MYSORE HIGH COURT

Doddaiah

Vs

State of Mysore

Writ Petn. No. 2028 of 1964

(T.K. Tukol and M. Santhosh, JJ.)

16.06.1967

JUDGMENT

Santhosh, J.

1. In this petition under Article 226 of the Constitution, the petitioner prays for quashing the order of respondent 3, dated 1-5-1964 terminating his services as Head Cooly. He also prays for an appropriate writ or order directing the third respondent to reinstate him in the Public Works Department of the Government of Mysore, in preference to respondents 4 to 17. There is also a prayer for quashing the reinstatement of respondents 4 to 13.

2. In his affidavit, the petitioner states that he was appointed as a Gang-Workman in the year 1946 in the Public Works Department. He worked in that capacity till 30-9-1960 and was duly given increments every year. Thereafter he was appointed as Head Cooly on 30-9-1960 on a salary of ₹ 60 per month. A service register showing him as an employee in the Public Works Department was also opened on 28 7-1960. On 1-5-1964, the third respondent terminated his services as also of respondents 4 to 13 as per Exhibit A. The complaint of the petitioner is that respondents 14 to 17 who had put in only 3 or 4 years of service and were far junior to him were retained in service and he was arbitrarily and capriciously singled out and discharged from service though he had put in 24 years of service. The petitioner further complains that respondents 4 to 13 who were junior to him and had also been discharged from service along with him, had been reinstated in service, Respondent 3 refused to reinstate him though he was senior and his record of service was without any blemish. He therefore contends that there has been denial of equal and fair treatment in matters of employment and there has been a violation of Article 16 of the Constitution. The petitioner also contends that the arbitrary and capricious termination of his service has violated the valuable safeguard guaranteed to him under Article 311(2) of the Constitution. In the additional affidavit filed by him, the petitioner states that he is a permanent civil servant in the Public Works Department and his tenure of appointment is governed by the Mysore Civil Services Rules. The arbitrary termination of his services by the third respondent and also the third respondent's refusal to reinstate him is gross discrimination and also violative of the fundamental rights guaranteed under Articles 14 and 16(2) of the

Constitution and as such the said order of termination is liable to be set aside.

3. In the counter affidavit filed on behalf of respondent 1 (State of Mysore), it is stated that the petitioner was temporarily appointed and he had no legal right to the post. It denied that the post of Head Cooly in the Public Works Department is a civil post under the State Government. Head Coolies like the petitioner were seasonal employees of the Public Works Department and their services were terminated as they were no longer required. The termination of the services is valid and is not violative of Article 311(2) of the Constitution. With regard to the allegation of the petitioner in regard to violation of Article 16 of the Constitution it is contended that Article 16 is not attracted as he recruitment of coolies depends purely on expediency and at the discretion of the concerned authorities. The allegation that there was discrimination is denied.

4. Before we proceed to discuss the question of law, we may dispose of one factual contention. The petitioner has contended that he has been holding continuously the post of a Gangman and then of a Head Cooly in a time scale and had been granted all the increments. It is contended by the respondents that the petitioner was a seasonal employee. The 'Service Book' produced by the respondents does not bear out this fact. It was open to the respondents to have produced the Pay Roll to establish that the petitioner was paid for his services only for some months during each of the years. In the absence of such evidence, we accept the petitioner's contention to hold that he has been a full time servant in the Public Works Department from the year 1946 as stated by him in his affidavit.

5. We now proceed to consider the main contention that the order terminating the petitioner's service violates the fundamental rights of the petitioner guaranteed by Article 16 of the Constitution. Article 16(1) of the Constitution states that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The words 'matters relating to employment or appointment' are wide enough to include all matters relating to employment under the State including termination of appointment. In *General Manager, Southern Railway v Rangachari*[1]. the Supreme Court has laid down that the words 'matters relating to employment or appointment' must include all matters in relation to employment both prior and subsequent.

6. The next question for consideration is whether Article 16 applies to temporary Government servants. Article 16 does not say that it applies only to permanent employees of State. It makes no distinction between permanent and temporary employees.

7. There can be no doubt that Article 16 applies even to temporary Government servants. A Division Bench of the Bombay High Court in *P. K. More v. Union of India*[2], in paragraph 19, has observed as follows :-

[1] AIR 1962 SC 36
[2] AIR 1959 Bom 134

> "The guarantee of equality embraces all matters of employment - the Article in
> terms clear and ample speaks of all 'matters relating to employment' and it is impossible

to accede to the suggestion that what is contemplated by Article 16 is only the initial stage when the citizen is employed to serve the Stale, Nothing so unfair and startling could have been within the contemplation of the framers of the Constitution. The guarantee, in our judgment, was intended to endure not to be illusory.

"But it was stressed that the plaintiff was not employed in any permanent service and was only a temporary employee. This distinction has not relevance and indeed is foreign to the fundamental right of equal opportunity insisted upon in the Constitution. Our Constitution regards equality of status and opportunity as instancing the democratic ideal it seeks to translate. Dignity of individual, evolution of his personality, social justice and equality would have little meaning unless there is guaranteed to the citizen real equality of opportunity. Obviously that equality would be unreal if every citizen was not eligible to appointment or employment under the State, whether temporary or permanent, according to his qualifications and capacity and without any barriers except those based upon public utility.

