

Dr. Kanshi Ram Anand vs The State Of U.P. And Anr. on 20 October, 1955

Equivalent citations: AIR1956ALL330, AIR 1956 ALLAHABAD 330

ORDER

Mehrotra, J.

1. This is an application under Article 226 of the Constitution praying that an order passed by the U. P. Government dated 5-8-1954, terminating the services of the applicant be quashed.

2. The facts are fully set out in the affidavit filed in support of the petition. The applicant is a refugee from Punjab. He passed his M.B.B.S. degree from using Edward Medical College, Lahore in 1939. He migrated from Pakistan to India in 1947 and started residing in Hardwar in district Saharanpur. He was appointed to the U. P. Public Health Service from 20-6-1949 for a period of six months and was posted at Dehra Dun as Medical Officer, Anti-Epidemic Operations.

On 10-8-1949, he received a communication from the Assistant Director of Medical and Health services, U. P. to the effect that the orders for his permanent appointment in the U. P. Public Health Service have since been received. He was, therefore, advised to stick to his appointment. When serving at Dehra Dun, he was asked to appear before the Medical Board in 1949 and again before the U. P. Medical Board and was declared fit by the said Board in April 1950.

After this he was appointed as Medical Officer Anti-Epidemie Operations in U. P. Medical Service on two years' probation from 20-6-1949. His probationary appointment was published in the gazette dated July, 1950. On 16-10-1950, the petitioner received a communication from the Director of Medical and Health Services. U. P. to the following effect:

"The post on which you have been appointed is permanent and pensionable and you will be confirmed on it in due course provided your work is satisfactory."

In the ordinary course, the probationary period expired on 19-6-1951. The applicant was transferred from Dehra Dun to Saharanpur on 2-9-1952 and was posted at Saharanpur as Malaria Survey Officer. On 8-1-1954, the Additional Director of Medical and Health Services informed the petitioner that in accordance with the order of Government he was directed to appear before the next Medical Board at Meerut. The applicant appeared before the Medical Board at Meerut on 9-2-1954 and was declared fit by the Board.

The applicant was directed by a letter dated 24-3-1954, sent by the Civil Surgeon, Meerut under

instructions from the Director of Medical and Health Services, U. P., to appear before the Divisional Medical Board consisting of the Civil Surgeon, an Assistant Surgeon and a Military doctor. The Military doctor held in favour of the petitioner while the remaining two doctors gave their opinion adverse to the petitioner. The petitioner was, therefore, asked to appear before the State Medical Board at Lucknow on 3-7-1954.

3. Government Order dated 5-8-1954 was sent to the applicant from which it appeared that he had been declared unfit for the retention in service by the State Medical Board and he was invalidated and discharged. After this order of discharge, the applicant made a representation to the Director of Medical and Health Services, U. P. by his letter dated 23-8-1954 in which he protested against the order of his discharge. Thereafter he made several representations to the head of his department and on 31-8-1954 he received a communication from the Director of Medical and Health services intimating him that his representation had been rejected.

Thereafter he made three representations to the Governor dated 27-8-1954, 2-9-1954 and 3-12-1954 praying for his reinstatement and for the revision of the order passed against him. He also made a representation to the effect that he was entitled to his increments which had been withheld. He received a communication from the Secretary to Govt., U. P., D/- 17-6-1955 in which it was stated that his representations had been rejected and as he had been invalidated from service on the basis of an authoritative medical opinion and that as his services had not been terminated as a sequel to any disciplinary proceedings, the provisions of Section 55 of the Civil Services (Classification, Control and Appeal) Rules were not applicable to him and as he had not put in the prescribed period of qualifying service, he could not be granted any pension.

As his services had been terminated, the question of granting him any increments did not arise.

4. On these facts the present petition has been filed for a writ of certiorari quashing the order of discharge passed by the opposite parties.

5. A counter-affidavit has been filed in this case on behalf of the opposite parties in which it is stated that there were complaints against his work while he was employed as Malaria Survey Officer, Saharanpur Dehra Dun. The Assistant Director (Malariology) made an inquiry of the complaints and he complained that the Officer showed poor technical knowledge in respect of Malaria Laboratory work and lacked in tact with the result that Malaria Inspector-cum-Laboratory Assistant under him could not get adequate technical guidance and training with the result that the work in that unit had been of poor quality.

The petitioner was further asked to refund the cost of one stop-watch and a stove which were lost from the Malaria Laboratory. The annual confidential reports on this officer for the year 1950-51 onwards contained an entry to the effect that stammering was a great physical disability with him. The Additional Director, in his confidential report on this officer for the year 1952-53, reported that the petitioner was reported to be stammerer which was a handicap and he should be put up before Medical Board.

In view of the above report of the Additional Director, he was examined by the Medical Board under the orders of the Government. The report of the Board was that so far as duties of field work as Malaria Survey Officer were concerned, this defect did not interfere with the efficient discharge of his duties but if his duties involved, making prolonged speeches or addressing big audience, then this defect did stand in his way.

