



GAHC010032712020

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1055/2020

EX CT/GD 041711898 HANIF ALI
S/O MD. AHMED ALI, R/O VILL-ABADI, P.O.-CHAKIHALI, P.S.-MANIKPUR,
DIST-BONGAIGAON, ASSAM, PIN-783392

VERSUS

THE UNION OF INDIA AND 4 ORS.
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW
DELHI-PIN-110001

2:THE DIRECTOR GENERAL
CENTRAL RESERVE POLICE FORCE
CENTRAL GOVERNMENT OFFICE COMPLEX
NEW DELHI
PIN-110003

3:THE INSPECTOR GENERAL OF POLICE
CENTRAL RESERVE POLICE FORCE
NORTH EAST SECTOR
SHILLONG
MEGHALAYA
PIN-793004

4:THE DEPUTY INSPECTOR GENERAL OF POLICE
GROUP CENTRE
CENTRAL RESERVE POLICE FORCE
SARAIKHAS
P.O.-KARTARPUR
JALANDHAR
PUNJAB
PIN-144001



5:THE COMMANDANT
68 BATTALION
CENTRAL RESERVE POLICE FORCE
MANKOLI
TINSUKIA
ASSAM
PIN-78612

Advocate for the Petitioner : MR. R MAZUMDAR

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

Date of Hearing : 15.06.2022, 8.6.2022

Date of Order : .30/06/..2022

JUDGMENT AND ORDER(CAV)

Heard Mr. R. Mazumdar, learned counsel for the petitioner. Also heard Mr. A. K.Dutta, learned CGSC, for Union of India.

2. This writ petition is filed assailing the order dated 20.11.2019 issued by the Commandant, 68 Bn, of Central Reserve Police Force (in short CRPF), whereby it was intimated that the service of the petitioner shall be terminated w.e.f. the date of expiry of one month from the date of receipt of the notice as per mandate of Sub Rule 1 of Rule 5 of Central Civil Services (Temporary Services) Rules, 1965. Further challenge is the order dated 24.12.2019, whereby the

name of the petitioner was struck off from the Unit.

3. The petitioner was enrolled in the CRPF as Constable (General Duty) after a due selection process and by order dated 9.3.2004.
4. Mr. Mazumdar, learned counsel for the petitioner submits that though no separate confirmation order was issued or no extension of probation period was made by virtue of Rule 108 of CRPF Rules, 1955, the petitioner's service was deemed to have been confirmed. Thereafter the petitioner continued to serve CRPF without any blemish till 19.12.2019, when the impugned order was issued, Mr. Mazumdar submits.
5. The learned counsel for the petitioner contends that the condition precedent required to issue the impugned order was not available in as much as in the given facts the petitioner cannot be treated as Temporary employee after 15 years of service in the Force and therefore provision of CCS (Temporary Service) Rule 1965 is not applicable in the case of the petitioner.
6. Mr. Mazumdar further submits that on the basis of alleged fraud in the matriculation certificate, the petitioner cannot be terminated without giving him a due opportunity of hearing as provided under Rule 27 of CRPF Rules, 1955. Accordingly, Mr. Mazumdar submits that entire process of removing the petitioner from the role of CRPF is illegal and same is liable to be interfered with

and petitioner needs to be reinstated in service.

7. Mr. Mazumdar further contends that as it has been alleged that the petitioner has been terminated for the reason of submission of fake certificate, the CCS (Temporary Service) Rule shall not be applicable.
8. Mr. R. Mazumdar, forcefully submits that the petitioner in absence of any order of confirmation in service beyond the period of probation, need to be treated as confirmed and permanent employee and he relies on a judgment of this court in ***Rajendra Singh vs Union of India and others*** reported in ***(2008)4 GLR 101*** in support of his submission, in support of his contention.
9. Per contra Mr. A. K. Dutta, learned CGC submits that as the petitioner's service was not confirmed by virtue of Rules 108(2) of the CRPF Rule 1955, therefore the authority was right in issuing impugned termination order under CCS (Temporary Service) Rule, 1965.
10. This Court has given anxious consideration to the submissions made by the learned counsel for both the parties.
11. The Rule 108 of CRPF Rules, 1955 (in short the Rules 1955) deals with the probation and confirmation. The said Rule provides that the period of probation is for two years. On completion of period of probation, if the employer considers the person to be fit for permanent appointment, the person need to

be confirmed in their appointments subject to availability of substantive vacancy.

12. Sub Rule 3 of said Rules empowers the Government to extend the period of probation.
13. Sub-Rule 4 provides that if on expiration of probation or after extension of probation, the Government is of the opinion that the candidate is not fit for permanent appointment the Government may discharge the person from service or pass such order as they deem fit.
14. Sub Rule 5 mandates that when Govt passes no order under sub-Rule (2) or (3) or (4) of Rule 108, the period of service, after the prescribed of probation shall be treated as engagement from month-to-month basis and such service is terminable by either of the parties after expiry of a notice of one month issued in writing.
15. Rule 16 of the Rules 1955 provides that Member of CRPF be enrolled for a period of 3 years and during such period of 3 years, they are liable to be discharged at any time of one month notice by the appointing authorities.
16. The said Rule further provides that during such period of 3 years, the person is liable to be discharged at any time on one month notice by the appointing authority.



