

2

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.1820/1990

New Delhi, This the 19th Day of October 1994

Hon'ble Shri Justice S.C.Mathur, Chairman

Hon'ble Shri P.T.Thiruvenagadam, Member (A)

Shri Upendra Kumar Gupta
S/o Late Shri V V Gupta
H.No.165, Garhai Mohalla
Circular Road, Shahdara
Delhi-32.

...Applicant

By Shri Ms Shashi Kiran, Advocate

Versus

1. The Hon'ble Minister
Ministry of Human Resource Development
(Govt of India)
Shastri Bhawan
New Delhi.
2. The Director (Languages)
Department of Education
Ministry of Human Resource Development
Shashtri Bhawan, New Delhi.

...Respondents

By Shri M K Gupta, Advocate

O R D E R (Oral)

Hon'ble Shri Justice S.C.Mathur, Chairman

1. The present application is directed against the order of termination of applicant's service.
2. The facts which are either admitted or not disputed or established from record as thus:

The applicant's father was in the employment of Directorate (Languages), Department of Education, Ministry of Human Resources Development. While in service he died on 15.2.87. On 13.3.87 the applicant made application seeking employment on the ground that his father had died leaving him, his mother and an elder brother and all of them were unemployed and there was no source of livelihood.

On 15.4.87 the applicant's mother wrote to the concerned department that employment may be given to her younger son, namely the applicant, as his elder son was not under her control. The applicant was offered an appointment on 25.5.87 which he accepted and joined the office concerned.

On 3.6.87 the department received a complaint in which it was stated that the applicant had obtained appointment by making false declaration that his mother and elder brother were unemployed. The place of their employment was disclosed.

In view of this letter the respondents made enquiry from the alleged employers of the applicant's mother and brother. The Director of Administration of the Institute of Company Secretaries of India confirmed that the applicant's brother Shri Shilendra Kumar Gupta was working in the institute as proof reader with effect from 2.12.1985 in the pay scale of Rs.950-1500 and at that time he was drawing salary of Rs.1439/- p.m. The nature of appointment was stated to be regular. The status of the institute was declared as autonomous body. The Principal of Lady Irwin Senior Secondary School through her letter dated 5.6.1987 confirmed that the applicant's mother Smt. Shashi Bala Gupta was working in the school as an Asst Teacher in the scale of Rs.1200-2040 and that she was a permanent teacher. It was mentioned that the school was aided by the Delhi Administration and Central Board of Secondary School Education, Delhi. In view of the above replies the respondents were satisfied that the applicant had obtained employment by mis-statement of

of material facts. Accordingly by the impugned order the services of the applicant were terminated. The order of termination is innocuous and does not make any allegation of mis-conduct against the applicant.

3. The aforesaid order of termination of service has been challenged on a number of grounds. It has been submitted by the learned counsel for the respondents that the services of the applicant were terminated on the allegation of mis-conduct in respect of which no enquiry was held.

4. In support of the submission that such a termination of service is illegal the learned counsel for the applicant has cited a number of authorities to which references will be made hereinafter.

5. The application has been opposed by the respondents and counter reply has been filed. The facts stated above ^{have} ~~not~~ been disputed in the reply. It has been asserted that the applicant obtained appointment by making false statements. It was pointed out that in the offer of appointment ^{it} was mentioned that if it was found that the appointment had been obtained by concealment of facts the same could be terminated. It is pressed that the termination order was passed under the terms of employment ^{and also} ~~and also~~ under the relevant rules governing the services of temporary Government servants.

6. Alongwith the counter affidavit a copy of the application on the basis of which the employment was given has been filed as Annexure R-I. In Column V the applicant was required to state the name of dependents of the deceased employee, their income

and whether they are living together or separately. The applicant disclosed the names of his mother as Smt. Shashi Bala Gupta and his brother's name as Shri Shailendra Kumar. In the column headed "Employed or not and particulars of employment", the applicant stated 'not' against the names of his mother, brother and himself. No rejoinder affidavit has been filed to controvert the averments made in the counter affidavit. Thus the allegation in the counter affidavit that the applicant obtained employment on the false representation that his mother and brother were unemployed remains un-controverted. Apart from this even during the course of argument the learned counsel for the applicant did not assert that the mother was unemployed. Rather it was submitted that on account of her ill health she intended to resign. In respect of applicant's brother it was argued that he was not in regular employment and was only a trainee and could be thrown out any time. It was further submitted that the respondents' own document showed that the Institute where he was working was not a department of the Government but was an autonomous body and therefore there was no security of employment. The submission of the learned counsel that the applicant was a trainee is falsified by the letter of the Institute's Director, Annexure R-7 in which it has been clearly stated that Shri Shailendra Kumar Gupta's appointment was regular. The letter does not describe him as a trainee. Instead of stipend a scale of pay is disclosed. Even if the employment of applicant's brother was of a precarious nature, the applicant should, in all fairness, have disclosed it and then pressed his claim for employment on the basis of the said precariousness.

7. At the bottom of his application for employment, Annexure R 1 the applicant had made the following declaration:-

"I do hereby declare that the facts given by me above are to the best of my knowledge correct. If any of the facts herein mentioned are found to be incorrect or false at a future date, my services may be terminated."

The above declaration did not require any enquiry to be held.

8. Under clause 3(3) of the letter of appointment also power was reserved to terminate applicant's services if the declarations and statements made by him were discovered to be false or if it was found that some material information had been deliberately suppressed. This clause also did ^{not} require any enquiry to be held.

9. The purpose of enquiry is to ascertain the truth. The truth is now undisputed. Therefore no enquiry into facts is required. On undisputed facts applicant himself clothed the respondents with power to dispense with his service. He cannot now turn round and claim opportunity of hearing.

