Supreme Court of India
Bachi Ram vs Union Of India (Uoi) And Ors. on 2 May, 1986
Equivalent citations: AIR 1986 SC 999, 1986 LablC 859, (1986) IILLJ 294 SC, 1986 (1) SCALE 1272, 1986 Supp (1) SCC 179, 1986 (2) UJ 579 SC
Author: S Natarajan
Bench: A Sen, S Natarajan
JUDGMENT S. Natarajan, J.

1. Special leave has been granted for this appeal on the sole ground that a recent decision of the Bombay High Court in Textile Committee v. K.A Malani 1983 (1) S.L.R. P. 416, heavily relied on by the appellant to challenge the dismissal of Civil Writ Petition No. 690/85 filed by him before the Delhi High Court, required consideration as to its correctness.

2. The limited facts which call for mention for the purposes of this appeal are as under.

3. On February 11, 1981 the appellant was offered a temporary post of Chowkidar in the National Cooperative Development Corporation (Respondent No. 2 herein). The terms of the appointment were that the appointee would be on probation for a period of two years from the date of assuming charge of the post and the period of probation would be subject to extension at the discretion of the appointing authority and furthermore the appointment was liable to be terminated at any time without notice during the period of probation and thereafter on one month's notice or on payment of one month's salary in lieu thereof on either side.

4. After the formalities of acceptance were over the appellant was issued an order of appointment extracted below on March 7, 1981 and he assumed charge on the same day:

The General Manager, National Cooperative Development Corporation, is pleased to appoint Shri Bachi Ram as a temporary Chowkidar in the National Coop. Dev. Corporation w.e.f. 3.3.81 (FN) at a basic pay of Rs. 196/- p.m. in the scale of pay of Rs. 196-3-220-EB-3-232/-, and until further orders.

sd/-

(B.S. Pathania) Deputy Director (Admn.)

5. By an order dated June 30, 1983 the appellant was informed that consequent on the abolition of 5 temporary posts of Chowkidar his services as well as those of 4 other Chowkidars have been terminated under Regulation 12 of the National Cooperative Development Corporation Service Regulations (hereinafter referred to as the "Service Regulations").

6. The appellant made a representation to the second respondent that he may be given appointment in some other capacity in view of the fact that he is an ex-serviceman and the sole bread-winner for a family of 10 members. The representation did not meet with success, but after a short interval of time the appellant was offered a temporary post of Chowkidar in the Regional Office of the second respondent at Bangalore, but he declined the offer for reasons of his own.

7. After some more time had lapsed, the appellant was again offered service and was appointed on February 20, 1984 as a Peon on temporary basis by the second respondent. The appellant then laid a claim that he is entitled to permanency of service as well as continuity of service together with attendant benefits from the date of termination of service till his re-employment as Peon on February 20, 1984. The appellant's claims were rejected by the second respondent and hence he filed Civil Writ Petition No. 690/85 under Article 226 of the Constitution of India before the High Court of Delhi. A Division Bench of the Delhi High Court dismissed the petition on August 7, 1985 holding that as the posts of Chowkidar had been abolished there was no merit in the Writ Petition and that if the appellant had not been paid one month's salary he can move the appropriate Court. It is the correctness of this order which is sought to be challenged in the present appeal.

8. The only ground canvassed for admission of the special leave petition was that the judgment of the High Court is in direct conflict with the judgment of the High Court of Bombay in Textile Committee ease (supra) in which it has been held, following the judgment of this Court in Senior Superintendent, R.M.S. Cochin v. K.V. Gopinath that non-compliance with the conditions relating to termination of service (namely, service of one month's notice or payment of one month's salary in lieu thereof) would render the termination itself invalid and of no effect.

9. Before dealing with the merit of this contention, we may refer to Regulation 12 of the Service Regulations:

12. Termination of Services of an employee:

1. The services of a temporary employee other than a probationer may be terminated by giving him one month's notice or salary in lieu thereof,

2. The services of a permanent employee may be terminated by giving him three month's notice or salary in lieu thereof if he is: declared medically unfit on account of any ailment which he develops while in service disabling him from discharging his normal duties or if the post is abolished.

