

SUPREME COURT OF INDIA

Union of India

Vs.

A.P. Bajpai

C.A.No.16838 of 1996

(Shivaraj V. Patil and H.K. Sema JJ.)

20.01.2003

JUDGMENT

Shivaraj V. Patil, J.

1. This appeal is directed against the order dated 27th May, 1996 passed by the Central Administrative Tribunal, Lucknow Bench. The respondent No. 1 was appointed as Assistant Central Ad intelligence Officer-II/G/(in short A.C.I.O-II) in the Intelligence bureau, Ministry of Home Affairs as a Temporary employee. His performance was found to be unsatisfactory on account of his negligence and dereliction of duties as he was found sleeping during duty hours on 24.6.1990 when he was posted at airport, New Delhi ; he frequently went on leave and as such remained on leave for about six months during his tenure of about one and half years which is not disputed and he left the station and absented himself from duty in anticipation of sanction of leave from 16.4.1992 on account of his marriage and the marriage of his cousin sister. Under the circumstances, an order of termination simpliciter was passed exercising power under sub-rule (1) of Rule 5 of *Central Civil Services (Temporary Service) Rules, 1866* (for short "the Rules").

2. The respondent No. 1 made representation against the said order of termination of his services which after consideration was rejected by the competent authority. Being aggrieved, he filed O.A. No. 281 of 1993 before the Central Administrative Tribunal, Lucknow Bench. The Tribunal, after considering the rival contentions, allowed the O.A. and set aside the order of termination of his services and declared him to be in continued service with all consequential benefits. Hence, this appeal is filed challenging the correctness and validity of the order of the Tribunal.

3. The learned Senior Counsel for the appellants contended that the appointment of the respondent No. 1, as is evident from the Memorandum dated 10.5.1988, was temporary ; the appointment could be terminated at any time by a month's notice by either side and the services of the respondent No. 1 could be terminated under Rule 5(1) of the Rules. He submitted that the said order of termination was a termination simpliciter ; it was not stigmatic in any way ; the Tribunal committed a manifest error in relying on the averments

made in the counter affidavit as to his unsatisfactory work and dereliction of his duties and these averments were made in the counter affidavit in order to meet the grounds raised in the O.A. According to the learned Senior Counsel, the respondent No. 1 was and found unsuitable on account of his taking frequent leave, sleeping when on duty and going on leave in anticipation before it was sanctioned ; the order of termination was not passed based on any misconduct so as to remove him from service. He brought to our notice the decisions of this Court in support of his submissions.

4. Per contra, the learned counsel for the respondent No. 1 argued in support and justification of the impugned order. He contended that as is evident from Annexure C-3 referred to in the impugned order, certain adverse comments are made against the respondent No. 1 in regard to his dereliction of duty and negligence. He further submitted that the Tribunal was right in relying on the same.

5. It is not in dispute that the appointment of the respondent No. 1 was temporary and his served could be terminated under sub-rule (1) of Rule 5 of the Rules. The order of appointment of the respondent No. 1 by its own terms was termination simpliciter. The tribunal in the impugned order relied on the statements made by the appellants in their counter affidavit to support the order of termination of services, annexure Annexure P-3. There was no other material or circumstances before the Tribunal to take a view that the order of termination was not simpliciter and that by stigma was attached to the respondent No. 1 in terminating his services. This Court in *State of Uttar Pradesh & Anr. v Kaushal Kishore Shukla*¹ dealing with the case of termination of service of temporary employee in terms of the contract as well as under the relevant rules applicable to a temporary Government servant held that the allegations made against the temporary Government servant in the counter affidavit by way of defence filed on behalf of the appellants did not change the nature and character of the order of termination.

6. In recent case in *Krishnadevaraya Education Trust & Anr. v. L.A. Balakrishna*² dealing with a case of termination simpliciter of a probationer this Court observed that there can be no manner of doubt that the employer is entitled to engage the service of a person on probation and if his services are not satisfactory during the period of probation, which means he is not suitable for the job, then the employer has a right to terminate the services. If such an order is challenged, the employer will have to indicate the grounds on which the services of a probationer were terminated. The Court went on to add "Mere fact that in response to the challenge the employer states that the services were not satisfactory would not ipso facto mean that the services of the probationer were being terminated by way of punishment".

7. The grounds stated in the counter affidavit filed by the appellants in answer to the challenge made by the respondent No. 1 in the O.A. before the Tribunal were only the basis to assess the unsuitability of the respondent No. 1 to continue in the sensitive post for which he was appointed. It may be added that Annexure C-3 on which the Tribunal heavily relied to say that the impugned order was stigmatic was an annexure to the counter filed by the appellants. It was a confidential letter written by the Assistant Director of the Department. In our view, the Tribunal committed a serious error in law and on facts of the present case in

concluding that the order of termination of services of the respondent No. 1 involved stigma attached to respondent No. 1. The grounds stated in the counter affidavit in answer to the challenge made by the respondent No. 1 were the factors to assess the suitability or otherwise of respondent No. 1 to continue in service. Having regard to all relevant aspects, the authorities reached a conclusion that respondent No. 1 was not suitable to continue in service. The order of termination of his services was simpliciter without attaching any stigma to the conduct of respondent No. 1. In this view, the impugned order cannot be sustained. Accordingly, it is set aside and the appeal is allowed. No costs.

Appeal allowed.

¹(1991) 1 SCC 91

²(2001) 9 SCC 319