

Uma Shankar Sharma vs The Union Of India And Ors on 17 April, 1980

Equivalent citations: 1980 AIR 1457, 1980 SCR (3) 730, AIR 1980 SUPREME COURT 1457, 1980 LAB. I. C. 746, (1981) 2 LAB LN 7, 1980 BLJR 324, 1980 UJ (SC) 595, 1980 (3) SCC 202, 1980 SCC (L&S) 348, (1980) 2 SERVLR 26, (1980) 6 ALL LR 387

Author: R.S. Pathak

Bench: R.S. Pathak, Ranjit Singh Sarkaria

PETITIONER:

UMA SHANKAR SHARMA

Vs.

RESPONDENT:

THE UNION OF INDIA AND ORS.

DATE OF JUDGMENT17/04/1980

BENCH:

PATHAK, R.S.

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PATHAK, R.S.

SARKARIA, RANJIT SINGH

CITATION:

1980 AIR 1457

1980 SCR (3) 730

1980 SCC (3) 202

ACT:

Termination of service-Condition of eligibility for selection as Inspector of Central Excise viz., "should be a sportsman who have represented the Universities in the Inter University Tournament conducted by the Inter-University Board"-Terms and conditions of service should be construed reasonably.

HEADNOTE:

The appellant was selected for and appointed in a temporary vacancy of Inspector of Central Excise, as he was found to be a "sportsman who has represented the Universities in the Inter University Tournament conducted by the Inter-University Sports Board". He joined duty and

continued therein. On 30-4-1976 the Assistant Collector (Head Quarters) Central Excise called for the original sports certificate on the ground that only attested copies were furnished by the appellant earlier. The appellant furnished the original documents on 5-7-76. After a year, he was directed to supply the details of the tournament at which he had represented the University. On 27-2-78, the appellant referred to the sports certificate dated 28th July 1975 issued by the Deputy Registrar of Mithila University, Darbhanga. The appellant explained that he had qualified and was selected, to represent the Mithila University in the Inter-University Tournament to be held at the Banaras Hindu University, Varanasi, in the year 1972 but that a serious illness had intervened and prevented him from actually participating in the tournament. He pointed out that this had been made clear by him during the interview for selection before the Appointments Committee and that as he had been discharging his duties to the satisfaction of his superior officers ever since December, 1975 and had, in fact, captained the sports team on behalf of the Excise Department at Calcutta for two years, he was astonished that the question should be raised later. Another fourteen months thereafter, on 16th June, 1979, the Assistant Collector (Headquarters) made an order purporting to be under the proviso to sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Rules 1965, terminating the services of the appellant. The appellant then applied for relief under Article 226 of the Constitution to the High Court against the order, but the High Court has summarily dismissed the writ petition.

Allowing the appeal on special leave, the Court

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HELD: The terms and conditions of service are intended to be construed reasonably, and too technical a view can defeat the essential spirit and intent embodied in them. The intention was to appoint meritorious sportsmen to the posts, and that object is served if a person who had qualified and was selected for representing his university in an Inter-University Tournament conducted by the Inter-University Sports Board is appointed, notwithstanding that he was actually prevented from participating because of reasons beyond his control. [733 A-C]

In the instant case, the respondents have proceeded on a technical view of the matter wholly unjustified by the intent behind the condition of eligibility.

731

The condition required that the applicant should have been a sportsman who had represented his university in an Inter-University Tournament conducted by the Inter-University Sports Board. The appellant did qualify, and was selected, for representing the Mithila University in the Inter-University Tournament at the Banaras Hindu University in the year 1972. All that remained was that he should have

participated in the tournament. Unfortunately, for him, he fell ill and was unable to do so. The fact that he fell ill, and for that reason was unable to represent his university, is not disputed. There is nothing to show that but for that illness he would not have actually taken part in the tournament. On a reasonable view of the facts the appellant should be taken to have fulfilled the conditions of eligibility. [732 G-H, 733 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2994 of 1979.

Appeal by Special Leave from the Judgment and Decree dated 11-7-1979 of the Patna High Court in Civil Writ Petition No. 1936 of 1979.