3. The power to terminate the Services of an employee may be exercised by the appointing authority.

10. We may also appositely extract the order of termination of service issued to the appellant on June 30, 1983. The order reads thus:

Consequent upon the abolition of five temporary posts of Chowkidar at the Head Office of the Corporation, the services of the following temporary Chowkidars at the Head Office are hereby terminated with immediate effect in terms of Regulation 12 of the HCDC Service Regulations, 1967.

Sr. No. Name 1. Shri Mohan Singh 2. Shri Mohan Singh Negi 3. Shri Tika Ram 4. Shri Chandu Lal 5. Shri Bachi Ram.

2. The aforesaid employees will be paid one month's salary in lieu of one month's notice period.

(Emphasis supplied) sd/-

(K.J.S. Bhatia) General Manager

11. The contention of the appellant before the High Court and before us as well is that even on the basis he was a temporary employee and not a probationer in a permanent post he ought to have been given one month's notice or alternatively one month's salary in lieu of notice as a condition precedent for effecting termination of service. For raising such a contention wholesale reliance is placed on the decision in Textile Committee. In that case the services of one Malani, a Deputy Director (Mechanical Engineering) in the office of the Textile Commissioner were terminated by the employer viz. the Textile Committee in exercise of its powers under the Regulations framed for governing the services of its employees. The order was issued on 9.7.73 and it was to take effect from the afternoon of the same day. The order stated that in lieu of notice "a sum equivalent to the pay and allowances for one month, at the same rates as being drawn by him on date, will be paid to him in lieu of one month's notice period." The order of termination was successfully challenged before a Single Judge. In the appeal pre ferred by the Textile Committee a Division Bench of the Bombay High Court has held as follows:

As regards the first point viz. that the payment of the notice pay was not a condition precedent to the termination to come into effect, we are afraid the point is squarely covered by a decision of the Supreme Court in Senior Superintendent, R.M.S. Cochin and Anr. v. K.V. Gopinath, Sorter (1). In that case the provisions of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, which had an identical language with our present Regulation 9, fell for consideration. There also, the same contention as is raised by Shri Khambata before us, was raised and in answer to the contention, the Supreme Court pointed out that the material words in the Rule were "the services of any such Government servant may be terminated forthwith by payment". Relying on this phraseology of the said Rule, the Supreme Court held that, hence to be effective the termination of service has to be simultaneous with the payment to the employee of whatever is due to him. The learned Judge has rightly relied upon the ratio of this decision to come to the conclusion that in the present case when admittedly the payment was tendered to the respondent as late as on 20.10.1973, while his services were sought to be terminated forthwith by order dated 9.7.1973, the termination was illegal. According to us, in view of the said decision of the Supreme Court, it will have to be held that in law the termination had never taken place..,Therefore, we will have to proceed on the basis that the law laid down by the Supreme Court to the aforesaid decision is still good.

12. We have to point out that the decision rendered by the High Court is clearly erroneous because the Bench has followed the ratio in Gopinath's case which has ceased to be good law after the judgment of this Court in Raj Kumar v. Union of India . It has been observed in Raj Kumar's case that the earlier Bench had failed to notice the amendment made in 1971 to the proviso to Rule 5(1)(b) of the Central Civil Services (Temporary Service) Rules, 1965 by reason of which the provision for the simultaneous payment of pay and allowances along with an order of termination in lieu of one month's notice has been done away with and the amendment was given force with retrospective effect from May 1, 1965. The relevant passage in the judgment occurs as under:

The effect of this amendment is that on May I, 1965, as also on June 15, 1971, the date on which the appellant's services were terminated forthwith it was not obligatory to pay to him a sum equivalent to the amount of his pay and allowances for the period of the notice at the rate at which he was drawing them immediately before the termination of the services or as the case may be for the period by which such notice falls short. The Government servant concerned is only entitled to claim the sums hereinbefore mentioned. Its effect is that the decision of this Court in Gopinath case is no longer good law. There is no doubt that this rule is a valid rule because it is now well established that rules made under the proviso to Article 309 of the Constitution are legislative in character and therefore can be given effect to retrospectively.

