

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.503 of 1992.

Date of decision : December 13 ,1993.

Srikant Rout ...

Applicant.

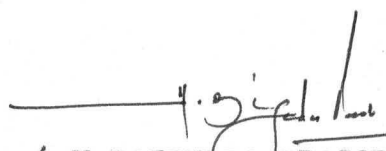
Versus

Union of India and others ...

Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not ? *N^o*
2. Whether it be circulated to all the Benches of the *N^o*
Central Administrative Tribunals or not ?


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)
13 DEC 93

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(K. P. ACHARYA)
VICE-CHAIRMAN.

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For the applicant ... M/s.K.P.Nanda
B.Pujari,
A.Chand, Advocates.

For the respondents.. M/s.B.Pal,
O.N.Ghosh, Advocates.

CORAM:

THE HONOURABLE MR.K.P.ACHARYA, VICE-CHAIRMAN

A N D

THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER(ADMN.)

J U D G M E N T

K.P.ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash Annexures 5A and 5 B being illegal and unconstitutional

2. Shortly stated, the case of the applicant is that he was appointed as a Bungalow Peon and he was attached to the Office of the Divisional Mechanical Engineer, South Eastern Railway, Khurda Road. The applicant had gained temporary status long since and was receiving his pay at the rate of C.P.C. scale. Suddenly the services of the applicant were terminated vide order dated 9.9.1991 and this order was challenged before this Bench which formed subject matter of O.A.105 of 1992. This Bench by its

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judgment dated 22.4.1992 quashed the order of termination and ultimately the applicant was reinstated to service on 22.6.1992. While he was working, the applicant was again served with an order dated 7.9.1992 discharging him from service on the ground that the integrity of the applicant was suspicious. This order was served on the applicant on 8.9.1992 and on 9.9.1992 the Senior Divisional Personnel Officer served another order dated 7.9.1992 that the applicant was discharged from Railway service with effect from 8.9.1992 as per extant home rules governing the employment of Bungalow peon. Hence, this application has been filed with the aforesaid prayer.

3. In their counter, the respondents maintained that since the applicant was a substitute Bungalow peon. Paragraphs 1512, 1513 and 1515 of the Indian Railway Establishment Code and Indian Railway Establishment Manual define the status of a substitute peon. So the services can be dispensed with by retrenchment or termination at any point of time. Further it is maintained that the order passed by the authority terminating the services of the applicant on the ground of suspicious integrity was recalled and the later order contained An Annexure-5B terminating the services of the applicant on the ground retrenchment was passed. Therefore, the case being devoid of merit is liable to be dismissed.

4. We have heard Mr.K.P.Nanda, learned counsel for the applicant and Mr.B.Pal, learned Senior Standing Counsel(Railways) for the respondents.

5. No doubt, the applicant being a temporary Government servant especially Bungalow Peon, his services can be terminated without adhering to the provisions contained under Article 311 of the Constitution. But the facts and circumstances leading to termination of services of the applicant, which is under challenge need to be stated in detail. The services of the applicant were terminated vide order dated 9.2.1991, copy of which is enclosed to the counter, which runs thus :

" Sri Srikanta Rout, s/o Banchhanidhi Rout who was approved for appointment as substitute Bungalow Peon vide SPO/GRC's no.SPO/(RP)/Cl.IV/B Peon/246/916 dt.27.2.90 and DPO/KUR's letter no. Mech./B.Peon/PO/20 dt.9.2.90 and was engaged by the undersigned w.e.f.16.11.1989 is not working satisfactorily and he is also not willing to work further.

As such the service of Sri Srikanta Rout as sub.bungalow peon is discontinued w.e.f.9.2.91. Another note regarding engagement of fresh bungalow peon will follow.

Put up for information and necessary action please.

Sd.

Divl.Mech.Engineer/Kur."

