

Court No. - 7

Reserved
A.F.R.

Case :- WRIT - A No. - 13670 of 2023

Petitioner :- Mahesh Kumar

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Harish Chandra

Counsel for Respondent :- C.S.C.,Manu Saxena

Hon'ble J.J. Munir,J.

1. The petitioner, a Safai Karmchari, engaged on contract by the Nagar Palika Parishad, Modi Nagar, Ghaziabad, assails the order dated 29.04.2023, determining the contract and in consequence terminating his services. The order aforesaid has been passed by the Executive Officer, Nagar Palika Parishad, Modi Nagar, Ghaziabad, and, shall hereinafter be referred to as the 'impugned order'.

2. The petitioner was appointed on the basis of a contract as a *Safai Karmi* (Sweeper) with the Nagar Palika Parishad, Modi Nagar, Ghaziabad, in terms of a letter of appointment dated 25.07.2006. The letter of appointment was issued by the Executive Officer, Nagar Palika Parishad, Modi Nagar, Ghaziabad (for short, 'the Nagar Palika'). The appointment as aforesaid was made in terms of Government Orders dated 26.08.2005 and 09.05.2006, after selection by a selection committee, constituted for the purpose by the District Magistrate, Ghaziabad. The letter of appointment says that the petitioner was appointed on contract as a Safai Karmi on a pay of Rs.2130/-. It was made explicit that the appointment is entirely contractual and made subject to the condition that in case the candidate's work is not found satisfactory, his appointment would be terminated.

3. It is the petitioner's case that though appointed as a Safai

Karmi on contract basis, the Nagar Palika have assigned him the duties of a driver. The petitioner has been paid salary of a *safai karmi* on contract basis. A pay slip relating to the petitioner has been annexed as Annexure No.2 to the writ petition, which shows that it relates to the month of September, 2021. Reference to this pay slip would be made later in this judgment. The petitioner acknowledges the fact that though he is working on the post of a Safai Karmi since 25.07.2006, he has not been confirmed or regularized in service. It is averred in the writ petition that the letter of appointment shows that the petitioner's services can be terminated if his work is not found satisfactory. It appears that the elections to the Nagar Palika were notified and the petitioner staked his candidature for the post of the Chairman of the Nagar Palika Parishad. He made an application, seeking sanction of leave from 15.04.2023 to 26.04.2023, in order to enable him to contest the said elections. It is the petitioner's case that since there was a condition to submit a No Objection Certificate, he secured one from the Tehsildar, Tehsil Modi Nagar (Ghaziabad) and duly submitted it. It is the petitioner's further case that a 'no dues certificate' was secured on 18.04.2023, also from the Tehsildar, showing that there were no dues against the petitioner for the year 2022-23. After all formalities were completed, the petitioner contested the elections to the post of the Chairman, Nagar Palika, but lost at the hustings. On 29.04.2023, the Executive Officer of the Nagar Palika terminated the petitioner's services on ground that he had contested elections to the office of the President of the Nagar Palika in the elections of 2023, which was in violation of the service conditions under the Uttar Pradesh Municipalities Act, 1916 (for short, 'the Act'). It was mentioned that the petitioner's contract was being determined on that ground. The

petitioner moved an application on 26.05.2023 to revoke the order of his termination from service, addressed to the Executive Officer. Nothing came out of it. Accordingly, this writ petition has been instituted by the petitioner, assailing the order impugned.

4. Parties have exchanged affidavits.

5. Heard Mr. Harish Chandra, learned Counsel for the petitioner, Ms. Amrita Singh, learned Additional Chief Standing Counsel on behalf of respondent No.1 and Mr. Radhamani Saxena, Advocate holding brief of Mr. Manu Saxena, learned Counsel appearing on behalf of the Nagar Palika.

6. The learned Counsel for the petitioner submits that the petitioner is a low paid employee of the Nagar Palika and applied for a no objection certificate (NOC) to contest the elections and also sought leave for the purpose. He was granted an NOC and leave by the Executive Officer. Therefore, it is no longer open to the Executive Officer to terminate his services on ground that he contested elections to the office of the Chairman. It is submitted that the petitioner has no knowledge about the provisions of the Act nor was he informed about its prohibitory provisions at the time when a no objection certificate and leave without pay was granted. It is urged that the impugned order is, therefore, manifestly illegal and arbitrary. It is also argued that no opportunity of hearing or showing cause has been given to the petitioner before the order terminating his services was passed.

