(14)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. Nos. 318/88 and 319/88
~~T.A. No.~~

DATE OF DECISION 10-10-1991

Harilal Tulsibhai Parmar
~~in OA 318/88~~ Petitioner
and
Anilkumar B. Pandya in OA 319/88
~~Mr. K.K. Shah~~ Advocate for the Petitioner(s)

Versus

Union of India Respondent

Mr. R.P. Bhatt Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. K.J. RAMAN ... Member (A)

The Hon'ble Mr. R.C. Bhatt .... Member (J)

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? Yes.
4. Whether it needs to be circulated to other Benches of the Tribunal? No.

MGIPRRND—12 CAT/86—3-12-86—15,000

10-10-91

(13)

Harilal Tulsibhai Parmer ... Applicant in OA 318/88

and

Anilkumar B. Pandya ... Applicant in OA 319/88

(Mr. K.K. Shah, Advocate for the applicants)

Vs.

1. Union of India, through the Secretary, Ministry of Finance, Income-tax Department, New Delhi

2. The Chief Commissioner of Income-Tax (Administration), Aayakar Bhavan, Ashram Road, Ahmedabad.

... Respondents

(Mr. R.P. Bhatt, Advocate for the respondents)

ORIGINAL APPLICATIONS 318/88 and 319/88

JUDGMENT

11-10-1991

Per: Mr. K.J. Raman, the Hon'ble Administrative Member

The two original applications involve common facts and issues and are, therefore, being disposed of by this common order.

2. In O.A. 318/88, the facts of the case are briefly as follows. The applicant belongs to the Scheduled Caste (SC) Community. He was called for interview by the Income-Tax Department for consideration for appointment as a Peon, by a Memorandum dated 25-5-1987, stating that the said Memorandum was issued with reference to the names sponsored by the Employment Office for the said post. The applicant was selected

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for the said post after the interview. He was appointed by a letter dated 5-10-1987 as a temporary/officiating Peon. The applicant accordingly joined the service of the respondents and was functioning as a Peon. However, by the impugned order dated 7-1-1988, (Annexure A-3) the Inspecting Assistant Commissioner of Income-Tax(Audit), Ahmedabad, terminated the services of the applicant under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 (Temporary Service Rules). The applicant states that he had already enrolled with the Employment Exchange. He has further submitted that, apart from his registering in the Employment Exchange, his name was also registered with the Akhil Bharat Anusuchit Jan Parishad (hereinafter referrdd to as Parishad). This Parishad is recognised by the Government of India for the purpose of notifying vacancies reserved for Scheduled Castes and Scheduled Tribes (page 22). It is further submitted that the Income-Tax Department by a letter dated 5-5-1986, asked the Parishad to sponsor the names of 54 candidates for the posts of Peon, etc. Thereafter the applicant was called for interview and then appointed. The applicant has alleged that the impugned termination under the Temporary Service Rules is arbitrary and against the principles of natural justice; violation of Articles 14 and 16 is also alleged. It is pointed out that the applicant has become ~~exxxxxxxx~~ age-barred for Government service after his serving the respondents as Peon from the date of his appointment. Under the above circumstances, the applicant has filed this application under Section 19

of the Administrative Tribunals Act, 1985, for the quashing of the impugned termination order dated 7-1-1988 and for reinstatement with back wages, etc.

3. In O.A. 319/88, the facts and developments are identical except for the dates. The applicant was called for interview by a Memorandum dated 25-5-1987 which is identical with the Memorandum in the other case. This applicant was appointed by a Memorandum dated 27-7-1987 as a temporary Peon. This applicant's service has been terminated by the impugned order dated 4-1-1988 issued under the Temporary Service Rules. This applicant was also sponsored by the Parishad on the same requisition letter dated 5-5-1986 sent by the respondents to the Parishad. The other contentions and the reliefs sought for are the same in this case as in OA 318/88.

4. The respondents have filed two replies resisting the claim of the applicants. The replies in both the cases are identical.