This order was challenged in O.A.105 of 1992 disposed of on 22.4.1992. In paragraph 6 of the judgment it was observed as follows:

" We have given our anxious consideration to the arguments advanced at the Bar. Provisions contained in Section 25F of the Industrial Disputes Act was intended to give prior notice to the person affected and that while terminating the services of a particular person, simultaneously his wages must be paid. This intention cannot be subverted

or given a go bye and if so done it would immensely affect the interest of the employee and the intention of the enactment. Therefore, we find that there is substantial force in the contention of Mr.K.P.Nanda, learned counsel for the petitioner and hence we do hereby quash Annexure-1 terminating the services of the petitioner and direct his reinstatement with effect from the date of termination. "

6. Soon after the judgment was pronounced, no doubt applicant was reinstated to service on 22.6.1992 and within three months therefrom the services of the applicant have been dispensed with. At first vide order dated 8.9.1992 the applicant was discharged from service due to suspicious integrity. Suddenly, thereafter the authorities being conscious of the illegal order passed on 7.9.1992 on the very same day passed another order discharging the applicant from service, with effect from 8.9.1992 as per the extant home rules governing the employment of Bungalow peon. Conceding for the sake of argument that a substitute Bungalow peon can be discharged without any reasons being assigned and with one month's notice in view of the provisions contained in ^{the} paragraphs mentioned above of the Code of Manual yet ^{the} if the aforesaid order is tainted with malafide or vindictiveness it cannot be allowed to stand.

7. In order to make out a case of malafide certain circumstances appearing in the case giving rise to reasonable apprehension in the mind of the person aggrieved that the impugned order is tainted with malafide - a fact which a reasonable body of ^{men} ~~mind~~ ^{men}

could arrive at would certainly and undoubtedly, make the discharge order tainted with malafide. The following circumstances, need to be stated to adjudicate as to whether the impugned order of termination is tainted with malafide or not.

- (i) The services of the applicant were once terminated vide order dated 9.2.1991 (which is enclosed to the counter) wherein it was stated that the work of the applicant was not satisfactory and as such the services of the applicant were dispensed with with an observation that another note regarding engagement of fresh bungalow peon will follow. Therefore, the possibility, on the part of the authorities to choose another person for the same job cannot be overruled.
- (ii) The applicant approached this Bench to get the order quashed. It was quashed and reinstatement was ordered. The authorities had no other option but to reinstate him especially when the Railway Administration had not moved the Apex Court to set aside the said judgment.
- (iii) Possibility of making ^{effort} an ~~an~~ to somehow oust the applicant from his service to employ another person, ^{and} in addition to the fact that the order of the competent authority was quashed by this Bench, might have given rise to a vindictive attitude on the part of the concerned authority to discharge the applicant from service, cannot be overruled.
- (iv) Finding no other means to discharge the applicant from his service the competent authority as a second string to his bow ordered

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discharge of the applicant from service owing to suspicious integrity and finding that it may be difficult to substantiate the case of suspicious integrity, if challenged in court, suddenly, on the very same day another order was passed discharging the applicant from his service on the ground of extant rules governing substitute Bungalow peon.

8. We find there is substantial force in the contention of Mr. Nanda that the cumulative effect of all the above mentioned facts and circumstances cannot but drive one to ^{an} irresistible conclusion ⁱⁿ that the discharge order/orders which are subject matter of challenge before this Bench was tainted with malafide. In this connection, Mr. Nanda relied upon a judgment of the Supreme Court reported in AIR 1990 SC 2228 (Jacob M. Puthuparambil and others vrs. Kerala Water Authority and others). Though this was a case of regularisation of services of casual labours yet certain observations of Hon'ble Supreme Court are worth-quoting.

In paragraph 8 of the judgment, Their Lordships observed as follows:

" After we attained independence the pace of industrial growth accelerated. Our Constitution makers were aware of the hardships and insecurity faced by the working classes. The Preamble of our Constitution obligates the State to secure to all its citizens social and economic justice, besides political justice. By the 42nd Amendment, the Preamble of the Constitution was amended to say that ours will be a socialist democracy. In furtherance of these promises certain fundamental rights were engrafted in Part III of the Constitution. The Constitution guarantees ^{of} equality, abhors discrimination, prohibits and

