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Reserved

Central Administrative Tribunal
Allahabad.

Registration T.A.No.410 of 1986(Civil Appeal No.228 of 1975)

Syed Mohd. Raja Appellant.

Vs.

Union of India Respondent.

(By Hon.G.S.Sharma, JM)

This civil appeal against the judgment and decree dated 26.9.1975 passed by the Additional Civil Judge Bareilly in suit no.208 of 1971 has been received by transfer from the Court of District Judge, Bareilly under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. According to the case of the plaintiff, vide order dated 26.11.1966, he was appointed as a Lower Division Clerk in the Income Tax Department temporarily and while posted at Rampur he was also assigned the duties of Stenographer and was attached to the Income Tax Officer Rampur. In one assessment order typed by the plaintiff on the dictation of the Income Tax Officer, he omitted to mention the total income of the assessee from the computation part of the order. When this mistake was detected, an inquiry was made and the Shorthand Note Book of the plaintiff was taken into custody. The plaintiff was also interrogated but afterwards, the said Shorthand Note Book was lost from the custody of the authorities. The plaintiff was thereafter transferred to Bareilly as Stenographer and vide a simple order of termination dated 16.11.1970, he was removed from service without assigning any reason. The ~~legality~~ ^{legality} of the said order was challenged by the plaintiff by filing the suit giving rise to this appeal and it was pleaded by him that after completing 3 years continuous service, he had acquired the status of quashi-permanent Govt.servant and his services could

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not be terminated treating him as a temporary employee. It was further alleged that the plaintiff has been punished without any formal inquiry in view of the mistake in the typing of the assessment order and the missing of his Short-hand Note Book which is in violation of Art.311 of the Constitution. It was also alleged that some persons junior to the plaintiff were retained and there has been a discrimination against him in choosing him for this action. After giving the notice under Section 80 of the Code of Civil Procedure, he accordingly claimed the back wages and a declaration that the order of termination of service is null and void.

3. The suit was contested on behalf of the defendant and it was pleaded in its written statement that 3 years continuous service could not ipso-facto make the plaintiff quasi-permanent in the absence of declaration to that effect under rule 3 of the the Central Civil Services (Temporary Service) Rules, 1965 (hereinafter referred to as the Temporary Service Rules). The plaintiff's services were terminated by the appointing authority in exercise of his power under rule 5(1) of the Temporary Service Rules and in lieu of one month's notice, his salary for one month was deposited in the Treasury as the plaintiff evaded to receive the notice of termination. The termination order is not justiciable in Court. It was not passed by way of punishment and no regular inquiry was called for in the matter. Certain legal pleas were also taken.

4. The learned trial Court framed 10 issues in the case. The findings recorded on issue nos. 1 to 5 appear to be more relevant for the purposes of this appeal. Under these issues, it was held that the plaintiff had not acquired

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the status of quasi-permanent employee and this could be possible only on a declaration issued by the competent authority under rule 3 of the Temporary Service Rules. No such declaration was issued in the case of the plaintiff. The wordings of the termination order, which are reproduced below, were quoted in its judgment by the learned trial Court :-

" In pursuance of the provision to sub-rule 1 of rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I hereby terminate forthwith the services of Sri S.M.Raza, Stenographer/Ordinary Grade and direct that he shall be paid a sum equivalent to the amount of pay and allowances for a period of one month (in lieu of one month's notice) calculated at the same rate at which he was drawing them immediately before the date on which the order is served on or, as the case may be, tendered to him."

5. After considering a number of decisions of the High Court and the Hon'ble Supreme Court, the learned trial Court held that the impugned termination order was a simple order of termination passed under rule 5 of the aforesaid service rules and it did not contravene the provisions of Art.311 of the Constitution and the fact whether any junior to the plaintiff was retained in service or whether ^{he} had committed certain error in past could not ~~not~~ be taken into consideration in interpreting this order. The suit was accordingly dismissed with costs.

