

Before Permod Kohli, J.

- SAT PAL,—Petitioner

versus

**PUNJAB AND HARYANA HIGH COURT AND
ANOTHER,—Respondents**

C.W.P. No. 941 of 1988

19th November, 2008

Constitution of India, 1950—Art. 226—Punjab and Haryana High Court Rules and Orders, Volume I—Termination of a regular employee of unblemished service record of 9 years—Temporary services—Only ground to justify termination—No deficiency in service of petitioner—Retention in service of persons junior to petitioner— Termination of services in a most arbitrary and whimsical manner by a judicial authority—Petition allowed with all consequential benefits.

Held, that how a judicial authority in the rank of District Judge can terminate the services of an employee in an arbitrary manner. The only ground to justify the termination of the petitioner is that services of the petitioner were temporary. I have called for the Service Record of the petitioner. Though I have already noted the appointment order of the petitioner which clearly indicates that the petitioner's services were *ad hoc* and temporary for a period of six months, however, the petitioner was regularized vide order dated 15th September, 1972. The contention of the respondents that the services of the petitioner were purely temporary cannot be and should not be accepted. No other ground whatsoever has been mentioned in the impugned order of termination. It is also admitted position that there are number of Clerks junior to the petitioner. It also cannot be imagined that juniors were regular employees and petitioner was temporary. The petitioner's services have been terminated in a most arbitrary and whimsical manner by the District and Sessions Judge, Ferozepur. He has expressed total lack of judicial mind despite being a judicial authority. Such an act of the

judicial authority who is otherwise entrusted with the job of rectifying the errors of others cannot be appreciated.

(Paras 5 & 7)

C.M. Munjal, Advocate *for the petitioner.*

S.S. Sahu, AAG, Punjab.

PERMOD KOHLI, J.

(1) Petitioner is aggrieved of order dated 19th December, 1980 terminating his services as Steno-typist by the District and Session Judge, Ferozpur. Briefly stated the factual background, leading to the filing of the present petition, is that the petitioner was appointed as Clerk *vide* order dated 7th July, 1971 in the pay scale of Rs. 110-250 on *ad hoc* basis for a period of six months. His appointment order is noticed as under :—

“you have been selected for appointment in this office into clerical grade of Rs. 110-250 plus usual allowances as admissible under the Rules on purely temporary basis. Your services are liable to be terminated without any notice. In case the appointment offered to you is acceptable you should report for duty in this office after getting yourself medically examined from the Chief Medical Officer, Ferozpur on 13th July, 1971.”

(2) It is alleged that services of the petitioner were regularised in the aforesaid scale on 15th September, 1972. The petitioner thereafter earned as many as seven increments and claims to have crossed the efficiency bar. It is further alleged that the petitioner was thereafter, posted as Steno-typist on 11th August, 1973 and worked with full dedication and with unblemished record. Petitioner was again promoted as Senior Clerk with effect from 1st April, 1979 in the pay scale of Rs. 510-800. Services of the petitioner however came to be terminated *vide* order dated 19th December, 1980. The termination order reads as under :—

“The services of Shri Sat Pal Steno-typist to the Senior Sub Judge, Ferozpur, who was appointed on purely temporary

basis, are hereby terminated with immediate effect.

(Sd.) . . . ,

Dated 19th December, 1980.

District & Sessions Judge,
Ferozepur.

(3) Aggrieved of his termination, he preferred an appeal under Chapter 18-A of Punjab and Haryana High Court Rules and Orders Volume I. This appeal of the petitioner, however, came to be rejected vide order dated 4th September, 1981 on the ground that the appeal under the aforesaid provision lies only where the termination is by way of penalty etc. The order of the appellate authority (Hon'ble Judge of this Court) came to be challenged in a writ petition on the ground that the appeal was maintainable. The writ petition also resulted in dismissal in limine. Petitioner preferred a Special Leave Petition before Hon'ble Supreme Court. The Special Leave Petition also came to be dismissed holding that the appeal was not competent, however, the petitioner was given liberty to file writ petition under Article 226 of the Constitution of India before the Punjab and Haryana High Court against the order of discharge on merit *vide* order dated 23rd November, 1987 passed in Civil Appeal No. 1255 of 1982. It is under these circumstances, the present petition has been filed by the petitioner challenging his termination. The impugned order of termination is challenged primarily on the grounds of violation of principles of natural justice claiming that he was a regular employee of the District Court. Petitioner has also alleged hostile discrimination stating that as many as 50 persons junior to him were retained in service and petitioner has been arbitrarily terminated.

