

Delhi High Court

Govt Of Nct Of Delhi vs Ajit Singh on 5 April, 2011

Author: Anil Kumar

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) No.19616/2005

% Date of Decision: 05.04.2011

Govt of NCT of Delhi ..... Petitioner

Through Mr.V.K.Tandon, Advocate.

Versus

Ajit Singh ..... Respondent

Through Mr.R.K.Saini, Mr.Sitab Ali Chaudhary  
and Mr.Vikas Saini, Advocates.

CORAM:

HON'BLE MR.JUSTICE ANIL KUMAR

HON'BLE MS.JUSTICE VEENA BIRBAL

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| 1. | Whether reporters of Local papers<br>may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not?                                   | NO  |
| 3. | Whether the judgment should be<br>reported in the Digest?                | NO  |

ANIL KUMAR, J.

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1. The petitioner, Government of NCT of Delhi has challenged the order dated 11th April, 2005 passed by Central Administrative Tribunal, Principal Bench, New Delhi in O.A No.105/2005 titled "Ajit Singh v. Government of NCT of Delhi & Anr." setting aside the order of termination passed by the petitioner against the respondent invoking Rule 5 of Central Civil Services (Temporary Service) Rules, 1965.

2. Relevant facts to comprehend the controversies are that the respondent was appointed as constable in Delhi Police on 18th January, 2003 and he was placed on probation for period of two years.

3. The respondent had applied for employment pursuant to an advertisement in "Employment News (Rozgar Samachar)" dated 13th/19th April, 2002 stipulating the eligibility condition for applying to the post of constable. One of the eligibility condition categorically stipulated that the candidate should have got himself registered with any employment exchange one month prior to the date of

advertisement to be eligible for consideration for the post of constable.

4. A show cause notice dated 6th August, 2004 was issued to the respondent after his employment on 18th January, 2003 as constable stipulating that a complaint was received from Sh. Rajpal Singh regarding the employment card submitted by the respondent to the effect that it was forged by the respondent. The complaint stipulated that the respondent fabricated it as it was not issued on 6th March, 2002 but on 26th March, 2002. According to the complaint the respondent was, therefore, ineligible in terms of the eligibility conditions and he submitted the employment exchange card by changing the date on it from 26th March, 2002 to 6th March, 2002.

5. The petitioner, therefore, issued a show cause notice asking him as to why his services should not be terminated for the said misconduct under sub Rule 1 of Rule 5 of CCS (Temporary Services) Rules, 1965.

6. The show cause notice dated 6th August, 2004 was answered by the respondent on 10th September, 2004. However, on 3rd January, 2005 the show cause notice dated 6th August, 2004 was withdrawn on administrative grounds.

7. Thereafter on 6th January, 2005, three days after the withdrawal of show cause notice dated 6th August, 2004 seeking to terminate his service on account of his misconduct of forging the employment certificate, the petitioner issued termination order of the respondent invoking Rule 5 of Central Civil Services (Temporary Services) Rules, 1965. The termination order of the respondent is as under:-

"In pursuance of the provisions of Sub-Rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, I, Atul Katiyar, DCP/4th Bn.DAP hereby terminate forthwith the services of Const. Ajit Singh, No.3746/DAP (PIS No.28030309) (under suspension) and direct that he shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of notice at the same rates at which he was drawing immediately before the termination of his service or, as the case may be, for the period by which such notice falls short of one month.

SD/-

(ATUL KATIYAR) DY.COMMISSIONER OF POLICE 4TH BN.DAP, DELHI.

8. The respondent, therefore, challenged his termination order dated 6th January, 2005 on the ground that his termination is not termination simplicitor but is punitive in nature and he could not be dismissed without a proper enquiry regarding the alleged misconduct imputed against him of fabricating the employment exchange card. He also contended that he had been placed under suspension before his termination, however, neither any enquiry was conducted nor his suspension had been revoked.

9. The Tribunal after considering the pleas and contentions of the parties and relying on 2005 III AD (Delhi) 92, Commissioner of Police & Ors v. Regional Secretary, Board of Secondary Education, Regional Office, Meerut, U.P. & Ors.; (1999) 3 SCC 60, Dipti Prakash Banerjee v. S. N. Bose National Centre for Basic Sciences quashed the order of termination under Rule 5 of the Central Civil Services (Temporary Services) Rules, 1965 and allowed the original application of the respondent holding that the order of termination was punitive in nature.

