

Superintendent of Post Offices and Others

Vs

E. Kunhiraman Nair Muliya

Civil Appeal No. 2454 of 1984

(G. T. Nanavati, Sujata V. Manohar JJ)

10.09.1997

ORDER

1. The respondent was temporarily and provisionally appointed as Extra Departmental Branch Postmaster for a period of four months from 9-1-1978 to 8-5-1978. The provisional appointment of the respondent was extended for a further period of three months up to 8-8-1978. It was again extended for three months from 9-8-1978 to 8-11-1978. During this period, by a Memorandum dated 23-9-1978, the services of the respondent were terminated with immediate effect. The order of termination is not on record but from the narration of the facts in the impugned judgment, it appears that this order of termination was under Rule 6 of the Extra Departmental Agents (Conduct & Service) Rules, 1964. On 30-9-1978, the respondent was served with an additional memo informing him that in the order of 23-9-1978, after the words "immediate effect", the words "on administrative grounds" are added. The respondent made a representation against this termination but the Director of Postal Services, Kerala upheld the order of termination by his order dated 22-12-1978. The respondent filed a writ petition before the High Court. By the impugned judgment, the Division Bench of the High Court allowed the writ petition and directed his reinstatement with consequential benefits. The Department has filed the present appeal.

2. The orders of appointment relating to the respondent show that the appointment was temporary and provisional. It was made for a short period. The order of appointment further stated, "Shri E. Kunhiraman Nair is informed that the appointment is purely provisional and his services are liable to be terminated at any time without assigning any reason and that his services will be governed by the P & T ED Agents, (C & S) Rules, 1964". The order of termination in the present case is an order of termination simpliciter. The initial order did not contain any reason. By an amendment made a week later, on 30-9-1976, the words "on administrative grounds" were added, presumably in the light of Rule 6 of the Post & Telegraph Extra Departmental Agents, (Conduct & Service) Rules, 1964. Rule 6 provides as follows :

"Termination of services. - The services of an employee shall be liable to termination by the appointing authority at any time without notice for generally unsatisfactory work within three years from the date of appointment or any administrative ground unconnected with his conduct."

3. The termination of the employment of the respondent on administrative grounds is, therefore, an order of termination simpliciter. It does not cast any stigma on the respondent. It is well settled that such termination will not attract the provisions of Article 311 of the Constitution of India. In the case of State of U.P. v. Kaushal Kishore Shukla ((1991) 1 SCC 691 : 1991 SCC (L&S) 587 : (1991) 16 ATC 498) this Court observed that : (SCC Headnote)

"A temporary government servant has no right to hold the post. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary government servant. If the services of a temporary government servant is terminated in accordance with the terms and conditions of service, it will not visit him with any evil consequences."

4. If, however, it is decided to take punitive action, Article 311(2) will be attracted. See in this connection the case of *Commr. Food & Civil Supplies v. Prakash Chandra Saxena* ((1994) 5 SCC 177 : 1994 SCC (L&S) 1042 : (1994) 27 ATC 817) and *State of U.P. v. Kamla Devi* ((1996) 4 SCC 548 : 1996 SCC (L&S) 1050). In the present case, the terms and conditions of employment as contained in the order of appointment provide for termination without assigning any reason and without notice. The letter, however, refers to the relevant Rules also. Rule 6 provides for termination without notice within three years of appointment for unsatisfactory work or on any administrative ground. In the present case, the termination is within nine months of the initial appointment and is on administrative grounds - which is in accordance with the terms and conditions of service applicable to the respondent and Rule 6.

5. It was urged before us by learned counsel for the respondent that the order of termination was in breach of Articles 14 and 16 of the Constitution and hence it was arbitrary because his juniors were retained. We do not have any material on record which shows whether any junior of the respondent was retained or not. When the termination of services of an employee is on administrative grounds, the question of any other person being retained is not really germane to the retention or discharge of the employee concerned. If there are administrative difficulties relating to a particular individual, obviously, he cannot be retained and his junior discharged. Therefore, there can be no presumption of arbitrariness simply because somebody junior to the employee concerned remains in service. We also do not find that this argument was canvassed before the High Court. The only reason why the High Court has held the termination of service as arbitrary is because, according to the High Court, reasons for termination were not set out in the order of termination. The amended order of termination mentions that the termination is on administrative grounds. The order is in accordance with Rule 6. It is also in accordance with the respondent's terms of appointment. Such termination of services of a temporary employee cannot be termed as arbitrary.

6. The appeal is, therefore, allowed and the impugned order of the High Court is set aside. The writ petition is dismissed. We are informed that pursuant to the order of the High Court the respondent was reinstated in service from April 1984. After the special leave petition was filed in this Court on 14-5-1984, this Court had issued a notice on the application for stay. However, no stay order was thereafter passed by this Court, presumably because he was reinstated in the meanwhile pursuant to the High Court's order. This, however, does not entitle the respondent to continue in service hereafter. The appellants, however, will not recover any amount paid to the respondent for his services till today.