

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

(21)

Allahabad, this the 20th day of August, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.
HON. MR. S.C. CHAUBE, A.M.

O.A. No. 295 of 1997

Om Babu Son of Shri Jai Lal, R/O H.No.54, Raja Ram Gupta
Colony, I.V.R.I. Road, Izatnagar, Bareilly.

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.....Applicant.

Counsel for applicant : Sri K.P. Singh.

Versus

1. Union of India through Secretary, Ministry of Agriculture
New Delhi.
2. Secretary, Indian Council of Agriculture Research, Krishi
Bhawan, New Delhi.
3. Indian Veterinary Research Institute, Izatnagar, Bareilly
through its Director.
4. Chief Administrative Officer, Indian Veterinary Research
Institute, Izatnagar, Bareilly.

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.....Respondents.

Counsel for respondents : Sri B.B. Sirohi.

O R D E R (ORAL)

BY HON. MR. JUSTICE S.R. SINGH, V.C.

Heard Sri K.P. Singh, learned counsel for applicant,
Sri B.B. Sirohi, learned counsel for respondents and perused
the pleadings.

2. The applicant is aggrieved by order dated 13.2.1997
(Annexure-I) whereby his services have been terminated forth-
with with a direction that he would be entitled to claim a
sum equivalent to the amount of his pay plus allowances for
the period of one month at the same rates as he was drawing
them immediately before the termination of his service. The
applicant, who was working as Senior Supporting Staff, Grade
I (Press) in the Indian Veterinary Research Institute, Izza-
Nagar, is aggrieved by order dated 13.2.1997. The applican
was offered appointment vide memo No.F.4-21/87MRDPC dated

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7.6.1988 (Annexure A-10) on a temporary post of Supporting Staff, Grade-I in the pay scale of Rs.750-12-870-EB-14-940. The applicant was placed ~~at~~ ^{on} probation for a period of two years from the date of joining the post. The period of probation was extendable at the discretion of the competent authority. Other terms and conditions of service~~s~~ ^{as} were laid down in the memo d-dated 7.6.1988. The applicant joined his duty on 9.6.88.

3. The order impugned herein is sought to be quashed ~~internally~~ firstly on the ground that after expiry of the period of probation, the applicant would be deemed to have been confirmed and, therefore, his services were not liable to be terminated in exercise of power under Rule 5 of CCS (Temporary Service) Rules, 1965; secondly that the service~~s~~ of the applicant has been terminated as a measure of punishment without holding any enquiry. For the respondent it has been stated in the counter reply that the applicant obtained the appointment by playing fraud by submitting a forged certificate and in the circumstances, he was not entitled to be given an opportunity ~~for the reasons~~ ⁱⁿ that it was open to the appointing authority to terminate the services of the applicant in view of Clause 15 of the memo dated 7.6.88 which clearly visualised that if any declaration given or information furnished by the applicant was found to be false or it was found to be wilfully suppressed any material information, he would be liable to removal from service. It is asserted in the counter affidavit that the applicant had submitted false and fabricated certificate regarding his date of birth and the educational qualification. In the circumstances of the case, the department instead of holding enquiry, terminated the services of the applicant by a simpliciter order of termination. The expression 'Temporary Service' as defined in Rule 2(B) of Central Civil Services (Temporary Service Rules), 1965 means the service of a temporary Government servant in a temporary post or officiating service in a permanent post,

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under the Government of India. In the memorandum dated 7.6.88, whereby the applicant was offered appointment, it was mentioned that the offer was against a temporary post of Supporting Staff, Grade-I(Press). No material has been brought to our notice to show that the post was later on converted into a permanent post.

4. In the circumstances, therefore, it is not possible for us to hold that the provisions contained in Rule 5 of CCS(Temporary Service) Rules, 1965 were not attracted.

