

**SUPREME COURT OF INDIA**

Davinder Singh

Vs.

State of Punjab

C.A.No.7904 of 2010

(D.K. Jain and H.L. Dattu JJ.)

10.09.2010

**JUDGEMENT**

**H.L. DATTU, J.**

1) Leave granted.

2) The appellants have come before this Court, being aggrieved by the judgment and order passed by the High Court of Punjab and Haryana at Chandigarh dated 11.09.2006 in CWP No. 5142/2005 and CWP No. 5144/2005. Both the appeals involve identical questions of law and facts. Consequently, both of them are clubbed and disposed of by this common Judgment.

3) The appellants in the instant case are 'volunteers' of the Punjab Home Guards. They were recruited and appointed sometime in the year 1989 under the Punjab Home Guards Act, 1947 and the Rules framed thereunder. They were paid consolidated wages of Rs.2700/- per month, from the

date of their appointment till their services were dispensed with. In the order of termination, it is alleged that the appellants were involved in an act of indiscipline at the Amritsar railway station on 02.10.2004. The order of termination was challenged before the High Court in the above mentioned civil writ petitions. The view of the High Court is that 'volunteers' are persons engaged in Honorary capacity. They have no civil rights and, therefore, the termination of their services on account of the allegations leveled against them cannot be considered to be in violation of law. The High Court has also placed reliance on the observations made by this Court in the case 309.

4) The learned counsel Sri Sanjay Sharawat appearing for the appellants, apart from others, submitted, that, the appellants, being temporary employees working from last 15 to 17 years, were entitled to Protection Guaranteed under Article 311(2) of the Constitution of India before being terminated. Reference is made to the decision of this Court in the case of Parshotam Lal Dhingra (1966) 3 SCR 106; since the appellants are governed by the provisions of Punjab Home Guards Act, 1947 and Punjab Home Guards and Civil Defence (Field) Class III Rules, 1983, their services could not have been terminated without issuing Show Cause Notice and without holding departmental enquiry.

Alternatively, it is contended that the order of termination passed by the respondents is not only stigmatic but the same has been passed as a consequence of an alleged misconduct committed by the appellants at the Railway Station, Amritsar on 02.12.2004.

Therefore, it is submitted that before any action could have been taken against the appellants, they ought to have been afforded a reasonable opportunity of hearing in consonance with the principles of natural justice. It is, therefore, contended that the action of the respondents is arbitrary and in violation of Principles of Natural Justice.

5) It is the contention of the learned senior counsel Dr. Rajeev Dhawan that the appellants are 'volunteers', though their appointment is under the Act and the Rules and, therefore, in view of the specific provisions under the Rules, their services could be discharged at any time without issuing a Show Cause Notice and without holding any enquiry, much less a departmental enquiry.

Alternatively, it is contended that the appellants have no civil rights as they are engaged only as volunteers. Since, the appellants have no civil rights, their services could be terminated for the reasons stated in the order of termination. The learned senior counsel invites our attention to the extract of Para 14.4 of Compendium of Instructions on Home Guards issued by Ministry of Home Affairs, which authorizes the Commandant General or the Commandant to discharge any Home Guard at any time, if in his opinion, the services of such Home Guard are no longer required.

It is also submitted that the appellants are not temporary employees, but only volunteers in the Organisation and they are governed by Punjab Home Guards Rules, 1963 and not the Punjab Home Guards and Civil Defence (Field) Class III Rules, 1983.

6) In view of the rival contentions canvassed by the learned counsel, the first issue which requires our consideration is, which is the rule which may be made applicable to the parties to this lis. The appellants contend, that, they are governed by Punjab Home Guards and Civil Defense (Field) Class III Service Rules, 1983, whereas the Respondents contend that the appellants are governed by the Punjab Home Guard Rules, 1963. They also contend that the Punjab Home Guard Rules, 1963 have been repealed by the Punjab Home Guards and Civil Defense (Field) Class III Service Rules, 1983. In support of their submission, they cite Rule 20 of the latter which reads as under:

"20.Repeal and Saving :- The Punjab Home Guard Rules 1963 as these are the applicable to the members of the service are hereby repealed. Provided that anything done or any action taken under the rules so repealed shall be deemed to have been done or taken under the corresponding provisions of these rules."