10. The respondent though in the application before the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 had sought that order of termination dated 6th January, 2005 be set aside with all consequential benefits including seniority and arrears of pay, however, the Tribunal only passed the order setting aside the order of termination dated 6th January, 2005, and did not grant consequential benefits including seniority and arrears of pay. The respondent has not challenged the order of the Tribunal dated 11th April, 2005 not granting him consequential benefits including seniority and arrears of pay.

11. The petitioner has challenged the order dated 11th April, 2005 passed in Original application No.105/2005 in which the Tribunal held that the termination of the respondent under Rule 5 of CCS (Temporary Service) Rules, 1965 was punitive and thus held that the order of termination dated 6th January, 2005 is not sustainable and quashed the same.

12. The petitioner has challenged the order on the ground that the Tribunal failed to observe that the respondent had filed a false employment exchange card No.1542/2002 dated 6th March, 2002 by changing its date from 26th March, 2002 which was the essential requirement for appointment in Delhi Police. Thus the Tribunal failed to appreciate that the respondent got the appointment by adopting wrongful means which was a grave misconduct on his part. The grounds B and C raised in the writ petition are as under:-

"B. Because the Hon ble CAT has failed to observe that the respondent has filed a false Employment Exchange Registration Card No.1542 of 2002 dated 6.3.2002 by changing its date from 26.3.2002 which is essential requirement for appointment in Delhi Police so that respondent is able to get employment in Delhi Police.

C. Because the Hon ble CAT has failed to observe that the respondent got appointment in Delhi Police by adopting wrongful means which was grave misconduct."

13. The petitioner has also contended that under Rule 5 of CCS (Temporary Service) Rules, 1965 petitioner is entitled to terminate the services of a temporary employee under sub Rule 1 without giving any notice and without disclosing any reason especially since the respondent was selected provisionally subject to verification of his character, medical fitness and final checking of the documents. It is asserted that after going through the documents and considering the complaint of Sh.Rajpal Singh against the respondent, the registration date of the employment certificate was found to be bogus and, therefore, the services of the respondent were terminated under the rules and regulations of CCS (Temporary Service) Rules, 1965. Ground E disclosing the foundation for

terminating the service of the respondent as stipulated in the writ petition is as under:-

"E. Because the Hon ble CAT has failed to observe that the respondent was selected provisionally subject to verification of Character, medical fitness and final checking of documents etc. After going through the documents and the complaint from Shri Raj Pal Singh against the respondent the Registration date of the respondent was found bogus, therefore, the service of the respondent was terminated under the Rules and Regulations of CCS Temporary Service Rule, 1965."

14. The Tribunal has held that in order to ascertain whether the termination of a temporary employee is simplicitor or is punitive can be ascertained by lifting the veil. In the circumstances, in order to ascertain whether the termination is actuated on account of misconduct and the alleged misconduct is the foundation or not has to be inferred from the facts and circumstances of the case.

15. The Supreme Court in *State of U.P & Ors v. Ashok Kumar*, (2005) 13 SCC 652 had held that when the complaint leads to the inquiry resulting the termination order it is the foundation of the order of termination, however, whether the termination is only on account of some complaint which is not enquired into and which is not made the basis of termination, then the complaint or misconduct may be the motive but will not be the foundation and termination will be simplicitor under Rule 5 of CCS (Temporary Service) Rules, 1965 shall be sustainable. In *Ashok Kumar (Supra)* a constable after recruitment was undergoing training and he was entitled for regular appointment on successful completion of training. However, during his training his services were terminated which termination was challenged by the said constable. It was held that the termination of service of the constable was violative of Article 311(2) of the Constitution of India as no reasonable opportunity of hearing had been afforded to him as contemplated under the said Article 311(2). The misconduct in this case alleged against the constable was that he was found using unfair means while undergoing training with other trainees which was the foundation of the termination and, therefore, it was held to be violative of Article 311(2) of the Constitution of India.

16. The Supreme Court had held that whether the order of termination is simplicitor or punitive is ultimately to be decided having due regard to the facts and circumstances of each case. The Supreme Court in *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences*, (1999) 3 SCC 60 at pages 71 and 72 in paragraph 21 had held as under:-

"21. If findings were arrived at in an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of

termination would be valid."

17. The Supreme Court in (1980) 2 SCC 593, Gujarat Steel Tubes Ltd and Ors Vs. Gujarat Steel Tubes Mazdoor Sabha and Ors had also laid down the test to distinguish whether the termination order is punitive or not. It was held that the form of the order is not decisive and the Court may lift the veil to see the true nature of the order. It was held that the substance, and not the semblance governs the decision. In paragraphs 53 and 54 it was held as under:-

"53. Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinized, the order has a punitive flavor in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is satisfied of the misconduct and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used.