5. The case has been heard. The learned counsel for the applicants reiterated the facts and contentions briefly indicated above. He particularly pointed out that the respondents have indicated in the Memorandum dated 25-5-1987, calling the applicants for interview, that the applicants had been sponsored by the Employment Exchange; and the applicants had no reason to doubt the veracity of this statement by the respondents themselves.

It is only from the replies filed by the respondents that the applicants came to know that their services were terminated because of the sponsoring of their names by the Parishad. The learned counsel strongly urged that it was the respondents themselves who had specifically written to the Parishad on 5-5-1986 specifically requesting the Parishad to sponsor the names of 54 candidates including those for Peons. The Parishad accordingly forwarded the names of the applicants and the applicants were appointed after being found suitable in all respects. Thus, the applicants were in no way to be blamed if some procedural irregularity has been committed by the respondents themselves. The learned counsel contended that it is extremely unfair that the services of the applicants had been terminated for the fault committed by the respondents themselves, and for no fault of the applicants. The learned counsel also pointed out that the applicants were admittedly registered in the Employment Exchange also and even this condition was satisfied.

6. The learned counsel for the respondents referred to the contentions contained in the two replies filed on behalf of the respondents. In the replies it is admitted that the applicants had indeed been registered with the Employment Exchange. It is, however, stated that the names of the applicants were not sponsored by the Employment Exchange. It is stated that it was erroneously intimated in the Memorandum calling the applicants for interview that their names were sponsored by the Employment

exchange. It is stated that the Parishad had written to the respondents stating that they are one of the recognised institutions for sponsoring the names of S.C. candidates, and therefore a requisition was placed on them for sending names of candidates. The Parishad accordingly sponsored the names of the applicants and others and the applicants were appointed. It is stated that thereafter some complaints were received about the authority of the Parishad to sponsor the names for recruitment and a reference was made to the Central Board of Direct Taxes (CBDT) seeking clarifications whether the Parishad was empowered to sponsor the names for recruitment. The CBDT merely asked the authorities to refer to Chapter 7, Para 7.1(iii) at page 91 of the Brochure on Reservation for Scheduled Castes/Scheduled Tribes. According to this provision, the Parishad is empowered merely to advise a candidate about the proposed recruitment and that it will not be for them to recommend or press the names of any individuals. It is, therefore, contended in the replies that, since in this case the Parishad had sponsored the names, which was against the above provision, the appointment of the applicants was irregular and because of this fact, the services of the applicants were terminated.

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7. We have carefully considered the rival contentions in this case. One of the points mentioned in the "further reply" filed by the respondents is that the present applicants ~~are~~ were only casual employees and this Tribunal has no jurisdiction in the present case of such employees, in view of the decision of Jabalpur Bench of this Tribunal in O.A. 98/86 in the case of Vijay Singh and Others Vs. Uniom of India. This contention is wholly baseless and impermissible. Firstly, it is not at all true to say that the applicants were casual employees. On the other hand, the various documents and the appointment order referred to above and even the impugned orders clearly indicate that the appointment of the applicants was regular, even if temporary. There is no question of the applicants being casual employees. We do not see how such contentions can be advanced. Secondly, even in the case of casual employees, this Tribunal has jurisdiction in their service matters, as has been held by a Full Bench of this Tribunal in Rahmat Ullah Khan Vs. Union of India and Others, 1989(2) SLJ (CAT, FB, New Delhi) Page 292. Any decision contrary to the decision of the Full Bench is no more good law.

8. From the facts detailed above, it is obvious that the applicants were registered in the Employment Exchange. They were called for the interview on the basis that their names had been sponsored by the Employment Exchange. They were interviewed, found fit, selected and appointed as regular Peons. They have put

in about ~~more than two years~~ three months of service as such. There is no whisper anywhere that anything has been found wanting either in regard to their suitability or conduct for continuing in service. The learned counsel for the respondents submitted an argument that the impugned orders have been issued under Rule 5 of the Temporary Services Rules and they are simpliciter, and the legal validity of the impugned orders of termination cannot be questioned. It is true that temporary Government servants do not have any indefeasible right to continue in office indefinitely, and their services can be terminated by orders simpliciter. However, it is not true to say that the services of temporary employees can be terminated for no reason at all. If that ~~was~~ were done, it would be both arbitrary and perverse and cannot bw upheld legally. Even when the services of temporary employees are terminated for some reasons, the validity of the order of termination can be judicially reviewed to see whether the reasons ~~ordered~~ were legally permissible. For instance, it is settled that the services of a temporary employee cannot be terminated under the Temporary Service Rules as a short-cut to imposition of penalty on such employees. Similarly an arbitrary, capricious and unfair termination cannot be ~~xx~~ legally sustained.