7. Mr. Radhamani Saxena and Ms. Amrita Singh, on the other hand, have submitted in one voice that the petitioner's appointment was entirely contractual. He does not hold lien on any post. His services have been determined in terms of the

contract as his act in running for the elections to the office of the Chairman of the Nagar Palika is not only prohibited under the Uttar Pradesh Government Servant Conduct Rules, 1956 (for short, 'the Rules of 1956') *vide* Rule 5, but also constitutes an act that may be viewed by the Nagar Palika as one which renders the petitioner's work and conduct unsatisfactory, entitling the Nagar Palika to terminate the contract. It is particularly emphasized by the learned Counsel for the Nagar Palika that a no objection was never given to the petitioner, entitling him to contest elections for the post of Chairman of the Nagar Palika. Instead, an order dated 26.04.2023 was passed, informing the petitioner with reference to his application dated 26.04.2023 that contesting an election to any Local Body or the Legislative Assembly is prohibited for a government servant by virtue of Rule 5 of the Rules of 1956. The petitioner was particularly informed that he may not do any act which may constitute violation of the Rules of 1956, else action would be taken against him, in accordance with the Act. The aforesaid notice, a photostat copy of which is annexed as Annexure No.CA-1 to the counter affidavit, shows on its face an endorsement made by the concerned peon or employee of the Nagar Palika, who went to deliver it to the petitioner, which reads:

“पढ़कर लेने से इन्कार किया”

Sd/- illegible.”

8. It is submitted, therefore, that it cannot be said by the petitioner that he had no knowledge of the prohibition. In fact, the petitioner was informed by the Executive Officer of the Nagar Palika that he was not permitted to run for elections to the office that he wanted to. The learned Counsel for the Nagar Palika, particularly, says that a no objection certificate

permitting the petitioner to contest elections was never issued by the Executive Officer of the Nagar Palika. It is also pointed out that the NOC, referred to by the petitioner in paragraph No.19 of the writ petition, was a certificate by the Executive Officer of the Nagar Palika about the petitioner not being obliged to the Nagar Palika on account of any outstandings in their favour. The learned Counsel, therefore, submits that the petitioner contested elections to the office of the Chairman of the Nagar Palika not only without permission of the Executive Officer, but in the face of a memo inviting his attention to the Rules of 1956 that prohibited him from doing so.

9. The learned Counsel for the petitioner in his rejoinder submits of that the edifice of the respondents' action is essentially flawed, because the Rules of 1956 do not apply to the petitioner as he was a contractual employee, and the order impugned has been passed in contravention of the terms of his contract. It is emphasized that the only condition, on the foot of which the petitioner's service can be terminated, is unsatisfactory work, which is not the respondents' case at all.

10. This Court must note one submission that was forcefully made by the learned Counsel for the petitioner and that was that the petitioner's services could not be terminated on the basis of a misconduct in contesting elections, contrary to the Rules of 1956, without affording him an opportunity of hearing. In support of this contention of his, learned Counsel for the petitioner placed reliance upon the decision of the Supreme Court in **State of U.P. and another v. Kaushal Kishore Shukla, (1991) 1 SCC 691**. He invited the Court's attention to the holding of their Lordships in paragraph No.7 of the report, which reads:

"7. A temporary government servant has no right to hold the post, his services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract providing for such termination or under the relevant statutory rules regulating the terms and conditions of temporary government servants. A temporary government servant can, however, be dismissed from service by way of punishment. Whenever, the competent authority is satisfied that the work and conduct of a temporary servant is not satisfactory or that his continuance in service is not in public interest on account of his unsuitability, misconduct or inefficiency, it may either terminate his services in accordance with the terms and conditions of the service or the relevant rules or it may decide to take punitive action against the temporary government servant. If it decides to take punitive action it may hold a formal inquiry by framing charges and giving opportunity to the government servant in accordance with the provisions of Article 311 of the Constitution. Since, a temporary government servant is also entitled to the protection of Article 311(2) in the same manner as a permanent government servant, very often, the question arises whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment. It is now well settled that the form of the order is not conclusive and it is open to the court to determine the true nature of the order. In *Parshotam Lal Dhingra v. Union of India* [1958 SCR 828 : AIR 1958 SC 36 : (1958) 1 LLJ 544] , a Constitution Bench of this Court held that the mere use of expressions like 'terminate' or 'discharge' is not conclusive and in spite of the use of such expressions, the court may determine the true nature of the order to ascertain whether the action taken against the government servant is punitive in nature. The court further held that in determining the true nature of the order the court should apply two tests namely: (1) whether the temporary government servant had a right to the post or the rank or (2) whether he has been visited with evil consequences; and if either of the tests is satisfied, it must be held that the order of termination of a temporary government servant is by way of punishment. It must be borne in mind that a temporary government servant has no right to hold the post and termination of such a government servant does not visit him with any evil consequences. The evil consequences as held in *Parshotam Lal Dhingra*

