

# **Binoy Kumar Mukherjee vs State Of Bihar And Ors. on 4 March, 1971**

**Equivalent citations: (1972)4SCC209, 1971(III)UJ462(SC), AIR ONLINE 1971 SC 5**

**Author: I.D.Dua**

**Bench: I.D.Dua**

## **JUDGMENT**

V. Bhargava, J.

1. This appeal has been filed by Binoy Kumar Mukherjee on the basis of a certificate under Article 133(1)(a) & (b) of the Constitution, challenging the order of the High Court of Patna dismissing his petition under Article 226 of the Constitution. The appellant, by that petition, had challenged the order of termination of his services while he was holding the post of Regional Transport Officer & Secretary, North Bihar Regional Transport Authority, Muzaffarpur. His service was terminated with effect from 23rd February, 1963.

2. The relevant facts are that by an order dated 7th February, 1948, the Government of Bihar reorganised its Transport Establishment and sanctioned a number of posts including two posts of Enforcement Officers for a period of five years with effect from 1st March, 1948. The appellant was appointed to one of these posts of Enforcement Officers on 22nd April, 1949. There was no specific mention whether he was being appointed permanently or temporarily, though the post, to which he was appointed, had been created for a period of five years only. On 21st November, 1951, he was appointed temporarily to act as Regional Transport Officer and Secretary, Regional Transport Authority, in a higher scale, and he continued to work in that scale until his services were terminated as mentioned above. The posts of Regional Transport Officer & Secretary were also temporary; but the State Government by an order dated 2nd Decembers, 1954, made them permanent with effect from 1st December, 1954. The incumbents of the posts, who had been entertained on temporary basis and had been working as such till the 30th November, 1954, were to continue to hold temporarily the corresponding posts sanctioned permanently on the same scale of pay and allowances with effect from 1st December, 1954, till specific orders could issue in each case regarding the confirmation or otherwise in the permanent posts of the particular incumbents, or the 31st May, 1955, whichever happened to be earlier. Under this order, the appellant continued to work temporarily in the post of Regional Transport Officer and Secretary which had become permanent under this order dated 2nd December, 1954. Thereafter, various orders were passed extending the time up to which the temporary holders of the posts were to continue temporarily in those posts

without orders of confirmation. On each occasion, there was a general direction that this continuance in temporary capacity was to be effective until orders were passed as regards confirmation or otherwise and, in the alternative a date was fixed in the same manner as had been fixed in the order dated 2nd December, 1954. Thus in the first letter, Subsequent to the letter dated 2nd December, 1954, granting extension, which was issued on 18th June, 1955, the date which was indicated was 31st October, 1955, up to which the temporary appointment was to continue. Similar orders were passed on 21st October, 1955, extending the date to 29th February, 1956; on 27th February, 1956, extending the date to 31st August, 1956; on 10th August, 1956, extending the date to 28th February, 1957, on 30th January, 1957, extending the date to 28th February, 1958 and on 25th February, 1958 extending the date to 28th February, 1959. Thereafter the last order of extension was issued on 29th September, 1959, and on this occasion, no date was mentioned for the period of extension. This time, there was only the general direction that those incumbents, who had not been either confirmed or discharged, were to continue to hold temporarily their respective posts on the same scale of pay and allowances till specific orders could issue in each case regarding their confirmation or otherwise. The appellant then continued in service until the year 1963 when, by the order dated 24th January, 1963, his services were terminated with effect from 23rd February, 1963, thus giving him one month's notice from the date of issue of the letter. This was the order which the appellant challenged by his petition under Article 226 of the Constitution before the High Court. The High Court having dismissed the petition, the appellant has now come up to this Court in appeal.

3. In this case, it is not disputed that the initial appointment of the appellant in the year 1949 was to a temporary post which had been created for a period of only five years, so that it could not be inferred that his appointment was in a permanent capacity. It is true that, in the order, there was no mention that he was being appointed temporarily; but, since the post, to which he was appointed, was to exist for a period of five years only, all that can be implied is that his appointment was for the same period. That period expired on 21st April, 1954. Before the expiry of this period of five years, he had, however, been promoted to a higher post of Regional Transport Officer and Secretary, Regional Transport Authority, and was acting in that capacity temporarily under the order dated 21st November, 1951. In December, 1954, when the posts in the Department were made permanent, he was under these orders holding the post of Regional Transport Authority, in a temporary capacity. Consequently, he continued in the same capacity under the order dated 2nd December, 1954. Under that order, he was to continue to act temporarily until orders could be passed regarding his confirmation or otherwise, or until the 31st May 1955, whichever date be earlier. The next order, which was passed, was issued on 18th June, 1955. The argument on behalf of the appellant was that no orders of his confirmation or otherwise having been passed before 31st May, 1955, and that date having passed, it should be deemed that he had become permanent in the post which he was holding, because that post itself had been made permanent. On the face of it, this plea has no force at all. In the letter dated 2nd December, 1954, the period for which he was appointed to act temporarily was indicated by referring to three different circumstances. The first was that he was to continue until order was passed regarding his confirmation. The second was that some order may be made otherwise, which obviously referred to an order discharging him from service. The third was that he could continue till 31st May, 1955. Since no orders of confirmation or otherwise were passed before 31st May, 1955, he could claim that he was entitled to continue temporarily up to that date. The letter did not give any authority for his continuance in service subsequent to that date. He was,