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9. In this case, the respondents' sole basis for issue of the impugned orders of termination is that the names of the applicants were sponsored by the Parishad which was not empowered to do so under the provisions of the Brochure referred to in Para 6 supra. The relevant extract of the provision is as follows:-

> "Simultaneously with the advertisement the vacancies should be brought to the notice of the Scheduled Castes/Scheduled Tribes organisations as the case may be, listed in Appendix 11. When doing so, it should be made clear to such organisations that their function is limited to advising the Scheduled Castes/Scheduled Tribes candidates about the recruitment proposed and that it will not be for them to recommend or press the names of any individulas. The candidates should apply to the appointing authority either direct or through the Employment Exchanges as the case may be."

10. The above provision merely states that organisations like the Parishad can only bring the vacancies to the notice of the Scheduled Castes/ Scheduled Tribe candidates and that "it will not be for them to recommend or press the names of any individuals." The respondents have contended that in this case, the Parishad had "sponsored" the names of applicants contrary to the above provision. It is stated

that, because of this infringement, the appointment of the applicants became irregular. From the letters written by the Department and the Parishad, it is obvious that it is the Department which specifically requested the Parishad to sponsor the names and it is only in reply to this requisition that the Parishad had forwarded the names of the candidates including the applicants. While forwarding the names of such candidates the Parishad wrote as follows:-

"To

The I.A.C., A.R.I., Ahmedabad

Respected Sir,

Sub: Recruitment of Peon/Watchman/ Safaiwala/Faras - Furnishing of names - request for vacancies reserved for SC/ST -

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In pursuance of your letter No. Ar-I/ PWSF/I.R./85, dated 5th May, 1986, I forward herewith the names of eligible candidates for the posts of Peons/Watchman/Safaiwala/Faras as per separate annexure. These names are registered with our employment bureau and we have verified their age, qualification, caste which are esential for recruitment.

You are requested to give them a chance to present themselves before you for personal interview, if considered fit, they might be given a chance for appointment. Please intimate the names of selected candidates to this office."

11. We find that, contrary to the contentions of the respondents, the Parishad neither pressed the names of any candidates nor even recommended any individual names for appointment. All that the Parishad did was to forward a list of candidates requesting the respondents to give the candidates a chance to present themsleves for interview. This letter of the Parishad is extremely fair and

cannot be said to contravene the provisions in the Manual which forbid only recommendations or pressing the names of any individuals. To this extent, the reasoning of the respondents behind the impugned termination is faulty.

12. It is also observed that the very provision cited permits S.C. candidates to apply directly or through Employment Exchange. We do not see why, even if the Parishad's so called sponsoring is ignored, the present case cannot be taken as one of direct application by the applicants themselves. If necessary, the applicants could have been asked to give an application to be put on record. When the solution is so simple and reasonable, we see no logic or fairness in the mechanical decision of the respondents to terminate the services of the applicants. Further as we have pointed out already, the applicants were admittedly registered in the Employment Exchange.