7) The respondents submit that there is a distinction between the 'volunteers' and 'members of the service' of the Punjab Home Guards. It was argued before us, that the 1963 Rules were still applicable to the 'volunteer' members of the Punjab Home Guards and that they are not to be considered as 'members of the service' as mentioned under Rule 20 of the 1983 Rules. The question before us is, whether the 1983 Rules provide for the repeal of the 1963 rules only in matters relating to 'members of the service' and whether the 1963 rules are still applicable for the purpose of recruitment, discharge and dismissal of 'volunteers' of the Punjab Home Guards.

8) The Punjab Home Guard Rules, 1963 were earlier repealed by the Punjab Home Guard Rules, 1960. Rule 31 of the Punjab Home Guard Rules, 1963 reads:

"Repeal :- The Punjab Home Guard Rules 1960, republished with Punjab Government Home Department Notification No. G.S.R 9P-A-8/47/S.9/6/ dated 19th December 1961 are hereby repealed."

9) If we were to juxtapose the two corresponding provisions relating to repeal, there is a marked difference in the wording of Rule 31 of The Punjab Home Guard Rules, 1963 and Rule 20 of Punjab Home Guards and Civil Defense (Field) Class III Service Rules, 1983. It is to be noted that the Rule 31 of the 1963 rules unlike Rule 20 of the 1983 rules are categorical in repealing the 1960 Rules. There is no reference to the 'members of the service'.

10) There is further evidence for such a distinction in Rule 22(2) of the Home Guard Act, 1963. Rule 22 is as under:- "22 (1) Training: - Every member shall be required to undergo a preliminary course of training in drill, discipline, weapon training and special training of service he belongs to for such period as may be fixed by the Commandant-General in the case of Home Guards Unit I and the Gram Raksha Dal Chief in the case of Home Guard Unit II.

(2) Such members of the public as may offer themselves voluntarily may also be given training in drill, discipline and the use of weapons."

11) It is relevant to note that there is no such provision empowering the state to recruit volunteers from the public under the scheme of the Punjab Home Guards and Civil Defense (Field) Class III Service Rules, 1983. In fact, Rule 22 of the Punjab Home Guard Rules, 1963, is the only Provision which seems to empower the recruitment of volunteers. The 1983 Rules prescribe an elaborate scheme for appointment of members to specific posts enumerated in Appendix `A'. This can be seen from Rule 3 of Punjab Home Guards and Civil Defense (Field) Class III Service Rules, 1983 which states :- "3. Number and Character of Posts. - The service shall comprise of the posts shown in Appendix `A' to these rules."

12) The 1983 Rules envisage a scheme where a person who fulfills the requirements under Rule 5 which deals with nationality, domicile and character of candidates; secondly, he must not be specifically disqualified under Rule 6, thirdly, he has to fall under the age group prescribed under Rule 7. On fulfilling these three criteria, he would be eligible for appointment to any of the posts mentioned under Appendix `A' as long as he has the necessary educational qualification. The educational requirement differs depending on the post to which the person is being appointed. On appointment there is a period of probation as prescribed under Rule 9 during which the work and conduct of the appointee is evaluated. The proviso to Rule 9 states that:- "Provided that the total period of probation, including extension, if any, shall not exceed three years."

13) The 1983 Rules deal with the appointment of individuals to specific posts mentioned in Annexure `A', when a temporary or permanent vacancy arises. It does not deal with volunteers who are recruited from the general public.

14) The legislative intent for such a distinction with respect to application of the 1983 Rules to `non-volunteer' members is also discernible from a combined reading of Rule 2(n) and Rule 3.

15) Rule 2(n) defines `service' as follows:- `Service' means the Punjab Home Guards and Civil Defence [Field] Class III Service.

16) If we read the above definition alongwith Rule 3 which states as under :- "3. The service shall comprise of the posts shown in Appendix 'A' to these rules."

17) It is, therefore, apparent from the scheme of the Rules that the appointment of volunteers is not envisaged under the scope of the 1983 Rules. Volunteers could be appointed only under Rule 22(2) of the Punjab Home Guard Rules, 1963.

(18)Rule 20 is as under:- "20. Repeal and Saving :- The Punjab Home Guard Rules 1963 as these are the applicable to the members of the service are hereby repealed."

