

Before M. Jeyapaul, J.

GOPAL PANDIT,—Petitioner

versus

PUNJAB AND HARYANA HIGH COURT AND

OTHERS,—Respondents

C.W.P No. 14230 of 1990

30th November, 2010

Constitution of India, 1950—Art.226—Haryana Civil Services (Punishment & Appeal) Rules, 1987-Rl.7—Appointment of petitioner as a temporary Class IV employee—Termination on ground that services of petitioner no longer required—Appellate authority confirming order of termination—Revisional authority finding service record of petitioner not satisfactory—Recruitment of another employee on the same day of termination of service of petitioner—Six temporary employees junior in rank to petitioner still in service—Order of termination not only arbitrary but also discriminatory—Reason assigned by Revisional Authority not found in original order of termination—Revisional authority cannot assign any different reason to substantiate order of termination—Even if service record was not satisfactory petitioner should have been given an opportunity of hearing to clear stigma—Petition allowed, orders passed by respondents quashed.

Held, that the order of termination passed by the Senior Sub Judge, Sonapat 3rd respondent of course, in terms of the order of appointment issued to the petitioner is not only arbitrary but also discriminatory inasmuch as the juniors in rank were retained by the 3rd respondent while terminating the petitioner from service on the ground that his service was no longer required and a new temporary employee was also recruited on the very same day. Of course, the appointing authority can terminate the temporary service of an employee in terms of the order of employment on the ground that the service of the temporary employee was unsatisfactory or that he was not suitable for the job assigned or for any such similar reasons. The service of a temporary employee can be terminated only when he has been positioned as junior most in the temporary cadre. When other junior temporary employees are in service, senior in rank cannot be shown the door on the

ground that his service was no longer required. Any such order passed by the authority would be definitely discriminatory.

(Para 11)

Further held, that on a perusal of the order passed by the revisional authority, it is found that the revisional authority has given a reason, which was not found in the original order of termination passed by the 3rd respondent that the service record of the petitioner was not satisfactory. Firstly, the revisional authority cannot assign any different reason to substantiate the order of termination, passed arbitrarily or discriminatorily by the appointing authority. Secondly even assuming that the service record of the petitioner was not satisfactory, the petitioner should have been given an opportunity by serving a copy of the service record to clear the stigma attached to his service. Though the order of appointment would state that even without notice the temporary service of the petitioner could be terminated, when a stigma is attached to the service of a temporary employee, the temporary employee should be given an opportunity to clear the stigma, as otherwise he will be sent out of the service mercilessly with a stigma imprinted in the service record.

(Para 12)

Puneet Bali, Advocate, *for the petitioner.*

Sukhvinder Singh Nara, Sr. DAG, Haryana, *for the respondents-State.*

M. JEYAPPAUL, J.

(1) The petitioner challenges the impugned order passed by the 3rd respondent, which was confirmed in appeal by the 2nd respondent and further confirmed in the revision preferred before the 1st respondent.

(2) The petitioner was appointed as a Class IV employee by the 3rd respondent, Senior Sub Judge, Sonapat. The order of appointment would read that the appointment of the petitioner being a temporary one could be terminated at any time without any notice. The service of the petitioner was terminated by the 3rd respondent by passing the following order :—

“The services of Gopal Pandit son of Shri Munshi Pandit, resident of Gangri Post Office, Hirodi District Hajari Bag (Bihar), who is

working as a temporary peon in this office are no longer required and therefore his services are hereby terminated with effect from 27th January, 1989 F.N.”

(3) The only reason assigned by the 3rd respondent for termination of the service of the petitioner with effect from 27th January, 1989 (FN) was that the temporary service of the petitioner was no longer required.

(4) The petitioner preferred an appeal before the 2nd respondent contending *inter-alia* that the order passed by the 3rd respondent was arbitrary. Citing three decisions of this Court in **Krishan Chand Goyal versus Punjab State and another (1)**, **Punjab State Transport Department versus Amarjit Singh, (2)** and **Baldev Krishan Ashta versus Union of India and others (3)**, the respondent has held that even if a temporary employee was senior in rank he could be terminated from service as his service was temporary in nature.

(5) In the revision preferred by the petitioner before this Court, this Court having assigned a totally different reason from that of the one assigned in the original impugned order passed by the 3rd respondent simply confirmed the impugned order by the 2nd respondent. In order words, this Court held in the revision preferred by the petitioner that the service record of the petitioner was not satisfactory and therefore the impugned order passed by the 3rd respondent, confirmed by the 2nd respondent terminating the temporary service of the petitioner, warranted no interference.

(6) The learned Counsel appearing for the petitioner referring to the decisions of the Hon'ble Supreme Court would submit that a temporary employee, who is senior in rank when the juniors are very much available cannot be terminated except on the grounds that the service of the such employee is unsatisfactory or that he is unsuitable to the position or for alike reasons. He would further submit that the revisional forum had supplied its own reasons for confirming the order passed by the 3rd respondent and confirmed by the 2nd respondent. Referring to the circular sent by the Registry of this Court, he would submit that the respondents had not

(1) 1980 (2) S.L.R. 623

(2) 1986 (2) S.L.R. 663

(3) 1986 (1) S.L.R. 378

adverted to such a circular issued to appointing authorities concerned that the senior shall not be terminated without assigning any reason when his juniors are still in service. Therefore, it is his submission that the impugned order passed by the 1st respondent and confirmed by the 2nd and 3rd respondents does not stand legal scrutiny.