(4) Written statement has been filed on behalf of the Registrar, Punjab and Haryana High Court as also the District and Session Judge, Ferozepur. The impugned order is sought to be justified on the sole ground that the termination of the petitioner is in accordance with terms of his appointment, being a temporary employee, terminable without assigning any reason. It is relevant to note that in the reply filed before this Court as also before the Hon'ble Appellate Judge in the appeal preferred by the petitioner, it has been specifically admitted that the petitioner was a dedicated employee and had unblemished service

record of 9 years of service. A specific averment made in the writ petition that services of the petitioner were regularised vide order dated 15th September, 1972, have also been unequivocally admitted. Regarding promotion of the petitioner to the post of Senior Clerk, it is stated that 50% of the strength of the staff, both permanent and temporary, was designated as Senior Clerk on the basis of the Government instructions. Petitioner's promotion/designation as Senior Clerk is also not disputed. No deficiency in the service of the petitioner has been pointed out. Retention of juniors is also admitted in the reply.

(5) In the above circumstances, I am at pain to observe that how a judicial authority in the rank of District Judge can terminate the services of an employee in an arbitrary manner. The only ground to justify the termination of the petitioner is that services of the petitioner were temporary. I have called for the Service Record of the petitioner. Though I have already noted the appointment order of the petitioner which clearly indicates that the petitioner's services were *ad hoc* and temporary for a period of six months, however, the petitioner was regularised vide order dated 15th September, 1972. The regularisation order on the file reads as under :—

“The services of the following Clerks working in this office on ad hoc/temporary basis are hereby regularised as temporary/officiating Clerks in the grade of Rs. 110-4-130-5-180-6-210-8-250. Their seniority is fixed in the order their names have been noted below :—

1. *Shri Juldip Singh, Ahlmad.*
2. *Shri Rajesh Kumar, Ahlmad.*
3. *Shri Rajesh Kumar, Copy Clerk.*
4. *Shri Ved Parkash, Ahlmad.*
5. *Shri Jana Raj, Ahlmad.*
6. *Shri Rajinder Kumar, Copyist.*
7. *Shri Mangat Rai, L.R.C.*
8. *Shri Sat Paul, L.R.C.*

9. *Shri Kuldip Kumar, Steno-typist.*

10. *Miss Ramesh Kumari, L.R.C.*

(Sd.). . .,

Dated 15th September, 1972.

District & Sessions Judge,
Ferozepur.”

(6) Vide the aforesaid order, as many as 9 persons including the petitioner were regularised in the pay scale of Rs. 110-250 and resultantly their seniority was also fixed. The petitioner stands at Sr. No. 7 that means there were two persons junior to him in the said order of seniority. The order of regularisation is also duly reflected in the Service Book produced before me. It is to the common knowledge for which a judicial notice can also be taken that on appointment of a Government servant, he is initially appointed temporarily though on regular basis, which is primarily the probation period but that does not mean that his services are without any protection of law. By no stretch of imagination, the order of regularisation of the petitioner can be construed to be purely a temporary/*ad hoc* arrangement. My view is further strengthened from the facts that the petitioner continued in service for a period of nine years and not only earned increments but also came to be placed at a higher pedestal and designated as Senior Clerk which fact is admitted and acknowledged by the respondents in the reply.

7) In these circumstances, the contention of the respondents that the services of the petitioner were purely temporary cannot be and should not be accepted. No other ground whatsoever has been mentioned in the impugned order of termination. It is also admitted position that there are number of Clerks junior to the petitioner. It also cannot be imagined that juniors were regular employees and petitioner was temporary. I am of the considered view that the petitioner's services have been terminated in a most arbitrary and whimsical manner by the District and Sessions Judge, Ferozepur. He has expressed total lack of judicial mind despite being a judicial authority. Such an act of the judicial authority who is otherwise entrusted with the job of rectifying the errors of others cannot be appreciated. A number of judgments have

been cited by the petitioner. I am not referring any, as to decide this proposition, no judgments are required when the facts are so apparent and clear.

(8) In view of the above, I quash the impugned order of termination dated 19th December, 1980 and direct the reinstatement of the petitioner forthwith. Under the normal circumstances, I would have denied the wages to the petitioner having not performed the duties during the interregnum. However, in the given circumstances, where the act complained of, is so arbitrary and patently illegal, I am constrained to award all the consequential benefits to the petitioner.

R.N.R.

Before Harbans Lal, J.

JAGDISH AND ANOTHER,—Appellants

versus

STATE OF HARYANA,—Respondent

Criminal Appeal No. 176-SB of 1998

16th January, 2009

Indian Penal Code, 1860—Ss.498-A and 304-B—Dowry death—Dying declaration—No specific allegation of demand of dowry—Statement recorded by SDM—No evidence to show that Judicial Magistrate was not available—No certificate at foot of dying declaration by attending Doctor that deceased remained in a fit state of mind—As per dying declaration it is not even a case of suicide rather of catching fire accidentally—No case that it was wilful conduct of appellants—Appeal allowed, appellants acquitted of charged offence.

Held, that there is no evidence to the effect that the condition of the deceased was precarious and the Judicial Magistrate was not available and that being so, the investigator was left with no alternative except to get the statement recorded through the Sub-Divisional Magistrate. If the accused-appellants had been maltreating, ill-treating