The petitioner was ultimately examined by the State Medical Board at Lucknow on 3-7-1954 and on the recommendation of the Board, his services were terminated. He was declared unfit for retention in service by the State Medical Board and was thus invalidated out of Government Service and discharged from the date of relief.

6. The main contention of the petitioner is that he was in the permanent employment of the State Government. He had been serving the State Government for the last seven years and the defect, if any, existed at the time when he was appointed to the service. The State Government could not terminate his services without giving him any reasonable opportunity to show cause against the order of discharge.

The contention of the applicant, in effect, is that the petitioner is a civil servant and is entitled to protection of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules as well as Article 311 of the Constitution. The contention of the Standing Counsel, in reply, is that Rule 55 of the Civil Services (Classification, Control and Appeal) Rules does not apply to the case of the present petitioner.

Reliance has been placed on the explanation to Rule 49 of the Civil Services (Classification, Control and Appeal) Rules which provides that:

"The termination of employment:

(a) of a person appointed on probation during or at the end of the period of probation, in accordance with the terms of the appointment and the Rules governing the probationary service; or

(b) of a temporary Government servant appointed otherwise than under contract, in accordance with Rule 5 of the Central Civil Services (Temporary Service) Rules, 1949; or

(c) of a person engaged under a contract, in accordance with the terms of his contract does not amount to removal or dismissal within the meaning of this Rule or of Rule 55."

In short, the contention of the opposite parties is that the petitioner was not a permanent employee. Admittedly, he was appointed on probation of two years on 26-6-1949 and after the expiry of two years, his period of probation expired. It is, however, contended in the counter-affidavit filed by the opposite parties that after the expiry of the probationary period, he had been informed that he

would not be confirmed in the U. P. Public Health Service unless he possessed a diploma in public health as required by Rule 11 of the U. P. Public Health Service Rules.

The petitioner did not raise any objection to this condition at that time and applied for the D.P.H. course for 1951-52 session. He was selected for the same and deputed to attend the course in June, 1951. He passed Part I of the D.P.H. Examination in the second attempt but while appearing in Part II examination he adopted unfair means.

He was consequently expelled from the examination up to the date of his discharge from the service. This allegation in the counter-affidavit really means to say that as he did not hold the necessary diploma required by Rule 11 of the U. P. Public Health Service Rules, he was not confirmed after the expiry of two years. In the first place, Rule 11 applies to the cases when a person is appointed to a post.

It cannot be held to be a ground for withholding the confirmation and secondly, even if it was a valid ground for withholding the confirmation, it cannot be said in the present case that the petitioner continued to be a probationer and his period of probation had been extended. Rule 11(i) of the U. P. Public Health Service Rules provides that-

"A candidate for a post other than that of Deputy or Assistant Public Analyst must possess a qualification in medicine and surgery registrable in the United Kingdom or of the University of Lucknow or of a University recognised by the University of Lucknow, and in addition must possess a British or an Indian diploma in public health or an equivalent qualification'. Rule 19 of the Rules provides :

"The services of a probationer may be dispensed with by the Government at any time during the period of probation or at its end. The Government may also extend the period of probation in the case of any particular member for any further period up to one year." Rule 20 of the Rules provides that:

"A probationer 'shall be confirmed in his appointment when:

(a) he has completed the prescribed period of probation and

(b) the Government are satisfied that (i) he is sufficiently acquainted with all local enactments relating to public health, municipal and district organization, the administrative work of local bodies; and the relations of those bodies to the various departments of the Government; (ii) he is otherwise fit for confirmation."

Rule 21 of the Subordinate Public Health Service Rules, therefore, clearly provides that the period of probation cannot be extended for more than one year. In the present case there is no averment by the opposite parties that the period of probation was extended and even if it be deemed that it had been extended by the Government by not confirming his appointment, the extension could not be made for more than one year after the expiry of the period.

It cannot, therefore, be said that the petitioner was on probation and consequently came under the Explanation to Rule 49 of the Civil Services (Classification, Control and Appeal) Rules. He was not a temporary servant and consequently he was also not covered by Clause (b) of the Explanation to Rule 49.

7. The next point which was urged by the opposite parties was that even if he was not a probationer he was not entitled to the guarantee given under Rule 55 or Article 311 of the Constitution inasmuch as it only applies to the cases where a person is punished. Rule 49 of the Rules provides the penalties which may, for sufficient reason, be imposed upon the members of the service.

Clause (6) of the said Rule provides for removal from service which does not disqualify from future employment and the Explanation, which I have already given, provides that termination of employment in certain circumstances will not be regarded as removal. This Explanation necessarily means that termination of service in other cases will be regarded as removal and the provisions of Rule 55 in 'those cases will be attracted.

In the present case the grounds of his discharge may have been that he was physically unfit but nonetheless it amounts to removal as he was in permanent employment and the petitioner is entitled to the protection guaranteed under Rule 55. Before he could be discharged, he was entitled to a hearing and a notice that the opposite parties proposed to terminate his service.

8. I, therefore, allow this petition with costs, quash the order of discharge and direct that he will be reinstated.