case [1958 SCR 828 : AIR 1958 SC 36 : (1958) 1 LLJ 544] do not include the termination of services of a temporary government servant in accordance with the terms and conditions of service. The view taken by the Constitution Bench in *Dhingra case* [1958 SCR 828 : AIR 1958 SC 36 : (1958) 1 LLJ 544] has been reiterated and affirmed by the Constitution Bench decisions of this Court in *State of Orissa v. Ram Narayan Dass* [(1961) 1 SCR 606 : AIR 1961 SC 177 : (1961) 1 LLJ 552] ; *R.C. Lacy v. State of Bihar* [C.A. No. 590/62 decided on October 23, 1963 (SC)] ; *Champaklal Chimanlal Shah v. Union of India* [(1964) 5 SCR 190 : AIR 1964 SC 1854 : (1964) 1 LLJ 752] ; *Jagdish Mitter v. Union of India* [AIR 1964 SC 449 : (1964) 1 LLJ 418 : 1964 Cur LJ (SC) 66] ; *A.G. Benjamin v. Union of India* [(1967) 1 LLJ 718] ; *Shamsher Singh v. State of Punjab* [(1974) 2 SCC 831 : 1974 SCC (L&S) 550 : (1975) 1 SCR 814] . These decisions have been discussed and followed by a three Judge Bench in *State of Punjab v. Sukh Raj Bahadur* [(1968) 3 SCR 234 : AIR 1968 SC 1089 : (1970) 1 LLJ 373 : 1968 Cri LJ 687]."

11. This Court must say at the outset that this stand of the petitioner, based on the principle in **Kaushal Kishore Shukla** (*supra*), about the provision of an opportunity in case of termination of service, founded on a charge, is inconsistent with the petitioner's stand, otherwise taken, that he is not a regular employee of the Nagar Palika, to whom the Rules of 1956 or the Act apply.

12. Assuming for a moment that the Rules of 1956 and the Act apply, and the petitioner's services have been terminated for his misconduct in contesting elections without the permission of the Executive Officer, the principle in **Kaushal Kishore Shukla** would not come to the petitioner's rescue at all. It is so for more than one reason. The foremost is that the principle in **Kaushal Kishore Shukla** has been laid down in the context of an employee appointed on *ad hoc* basis for a fixed period that was extended from time to time, but not a contractual employee, whose conditions of service were

governed by contract. The law has been laid down on principles governing the rights of temporary government servants, to whom the Uttar Pradesh Temporary Government Servants (Termination of Services) Rules, 1975 are applicable. This is certainly not the case here.

13. The other is that their Lordships in **Kaushal Kishore Shukla** held that even a temporary government servant has no right to the post and his services can be terminated by a month's notice without assigning any reason, either in terms of the contract or the relevant statutory rules. It is observed there that a temporary government servant also can be dismissed from service by way of punishment. It is only if the competent Authority decides to take punitive action that a formal inquiry may be held by framing charges and giving opportunity to the government servant in accordance with Article 311 of the Constitution. If the order is punitive in nature, the government servant is certainly entitled to opportunity. The Court went into the question, what order of termination may be regarded as punitive or stigmatic and what a termination simpliciter in terms of the contract or rules means.

14. The twin tests suggested to determine the nature of the order, if it is stigmatic or not is, if the temporary government servant had a right to the post or rank, and, secondly, if he has been visited with 'evil consequences', in the words of their Lordships. It has been held that if either of the two conditions exists, the order of termination relating to a temporary government servant must be held penal in nature. It has also been clarified that termination of services of a temporary government servant in accordance with the terms and conditions of service do not entail evil consequences, as held by the Constitution Bench in case of **Parshotam Lal Dhingra v.**

Union of India, AIR 1958 SC 36.

15. In this case, the petitioner, as already remarked, is not remotely a temporary employee. He is an employee, whose services are entirely contractual. Once that is the case, even if he has been selected through some kind of a mechanism to select under a Government Order and appointed on contract, he has no right to the post. There is no lien. In fact, that is precisely the petitioner's case that the Rules of 1956 and the Act would not apply to him because he is not an employee of the Nagar Palika, governed by those statutes or statutory rules. His terms of service are governed by the contract alone.

16. If then that is the case, the petitioner's rights are governed exclusively by a contract that does not have any statutory flavour. It is a purely contractual appointment accepted by the petitioner *dehors* the rules and without a lien on any post. The issue whether the termination is in accordance with the contract or contrary to it in the absence of violation of any statute or statutory rules, or at least a statutory contract, is not fit to be determined by this Court in the exercise of our writ jurisdiction under Article 226 of the Constitution.

17. The dispute between the petitioner and the Nagar Palika arises out of a contract of service simpliciter, which cannot be determined in the present proceedings. The determination of the petitioner's employment in terms of the contract of service or in violation thereof, given the terms of the contract and its nature, does not involve any arbitrariness, as may make it fall foul of the petitioner's right under Article 14 or 16 of the Constitution.

18. If the petitioner thinks that his services have been determined in violation of the contract between him and the

Nagar Palika, or otherwise the Nagar Palika have indulged in any unfair labour practice in dispensing with the petitioner's services, it would be open to the petitioner to raise an industrial dispute under the Uttar Pradesh Industrial Disputes Act, 1947. No relief, however, can be afforded to the petitioner in the present writ petition.

19. Subject to the above liberty, this petition fails and is **dismissed**.

20. There shall be no order as to costs.

Order Date :- 11.03.2024

Anoop

(J.J. Munir, J.)