however, allowed to continue without any fresh orders which were issued after an interval on the 18th June, 1955. During the period between 31st May, 1955 and 18th June., 1955, he continued to work without any letter of authority. It cannot be held that, during this period, he automatically became confirmed or permanent. From his continuance in the post without any specific orders, the only inference that can be drawn is that the Government allowed him to continue in the same capacity in which he was working up to 31st May, 1955. His continuance in the same capacity could be implied when the Government took no steps to pass specific order either confirming or discharging him up to the target date of 31st May, 1955, up to which his temporary appointment had been extended. There is nothing at all in the letter dated 2nd December, 1954 which could justify an inference that on the 1st June, 1955, he was to hold the post permanently, even though no order of his confirmation was passed. In support of the plea that the appellant should be deemed to have been confirmed from 1st June, 1955, reliance was placed on behalf of the appellant on the following passage in the judgment of this Court in *State of Punjab v. Dharam Singh* .

The initial period of probation of the respondents ended on October 1, 1958. By allowing the respondents to continue in their posts thereafter without any express order of confirmation, the competent authority must be taken to have extended the period of probation up to October 1, 1960 by implication But under the proviso to Rule 6(3), the probationary period could not extend beyond October 1, 1960. In view of the proviso to Rule 6(3) it is not possible to presume that the competent authority extended the probationary period after October 1, 1960, or that thereafter the respondents continued to hold their posts as probationers.

4. That decision, instead of assisting the appellant, goes directly against him. In that case, the initial period of probation ended on 1st October, 1958. No order of confirmation having been passed, this Court held that the period of probation must be taken to have been extended up to 1st October, 1960 by implication On that analogy, when the temporary appointment of the appellant was up to 31st May, 1955 and no order of confirmation was passed, while permitting him to continue in the same post, the only inference that could be drawn was that his temporary appointment had been extended. On 18th June, 1955, therefore, when fresh orders were issued, the appellant could only be deemed to be holding the post temporarily. In that case, the period of probation could not be extended beyond October 1, 1960, under a particular rule and, consequently, the Court held that the extension of the period of probation terminated on 1st October, 1960. In the case before us, no such inference follows, because no rule exists laying down any particular period beyond which the temporary appointment of the appellant could not have been continued. The temporary appointment could continue indefinitely. In fact, with effect from 18th June, 1955, orders were passed successively extending the time of temporary appointment of the appellant up to 28th February, 1959, and in each case, the order was issued before the period of temporary appointment expired. Once again, there was a gap in 1959, as the next order extending indefinitely the temporary appointment of the appellant was issued on 29th September, 1959. During the period between 28th February, 1959 and 29th September, 1959, also, the appellant can only be deemed to have continued to work temporarily on the same principle on which it has been held by us that he did so between 1st June, 1955 and 18th June, 1955. The result is that the appointment of the appellant has throughout been in a temporary capacity, so that his services could any time be terminated by giving him one month's notice. This is exactly what the Government did. Consequently, the submission that the

order of termination was bad and should have been passed, after giving an opportunity to the appellant to show cause against it, must be rejected.

5. Another point mentioned by learned Counsel for the appellant was, that, subsequently, the appellant applied in another department for appointment in a public sector industry and, on enquiry, the Government gave information to the new employer that the services of the appellant had been terminated because he had not been found suitable. It was urged that giving of this information indicated that the appellant's services had been dispensed with as a measure of punishment; and the order of termination of service was void for want of compliance with the requirements of Article 311(2) of the Constitution. The order, by which the services of the appellant were terminated; was an order of termination simplicitor and did not contain any reflection on the conduct or work of the appellant. The mere fact that, subsequently, the Government gave information on enquiry as to the background reason which led the Government to terminate the services cannot convert that order into an order of dismissal so as to attract the provisions of Article 311(2) of the Constitution.

6. The appeal has no force and is dismissed; but, in the circumstances of this case, we make no order as to costs.