(19)The repeal applies only to the members of the service mentioned under Annexure 'A' and not to volunteers. Furthermore, the 1983 rules do not confer upon the appointing authority any power to discharge the volunteer when his services are no longer required as provided under Rule 18 of the 1963 Rules. This is because, the 1983 Rules are not meant to apply to volunteers. Under the 1983 Rules, a member of the service can be dismissed only after following the procedure prescribed for that purpose under the Punjab Civil Services (Punishment and Appeal) Rules, 1970. But such a detailed procedure is not envisaged while discharging a volunteer under 1963 rules. It is therefore evident that the legislature intended to preserve this distinction between the 'volunteers' and 'members of the service' within the scheme of the 1983 Rules. That being the case, we think that it is neither possible nor desirable to dilute the distinction which the legislature intended to preserve, something which falls squarely in the realm of policy. Therefore, in our opinion, the 1963 Rules are applicable to the appellants in these appeals.

(20)Now we take up the second issue. The appellants contend that the High Court erred in dismissing the writ petition filed by the appellants relying on the decision of this court in State of Gujarat vs. Akshay Amrutlal Thakkar (2006) 2 SCC 309. In that case, Akshay Amrutlal Thakkar was appointed to the honorary post of District Commandant in the Home Guard and then subsequently the order of disengagement was passed by the State Govt. vide its order dated 02.12.1995. It is this order which was impugned in the writ petition.

This court sustained the order passed by the State Government primarily on the ground, that the persons involved therein did not act in the terms of undertaking given by them. It has also observed, that the services rendered by those persons was honorary, therefore, no civil consequences were involved. In our view, the facts of that case are different from that of the instant case. In that case, Amrutlal Thakkar was being discharged from a honorary post, his employment was not being terminated as is being done in the present case.

Therefore, in our opinion, the High Court was not justified in placing reliance on this decision to unsuit the appellants.

(21)A judgment, as is well known is the authority for the proposition which it decides and not what can logically be deduced from. This Court in the case of Union of India v. Major Bahadur Singh (2006) 1 SCC 368, has observed:

"The courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of the courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of the courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes."

The court has proceeded to add:

"Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."

(22)There is a substantial difference in the circumstances surrounding the lis in Amrutlal's case and the present case. Firstly, as stated earlier, the appellants in that case were not being terminated from service.

Secondly, the revocation of appointment was merely with regard to an honorary post.

(23)It is, therefore, necessary to consider whether Order No. E//285 dated 02.12.2004 passed by the respondents is one without authority of law and whether the said order suffers from any other legal infirmities.

(24)The order of termination served on the appellants reads :

"In response to above said letters, the following guards who had created indiscipline at the Railway station Amritsar while boarding the train for going to Maharashtra in connection with election duty maybe terminated today the 2.12.2004 and they cannot be given any allowance from 3.12.2004. Immediate [action] in this regard should be taken on this letter."

(25)It is argued on behalf of the Respondents that the appellants were discharged under Rule 18 of the 1963 rules read with para 14.4 of compendium of instructions on Home Guards. Rule 18 of 1963 reads:

"Discharge of Members :- any member may be discharged at any time by the authority which had appointed him when his services are no longer required."

(26)The expression 'Discharge' was interpreted by this Court in the case of State of Kerala vs. Mother Anasthasia, Superior General and Others (1997) 10 SCC 79, wherein, it is stated, "Discharge would connote for any other reason ejusdem generis due to abolition of the post or course of study or such similar circumstances except for discharge due to misconduct."

(27)The abovesaid Rule does not contemplate the requirement of conducting an enquiry or giving notice to the concerned person and, therefore, the respondents maintain that the termination order was therefore within the scope and scheme of the Home Gaurds Act, 1947 and the 1963 Rules made thereunder.

(28)The order terminating the services of the appellants specifically cites indiscipline at the Amritsar Railway Station as the cause for the termination. Therefore, it is not a case where the appointing authority is discharging the services of the appellants on the ground that their services are no longer required but it is a case where their services are sought to be dispensed with on the ground of indiscipline, which would come within the meaning of the expression 'Misconduct'. In such a situation, the respondents cannot terminate the services of the appellants without following the procedure prescribed under Rule 27 of the Rules, the said rules, specifically deals with Discipline. It reads as under :- "Dismissed :- (1) Any officer may for misconduct or for absence without sufficient cause, be dismissed from service.

