Supreme Court of India
State Of Gujarat And Anr vs P.J. Kampavat And Ors on 28 April, 1992
Equivalent citations: 1992 AIR 1685, 1992 SCR (2) 845
Author: B Jeevan Reddy
Bench: Jeevan Reddy, B.P. (J)

PETITIONER:
STATE OF GUJARAT AND ANR.

Vs.

RESPONDENT:
P.J. KAMPAVAT AND ORS.

DATE OF JUDGMENT28/04/1992

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
PUNCHHI, M.M.

CITATION:
1992 AIR 1685 1992 SCR (2) 845
1992 SCC (3) 226

ACT:
Constitution of India, 1950:
Article 309-Contractual appointments-Ministers' establishment-Temporary appointment on the recommendation of Ministers-Power of State to make such appointments-Source of.
Civil Service:
Bombay Civil Service Rules, 1959: Rules 2, 9(56), 33.
Temporary appointments-Co-terminus with the term of Ministers-Whether incumbents entitled for absorption-Termination Order-Prior notice-Whether necessary.

HEADNOTE:
The respondents were appointed in the State Government Service purely on temporary basis, co-terminus with the tenure of the Chief Minister and Ministers, with no right of absorption. They also furnished undertaking to this effect. With the change in Government, the respondents were issued orders of termination. They filed Writ Petitions before the High Court challenging the termination orders and claiming that they were entitled to be absorbed in service. The High Court granted stay and directed that status quo be maintained and the respondents continued in service. The High Court was of the opinion that they were entitled to the

protection of Rule 33(1)(b) of the Bombay Civil Service Rules and since termination was ordered without complying with the requirements of the said rule the termination order were null and void. It however ruled out the question of absorption. However, taking an overall view of the matter, the High Court directed that in lieu of reinstatement, they may be paid salary from the date of termination till the date of judgment and for a further period of two months-that is in all for a period of two years. Aggrieved against the said judgment, the State Government has preferred the present appeals by special leave.

Allowing the appeal, this Court,

846

HELD : 1. The appointment of the respondents was a pure and simple contractual appointment and that such appointment is outside the purview of the Bombay Civil Service Rules, 1959. Since the tenure of the ministers at whose instance and on whose recommendation they were appointed has come to an end, their service also came to an end simultaneously. No order of termination as such was necessary for putting an end to their service, much less a prior notice. They ought to go out in the manner they have come in. [853-C, D]

2. It is evident from a reading of the order of appointment that it was purely a contractual appointment co-terminus with the tenure of the Ministers at whose choice and instance they were appointed. The order expressly stated that they shall not get any right to appointment in regular cadre. Their services were, it was expressly stated, liable to be terminated at any time without giving any notice and/or without assigning any reason. Indeed, they were asked to furnish undertakings in the above terms which they did. The order no doubt employs the words `appointed as direct recruits on purely temporary basis'. However, the order must be read as a whole and so read, it is clear that the appointment of the respondent was made otherwise than in accordance with the rules, at the choice and on the recommendation of the concerned Minister who wanted them to serve in his establishment. That the State has the power to make such contractual appointment is recognised by clause (2) of Article 310. [849 H, 850 A-C]

3. Rules 9(56) and 33 of the Bombay Civil Service Rules have no application to the instant case as the respondents cannot be deemed to be temporary Government servants within th meaning of the said rules inasmuch as the terms of their appointment clearly amount to an otherwise provision within the meaning of the Non-obstante clause ("except where it is otherwise expressed or implied") with which rule 2 begins. It is evident that the terms of their appointment and the undertaking are clearly inconsistent with the said rules and in particular with rule 33. Rule33(1)(b) and the term making their tenure co-terminus with their minister cannot go together. [853 B-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1826- 37 of 1992.

From the Judgment and Order dated 7.9.1991 of the Gujarat High Court in Special Civil Application Nos. 8627 to 8633 of 1989, 8635 to 8638 of 1989 and 2937 of 1991.

D.A. Dave, Bimal Roy Jad and Anip Sachthey for the Appellants.

Anil Nauriya and Hemantika Wahi for the Respondents. The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J. Heard counsel for both parties. Leave granted.

These appeals filed by the State of Gujarat are directed against the Judgment of a Division Bench of the Gujarat High Court allowing partly a batch of writ petitions filed by respondents 1 to 12.

In the year 1985, the Government of Gujarat thought it expedient to permit the Chief Minister and other Ministers to appoint persons of their choice in their respective establishments. Respondents 1 to 12 were accordingly appointed in the category of Clerk/Typists/Director/Peon. The orders of appointment issued to the respondents are identical. The State has placed before us a copy of the Office Order dated 12.7.1985 issued from the General Administration Department, Government of Gujarat relating to the appointment of some of the respondents. The order reads as follows:

"The following persons are appointed as direct recruits on purely temporary basis in the office of the Chief Minister with effect from 6.7.1985 (after office hours) on the posts shown against their names. Their services shall be liable to be terminated at any time without giving any notice or assigning any reasons. This appointment is for a limited period up to the tenure of Minister's establishment. They will not get any right for absorption in regular cadres of Sachivalaya and they will have to furnish an undertaking to this effect.

