

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

ORIGINAL APPLICATION NO. 11 OF 1987

M. Kunjumol

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Applicant

vs

1. Registrar General, India,
2/A Mansingh Road, New Delhi.
2. Director of Census Operations,
Lakshadweep, Cochin-16.
3. Assistant Director of Census
Operations, Lakshadweep,
Cochin-16.
4. K.P.Mony, L.D.C., O/o the
Director of Census Operations,
Lakshadweep, Cochin-16.

Respondents

For the applicant:

M/s. M.M.Churian &
Ashok Churian, Advocates

For respondents 1 to 3:

Mr. K.Karthikeya Panicker,
Advocate.

CORAM:

Hon'ble Shri C. Venkataraman, Administrative Member

&

H'onble Shri G. Sreedharan Nair, Judicial Member

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O R D E R

(Hon'ble Shri C. Venkataraman, Administrative Member)

Can the services of a temporary employee be terminated by an authority lower than the appointing authority under Rule 5(1) of the Central Civil Services (Temporary Service) Rules, 1965 (Temporary Service Rules for short), consequent on such lower authority having been declared as head of office competent to make appointments to the grade in which the applicant was working? Can the services of a purely temporary employee be terminated under the said Temporary Service rules on the ground of her not having passed the required examination for regularisation while retaining her junior who had also been appointed along with her, but had not even taken the examination? These are the questions involved in this application which has been filed by M.Kumjukol under Section 19 of the Administrative Tribunals Act, 1985.

The facts of this case are as follows:

The applicant and the 4th respondent were selected for appointment as Lower Division Clerks in the establishment of the Directorate of Census Operations, Lakshadweep and they were appointed on 3-10-1980 on purely temporary and adhoc basis. The applicant is admittedly senior to the latter in view of her higher position in the select list. After she had completed six years of continuous service, she was served with an order dated 19-11-1986 terminating her services under Rule 5(1) of the Temporary Service Rules with an entitlement to her to claim one month's pay and allowances. She was also relieved on the same day. She has challenged the order of termination on the following grounds:

(i) Her services have been terminated while retaining the services of her junior viz., the 4th respondent.

(ii) The termination has not been ordered

by the authority who appointed her, but by a lower authority and as such it is violative of Article 311 of the Constitution.

The reliefs prayed for by her are that the order terminating her services should be set aside; a declaration that such termination while retaining the junior is violative of Articles 14 and 16 of the Constitution; a direction to be issued to respondents 1 to 3 to reinstate her in service and treat her as continuing in service without any break and pay her arrears of salary on that basis.

The learned counsel for the applicant stated before us that the applicant and the 4th respondent were similarly placed, both having been appointed on the same day. The applicant was the senior of the two. To have terminated her while retaining the junior was violative of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution. In this connection

he invited our attention to A.I.R.1979 SC 429 Government Branch Press vs. D.B.Belliappa and 1986(3) SCC 277 (Jarnail Singh v. S t a t e o f P u n j a b). The Supreme Court had observed in the former case that "the protection of Articles 14 and 16(1) will be available even to temporary Government servant, if he has been arbitrarily discriminated against and singled out for harsh treatment in preference to his juniors, similarly circumstanced."

He further stated that the appointment order dated 3-10-1980 to the applicant was issued by the Deputy Director acting ^{on behalf of the} ~~for~~ Director of Census Operations, Lakshadweep. The order terminating the appointment under Rule 5(1) of the Temporary Service rules has however been issued by the Assistant Director of Census Operations. The Assistant Director is not the appointing authority in the case of the applicant. In these circumstances he prayed that the application be allowed.

Shri M. Karthikeya Panicker, Central Government Standing Counsel for respondents 1 to 3 vigorously contended before us that the applicant had been appointed on a purely temporary and adhoc basis as Lower Division Clerk and the order terminating her services ^{was} in terms of Rule 5(1) of the Temporary Service Rules. It was termination simpliciter without casting any stigma on her and was issued by an authority to whom powers as "head of office" had been delegated with effect from 1-11-1986 by the Registrar General of India. By virtue of that delegation in favour of the Assistant Director, he had acquired the necessary competence to terminate the services of the applicant. As a temporary employee, she did not have a right to hold the post. Therefore, both on grounds of jurisdiction as well as on merits, the applicant did not have a case. He pointed out that for regularisation of ~~his~~ appointment as L.D.Cs. the Government of India, Department of Personnel, held through the Staff Selection Commission a special qualifying examination on 28th July, 1985. In this connection, he drew our attention to a letter dated 11-4-1985 sent by the Registrar General

of India to all the Directors of Census Operations and marked Annexure 'A' to the Counter Affidavit. According to that, the applications of all persons working on adhoc basis as L.D.Cs. who had been recruited against vacancies in the core strength or on posts sanctioned for plan schemes might be forwarded to the Staff Selection Commission provided they fulfil educational, age etc. qualifications. The applicant, who was the first in the order of seniority in her unit was considered to be in the core strength of the office against a permanent vacancy and accordingly her application was forwarded to the Staff Selection Commission. She appeared in the examination, but failed to qualify. Therefore, her services had to be terminated in terms of a communication dated 10-11-1986 from the Registrar General of India which required that adhoc lower division clerks working against core posts who appeared in the said qualifying examination held in July, 1985

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but could not qualify, had to face termination of service. The learned counsel clarified at this stage that the 4th respondent had not taken the Staff Selection Commission examination because there was only one vacancy in the unit and the applicant being the senior, had to be given the opportunity to take the examination so that in the event of her passing, she could be regularised. The 4th respondent still continues as LDC on adhoc basis.