It is a matter of common knowledge that thousands of Government employees are engaged in posts classified as of temporary cadres and a large number of those have been in service for many years. There seems no intelligible reason for accepting the suggestion that the right of equal opportunity recognized by the Constitution should not apply to temporary cadres and should not exist between one temporary servant and another. The guarantee extends to every citizen and every employment or appointment whether permanent or temporary. A termination of the services of a person engaged in temporary work is in the present context no less hit by the mischief sought to be avoided by Article 16 than in case of a person wrongfully discharged from service and who was holding his job on a permanent tenure. It is essentially a question not of the nature or tenure of the engagement but of the basic guarantee of equable treatment assured by the Constitution. If the termination of service was on grounds extraneous the order of termination would be without competence and jurisdiction and the order must be treated as if it had not been made at all." The Andhra Pradesh High Court has also held that the protection of Article 16 is available even to temporary Government servants. In *Janikiraman v. State of Andhra Pradesh*[3], a Division Bench of the High Court, in paragraph 5 of the judgment, has observed as follows :-

"The learned Government Pleader, however, contends that since the petitioner held only a temporary post and his services could be terminated at will, he cannot claim the benefit of Article 16. We are not impressed with this argument. Clause (2) of Article 16 recognizes no such distinction : it applies with equal rigour to all posts under the State, permanent as well as temporary. It is not permissible to engraft limitations upon the fundamental rights enshrined in the Constitution."

[3] AIR 1959 And Pra 185

The observations made by the Supreme Court in *Champaklal Chimanlal v. Union of India*[4], clearly indicate that Article 16 of the Constitution would be attracted even in the case of a temporary Government servant when his seniority, qualification, length of service, were not taken into account and his services terminated while his juniors were retained in service. In paragraph 9 of the judgment, their Lordships have observed as follows :-

"It is next urged that even if Rule 5 is good, the order by which the appellant's services were dispensed with was bad, because it was discriminatory. In this connection reference was made in the plaint to a number of Assistant Directors whose services were not dispensed with even though they were junior to the appellant and did not have as good qualification as he had. We are of opinion that there is no force in this contention. This is not a case where services of a temporary employee are being retrenched because of the abolition of a post. In such a case a question may arise as to who should be retrenched when one out of the several posts is being retrenched in an office. In those circumstances, qualifications and length of service of those holding similar temporary posts may be relevant in considering whether the retrenchment of a particular employee was a result of discrimination . ."

8. The petitioner in his affidavit has stated that he has put in 24 years of service and though he had worked honestly and efficiently and without any blemish in his service records, his services were terminated whereas respondents 14 to 17 who were far junior to him and had put in only 3 or 4 years of service in the department, were arbitrarily retained in service. He has further averred that respondents 4 to 13. who were also junior to him and who along with him, had been discharged were subsequently reinstated. He has stated that he had been discriminated against and deliberately picked and chosen for discharge and has been denied equal and fair treatment in matters of employment, as laid down by Article 16(2) of the Constitution. It may be mentioned that the respondents, in the counter filed on their behalf, have not denied that respondents 4 to 17 were juniors to the petitioner in service. It has also not been denied that the petitioner had worked honestly and efficiently and that there was no blemish in his service records. From what has been stated above. It is clear that respondents 4 to 17 were junior in service to the petitioner and that there was no blemish in the service records of the petitioner and that he had worked honestly and efficiently. That being the case, even assuming that the stand taken by the respondents that the petitioner is only a temporary employee is correct. Article 16 of the Constitution applied to him. The fact that respondents 14 to 17 who were junior to him were retained in service clearly shows that there has been denial to the petitioner of equal treatment in matters relating to employment and there has been arbitrary discrimination in terminating the services of the petitioner. It is also clear that subsequently respondents 4 to 13 were reinstated in service though they were junior to the petitioner. The arbitrary termination of the service of the petitioner is opposed to Art 16 of the Constitution. The Supreme Court has also laid down that when reversion takes place on account of exigencies of public service, the usual principle that should be followed is that the junior most person should be first reverted unless there are extraordinary circumstances to the contrary.

[4] AIR 1964 SC 1854

In *Ramaswamy v. I. G. of Police*[5], in paragraph 12, their Lordships have observed as follows:- Even so, it may be conceded that when reversion takes place on account of exigencies of public service, the usual principle is that the junior most persons among those officiating in clear or long term vacancies are generally reverted to make room for the senior officers coming back from deputation or from leave etc. Further ordinarily as promotion on officiating basis is generally according to seniority, subject to fitness for promotion the junior most person reverted is usually the person promoted last. This state of affairs prevails ordinarily unless there are extraordinary circumstances, as in the present case. " It may be mentioned that in the present case, it has not been contended by the State that there were any extraordinary circumstances necessitating the

termination of the petitioner's services.

9. In view of our finding that the order, dated 1-5-1964 (Exhibit A), terminating the services of the petitioner offends Article 16(1) of the Constitution, there is no need to consider the question whether the petitioner is a permanent civil servant in the Public Works Department or whether he was holding only a temporary post. It is therefore not necessary to consider the contentions and the various authorities cited on behalf of the petitioner and the respondents in support of their rival contentions.

10. We are therefore clearly of opinion that the order dated 1st May, 1964, passed by the third respondent terminating the services of the petitioner offends Article 16(1) of the Constitution. We accordingly quash the said order of respondent 3, dated 1st May, 1964, terminating the services of the petitioner. Since the termination of service of the petitioner is illegal, it follows that he continues in service as Head Coolly in the Public Works Department and would be entitled to all the emoluments of that post Respondent 1 will pay the costs of the petitioner. Advocate's fee ₹ 100

Petition allowed.

[5] AIR 1966 SC 175