Dr. Y. S. Chitale and P. P. Singh for the Appellant. R. B. Datar and Miss A. Subhashini for the Respondent. The Judgment of the Court was delivered by PATHAK, J : This appeal by special leave is directed against an order of the Patna High Court dismissing the appellant's writ petition against the termination of his services.

The Collector of Central Excise & Customs, Patna, invited, by an advertisement dated 30th July, 1975, applications for filling up some posts of Inspector of Central Excise. Among those eligible for selection were "sportsmen who have represented the Universities in the Inter-University Tournament conducted by the Inter- University Sports Board." The appellant, who was studying in the M. A. (Political Science) in the Mithila University, was one of the applicants and he was directed to appear for a physical test and an interview. On 12th December, 1975 the Collector of Central Excise and Customs issued a letter informing the appellant that he had been selected for appointment in a temporary vacancy of Inspector, and that he would be on probation for a period of two years. The appellant joined the post and continued therein. On 30th April, 1976 he received a letter from the Assistant Collector (Headquarters) Central Excise pointing out that he had submitted attested copies only of the sports certificates along with his application for appointment and he was directed to submit the original certificates. The appellant forwarded the original certificates. Nothing happened for some time, and the appellant continued in the post without any objection. It was almost a year later that the Assistant Collector (Headquarters) wrote to the appellant to supply details of the tournament at which he had represented the University. On 27th February, 1978 the appellant referred to the Sports certificate date 28th July, 1975 issued by the Deputy Registrar of the L. N. Mithila University, Darbhanga. The original certificate had been sent by him to the Collector, along with the other certificates on 5th May, 1976. The appellant explained that he had qualified and was selected, to represent the Mithila University in the Inter-University Tournament to be held at Banaras Hindu University, Varanasi, in the year 1972 but that a serious illness had intervened and prevented him from actually participating in the tournament. He pointed out that this had been made clear by him during the interview for selection before the Appointments Committee and that as he had been discharging his duties to the satisfaction of his superior officers ever since December,

1975 and had, in fact, captained the sports team on behalf of the Excise Department at Calcutta for two years, he was astonished that the question should be raised now. Another fourteen months later, on 16th June, 1979, the Assistant Collector (Headquarters) made an order, purporting to be under the proviso to sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Rules 1965, terminating the services of the appellant. The appellant then applied for relief under Article 226 of the Constitution to the High Court against the order, but the High Court has summarily dismissed the writ petition.

In this appeal, the appellant contends that he fulfilled the conditions of eligibility and that there was no justification for terminating his services.

The case of the respondents is that the appellant was appointed under a mistake inasmuch as the condition of eligibility required actual representation of a University in an Inter-University Tournament conducted by the Inter- University Sports Board and that, therefore, the appellant was not entitled to any relief against the termination of his services.

Having given the matter our careful consideration, it seems to us that the respondents have proceeded on a technical view of the matter wholly unjustified by the intent behind the condition of eligibility. The condition required that the applicant should have been a sportsman who had represented his university in an Inter-University Tournament conducted by the Inter-University Sports Board. There is no dispute before us that the appellant did qualify, and was selected, for representing the Mithila University in the Inter-University Tournament at the Banaras Hindu University in the year 1972. All that remained was that he should have participated in the tournament. Unfortunately, for him, he fell ill and was unable to do so. The fact that he fell ill, and for that reason was unable to represent his university, is not disputed. There is nothing to show that but for that illness he would not have actually taken part in the tournament. It seems to us that on a reasonable view of the facts the appellant should be taken to have fulfilled the condition of eligibility. The terms and conditions of service are intended to be construed reasonably, and too technical a view can defeat the essential spirit and intent embodied in them. The intention was to appoint meritorious sportsmen to the posts, and that object is served if a person who had qualified and was selected for representing his university in an Inter-University Tournament conducted by the Inter-University Sports Board is appointed, notwithstanding that he was actually prevented from participating because of reasons beyond his control.

We have no doubt that on the interpretation which has found favour with us the appellant will be entitled to a certificate of eligibility, a requirement postulated by the terms of his appointment.

The appeal is allowed, the order dated 16th June, 1979 made by the Assistant Collector (Headquarters) is quashed and the respondents are directed to treat the appellant as continuing in service. The appellant is entitled to his costs throughout.

S.R.

Appeal allowed.

