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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 867 198 6
~~REXXIO~~

DATE OF DECISION 28-7-1987

Gauri Shanker and others

Petitioner

Shri R.Kapor

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondent

Shri M.L.VERMA

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K.S.Puttaswamy, .. Vice-Chairman

The Hon'ble Mr. Birbal Nath, .. Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*

2. To be referred to the Reporter or not ? *yes*

3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*

4. Whether to be circulated to other Benches? *yes*

(Judgment delivered by Hon'ble Mr.Justice K.S.Puttaswamy, Vice-Chairman)

JUDGMENT

In this application made under Section 19 of the Administrative

Administrative Tribunals Act, 1985 ('the Act'), the applicants have challenged their alleged 'verbal terminations' from 18-8-1986 and have sought for a direction to the respondents to take them back to service and allow them continuity of service from 18-8-1986.

2. On different dates set out at para 6(1) of the application, the applicants were appointed as Lower Division Clerks ('LDCs') initially for a term which was not specified in the orders of appointment. But, from the various orders produced by the applicants at the hearing, it is abundantly clear that they were appointed for short durations on every occasion and were continued from time to time till 14-7-1986.

3. On 14-7-1986, the Secretary, Ministry of Parliamentary Affairs ('Secretary') by Office Order No.59/86 continued the applicants till the dates specified in the said order or from 18-8-1986 the Secretary had not continued their services. But, the applicants asserting that the Secretary had verbally terminated their services from 18-8-1986 have approached this Tribunal on 1-10-1986 for the various reliefs noticed by us earlier.

4. The applicants have challenged their alleged terminations on a large number of grounds which will be noticed and dealt by us in due course.

5. In their reply, the respondents have asserted that the applicants had been appointed from time to time against temporary vacancies that arose due to retirement, deputation, promotion and leave of officers and that the last order made on 14-7-1986 had expressly appointed them for the terms specified against them and that on the expiry of the terms they had not been continued and therefore, there was no question of their termination in conformity with the requirements of Rule 5 of the Central Civil Services (Temporary Service) Rules of 1965 ('the Rules').

6. Shri R. Kapoor, learned counsel for the applicants, strenuously contends that his clients were temporary Government servants and their terminations made by the Secretary in contravention of Rule 5 of the Rules was illegal and impermissible. In support of his

his contention, Shri Kapoor strongly relies on a Division Bench ruling of this Tribunal in SMT. MAMLESH MADAN v. UNION OF INDIA AND OTHERS (O.A.No.281 of 1986 decided on 27-2-1987) and an unreported Division Bench ruling of the High Court of Delhi in CWP 773/73 decided on 10-12-1974.

7. Shri M.L.Verma, learned counsel for the respondents, contends that on the expiry of the terms for which the applicants had been appointed, they ceased to be Government servants and therefore, Rule 5 of the Rules had no application at all.

8. In one of the appointment orders issued on 1-8-1984 (Annexure-I) to applicant No.1 which is stated to be the form adopted in the case of others, the authority had not specified any date against the term 'until' of that form. But, notwithstanding the same, the applicants were not continued from 1-8-1984 and onwards only on the basis of that order indefinitely. On the other hand, the applicants were continued from time to time by different orders for specified periods specified in those orders. If that is so, then the applicants cannot place any reliance on the order dated 1-8-1984, if any, made in their favour.

9. On 14-7-1986 the Secretary made his very last order in favour of the applicants, which reads thus:

" No.3(1)/86-Admn.
Government of India
Ministry of Parliamentary Affairs

92, Parliament House,
New Delhi,
14th July, 1986.

OFFICE ORDER NO.59/86

The Secretary, Ministry of Parliamentary Affairs has appointed the following persons on ad hoc basis in the grades and upto the dates mentioned against each:-

1. Sh. O.P.Dhawan	UDCs as Asstts. w.e.f. 2-7-1986 to 31-10-1986.
2. Sh. Manohar Lal	
3. Sh. J.S.Kochhar	
4. Sh. Satish Ohri	
5. Sh. S.C.Kapoor	