Provided that an order of dismissal shall not be passed unless reason of dismissal are recorded in writing and the member concerned has been given a reasonable opportunity of showing cause against the action proposed to be taken against him."

(29)The language employed in the Rule is clear and unambiguous. The Rule envisages that any officer may be dismissed from service either for misconduct or for unauthorized absence. Proviso appended to the Rules speaks of giving an opportunity of hearing to the delinquent officer or the member appointed under the Act and the Rules. It is an admitted position that no such opportunity of hearing or notice was given to the appellants in the present case as is required under Rule 27. In this view of the matter, the respondents cannot be permitted to contend that the appellants being 'volunteers', their services could be terminated without complying with the procedure prescribed in the Statutory Rules, which speaks of providing an opportunity of hearing to the person who would be affected by the proposed action.

(30)To us, it appears, after going through the Act and the Rules framed thereunder, that the expression 'volunteers' appears to be misnomer.

We do not intend to dwell on this issue, since we are told that the writ petitions for the regularization of similarly placed persons are pending before the High Court. The facts and circumstances pleaded by the appellants and the number of years they have spent as 'volunteers' and since they have no other avenue for their alternate employment because of their age factor, we are impelled to look into the reason for the termination of the services of the appellants. The letter discharging their services explicitly states that the reason for discharge is the indiscipline at Amritsar railway station before the appellants were to board the train for Maharashtra on election duty.

Therefore, in our view, it is not a case of discharge simplicitor.

Under Rule 18 of the 1963 Rules, any member appointed under the rules may be discharged at any time by the authority which had appointed him when his services are no longer required. If it is instance of discharge simplicitor, it would necessarily relate to instances where the post has been abolished or where there is a surplus of employees or other similar circumstances. The respondents have not raised the existence of any circumstances which required the discharge of any volunteers, neither has it been urged that there exists any condition which would require the appellants specifically to be discharged apart from the allegation of indiscipline. Therefore, in our view, services of the appellants are discharged for acts of alleged misconduct. It casts a stigma on their competence and affects their future career.

(31)In our considered view, even in matters of discharge, the authority concerned cannot act arbitrarily while discharging an employee.

However, in the instant case, the appellants are being discharged from service for indiscipline. Therefore, as provided in proviso to rule 27 of the rules, the appellants should have been given a reasonable opportunity of showing cause against the action proposed to be taken against them.

Admittedly, no such opportunity was given to them. Therefore, we are of the view that the action of the respondents is contrary to their own statutory rules and in violation of principles of natural justice.

(32) Even without going into the question whether the appellants are eligible for the protection under Article 311 of the Constitution, in our view, the respondents seem to have acted in an arbitrary manner by terminating the services of the appellants, who have been working as Home Guards for the last 15-17 years. They are all over-aged.

They may find it difficult to find alternate employment. Therefore, in the facts and circumstances of this case and in the interest of justice, we deem it proper to set aside the order of termination passed by the respondents dated 02.12.2004 and direct the respondents to reinstate the appellants as Home Guards without back wages.

(33) Before parting with the case, we should also notice the minor issue raised by learned senior counsel for respondents. It is submitted that the appellants without exhausting the appeal remedy provided under rule 27(3) of 1963 rules could not have approached the High Court under Article 226 of the Constitution, inter-alia, requesting the High Court to quash the order passed by respondents dated 02.12.2004.

We do not find any merit in their submission, for the reason that this issue was not raised nor argued before the High Court and, therefore, we will not permit this issue to be raised for the first time before us.

It is also argued that para 14.4 of compendium of instructions on Home Guards authorizes the Commandant General or the Commandant to discharge a Home Guard at any time, if in his opinion, the services of the Home Guard are no longer required.

These instructions are reiteration of Rule 18 of the Rules. We have already dealt with these rules. Therefore, repetition of our reasoning once over again may not be necessary.

(34) For the reasons stated, we allow these appeals and set aside the impugned judgment. We direct the respondents to reinstate the appellants within four weeks' time from today without back wages.

No order as to costs.