Having heard both sides, we wish to observe that temporary appointment on a purely adhoc basis can be terminated under Temporary Service rules by issue of a terminator simpliciter if the person fails to qualify in the recruitment examination held by the Staff Selection Commission, which alone is the prescribed method for recruitment for such posts on adhoc basis. However, what has happened in this case is that while terminating the service of the applicant, the service of her junior who had joined along with her on the same day has still been retained. This action has resulted in

a discriminatory treatment being meted out to the applicant as compared to the 4th respondent. The learned counsel for the respondents 1 to 3 had also invited our attention to instructions dated 30th September 1986 received from the Department of Personnel through the Registrar General of India to seek strength for sustaining the termination order issued to the applicant who had failed to qualify in the Staff Selection Commission examination. It was ^{also} provided in that letter that employees who had not taken the Staff Selection Commission examination of July, 1985 might be allowed to appear at another special qualifying examination which was to follow. Apparently he meant that the 4th respondent could take that examination for regularisation of his service as L.D.C.

We notice that in the communication from the Department of Personnel dated 30th September, 1986, it has been highlighted that specific instructions had earlier been issued on 22nd May, 1985 that the services of the persons who

had been appointed on adhoc basis to Group 'C' posts should be terminated in the following stages:

(i) The services of those adhoc employees who are not eligible to take the ensuing examination and also those who are eligible but did not apply for the examination, should be terminated from the date of receipt of this office memorandum.

(ii) The services of those adhoc employees who are eligible to take the examination and have applied for the examination, but do not appear in the examination, should be terminated immediately after the date of examination; and

(iii) The services of those adhoc employees who do not qualify having taken the examination should be terminated after the results are announced.

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If these instructions had been correctly followed even before the applicant who was eligible to appear in the Staff Selection Commission examination could take the examination, the services of the 4th respondent should have been terminated ^{first} because

he would come under category (~~ii~~) above whereas the applicant comes under category (iii).

Retaining the 4th respondent while terminating the service of the applicant had resulted in discriminatory treatment being meted out to the latter when both of them are in the same category of persons holding posts on a purely temporary and adhoc basis. This cannot be sustained in the light of Supreme Court's decision in Government Branch Press vs.

**Supreme Court held that the order of termination of the services of the appellants was illegal and bad being in contravention of the fundamental rights guaranteed under Arts. 14 and 16 of the Constitution of India because the services of their juniors were retained while dispensing with the seniors.

D.B. Belliappa reported in A.I.R. 1979 SC 429, as well as 1986(3) SCC 277 referred to by the counsel for the applicant, in which the**

As regards the competent authority for termination of services under the Temporary Service Rules, it is the appointing authority who can do so. The appointing authority has been defined in the said rules in relation to a specified post as the authority declared as such under the C.C.S. (C.C.A.) Rules, 1965. The latter rules define appointing authority in relation to a Government servant as follows:

- "(i) the authority empowered to make appointments to the Service of which the Government servant is for the time being a member or to the grade of the Service in which the Government servant is for the time being included, or
- (ii) the authority empowered to make appointments to the post which the Government servant for the time being holds; or
- (iii) the authority which appointed the Government servant to such Service, grade or post, as the case may be, or
- (iv) where the Government servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment of the Government, the authority which appointed him to that Service or to any grade in that Service or to that post,

whichever authority is the highest authority."

In this case the applicant's appointment order has been signed by the Deputy Director on behalf of the Director of Census Operations, Lakshadweep. In the termination order dated 19-11-1986 it has been stated that "I, P.V. James, Assistant Director of Census Operations, Lakshadweep, Cochin hereby terminate forthwith the services of Smt. M. Kunjumole, LDC.... ..". It is clear from the above that even though powers have been subsequently delegated subsequent to the appointment of the applicant, to the Assistant Director, he would not be the appointing authority

in the case of this applicant for the purpose of invoking Rule 5 of the Temporary Service Rules. This position would be clear from a decision of the Supreme Court in Om Prakash v. Union of India - 1975(2)SLR 226 that the appointing authority is to be understood in its plain and natural meaning, that is the authority which appointed the official. If the order of termination is not issued by the appointing authority, it is illegal. We also see from Dina Nath v. District Medical Officer reported in 1982(2)SLJ 691, the High Court of Himachal Pradesh had allowed the petition after setting aside the impugned order therein removing the petitioner from service. It was stated therein that the petitioner was also entitled to succeed on the ground that he was removed by a person who was subordinate to the appointing authority because the appointment was by the Director of Health Services whereas the removal order was issued by the Civil Surgeon (DMO), Mandy district. Similar conclusions were reached by the Delhi High Court in Management of Delhi Transport Undertaking v. B.B.L.Hajelay and another (1972 SLR 229)

and State of Jammu and Kashmir v. Raj Mohammad
1971 SLR 828.

For the reasons stated above, the applicant
succeeds and the order terminating her services
under Rule 5(1) of the Temporary Service Rules
is set aside. Respondents 1 to 3 are also
directed to reinstate her in service forthwith
and treat her as having continued in service
without break with attendant benefits. This
application is allowed accordingly.

C Venkataraman
26/8/87

(C. VENKATARAMAN)
ADMV.MEMBER

G Sreedharan Nair
26/8/87

(G.SREEDHARAN NAIR)
JUDL.MEMBER

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