" 6. Smt. Mithlesh Kalie LDC as UDC w.e.f. 2-7-86 to 31-10-86
7. Smt. Kamlesh Banerjee LDC as UDC w.e.f. 3-7-86 to 31-10-86
8. Sh. Mohan Chander)
9. Sh. Satish Kumar) LDCs as UDCs w.e.f. 2-7-86 to 31-10-86
Dureja.
10. Sh. Dalip Kumar)
11. Sh. Hoshiar Singh) Peons as LDCs w.e.f. 2-7-1986 to
14-8-1986.
12. Sh. J.N. Sharma as LDC w.e.f. 3-7-86 to 14-8-86
13. Sh. Raj Pal)
14. Sh. Gauri Shankar)
15. Sh. R. Raghunathan)
16. Smt. Swaranjit Kaur as LDCs w.e.f. 2-7-1986 to
17. Km. Reshma Bijlani) 14-8-1986.
18. Km. Leolina Tirkey)
19. Smt. Usha Kharbanda)
20. Sh. Praveen Kumar)
21. Smt. Sheela Vati as LDC w.e.f. 3-7-1986 to 14-8-1986

Sd/- V.S. Bansal,
Under Secretary (ADMN.)
for Secretary, Ministry of
Parliamentary Affairs."

In this order, the applicants had been appointed only for the terms specified in the same. On the expiry of the terms specified in this order, the Secretary had not made any order continuing the services of the applicants and this fact was not disputed by both sides. If that is so, then the position is that the applicants had ceased to be Government servants at any rate from 15-8-1986. In other words the terms of the applicants as temporary Government servants had lapsed or stood discontinued from the expiry of the dates specified against them in the order dated 14-7-1986. With that the relationship of employer and employee or worker and servant stood discontinued. In such a case, no question of termination and compliance with the Rules arise. We are, therefore, of the view that these are not cases of terminations of 'temporary' servants to whom Rule 5 of the Rules was applicable.

10. In Mamlesh Madan's case a stenographer had been reverted on the ground that she had not appeared for a departmental examination. On an examination of that question, the Division Bench held that the same was illegal and impermissible. But, that is not the position in the present case. Even otherwise the ratio in Smt. Mamlesh Madan's case does not really bear on the point and assist the applicants. This is also true of the ruling of the Delhi High Court in CWP 773/73.

11. On the foregoing discussion we hold that there is no merit in this contention of Shri Kapoor and we reject the same. On this conclusion, all other contentions urged by Sri Kapoor do not really call for our examination. But, out of deference to Sri Kapoor, we propose to notice and express our views on all other contentions urged by Sri Kapoor.

12. Shri Kapoor strenuously contends that it was not open to the respondents to terminate the services of the applicants without service of termination notices in conformity with Rule 5 of the Rules and otherwise also.

13. We have earlier held that the term of the applicants had expired and, therefore, they were not entitled to any notice or pay in lieu of notice. If that is so, we do not see as to how the applicants can contend that they are entitled for service of notices either under the Rules or otherwise also. When it is held that the applicants were not entitled for service of notices the question of form of notice will not at all arise. We see no merit in this contention of Sri Kapoor and we reject the same.

14. Shri Kapoor contends that the termination of the applicants was without a reason and illegal.

15. We have earlier held that the term of applicants stood discontinued and they had ceased to be Government servants from the expiry of the terms specified against them. When that is so, the question of termination, much less for a reason does not at all arise. We see no merit in this contention of Sri Kapoor and we reject the same.

16. Shri Kapoor next contends that on the terms of clause 2 of the appointment order dated 1-8-1984 the applicants were entitled for a month's notice or one month's pay in lieu of notice in terms of that clause of the order dated 1-8-1984 and Rule 5 of the Rules.

17. What we have expressed earlier is also an answer to this contention of Sri Kapoor. The applicants had not been continued for all time only on the basis of the order dated 1-8-1984. The terms or periods of appointments of the applicants on the basis of the very last order dated 14-7-1986 had expired. If that is so, then clause 2 of the appointment order dated 1-8-1984 or Rule 5 of the Rules had no application. We see no merit in this contention of Sri Kapoor and we reject the same.

18. Sri Kapoor contends that the termination of applicants 1 and 2 who had even been allowed increments was illegal.

19. The fact that applicants Nos. 1 and 2 had been allowed increments does not in any way alter and affect the terms for which they had been appointed. An increment granted in the time scale does not extend the term or period of appointment of applicants Nos. 1 and 2. We see no merit in this contention of Sri Kapoor and we reject the same.

20. As all the contentions urged for the applicants fail, this application is liable to be dismissed. We, therefore, dismiss this application with no order as to costs.

M.S. Puttaswamy
(M.S. PUTTASWAMY)
VICE-CHAIRMAN
BS/7/81

✓ 9/8/87
(BIRBAL NATH)
MEMBER (A)

sr/np