State Of Nagaland vs G. Vasantha on 16 October, 1969

Equivalent citations: AIR 1970 SUPREME COURT 537, 1970 LAB. I. C. 419

Bench: J.C. Shah, J.M. Shelat, C.A. Vaidyialingam, K.S. Hegde, A.N. Ray

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           CASE NO.:
Appeal (civil)  1354 of 1968

PETITIONER:
STATE OF NAGALAND

RESPONDENT:
G. VASANTHA

DATE OF JUDGMENT: 16/10/1969

BENCH:
J.C. SHAH & J.M. SHELAT & C.A. VAIDYIALINGAM & K.S. HEGDE & A.N. RAY

JUDGMENT:
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JUDGMENT 1970 AIR (SC) 537 The Judgment was delivered by : VAIDIALINGAM VAIDIALINGAM, J. : - This appeal, by special leave, by the appellant-State is directed against the judgment and order of the High Court of Assam and Nagaland, dated March 4, 1968 in Civil Rule No. 206 of 1967 (reported in 1969 AIR(Assam) 3) by which the High Court quashed an order passed by the Deputy Director of Education, Nagaland, dated February 10, 1967 terminating the services of the respondent as an Assistant Teacher with effect from April 1, 1967.

2. The respondent was appointed by an order of the Chief Secretary of Nagaland, dated October 23, 1962 as an Assistant Teacher and she was posted in Zunheboto Government High School. The category of the post to which she was appointed was Class III (Non-Gazetted). By an order dated February 16, 1967 of the Deputy Director of Education, Nagaland, the services of the respondent as Assistant Teacher were terminated with effect from April 1, 1967.

3. The respondent filed Civil Rule No. 206 of 1967 in the High Court of Assam and Nagaland for quashing the order dated February 16, 1967 terminating her services. According to her she had served as a teacher for a period of five years and she was fairly high in the Seniority List and that her work has been completely free from any blemish. While so, without giving any reason her services had been terminated arbitrarily and illegally. She also pleaded that by virtue of the order dated November 10, 1966 of the State Government, her services as well as the post which she held had both been made permanent. It was her further case that she had been appointed by the Chief Secretary of the Government, while the order of termination was by a subordinate officer, viz., the Deputy Director of Education. On these grounds the respondent pleaded that the order terminating her services was illegal and opposed to the principles of natural justice and there had been a breach of the provision of Article

311.

4. The State of Nagaland, the appellant, controverted the claim of the respondent that her services had been made permanent and that there had been a violation of Article 311. On the other hand, the State pleaded that the respondent had been appointed on a purely temporary basis to a temporary post and, according to the terms and conditions governing the appointment, her services could be terminated by giving one month's notice. The order of termination fully satisfies this requirement. The State further pleaded that the services of the respondent had never been made permanent. The Deputy Director of Education, who was exercising the powers of the Head of the Department was fully competent to pass the order in question. In view of these circumstances, the State pleaded that Article 311 of the Constitution did not apply and that the order of termination was valid.

5. Before the High Court the respondent raised two contentions both related to Article 311 and they were (1) that as the respondent had been appointed by the Chief Secretary to Government, the order of termination by a subordinate authority was in violation of Article 311 and therefore void; and (2) though initially she was appointed on a temporary basis, later on the post which she held as well as her services, had both been made permanent and therefore the order of termination, without complying with the requirements of Article 311, was void.

6. The High Court has substantially accepted both the above contentions. It has taken the view that the Deputy Director of Education had no. jurisdiction to terminate the services of the respondent as her appointment was by the Chief Secretary to the Government. Even though there may have been a delegation of powers to the Deputy Director of Education, the High Court's view is that the said officer has no. authority to pass an order of termination as that will be depriving the respondent of her rights under Article 311. The High Court, relying upon the Circular, dated November 10, 1966 of the Government, has further held that the services of the respondent had been made permanent and therefore the order terminating her services has the effect of removing her from service and placing the respondent in a position where she could no. longer serve the State. This, according to the High Court has further taken the view that though the termination of the respondent's services was innocuous and not on any disciplinary or punitive grounds, nevertheless, in view of the fact that she has been service for merely five years and no. reason is given by the State for terminating her services, it must be inferred that the order of termination must have been passed by way of punishment or penalty. On these grounds the High Court quashed the order, dated February 10, 1967.

