examining the records, we are of the opinion, that no useful purpose would be served by continuing this special leave petition or granting relief under Article 136 of the Constitution. Sri Chatterjee raised various contentions. He sought to urge that his client was not here. We find no justification in waiting for the client to come because there was no scope for interference by this Court under Art. 136 of the Constitution. Sri Chatterjee prayed for more time to take instructions on the affidavit in opposition sought to be filed on behalf of the State. We are not inclined to take into consideration the affidavit in opposition filed by the State. Therefore, there is no occasion for giving any opportunity to take instructions.

10. We have taken into consideration the fact that notice was issued when the original petitioner was alive. We are inclined to think that perhaps it was done to induce the Government to make some payment due to the old age of the petitioner. The original petitioner has died. His heirs have been substituted. On this state of affairs we find that there is no possibility of special leave petition ultimately succeeding and appeal succeeding in this case. If this is the position then the parties should be allowed to save themselves from the litigation. Having regard, therefore, to the aforesaid factors, we are of the opinion that this special leave petition should be dismissed without any order as to costs.

Petition dismissed.

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