13. The respondents have contended that the appointment of the applicants was irregular for the reasons discussed above. We have already held that there were no such reasons, and there was no such irregularity in terms of the Brochure provision as pointed out by the respondents. Even assuming that there was some irregularity, there is no whisper of any argument that the applicants were in any way responsible for such irregularity. On the other

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hand the Department itself deliberately requisitioned the Parishad to sponsor the names. Such being the position, and the applicants being entirely innocent and blameless, we fail to see how the remedy for the alleged irregularity is the drastic step of blighting the budding career of ~~many~~ innocent ~~Scheduled Caste~~ candidates. We do not think that any such irregularity could possibly vitiate in any manner the legality and validity of the ~~conditions~~ appointments in such circumstances. The act of ending the employment of the applicants in this case was totally unfair, and on top of this, it has been done without giving any opportunity to the applicants to represent their case, e.g. stating that they were fully eligible for the appointment notwithstanding the sponsoring by the Parishad, and that their services were not liable to be terminated on the reasoning adopted by the Department. The necessity of the administrative authorities adopting fairness as a guiding factor has been postulated by the Supreme Court in M/s. Nenally Bharat Engg. C.O. Ltd., Vs. State of Bihar and Others, AIR 1990(2) SC 269. On the test of fairness also, the impugned orders of termination fail in both the cases.

14. As we have indicated above, both the applicants had been interviewed, selected and appointed and allowed to function as Peons regularly for more than ~~two years~~ three months. The respondents have thus extended both

a promissory estoppel and an assurance of a regular job to the applicants. The applicants had accepted the offer and changed their positions accordingly, and had functioned fairly long time in the posts. The respondents have now turned round and go back on their earlier commitments, and terminated the services of the applicants on extraneous grounds for which, admittedly, the applicants were not responsible. This is a clear case for the application of the principle of promissory estoppel. In this case, adopting this principle also, the impugned orders are liable to be set aside.

15. The learned counsel for the respondents relied on the case of Chet Bahadur and Others Vs. Union of India and Others, (1990) 13 ATC 163. The learned counsel for the applicants also relied on this case. We, however, find that this case is relating to bogus sponsoring by the Employment Exchange and we can see no applicability of the decision in that case being imported into the present case.

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16. The object and scope of sponsoring through Employment Exchange have been explained in Union of India Vs. N. Hargopal, 1987 (3) SCC, 308. There is no authority for the proposition that, just because a candidate has not been sponsored by the Employment Exchange, his appointment becomes void, if he is otherwise eligible for the said post.

17. The principle of promissory estoppel has been adopted in a number of other rather similar cases by this Tribunal, for example in :

(i) Swami Nath Sharma and Anr. Vs. Union of India and two others, A.T.R. 1988(1) C.A.T. 84.

(ii) Pandya Mahesh Ganpatram Vs. Union of India, A.T.R. 1988 (2) CAT Ahmedabad 289

(iii) Lalita Rani Vs. Union of India A.T.R. 1990(1) C.A.T. (N.D.) 97

18. The above authorities confirm the view we are taking in this case that the impugned orders are hit by the principle of promissory estoppel.

19. We have already indicated that in the facts and circumstances of the present case, the impugned termination was clearly arbitrary, capricious and unfair. It has been held by the Supreme Court in a catena of cases that any arbitrariness in administrative action attracts the mischief of the equity clause in Articles 14 and 16 of the Constitution and such action is vitiated and rendered void. In this connection we may refer to:

i) E.P. Royappa Vs. State of Tamil Nadu (1974) 4 SCC 3

ii) Maneka Gandhi Vs. Union of India, (1978) 1 SCC

iii) Paradise Printers Vs. U.T. of Chandigarh, (1988) 1 SCC

20. We observe that even though the impugned order of termination was issued in January, 1988 in both the cases, the present applications were filed only in November, 1988. There is no indication that any statutory right of appeal was availed of. There is no valid explanation

....16

why the applicants did not seek appropriate remedy at the earliest possible time.

21. In the conspectus of the facts and circumstances indicated above, both the applications are allowed, and the following orders are passed:-

i) The impugned orders dated 7-1-1988 and 4-1-1988 in O.A. 318/88 and 319/88 respectively are hereby quashed.

ii) The respondents are directed to reinstate both the applicants in service within a period of one month from the date of receipt of a copy of this order by the respondents.

iii) The period between the date of termination of the services of the applicants and the date of reinstatement shall be treated as service of the applicants for all purposes except in respect of back wages for the said period. The applicants are not entitled for back wages for the said period.

iv) There is no order as to costs.

(R.C. BHATT)
Member (J)

(K.J. RAMAN)
Member (A)

10-10-1991

vgs