6. Aggrieved by the findings recorded against him, the plaintiff preferred this appeal. During the pendency of the appeal, there was a devastating fire in the civil Court building, Bareilly in the night of November 18/19, 1979 and even some part of the record of this case could

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not remain ~~safe &~~ ^{safe &} According to the certificate given by the Officer Incharge, Record Room, Bareilly, only C-1 and C-2 Natthees (sub-files) of the lower court record are available in this case. Record of appeal appears to be ~~fully~~ ^{fully} intact. We have heard the learned counsel for the parties on the basis of the available record.

7. The main point arising for determination in this appeal is whether the impugned order of termination of the services of the plaintiff as quoted above, is a simplicitor order of the termination of his services passed under rule 5 of the Temporary Service Rules or it is a colourable exercise made by the authority concerned with a view to punish the plaintiff for the errors he committed in typing the assessment order. There is no mention of any oral evidence in the judgment of the trial Court and it appears to us that no oral evidence was laid in the case before the trial Court. The impugned order dated 16.11.1970 has, therefore, to be interpreted on the basis of its wordings keeping in view the circumstances taking place prior to this order.

8. It has not been shown on behalf of the plaintiff ~~anywhere~~ that after the omission of the total income in the assessment order typed by him, he was ever charge sheeted or with the exception of oral interrogation, any other inquiry in the matter was ever made. A report dated 21.7.1971 of Inspecting Assistant Commissioner of Income Tax, Bareilly has been filed by the appellant in this appeal, but it is not a certified ^{true &} copy. We are, therefore, unable to go through its contents.

9. A similar matter had cropped up before this Bench in Dal Chand Vs. Union of India (Registration T.A.No.351 of 1986). A number of decisions of the Hon. Supreme Court were considered in that case to determine whether it is permissible for the Tribunal to go behind the order to determine the real intention or

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motive leading to the termination of the services of a temporary employee. In the case of State of U.P. Vs. Bhoop Singh Verma (1979(2) SLR -28), a Sub Inspector of Police was discharged from service after conducting a preliminary inquiry against him. On his reinstatement by the High Court, Allahabad in the writ petition he was again discharged by passing another order. The Sub-Inspector challenged the subsequent order again and took up the plea that the second order of discharge was made in the background of the allegations made against him concerning his behaviour which had led to his first discharge. The Hon. Supreme Court ultimately held that no disciplinary inquiry was required under the law and the services of the petitioner could be terminated according to the rules of his service by passing another order and that order was not found to be a punitive order. In the case of Manager, Government Branch Press Vs. Belliappa (1979 (2) SLR-458), the Hon. Supreme Court had made the following observations :-

"The principle that can be deduced from the above analysis is that if the services of a temporary Government servant are terminated in accordance with the condition of his service on the ground of unsatisfactory conduct or his unsuitability for the job and/or for his work being unsatisfactory, or for a like reason which marks him off in a class apart from other temporary servants who have been retained in service, there is no question of the applicability of Article 16."

10. In view of this, the motive behind the order of termination is not relevant. Afterall, the authorities have to base their opinion on some material to decide whether the services of a particular temporary employee are any more required in public interest or not.

11. We are, therefore, of the view that despite his having served for more than 3 years, the plaintiff-appellant had not acquired the status of quasi-permanent employee and his services were liable to be dispensed with by a mere notice under rule 5(1) of the Rules governing his service. No stigma was attached

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to his work or conduct while passing the impugned order of termination and as such, the learned trial Court was fully justified in treating it as a simple order of termination of service. In our opinion, there is no force in this appeal and the appellant has failed to establish that there has been any violation of the provisions of the Constitution in his case.

12. The appeal is accordingly dismissed without any order as to costs.

Bhama 12-10-87

MEMBER (A)

*Subhashree
12/10/87*

MEMBER (J)

Dated : 12-10-1987
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