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penalises forced labour in any form whatsoever and extends protection against exploitation of labour including child labour. After extending these guarantees, amongst others, the Constitution makers proceeded to chart out the course for the governance of the country in Part IV of the Constitution entitled 'Directive Principles of State Policy'. These principles reflect the hopes and aspirations of the people. Although the provisions of this part are not enforceable by any court, the principles laid down therein are nevertheless fundamental in the governance of the country and the State is under an obligation to apply them in making laws. The principles laid down therein, therefore, define the objectives and goals which the State must endeavour to achieve over a period of time. Therefore, whenever the State is required to make laws it must do so consistently with these principles with a view to securing social and economic freedom so essential for the establishment of an egalitarian society. This part, therefore, mandates that the State shall strive to promote the welfare of the people by minimising the inequalities in income, and eliminating inequalities in status, facilities and opportunities; by directing its policy towards securing, amongst others, the distribution of the material resources of the community to subserve the common good; by so operating the economic system as not to result in concentration of wealth; and by making effective provision for securing the right to work as also to public assistance in cases of unemployment, albeit within the limits of its economic capacities. There are certain other provisions which enjoin on the State certain duties e.g. securing to all workers work, a living wage, just and humane conditions of work, a decent standard of life, participation in management, etc., which are aimed at improving the lot of the working classes. Thus the Preamble promises socio-economic justice, the fundamental rights confer certain justiciable socio-economic rights and the Directive Principles fix the socio-economic goals which the State must strive to attain. These three together constitute the core and conscience of the Constitution. "

In paragraph 9 of the judgment Their Lordships were pleased to observe as follows:

" India is a developing country. It has a vast surplus labour market. Large-scale unemployment offers a matching opportunity to the employer to

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exploit the needy. Under such market conditions the employer can dictate his terms of employment taking advantage of the absence of the bargaining power in the other. The unorganised job seeker is left with no option but to accept employment on take-it-or-leave-it terms offered by the employer. Such terms of employment offer no job security and the employee is left to the mercy of the employer. Employers have betrayed an increasing tendency to employ temporary hands even on regular and permanent jobs with a view to circumventing the protection offered to the working classes under the benevolent legislations enacted from time to time. "

Another observation of Their Lordships in paragraph 11 of the judgment forming the principles laid down in the case of Daily rated Casual Labour employed under P & T. Department through Bharatiya Dak Tar Mazdoor Manch v. Union of India, reported in AIR 1987 SC 2342, needs to be quoted.

" Of those rights the question of security of work is of utmost importance. If a person does not have the feeling that he belongs to an organization engaged in production he will not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim of the management. It is for this reason it is being repeatedly observed by those who are in charge of economic affairs of the countries in different parts of the world that as far as possible security of work should be assured to the employees so that they may contribute to the maximisation of production. It is again for this reason that managements and the Governmental agencies in particular should not allow workers to remain as casual labourers or temporary employees for an unreasonable long period of time. "

9. Relying on the observations of Their Lordships quoted above, we would say that it was unreasonable on the part of the concerned authority to have kept the

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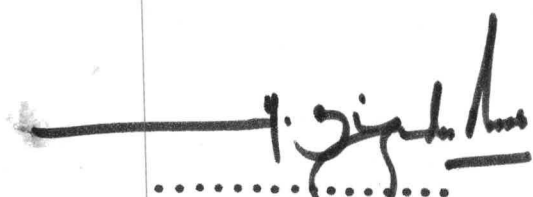
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applicant as temporary employee and more so discharging him from service on a ground which was later recalled on intangible grounds. In addition to the above, we would say that the impugned orders being tainted with malafide due to the above mentioned circumstances cannot be allowed to stand. Therefore, we do hereby quash the impugned orders terminating the services of the applicant and we direct his reinstatement within 30 (thirty) days from the date of receipt of a copy of this judgment. Incidentally, it may be mentioned that vide order dated 1.10.1992 it was observed that the prayer for issuance of interim orders stands dismissed subject to the condition that the result of this application will govern the future service benefits of the applicant, and any appointment to the post which was being held by the applicant, the appointee should be specifically informed that his appointment is subject to the result of this application. In such circumstances, it is further directed that direction given by this Bench to reinstate the applicant into service be carried out within the stipulated period. The applicant would refund the amount received by him towards one month's salary in lieu of one month's notice and 45 days wages as retrenchment compensation under the Industrial Disputes Act, 1947 and he will be entitled to back wages from the date of termination of his service till reinstatement. The applicant will be entitled to arrear emoluments after

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he deposits the amount to be repaid by him.

10. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.



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MEMBER (ADIN.)

13 DEC 93.


13.12.93

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VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
December 13, 1993/Sarangi.