Sr. No.	Name of Employee	Post	Date of Birth	Remarks
1.	2.	3.	4.	5.
1.	Sh. P.J. Kampavat	Clerk-Typist	20.5.55	Relaxation is given on upper age limit.
2 to 10 omitted.				

2. They will have to furnish physical fitness certificate from the Civil Surgeon immediately. Out of the above, those appointed on class III posts, are not eligible for special pay whereas those appointed on class IV posts are eligible to get special pay as per rules."

In December 1989, a new Government came into office following the General Elections to the Legislative Assembly. With the exit of the Ministers in whose establishments the respondents were appointed, the respondents were also issued orders of termination with effect from 18.12.1989. The orders of termination are dated 10.12.1989 and 11.12.1989. Aggrieved by the said orders of termination the respondents filed a batch of writ petitions in the Gujarat High Court claiming that they are entitle to be absorbed as permanent employees in the Service of the State of Gujarat Alternatively they contended that the impugned orders of termination are bad being contrary to Rule 33 of Bombay Civil Service Rules, 1959, as also Section 25F of the Industrial Disputes Act. Having filed the writ petitions, they moved application for staying the operation of the termination orders. The Gujarat High Court directed the status quo to be maintained which implied their continuance in Service. The State, however, carried the matter to this Court which vacated the said orders, with result that the respondents went out of the office.

The respondents' case before the High Court of Gujarat was that notwithstanding the terms of their appointment orders they have a right to continue in service. They submitted that they served different ministers from time to time (as per the particulars supplied by them) and that they were really employed on account of their past experience. They relied upon certain instances in the composite State of Bombay where similarly appointed persons were absorbed in Government service. They invoked Articles 14 and 16 of the Constitution besides Rules 33 of Bombay Civil Service Rules. The State, on the other hand, relied upon the terms of their appointment and contended that their appointment was contractual in nature, co-terminus with the tenure of the concerned Minister under whom and at whose instance they were appointed. They have no right to claim absorption or any other right. They must go along with their Ministers, it was submitted.

In the light of the rival contentions, the Gujarat High Court framed three questions for their consideration, viz., (1) whether the respondents (State) had discriminated against the petitioners by no absorbing them in the State service and instead terminating their services by impugned orders and whether the said action was violative of Articles 14 and 16 of the Constitution. (2) Whether the impugned termination orders were contrary to BCS Rule 33 and hence, they were null and void and the inoperative of law. (3) What reliefs were the petitioners entitled. On the first question, the High Court held against the writ petitioners. It was of the opinion that the writ petitioners cannot be directed to be absorbed in regular service inasmuch as their initial entry itself was otherwise than in accordance with the Rules and also because their appointment was made exclusively on the recommendation of the concerned Minister who selected persons of his choice to serve in his establishment. Such absorption, the High Court pointed out, may amount to circumventing the Rules relating to recruitment and would be unjust to other employees. Articles 14 and 16 of the Constitution do not come to the rescue of the writ petitioners. Further, it was held, the Gujarat Non-Secretariat Clerks and Clerks/Typist (Training and Examination) Rules, 1970 do not apply to the writ petitioners. On the second question, however, the High Court was of the opinion that the writ petitioners are entitled to the protection of Rule 33 (1)(b) of the Bombay Civil Service Rules;

Since the termination has been effected without satisfying the requirements of the said Rule, they were declared to be null and void. On the question of relief, the High Court was of the opinion that granting of relief of reinstatement would be of no help to the writ petitioners inasmuch as even after such reinstatement their services can be terminated by paying one month's salary as contemplated by the proviso to Rule 33(1)(b) of the BCS Rules. Taking "a practical view of the matter"-to use the language of the High Court-they directed that in lieu of orders of reinstatement, the writ petitioners shall be paid the salary from the date of their termination up to the date of Judgment and for a further period of two months thereafter-that is for a period of approximately two years. The correctness of the said Judgment, insofar as it goes against the State is canvassed in these appeals.

It is evident from a reading of the order of appointment of the writ petitioners that it was purely a contractual appointment co-terminus with the tenure of the Minister's establishment, at whose choice and instance they were appointed. The order expressly stated that they shall not get any right to appointment in regular cadre. Their services were, it was expressly stated, liable to be terminated at any time without giving any notice and/or without assigning any reasons. Indeed, they were asked to furnish under-takings in the above terms which they did. The order no doubt employs the words "appointed as direct recruits on purely temporary basis"-and these are the words which constitute the sheet-anchor of the writ petitioners' contention. We are, however, of the opinion that the order must be read as a whole and so read, it is clear that the appointment of the respondents/writ petitioners was made otherwise than in accordance with the rules, at the choice and on the recommendation of the concerned Minister who wanted them to serve in his establishment. That the State has the power to make such contractual appointment is recognised by clause (2) of Article 310. clauses (1) and (2) of Article 310 read as follows:

"310. Tenure of office of persons serving the Union or a State:-(1) Except as expressly provided by this Constitution, every person who is a member of a defence service or of a civil service of the Union of an all-India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President, and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State.

