

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

DATED THIS THE FIFTEENTH DAY OF DECEMBER 1986

Present : Hon'ble Shri Ch. Ramakrishna Rao ... Member (J)

Hon'ble Shri P. Srinivasan ... Member (A)

APPLICATIONS NO.810 and 811/86

Santha Marai Kannan,  
No.6/2, 5th Main,  
3rd Cross,  
Gangenahalli,  
Bangalore-560 032.

M. Vijayan,  
No.213, Meenakshi Koil Street,  
Shivajinagar,  
Bangalore-560 051.

... Applicants

(Dr. M.S. Nagaraja .. Advocate)

V.

The Executive Engineer,  
Bangalore Central  
Electrical Division,  
CPWD, 23/24, Infantry Road,  
Bangalore-560 001.

The Assistant Engineer,  
Central Electrical Sub-Division,  
CPWD, Bangalore-560 003.

... Respondents

(Shri M. Vasudeva Rao ... Advocate)

This application has come up for hearing before this  
Tribunal to-day, Hon'ble Member (J) made the following:

O R D E R

Both these applications involve a common point and are,  
therefore, conveniently disposed of by a common order.

2. Both the applicants before us applied for the post of  
Service Man (SM) in the Office of the Executive Engineer (E),  
Bangalore Central Electrical Division, Central Public Works  
Department, Bangalore, in response to an advertisement which  
appeared in the Deccan Herald dated 26.5.1984. Both of them  
were duly interviewed and selected for the post. Both the  
applicants joined service thereafter on 19.9.1984. By an

*Amf*

order dated 13.5.1985 the services of both the applicants were terminated. Their grievance is against this order of termination of their services.

3. Dr. M.S. Nagaraja, learned counsel for the applicants took us through the various annexures filed with the applications. He pointed out that the advertisement calling for applications for the post did not indicate that the posts were temporary. Next he read the Memorandum dated 19.9.84 Annexure B - by which both the applicants were offered appointment. The first paragraph of the Memorandum states that the posts to which the applicants were being appointed were purely temporary posts. Para 6 of the Memorandum stated that their services were liable to be terminated by the Government at any time without assigning any reason, but ordinarily one months notice would be given. Finally he read para 24 of the Memorandum and laid particular stress on this. The said paragraph states that the applicants would be on probation for a period of three months and on successful completion of the period of probation their suitability for continuation in the appointment would be assessed by the competent authority who would issue necessary orders to that effect. Subsequently, the Assistant Engineer (Electrical), Central Electrical Sub-Division No.1 addressed two separate letters both dated 29.1.85 to the Executive Engineer in which he reported that both the applicants had successfully completed the probationary period of 3 months as per condition 24 of the appointment order and that both of them "may be confirmed for the above post". He also certified that the work, conduct and character of both the applicants were very good. Elaborating the point further Dr. Nagaraja referred to the reply of the respondents in which it is stated that under the rules the

period of probation fixed for the post was one year and that it was wrongly stated as three months in the offers of appointment issued to the applicants. If that were so, Dr. Nagaraja contended, the Assistant Engineer would not have written to the Executive Engineer that they had completed the probationary period of three months and that they might be confirmed in their respective posts. It was not a typographical error but something which the respondents clearly understood and to some extent acted upon. Thus both the applicants had completed their probation and could not be treated for the purpose of termination of their services as officials on probation.

Though the offer of appointment referred to the posts to which both the applicants were appointed as purely temporary, their services could not be terminated without reason or proper consideration. The condition in the offer of appointment at para 6 that their services were liable to be terminated without assigning any reason was applicable only during the period of probation and not thereafter. It was also not as if the posts were temporary and ceased to exist leaving no choice to the respondents but to terminate the services of the applicants as could be seen from the expenditure estimates of the office submitted after the applicants had been sacked. Therefore, the services of the applicants should not have been terminated.

According to Dr. Nagaraja, the orders terminating the services of both the applicants were arbitrary and violative of Articles 14 and 16 of the Constitution. In this connection he referred to the judgment of the Supreme Court in Nepal Singh's case 1985 SCC (L&S) 1 and Belliappa's case AIR 1979 SC 429 to urge that even in cases where an official's services were being terminated in accordance with the terms of his appointment this

power cannot be exercised arbitrarily.

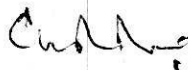
4. Shri M. Vasudeva Rao, learned counsel for the respondents refuted the arguments of Dr. Nagaraja. He pointed out that the term of probation mentioned as 3 months in the offer of appointment given to both the applicants was a mistake. The Assistant Engineer, who had recommended their confirmation was only going by para 24 of the said offer and so what he has said cannot be treated as a collateral evidence corroborating the correctness of the period of probation mentioned in the ~~offer~~<sup>offer letter</sup>. Shri Rao showed us the CPWD Manual Volume III 1984 Edition which at page 80 states that the period of probation for the posts of SM (AC and Refrigeration) to which the applicants were appointed, is one year. In the face of the printed rules on the subject the applicants cannot be allowed to base their claim on an obvious mistake committed in the offer of appointment. That being so the services of both the applicants were terminated within one year of their appointment that is during the period of probation and this the respondents had every right to do. Even if it is assumed that the applicants had completed their probation they were still only officiating in their posts and their services were terminated in accordance with the rules governing temporary Government servants giving them one month's pay in lieu of notice. No reasons are required to be stated when terminating the services of a temporary Government servant<sup>letter</sup>. Therefore, there was no question of arbitrariness and no question of discrimination against the applicants under Article 14 and 16 of the Constitution.

5. We have considered the matter very carefully. It is no doubt true that normally the services of a Government servant cannot be terminated without assigning any reasons for doing so.

However, the pleasure doctrine embodied in Article 310 of the Constitution is not toally abolished. ~~Where~~ a Government servant is appointed on probation or on an efficiating or temporary basis Government retains the power to terminate his services with one month's notice in the case of temporary Government servants and without any notice in the case of officials on probation without obligation to assign any reasons. Therefore, a simple termination of the services of a temporary Government servant or a Government servant on probation cannot be taken to be an arbitrary exercise of power unless the person concerned makes specific allegations of mala fides. In the present case the orders terminating the services of the applicants are ex facie innocuous orders not suggesting that they were being punished for any irregularity committed by them. It is not for the court to delve into the files of the Government and go behind an order of termination simpliciter unless a prima facie case of mala fides is brought out. In this case no specific allegation of mala fides has been made. Merely because the posts from which the services of the applicants were terminated continued in existence and were kept vacant thereafter, it cannot be said that the action terminating the services was arbitrary. It is not necessary that if a post continues to be in existence, a temporary incumbent in the post should be allowed to continue in it. Whether the work of a person appointed temporarily or on probation to a post was satisfactory and whether he deserved to be continued in the post is for the Government to judge and we cannot question that judgement unless any prima facie case of mala fides or ill will is made out. No such allegation of mala fides having been made, we are unable to agree with Dr. Nagaraja that we should call for

the records and examine them to find out the circumstances in which the services of the applicants were terminated. As we have mentioned earlier, the impugned orders are orders of termination simpliciter and the applicants have <sup>led out</sup> had no evidence to <sup>show out</sup> support that they were otherwise. In Nepal Singh's case such evidence was led by the petitioner satisfying the court prima facie that Articles 14 and 16 were <sup>violated out</sup> vitiated. The initial burden is on the person alleging violation of Fundamental Rights and that burden has not been discharged here.

6. In the result both the applications are dismissed with no order as to costs.



MEMBER (J)



MEMBER (A)

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