13. As the ratio in Gopinath's case has been held to be not good law in Raj Kumar's case it goes without saying that the decision in the Textile Committee case is not a correct one and consequently the appellant's reliance on that decision to contend that his termination of service without simultaneous payment of 'notice salary' is misconceived. For the limited purpose for which leave was granted for this appeal the enunciation of law made above will serve the purpose. Even so, we feel persuaded to refer to a recent decision of this Court in Union of India v. Arun Kumar Roy to which one of us was a party (A.P. Sen, J.) to make the judgment complete and the enunciation of law up-to-date.

14. In the abovesaid case one Arun Kumar Roy was appointed on temporary basis in the post of Stores Officer in the Department of Zoological Survey of India. He was placed on probation for two years and before the expiry of that period he was served a memo extending his probation by one more year from July 30, 1977. On July 27, 1978 the Deputy Secretary of the Government of India communicated to him an order of the President of India to inform him that his services had been terminated with effect from the afternoon of July 29, 1978. The communication further stated that the employee would be entitled to claim a sum equal to the amount of his pay plus allowances in lieu of one month's notice at the same rates at which he was drawing them immediately before the termination of his service. Arun Kumar Roy challenged the order of dismissal on two grounds, one being that it was incumbent upon the authorities to pay notice salary along with the termination notice and the other that as he was put on probation he was not a temporary hand and hence his services could not have been terminated.

15. Both these contentions were rejected and Khalid, J. speaking for the Bench held as follows:

We would first dispose of the contention raised by the respondent that he was not a temporary hand. The order of appointment itself makes it clear that he will be on probation for a period of two years which may be extended, if necessary. According to him, a temporary hand is not normally put on probation nor is probation extended in the case of temporary hands. The fact that he was originally put on probation for a period of two years which was extended by one year itself indicates according to him that he is not a temporary hand. This contention need not detain us for long. The appointment order makes it clear that the appointment will be on a temporary basis. The mere fact that he was put on probation does not ipso facto make the appointment any the less temporary and for that reason his extended probation also. Unless the respondent makes out a case based on some rules which requires confirmation to a post on the expiry of the period of probation, he cannot

succeed on the mere ground of his being put on probation for a period of two years or by the fact that is probation was extended.

As regards the other contention the Court after referring to the decisions in Sr. Superintendent, R.M.S. v. K.V. Gopinath and Raj Kumar v. Union of India (supra) held as follows:

We would like to observe, with respect, that the amendment brought into Rule 5(1)(b), with effect from May 1, 1965, escaped the notice of the Bench that decided that case (Gopinath's case). The error was subsequently corrected by another Bench of this Court in the decision in Raj Kumar v Union of India.

16. In the light of the judgments of this Court in Raj Kumar v Union of India and Union of India v. Arun Kumar Roy (supra) the appellant's contentions are devoid of merit. The sheet anchor of his case viz. the decision in Textile Committee v. K.A. Malani (supra) is not in accordance with law and is held to be erroneous.

17. Learned counsel for the appellant raised an argument that the terms of Regulation 12 of the Service Regulations bear similarity to the terms of the unamended Rule 5(1)(b) of the Central Civil Services (Temporary Service) Rules, 1965 and as such the judgment in Gopinath's case would have relevance notwithstanding the subsequent pronouncements in Raj Kumar's case and Arun Kumar Roy's case. We are not in the least impressed by this argument because Regulation 12 does not contain any such stipulation as was found in the proviso to Section 5(1) of the Central Service (Temporary Service) Rules. The proviso to the above said Service Rule was worded as under:

Provided that the services of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month.

18. In view of this incontrovertible position the argument has to be discountenenced.

19. For the reasons aforesaid the order of the Delhi High Court in Civil Writ Petition No. 690/85 is affirmed and the appeal stands dismissed. No order as to costs.