(2) Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provided for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate the post."

While clause (1) corresponds to sub-section (1) of Section 240 of the Government of India Act, 1935, clause (2) is practically a re-production of sub-section (4). Clause (1) declares that unless otherwise provided by the Constitution, every person holding a post in defence service or civil service or any post connected with them holds office during the pleasure of the President and similarly every

person holding a civil post under the State holds the same during the pleasure of the Governor of the State. Clause (2) recognises the power of the President/Governor to appoint a person to a civil post (under the Union or the State) on contract. However, the person to be so appointed should not be a member of a defence service or of an All-India service or a civil service of the Union or the State. The clause enables the President/Governor to provide, if he thinks it necessary to secure the services of a person having specific qualifications for payment to him compensation in case the post is abolished before the expiry of the agreed period or where he is asked to vacate the post before the expiry of such period for reasons not connected with any misconduct on his part. In the case before us, of course, there is no such provision for compensation-apart from the fact that this is not a case of termination before the expiry of the period of the contract. (For the purposes of this case, it is unnecessary to examine the reasons for which sub-section (4) was enacted in Section 240 of the Government of India Act, 1935 and why was it repeated in Article 310).

In the light of this clause it is idle to contend on the part of the respondents/writ petitioners that their appointment is under the rules or that their appointment is a temporary appointment within the meaning of Bombay Civil Service Rules. Rule 2 of the Bombay Civil Service Rules which is quoted in the judgment of the High Court reads thus:

"except where it is otherwise expressed or implied, these rules apply to all members of services and holders of posts whose conditions of services the government of Bombay are competent to prescribe: Provided that they shall also apply to:- "(a) any person for whose appointment and conditions of employment and conditions of employment special provision is made by or under any law for the time being in force, and

(b)any person in respect of whose service, pay and allowances and pension or any of them special provisions has been made by an agreement made with him in respect of any matter not covered by the provisions of such law or agreement."

The High Court has relied upon the said rule to hold that the writ petitioners are covered by clause (b) to the proviso. It has further held that the respondent must be deemed to be holders of temporary posts within the meaning of rule 9(56) which defines the expression temporary post to mean a post carrying a definite rate of pay sanctioned for a limited time. On the above basis, the High Court has applied Rule 33 which provides the mode of terminating the service of a temporary Government servant. In short, the rule provides for a prior notice, the duration of which depends upon the length of service put in by the temporary Government servant. We are, however, of the opinion that the said rules have no application to the respondents herein and that they cannot be deemed to be temporary Government servants within the meaning of the said rules inasmuch as the terms of their appointment clearly amount to an otherwise provision within the meaning of the Non- obstante clause ("except where it is otherwise expressed or implied") with which rule 2 begins. The order appointing the respondents expressly states not only that their services shall be terminated at any time without giving any notice and without assigning any reason but also that their appointment is for a limited period co-terminus with the concerned minister's tenure. They were also asked to execute an undertaking in the above terms which they did. It is evident that the terms of their appointment and the undertaking are clearly inconsistent with the said rules and in

particular with rule 33. Rule 33 (1)(b) and the term making their tenure co-terminus with their minister cannot go together. Sub-rule (1) of rule 33 of the Bombay Civil Service Rules may be set out at this stage, for the reason that the High Court has rested its case on clause (b) of the said sub-rule.

"33. (1)(a) The service of a temporary government servant shall be liable to termination at any time by a notice in writing given to him by the appointing authority.

(b) Where a temporary government servant has put in service for a period exceeding one year the period of such notice shall be one month and where such government servant has put in service for one year or any period less than one year the period of such notice shall be one week.

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 allowance for the period of the notice due the same rates at which he was drawing pay and allowances immediately before the termination of his service or as the case may be, for the period by which such notice falls short of the notice period."

For the reasons given above, we are of the opinion that the appointment of the respondents was a pure and simple contractual appointment and that such appointment does not attract and is outside the purview of the Bombay Civil Service Rules, 1959. Since the tenure of the ministers at whose instance and on whose recommendation they were appointed has come to an end with 10.12.1989 their service also came to an end simultaneously. No order of termination as such was necessary for putting an end to their service, much less a prior notice. They ought to go out in the manner they have come in.

The appeal in accordingly allowed. The judgment and the order of the Gujarat High Court is set aside. Having regard to the circumstances of the case, there shall be no order as to costs.

G.N. Appeal allowed.