10. The manner in which applicant's service has been terminated has the sanction of authorities.

11. State of UP and another Vs Kaushal Kishore Shukla 1991(1) SCC 691 was a case where after holding preliminary enquiry into alleged improper conduct of the petitioner an order of termination of services was passed. The same was challenged on the ground that the allegation of misconduct should have been proved by holding regular disciplinary enquiry. Their Lordships of Hon'ble Supreme Court negatived the plea. This judgement has full application to the facts of the

present case.

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12. In Governing Council K M Institute of Oncology Vs V Pandurang reported in AIR 1993 SC 392 it has been stated by Their Lordships of Hon'ble Supreme Court in para 6 as under:-

"If an employee who is on probation or holding an appointment on temporary basis is removed from the service with stigma because of some specific charge, then a plea cannot be taken that as his service was temporary or his appointment was on probation, there was no requirement of holding any enquiry, affording such an employee an opportunity to show that the charge levelled against him is either not true or it is without any basis. But whenever the service of an employee is terminated during the period of probation or while his appointment is on temporary basis, by an order of termination simpliciter after some preliminary enquiry it cannot be held that as some enquiry had been made against him before the issuance of order of termination it really amounted to his removal from service on a charge as such penal in nature" (emphasised)

The emphasised portion completely sanctions the course of action adopted by the respondents.

13. The learned counsel for the applicant submitted that authorities acted in a hasty and casual manner. We are unable to accept the submission. The respondents checked up the information given to them by writing to the employers of the applicant's mother and brother. It was only after the facts stated in the complaint were confirmed by the employers of the applicant's mother and brother that the impugned action was taken.

-7-

14. We may now consider the authorities cited by the learned counsel for the applicant.

15. AIR 1964 SCC 364 Union of India Versus H.C. Goel was a case of dismissal from service after disciplinary proceedings. The questions which arose for determination before Their Lordships were - (i) whether the Government is competent to differ from the findings of fact recorded by the Enquiry Officer who has been entrusted with the work of holding a departmental enquiry against the delinquent Government Servant under rule 55 of Central Civil Services (Classification, Control and Appeal) Rules and (ii) whether the High Court in dealing with the Writ Petition filed by Government officer who has been dismissed from Government service is entitled to uphold that the conclusion reached by the Government in regard to his mis-conduct is not supported by any findings at all. No such question arises in the present case.

16. Ratna Devi Versus The Secretary, Haryana State Electricity Board 1987(3) SLJ 186 was relied upon for the proposition that appointment on compassionate grounds cannot be denied merely on the ground that some other member of the family was in employment in some other institutions. Para 5 of instruction dated 25.11.1978 relating to appointment on compassionate ground (Annexure R-2) reads as follows:

"5. When there is an earning member. - In deserving cases even where there is an earning member in the family, a son/daughter/near relative of a Government servant, who dies in harness leaving his family in indigent circumstances, may be considered for appointment

to the post. All such appointments are, however, to be made with the prior approval of the Secretary of the Ministries/Departments concerned, who before approving the appointment will satisfy himself that the grant of the concession is justified, having regard to the number of dependants left by the deceased Government Servant, the assets and liabilities left by him, the income of the earning member as also his liabilities, whether the earning member is residing with the family of the deceased Government servant and whether he should not be a source of support to the other members of the family."

Under the above clause appointment can be given on compassionate ground to a member of the family of the deceased despite another member of the family having already ^{an} appointment only with the approval of the Secretary of the Ministry concerned. In the present case, if the applicant had disclosed that his mother and brother were in employment the matter would have been referred to the Secretary to Government who would have examined the applicant's claim on the basis of the consideration mentioned in the clause. In view of the false declaration made by the applicant his case was not processed in accordance with clause 5. This authority is therefore of no assistance to the applicant.

17. Ravindra Kumar Misra Vs U.P.State Handloom Corporation Ltd and another AIR 1987 SCC 2408. was relied upon for the preposition that where the order of termination is founded upon the allegation of mis-conduct, enquiry is must. It is held that an enquiry is necessary in order to

15
find out the correct factual position. In the present case there is no dispute at this stage on facts.

Accordingly it will be futile to direct the respondents to hold an enquiry. Further we cannot lose sight of the fact that in view of clause 5 of the instructions referred to above the authority which offered appointment to the applicant was not competent to offer the same as the matter was required to be referred to the Secretary to Government. The appointment was therefore, contrary to the instructions and no enquiry is required.

18. Dr.Mrs.Sumati P. Shere Vs Union of India and others AIR 1987 SC 1431 was relied upon for the preposition that where the services of adhoc employee are terminated on the ground of unsuitability the defects in work should be communicated in advance. The case on hand does not relate to the defects in performance of duty. This authority, is therefore, of no assistance to the applicant.

19. D.K.Yadav Vs J.M.A. Industries Ltd(1993) 3 SCC 259 was relied upon for the preposition that principles of natural justice are required to be followed. Principles of natural justice may be required to be followed where facts are in dispute. In the present case facts are not in dispute and further the applicant obtained appointment from a person who was, on the facts now admitted, incompetent to give the same. This authority also does not advance the applicant's case.

20. In the end the learned counsel for the applicant stressed that the punishment awarded was dis-proportionate to the gravity of mis-conduct alleged against him. The plea is mis-conceived as the present is not

-10-

a case of punishment.

21. In view of the above, the application is dismissed with costs to the contesting respondents which are quantified at Rs.500/. (Rupees five hundred only).

P. T. Thiruvenkadam

(P.T.THIRUVENGADAM)
Member(A)

19-10-94

S. C. Mathur

(S.C.MATHUR)
Chairman

19-10-94

LCP