54. On the contrary, even if there is suspicion of misconduct the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simplicitor, if no injurious record of reasons or punitive pecuniary cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge. We need not chase other hypothetical situations here.

18. On the basis of the test laid down by the Supreme Court on lifting the veil, it is apparent that the foundation of the termination order is the alleged fabrication in the employment certificate by the respondent whereby he allegedly changed the date of the certificate from 26th March, 2002 to 6th March, 2002. The learned counsel for the petitioner also relied on photocopy of his application form which incorporates the date of registration in Clause 10C as 6th March, 2002 and not 26th March, 2002. If the respondent in his reply to show cause notice admitted that the certificate issued to him was dated 26th March, 2002 then why he had filed the date of registration as 6th March, 2002 in his application form. In the circumstances, it is apparent that the manipulation appears to be at the instance of the respondent himself and the petitioner after enquiry where the respondent was not involved got himself satisfied. From the grounds taken in the writ petition which are enumerated

hereinabove it is also apparent that the foundation for termination of the service of the respondent is the alleged misconduct on his part whereby he is alleged to have changed the date of certificate from 26th March, 2002 to 6th March, 2002. Though a complete enquiry was not initiated and concluded in the case of the respondent, however, a show cause notice dated 6th August, 2004 was issued to the respondent which was also replied by the respondent by reply dated 10th September, 2004. After the reply was given on behalf of the respondent, the show cause notice dated 6th August, 2004 was allegedly withdrawn on 3rd January, 2005 and three days thereafter the termination order invoking Rule 5 of Central Civil Service (Temporary Service) Rules, 1965 was issued terminating the service of the respondent. In the circumstances, it is not possible to draw any other inference but that the service of the respondent was terminated under the shelter of Rule 5 of Central Civil Service (Temporary Service) Rules, 1965 though on the ground that he mis-conducted by tampering with his employment certificate. The Court can find out even from the other proceedings or documents connected with the formal order of termination what the true ground for termination is. In the present case even in the writ petition it is alleged that the respondent had mis-conducted by tempering with the employment certificate. The learned counsel for the petitioner, Mr. Tandon, has produced a copy of the application form of the respondent showing the date of employment certificate as 6th March, 2002. It is contended that if according to the respondent his certificate of employment exchange was dated 26th March, 2002, then why did he write the date of certificate as 6th March, 2002 in the appropriate column. According to him this shows the complicity of the respondent. If that be so, then it is apparent that the foundation of termination is alleged mis- conduct on the part of the respondent and the petitioner could not have terminated the respondent under section 5 of the CCS (Temporary Services) Rules, 1965 and the termination of the respondent cannot be termed to be termination simplicitor. There is apparent live nexus between the alleged mis-conduct of the respondent and his termination. Even though full benefits were given to the respondent on his simple termination and the language in the order of termination is non injurious, yet it remains termination on mis-conduct without an appropriate enquiry.

19. On such an allegation the services of the respondent could not be terminated without conducting a proper enquiry as termination without conducting a proper enquiry would be violative of Article 311 (2) of the Constitution of India. The Tribunal also lifted the veil and reached the conclusion that the order dated 6th January, 2005 terminating the services of the respondent invoking Rule 5 of Central Civil Service (Temporary Service) Rules, 1965 was punitive and not termination simplicitor and could not be sustained.

20. The learned counsel for the respondent has also tried to contend that requirement of registration with the Employment Exchange one month prior to date of advertisement was not mandatory and would not dis-entitle the respondent from employment. Such pleas are not to be considered at this stage and can be canvassed by the respondent during enquiry if it is conducted by the petitioner, if so advised. In any case the grievance of the petitioner seems to be the alleged forgery done by the respondent.

21. For the foregoing reasons we do not find any such illegality or perversity in the order dated 11th April, 2005 passed in original application No.105/2005 titled "Ajit Singh v. Government of NCT of

Delhi" which would require correction by this Court by exercising its power under Article 226 of the Constitution of India. Thus the writ petition is dismissed and the order of Tribunal setting aside the order of termination is upheld. However, it is clarified that the petitioner shall be entitled to conduct disciplinary proceedings against the respondent, if so advised for the allegations made against him in accordance with rules and regulations. The parties in the facts and circumstances are left to bear their own cost.

ANIL KUMAR, J.

VEENA BIRBAL, J.

April 05, 2011.

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