17. It also provided that if at the end of this period of 3 years an employee is not given substantive status then the said employee shall be considered for quasi permanent under the provision of CCS (Temporary Service) Rules, 1965.
18. The said Rules also provides that those who are not declared quasi permanent, under the CCS (Temporary Service) Rules, 1965, the employee shall be continued as temporary Government employee unless they are discharged.
19. The said Rule also clarifies that the temporary employees shall be liable to be discharged on one month notice and those who are quasi permanent shall be liable to be discharged on 3 months' notice in accordance with CCS (Temporary Service) Rules, 1965.
20. The facts of the present litigation reveal that on 20.11.2019 the Commandant of 68 Bn CRPF issued a notice of termination under Rule 5(1) of the CCS (Temporary Service) Rules, 1965 intimating that the service of the petitioner stands terminated with effect from the date of expiry of period of one month from the date of which the notice is served. Such notice was received by the petitioner on 20.11.2019. Thus, from the aforesaid notice, it is clear that the petitioner was treated as the temporary employee under the CRPF inasmuch as it is an admitted position that the petitioner's service was

not confirmed after expiry of the period of probation and no action under Rule 16 was taken so far the same relates to present petitioner.

21. Rule 16 and Rule 108 of the Rules 1955 empowers the employer CRPF to terminate a temporary employee from service after issuance of notice of one month. Though the petitioner continued in service since 2004, he became a temporary employee by virtue of provisions of the Rule'1955 and CCS (Temporary Service) Rules' 1965 inasmuch as it is an admitted fact that neither the service of the petitioner was confirmed nor any order of extension was issued.

22. In the case of Rajendra Singh (supra) relied on by Mr. Mazumdar, learned Counsel, the petitioner was reverted from Administrative Officer to Asstt. Administrative Officer after serving in the higher post for a long period. This court while dealing with the issue held that the petitioner's service should be treated to be confirmed on the expiry of maximum period of probation as the petitioner in Rajendra Singh (supra) continued to work beyond the period of probation and he rendered sincere and devoted service. In the given facts of the present case, more particularly in view of the provisions of the Rules discussed herein above, the decision of Rajendra Singh is not applicable in the present case.



23. And therefore, this Court is left with no option but to held that the CRPF authority was within its competence and jurisdiction to issue the impugned termination order.
24. The respondent CRPF has taken a stand on affidavit that the petitioner has produced forged certificate at the entry into the service and the employer CRPF could learnt about such fake certificate during the regular verification of the certificate and on information from the Board of Secondary Education, Assam who, purportedly issued the alleged fake certificate in favour of the petitioner. On such basis, Mr. Mazumdar submits that such allegation clearly reveals that the order impugned was punitive. And therefore, he was entitled for reasonable opportunity of hearing inasmuch as it is the contention of the learned counsel that even a probationer/temporary employee is entitled for reasonable opportunity of hearing when the termination order is punitive.
25. Having held that the petitioner is temporary servant and the employer CRPF was within the competence and jurisdiction to issue the notice of termination as has been issued in the present case. Now let this Court deal with the next argument of Mr. Mazumdar, learned Counsel for the petitioner that in view of disclosure of motive of termination of service of the petitioner on the foundation that the petitioner had entered into the service with a fake

certificate, termination has become punitive and therefore the principles of natural justice ought to have been followed .

26. The Hon'ble Apex Court in the case of *Parshotam Lal Dhingra vs. Union of India* reported in AIR 1958 SC 36 had laid down that if the misconduct was the motive, the order of termination cannot be treated as punitive but if the same is the foundation of the termination, it is punitive.
27. Subsequently, in the case of *State of Bihar Vs Gopi Kishore Prasad* reported in AIR 1960 689, it was held by the Hon'ble Apex Court that termination without notice but after holding enquiry into alleged misconduct or in efficiency or similar reason, be punitive.
28. In yet another decision, in the *State of Orissa Vs Ram Narayan Das* reported in AIR 1961 SC 177, the Hon'ble Apex Court laid down that when there is an enquiry while determining the issue whether the same is punitive or termination simpliciter, one should look into the object or purpose of the enquiry. If the order of termination is based on such enquiry and such enquiry was to ascertain whether the temporary/probationer was fit to be confirmed, the Hon'ble Apex Court held that such enquiry will not necessarily make termination punitive.
29. This principle of "object of enquiry" was again reaffirmed in the case

of *Jagdish Mitter vs Union of India* reported in *AIR 1964 SC 449*.

30. In the case of *Champaklal Chimanlal Shah Vs Union of India* reported in *AIR 1964 SC 1854*, the Hon'ble Apex Court held that when termination of a temporary employee is based upon preliminary enquiry, it was open to the employer not to make a regular enquiry for proving the guilt of the employee and employer could stop at that stage and issue a simple order of termination. It was clarified by the Hon'ble Apex court that the facts gathered or revealed in the preliminary enquiry could be the motive and not the foundation and since no enquiry was there as to the correctness and in such a case, the order of termination shall not be punitive in nature.
31. Considering the above legal principle as well as the facts of the present case, it is clear that the employer, in the present case, in their regular course of verification came to know that the certificate produced by the petitioner was fake on the basis of intimation given by the Education Board, according to the petitioner, who issued the certificate. After receiving such information, the Employer decided not to go for further enquiry as to the correctness and the impugned notice was issued under the provision of Rule 108, the petitioner being a temporary employee. Therefore, in the considered opinion of this court, the principle laid down in *Champaklal Chimanlal Shah*

(supra) squarely covers the present case inasmuch as the facts gathered or revealed from the Board regarding the genuineness of certificate of the employer would be the motive and not the foundation of termination/discharge of the petitioner, since there was no enquiry as to the correctness made.

32. In aforesaid view of the matter, it is the considered opinion of this court that disclosure of the fact in the affidavit and as discussed hereinabove, cannot make the order of discharge punitive and accordingly it cannot be held that the petitioner was entitled for principles of natural justice before termination of his service or he was entitled for regular departmental enquiry.

33. Accordingly, this court finds no merit in the present writ petition and therefore, the same is dismissed. Parties to bear their own costs.

JUDGE

Comparing Assistant