5. The next question arises for consideration is whether in the facts and situation of the case, the applicant was entitled to a notice for opportunity for showing cause. In the Counter Affidavit it is asserted by the respondents that the applicant's services have been terminated due to the reason that he had submitted false and forged certificate regarding his date of birth as well as educational qualification. The appointment was made in 1988 whereas the services came to be terminated by order dated 13.2.1997. The question whether the applicant was appointed on the basis of forged certificate of date of birth and educational qualification, in our opinion, ought to be decided after opportunity of showing cause to the applicant. In Basudev Tiwary Vs. Side Kanhu University & others (1998) 8 SCC 194 the services of the appellant therein were terminated on the ground that his appointment was made by an incompetent authority and was therefore, invalid. Section 35(3) of the Bihar Universities Act provides that any appointment or promotion made contrary to the provisions of the Act, statute rules or regulations or in any irregular or unauthorised manner shall be terminated at any time without notice. Their Lordships of Supreme Court ~~said injustice into the~~ ~~say and~~ held that in order to arrive at a conclusion that an appointment is contrary to statutory provisions, a finding has to be recorded and unless such a finding is recorded, termination cannot be made ~~said before termination~~ ~~the services~~ under the provisions of Section 35(3) of the

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Bihar State Universities Act, 1976 and to arrive at such a conclusion, necessary enquiry will have to be made as to whether such appointment was made in violation of the provisions contained in the Act etc. Their Lordships of Supreme Court very clearly held that in such event there was implicit a requirement of hearing for arriving at a conclusion that the appointment had been made contrary to the statutory provisions. Likewise in the present case the conclusion that the applicant had obtained appointment by playing fraud, ought not to have been made without holding an enquiry. It is true that the order impugned herein is simpliciter order of termination and does not, by itself cast a stigma but in the counter affidavit, respondents have stated that an exparte enquiry was held and it was found that the applicant had obtained appointment on the basis of forged certificates regarding his date of birth and educational qualification. The order, in our opinion, acquires the complexion of an order of termination by way of punishment though formulated in a language which suggests that order of termination is simplicitor one.

6. In Dipti Prakash Banerjee Vs. Satvendra Nath Bose National Centre for Basic Sciences, Calcutta & others, 1991(1) SC Service Law Judgments 232; it has been held that where in enquiry the findings as to misconduct were arrived at behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as founded on the allegation and will be bad in law. The respondents in the instant case conducted some enquiry behind the back of the officer though it was not a regular enquiry and on the basis of such enquiry they have arrived at a finding that the applicant obtained appointment on the basis of forged certificate of date of birth and educational qualification. Respondents have placed reliance on a letter dated 20.11.96 issued from the Zila Basic Shiksha Adhikari, Bareilly produced during the course

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of argument. The letter itself shows that some enquiry was conducted by the respondents and they have acted on the basis of an information supplied by the Basic Shiksha Adhikari, Bareilly behind the back of the applicant. The course adopted by the respondents in the instant case was violative of the principles of natural justice. Sri B.B. Sirohi, learned counsel for respondents, however, placed reliance on R. Vishwanatha Pillai Vs. State of Kerala & others 204 AIR SCW 419 in support of his contention that the applicant in the instant case was not entitled to an opportunity of hearing. In paragraph 19 of the report it has been observed that person who entered the service by producing a false caste certificate and obtained appointment for the post meant for Scheduled Caste does not deserve any sympathy or indulgence of a court; for a person who seeks equity must come with clean hands. The decision, in our opinion, has no application to the present case.

7. Sri B.B. Sirohi then cited a decision of Supreme Court in S-tate of M.P. Vs. Shyama Pardhi 1996 AIR SC 2219 wherein it has been held that a candidate wrongly selected for appointment by way of initial selection to undergo training is not entitled to hearing if the appointment is cancelled due to the reason that the candidate did not possesses the requisite qualification. The subsequent decisions in Basudeo Tiwari and Dipti Prakash Banerjee (Supra) are more on the point.

8. In view of the above discussion, the instant application is allowed. The impugned order is quashed with liberty to the respondents to pass a fresh order in accordance with law and in the light of observations made herein above.

No order as to costs.

S. Shankar
A.M.

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V.C.

Asthana/