7. Mr. Naunit Lal, learned counsel for the appellant, pointed out that the High Court has committed a very serious error in holding that Article 311 has been violated when the order terminating the services of the respondent was passed. The counsel further pointed out that the High Court has committed a mistake in proceeding on the basis that the respondent was a quasi-permanent employee. It was also urged that the High Court, having come to the conclusion that the order of termination was not passed on any disciplinary or punitive grounds, erred in setting aside the order on the ground that the said order must have been passed by way of punishment or penalty because the respondent has been in service for nearly five years. The counsel finally urged that the respondent being a temporary servant, her services had been terminated under the contract of

service and the State Government was entitled to pass such an order.

8. Mr. Lakshmi Narasu, learned counsel appearing for the respondent, in view of the approach made by the High Court, found considerable difficulty in supporting the order. But the counsel urged that as the High Court has come to the conclusion that the order of termination must have been passed by way of punishment, and as the services of the respondent who had been in service for over five years had been terminated without giving any reason, this Court need not interfere with the decision of the High Court.

9. In our opinion, the High Court has committed a fundamental error in proceeding on the basis that Article 311 applies to the respondent. The High Court has also committed another serious mistake in proceeding on the basis that the order dated November 10, 1966 of the State Government made the respondent a quasi-permanent government servant. The order dated October 23, 1962 appointing the respondent as an Assistant Teacher clearly says that the post to which she is appointed is a temporary one and that her appointment itself is made on a purely temporary basis. The order further states that the services of the respondent may be terminated by one calendar month's notice in writing on either side. No. doubt the respondent was in service till the impugned order was passed.

10. Rules 2 (b), 3 and 4 of the Central Services (Temporary Services) Rules, 1949 read together show that a government servant shall be deemed to be in quasi-permanent service if the said government servant has been in continuous government service for more than three years and the appointing authority is satisfied regarding the matters relating to the said employee referred to in Rule 3, and issues a declaration to that effect. The State Government, no. doubt appears to have taken a decision on August 17, 1966 to make certain temporary employees quasi-permanent and accordingly certain posts also were made permanent. The Government also issued a Circular, dated October 10, 1966 making the temporary posts in the Schedules attached to that order into permanent posts under the Education Department. But it will be seen that except making those posts permanent, the services of the incumbents of such posts had not been made permanent, as wrongly assumed by the High Court. On the other hand, by order dated September 14, 1967 the State Government made various temporary employees permanent. No. such notification had been issued in respect of the respondent, i.e., no. declaration in respect of the respondent, as required under Rule 3 (2) of the Central Services (Temporary Services) Rules, 1949 has been issued. Therefore the position was that the respondent continued to be a temporary servant on the date when the order under attack was passed.

11. The High Court itself has stated.

> "It is true that the termination appears to be innocuous and not on any disciplinary or punitive grounds"

. After this finding and in view of the fact that the respondent was only a temporary government servant, whose services had been terminated under the contract of service, no. further question regarding the validity of the order arises at all. But the High Court has expressed the opinion that

Article 311 has been violated because it must be inferred that the order has been passed by way of punishment, especially when the respondent has been in service for over five years. This reasoning, in our opinion, is erroneous. In fact the High Court has recorded two inconsistent findings :

> (i) that the termination is incases and not on any disciplinary or punishment grounds; and (ii) that the order of termination must be considered to have been passed by way of punishment. Even the respondent, so far as we could see, has not taken up any plea tot he effect that the order terminating her services was by way of punishment.

12. No. doubt the High Court has referred to certain passages in the decision of this Court in Parshotam Lal Dhingra v. Union of India, 1958 SCR 828 = 1958 AIR(SC) 36) but those principles have no. application to the facts of the present case. Reviewing the case-law on the subject, the recent decision of this Court in State of Punjab v. Sukh Raj, 1968 AIR(SC) 1089 has laid down several propositions of which proposition No. 1 is as follows :

> "On a conspectus of these cases, the following propositions are clear : -
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> 1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution."

As we have already pointed out, the services of the respondent have been terminated according to the terms of the contract of service and the order terminating the service is one simpliciter and not by way of punishment. If so, the matter comes squarely within the proposition No. 1 set out above and it follows that Article 311 has no. application at all.

13. As we have mentioned earlier, the respondent has raised a contention that as she was appointed by the Chief Secretary, the order terminating her services passed by the Deputy Director of Education, a subordinate authority, is not valid. But that contention, again was on the basis that Article 311 has been violated in this regard. The appellant State has taken the stand that the power of appointment had been subsequently vested in the Director of Education and that there has been a delegation in favour of the Deputy Director of Education to exercise all the powers of the Director in this regard. In the view that we take that Article 311 has no. application to the case of the respondent, it becomes unnecessary to consider this aspect.

14. In the result the order of the High Court, dated March 4, 1968 is set aside and this appeal allowed. In the circumstances of the case, there will be no. order as to costs.

Appeal Allowed.