(7) The learned Senior Deputy Advocate General for the respondents-State referring to the order of appointment would submit that the appointing authority has power to terminate the temporary service of the petitioner without assigning any reason. It is his further submission that one Mr. Singhal who was allegedly instrumental in passing the termination order, was not impleaded as a party before this Court. At any rate, it is his submission that this Court in the revision preferred by the petitioner has observed that the service record of the petitioner was not satisfactory and therefore he cannot be permitted to continue in service as temporary employee.

(8) The 3rd respondent has passed the order of termination on the ground that the temporary service of the petitioner was no longer required. It has been demonstrated before this Court by the petitioner that on the very same day of the termination of the service of the petitioner, another temporary employee by name Mr. Raj Kumar was recruited by the 3rd respondent. It is also demonstrated by the petitioner that there are six temporary employees, who are juniors in rank are still continue in service. This position was also admitted by the respondents.

(9) The Hon'ble Supreme Court in **The Manager, Government Branch Press and another versus D.B. Belliappa** (4), has held as follows:—

“Conversely, if the services of a temporary Government servant are terminated, arbitrarily, and not on the ground of his unsuitability, unsatisfactory conduct or the like which would put him in a class apart from his juniors in the same service, a question of unfair discrimination may arise, notwithstanding the fact that in terminating his service, the appointing authority was purporting to act in accordance with the terms of the employment.”

(10) Following the aforesaid decision, the Hon`ble Supreme Court in **Jarnail Singh and others versus State of Punjab and others (5)**, has held further as follows :—

“In the instant case as we have stated already hereinbefore that though the impugned order was made under the camouflage or cloak of an order of termination simpliciter according to the terms of the employment, yet considering the attendant circumstances which are the basis of the said order of termination, there is no iota of doubt in inferring that the order of termination had been made by way of punishment on the ground of mis-conduct and adverse entry in service record without affording any reasonable opportunity of hearing to the petitioners whose services are terminated and without complying with the mandatory procedure laid down in Article 311(2) of the Constitution of India.”

(11) In the light of the aforesaid decision, I find that the order of termination passed by the 3rd respondent of course, in terms of the order of appointment issued to the petitioner is not only arbitrary but also discriminatory inasmuch as the juniors in rank were retained by the 3rd respondent while terminating the petitioner from service on the ground that his service was no longer required and a new temporary employee was also recruited on the very same day. Of course, the appointing authority can terminate the temporary service of an employee in terms of the order of employment on the ground that the service of the temporary employee was unsatisfactory or that he was not suitable for the job assigned or for any such similar reasons. The service of a temporary employee can be terminated on the ground that his service is no longer required only when he has been positioned as junior most in the temporary cadre. When other junior temporary employees are in service, senior in rank cannot be shown the door on the ground that his service was no longer required. Any such order passed by the authority would be definitely discriminatory.

(12) On a perusal of the order passed by the revisional authority, it is found that the revisional authority has given a reason, which was not found in the original order of termination passed by the 3rd respondent that

the service record of the petitioner was not satisfactory. Firstly the revisional authority cannot assign any different reason to substantiate the order of termination, passed arbitrarily or discriminatorily by the appointing authority. Secondly even assuming for the sake of arguments that the service record of the petitioner was not satisfactory as per the decision of the Hon'ble Supreme Court in **Jarnail Singh and others's case** (*supra*), the petitioner should have been given an opportunity by serving a copy of the service record to clear the stigma attached to his service. Though the order of appointment would state that even without notice the temporary service of the petitioner could be terminated, when a stigma is attached to the service of a temporary employee, the temporary employee should be given an opportunity to clear the stigma, as otherwise he will be sent out of the service mercilessly with a stigma imprinted in the service record.

(13) Referring to the decision of this Court passed in CWP No. 281 of 1986 and CWP No. 2367 of 1984 following the decision in **The Manager, Government Branch Press and another's and Jarnail Singh and others's cases** (*supra*), the Registry of this Court has issued instructions to all the District and Sessions Judges in the State of Punjab and Haryana as well as the Union Territory of Chandigarh that the services of temporary employees shall not be terminated without any regard to their seniority. In other words the senior employees shall not be terminated from service while their juniors are still in service. The said circular was also not followed by the respondents while passing the impugned orders.

(14) For all these reasons, holding that the impugned orders passed by the respondents are not only arbitrary but also discriminatory, the impugned orders stand quashed. Consequently the respondents are directed to reinstate the petitioner in his original position with continuity of service, but with half pay during the period he was out of service. All the benefits accrued to the petitioner on account of this order shall be given to him within a span of two months from the date of receipt of this order.

(15) With the above directions, the writ petition is allowed. There is no order as to costs.