

JAMMU AND KASHMIR HIGH COURT

Ahmad Sheikh

Vs.

Ghulam Hassan

Writ Petn. No. 19 of 1956

(Wazir, C.J.)

06.12.1956

JUDGMENT

Wazir, C.J.

1. This is a petition for the issue of an appropriate writ in respect of an order of dismissal No. 829 dated the 8th May 1956 passed by the respondent No. 1 against the petitioner. An extract of that order may be reproduced here.

"So after taking due cognizance of all the facts I have come to the firm conviction that the retention of this man is not only dangerously troublesome but also detrimental to the Government interests as a whole. He is hereby discharged and dismissed from the service and is being black-listed to incapacitate him from any future Govt. service in default of his gross misconduct and hardened criminal tendencies."

Sd/- D. F. O.
Kishtwar.

2. The petitioner, Ahmad Sheikh, was employed as a Chowkidar in the Forest Bungalow at Kishtwar and according to him he was in the permanent service of the State for the last ten years. He was suspended by respondent No. 1 on the 17th January 1956 and was asked to submit his written reply in regard to some charges which the petitioner did on the 23rd January 1956. Then the respondent No. 1 by his order dated the 5th April 1956 sent a list of the charges to the petitioner by registered post which was received by him on the 26th April 1956 and he was asked to submit his reply within a week. The charges were contained on eight closely written papers and it was not possible for the petitioner to send a detailed reply to the charges within the specified time. The petitioner on the 3rd May 1956 submitted an application to the respondent requesting him to grant the petitioner at least two weeks' time for submitting his reply. The respondent sent a notice to the petitioner that an explanation on the charges must be submitted by 12 o'clock on the 4th May failing which it would be presumed that the petitioner had no explanation to offer and that the case would be decided according to law. This notice was

received by the petitioner at 5 p.m. on the 3rd May 1956 and the petitioner made an endorsement on that notice to the effect that he had already made an application for extension of time. On the 8th May the above order of dismissal was passed by the respondent which the petitioner submits was illegal, mala fide and ultra vires.

3. The Advocate General appearing on behalf of the respondents has filed objections and his preliminary objections are : that as the petitioner held a temporary post on a year to year basis the petition was not maintainable; that since an alternate adequate remedy by way of appeal had not been pursued and had been allowed to become time barred the petition cannot be entertained and lastly that the order of dismissal cannot be questioned by a writ of Mandamus and the petitioner cannot be ordered to be reinstated. It is admitted that the petitioner had asked for extension of time for submitting his explanation which was not allowed as the request was, according to respondent No. 1, unreasonable.

4. The petitioner has not been able to show that he held a permanent appointment as Chowkidar of the Forest Bungalow. On the other hand it is established from the official documents produced by the respondent that the petitioner held a temporary post on a year to year basis. The question for consideration is whether or not a writ would lie in case a person is removed from a temporary service on the grounds of certain charges levelled against him. Ordinarily services of a person holding temporary post are liable to be terminated at any time by giving him notice that his services are no more required. It is not necessary for the appointing authority to give any reason for terminating the services of a temporary employee but if the appointing authority terminates the services of a temporary employee on the ground of any charge it is open to the employee to say that his removal was illegal and that his services should not have been terminated by way of penalty. There is a clear distinction between the temporary service being terminated on the ground that it was temporary and the temporary service being terminated by way of penalty on the ground of any charge. If a person is removed by way of penalty on the ground of a charge from temporary service an application for an appropriate writ is maintainable. In support of this view reliance may be placed on a ruling of the Patna High Court reported as *Kamta Charan v. Post Master General, Bihar*¹ in which it has been held that Article 311 of the Constitution makes no distinction between permanent and temporary holders of civil posts under the State. Where an order terminating the services of petitioner (an employee in the temporary service of the postal department) is in effect an order of removal by way of penalty on the ground of the charge of false impersonation at the examination held by the department, then if the authority concerned fails to comply with Clause (2) of Article 311 of the Constitution and also fails to draw up a proceeding and give the petitioner an opportunity of making a representation in accordance with the rules relating to appointments, penalties and appeals of the subordinate staff in the postal department, the defect is fatal and invalidates the order.

5. In this case although the petitioner was appointed as a temporary hand in the Forest Department yet his removal was not on the ground that the appointment was a temporary one, but on the basis of certain charges levelled against him. The question for consideration is whether the proceedings were taken in accordance with R. 32 of

¹ AIR 1955 Pat 381

the Kashmir Civil Service Rules before order of dismissal was passed against the petitioner. It is admitted by the respondent that charges were framed and conveyed to the petitioner and his explanation was called in regard to those charges. A week's time was given to the petitioner to

submit his explanation. The petitioner made an application on the 3rd May 1956 praying for extension of time. On that very date another notice was given by the respondent to the petitioner to submit his explanation by 12 o'clock on the following day. The petitioner stated that it was not possible for him to do so and he had already made an application for the extension of time by two weeks. Rule 32 K. C. S. R. specifically provides that the petitioner should be given reasonable time to put in his written statement and also he should be asked to state whether he desired to be heard in person. No opportunity was given to the petitioner to say whether he desired to be heard in person. Lengthy charges were framed and the time given to the petitioner to submit his explanation was not adequate. The petitioner's application praying for extension of time was disallowed without giving any adequate reasons. In fact the petitioner had not put in his explanation to the charges leveled against him and there is nothing to show that he was asked whether he desired to be heard personally. The provisions of R. 32 K. C. S. R. have not been complied with which is a fatal defect and invalidates the order of dismissal.

6. The Advocate General has argued that the petitioner has a remedy by way of appeal which was allowed to become time barred and therefore the petition would not lie. The fundamental rights guaranteed to the petitioner under the Constitution have been violated inasmuch as the petitioner has been denied equal protection of the laws and equality before the law by not following the provisions of R. 32 K. C. S. R. In these circumstances the petitioner is not barred from seeking a speedy and adequate remedy by an application for an appropriate writ.

7. The impugned order, as stated above, is defective and invalid and is therefore quashed. The petitioner shall be placed in the same position as he was before the order of dismissal was passed. The Forest authorities may, if they so desire, proceed against him strictly in conformity with R. 32 of the Kashmir Civil Service Rules and pass orders according to law. In the circumstances of the case there will be no order as to costs.

Order quashed.