

Madan Mohan Goel v. State of Haryana (Koshal, J.)

No application for restoration of the first suit was ever filed. On these facts and in the state of law discussed by me above, the respondent appears to me to be precluded from filing the present application for divorce in respect of the same cause of action, that is the same desertion. The order of the learned District Judge to the contrary cannot, therefore, stand.

(8) For the reasons assigned above, I allow this petition, set aside and reverse the order of the Court below, and decide the preliminary issue in favour of the petitioner (the wife). As a result of the decision on the preliminary issue, the respondent's petition for divorce is dismissed as being barred by Order 9, Rule 9 of the Code. The parties are left to bear their own costs throughout.

K. T. S.

LETTERS PATENT APPEAL

Before A. D. Koshal and Surinder Singh, JJ.

MADAN MOHAN GOEL,—Appellant.

versus

STATE OF HARYANA,—Respondent.

Letters Patent Appeal No. 673 of 1974

and Civil Misc. No. 549 of 1977

August 9, 1977.

Punjab Civil Service (Punishment and Appeal) Rules 1952—Rule 9—Person applying for a post in response to advertisement providing for a period of probation—Letter of appointment making no reference to advertisement and prescribing no such period though laying down terms and conditions of service—Such person—Whether governed by the conditions in the appointment letter.

Held, that where the contents of an advertisement providing for a period of probation do not form part of the appointment letter and the terms and conditions of service of an employee are comprehensively laid down in the appointment letter independently of the

advertisement and without providing for any such period, the employee will not be said to be on probation and will be governed by the terms and conditions stated in the appointment letter. If the services of such an employee are terminated in contravention of the terms stated therein, the termination would be illegal.

(Para 4).

Letters Patent Appeal under Clause X of the Letters Patent against the judgment dated 23rd October, 1974, delivered by Hon'ble Mr. Justice B. R. Tuli, in Civil Writ Petition No. 1722 of 1974 (Madan Mohan Goel vs. State of Haryana).

Application under section 151 of the Civil Procedure Code praying that the appellant be permitted to refer to the documents (Annexure P-41, order dated 9th February, 1977 promoting seven junior officers and ignoring the appellant is filed herewith as Annexure 43) and make submissions on the basis thereof at the time of the final hearing of the appeal.

Kuldip Singh, Advocate with G. C. Garg, Advocate, for the Appellant.

I. S. Saini, Advocate for A. G. (Hy.), for the Respondent.

JUDGMENT

A. D. Koshal, J:

(1) In the year 1971 the Haryana Public Service Commission, through their advertisement No. R.G. 313/69 (hereinafter referred to as the advertisement), invited applications from persons desirous of being appointed to a temporary post of Chief Electrical Inspector in the Irrigation and Power Department of the Government of Haryana. Paragraphs 4 and 5 of the advertisement stated:—

“4. The post is temporary but is likely to continue. It belongs to Class I. It is pensionable. The incumbent of the post will be eligible to subscribe to the general provident fund according to State Government Rules.

“5. The period of probation is two years for persons recruited direct and one year for those already in Government service. The appointment can be terminated according to civil service rules.”

(2) The petitioner, who was then serving the Haryana State Electricity Board as an Executive Engineer, applied for the job, was

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selected for the same and was appointed thereto through a letter dated the 19th of November, 1971 (hereinafter called 'the appointment letter') which made no reference to the advertisement or to any of its contents and, on the other hand, detailed the terms and conditions on which the appointment was being made. The tenure of the post was thus described in paragraph 1 of the appointment letter:

"1. *Tenure of Post:*

- (i) The appointment will be temporary, but likely to continue.
- (ii) The service will be terminable on one month's notice in writing by Government to you/you to Government, should Government desire to terminate your service/you leave service, without notice, Government/you will have to pay you/to Government an amount equal to your one month's emoluments in lieu of one month's notice, or the amount equal to your emoluments for the period by which the notice falls short of one month. In case of misconduct, inefficiency, neglect or failure of duty, the service shall be terminable after giving you an opportunity to represent in the matter."

(3) The petitioner started working as the Chief Electrical Inspector under the appointment letter. By an order dated the 19th of April, 1972, the Governor of Haryana, converted the temporary post of Chief Electrical Inspector into a permanent one. However, no order was passed for any change in the tenure of the petitioner in relation to that post. While working in the post, the petitioner received references for arbitration between the Haryana State Electricity Board and the consumers served by it. He decided them against payment of fees to which exception was taken on behalf of the Government who called his explanation which was furnished through a memorandum dated the 18th of December, 1972, but was found unacceptable. On the 5th of March, 1973, the Government informed him that his performance during the period spent on probation had not been satisfactory and that, therefore, he stood reverted to his parent Department, i.e., the Haryana State Electricity Board in which he had a lien. This action of the Government was challenged by the petitioner in proceedings under Article 226 of the Constitution of India which failed as infructuous after the Advocate General for the State of Haryana had made a statement that the

order dated the 5th of March, 1973, was being withdrawn. Later on, the Government charged the petitioner with misconduct consisting of the acceptance by him of fees relating to arbitration work and asked him to show cause under rule 9 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952 as to why his services as Chief Electrical Inspector should not be terminated. The petitioner submitted his explanation which was again found unsatisfactory, with the result that his services were terminated a second time through an order dated the 15th of May, 1974, which the petitioner challenged in proceedings under Article 226 of the Constitution of India seeking issuance of a writ of certiorari. His petition was dismissed by Tuli, J., on the 23rd of October, 1974, by an order which is attacked in this appeal filed under clause 10 of the Letters Patent. Tuli, J., held that the petitioner had contravened the relevant rules in carrying out arbitration work against payment of fees without prior permission of the competent authority and that the Government was, therefore, justified in reverting the petitioner to his parent Department on the ground that he had not satisfactorily completed the period of his probation.

(4) The main point stressed by learned counsel for the petitioner before us is that the contents of the advertisement did not form a part of the appointment letter, that the terms and conditions of service by which the petitioner was governed were comprehensively laid down in the appointment letter independently of the advertisement, that they did not envisage any period of probation which the petitioner had to go through and that, therefore, his services were liable to termination only on the Government giving him a month's notice which had admittedly not been given. After hearing learned counsel for the parties, we find the contention to be unexceptionable. As already stated, the appointment letter did not make any reference at all to the advertisement. It also did not advert to any period of probation such as was mentioned in the advertisement. On the other hand, it stated in explicit terms that the petitioner was being offered the post of Chief Electrical Inspector "on the following terms and conditions of service". Had a period of probation been envisaged for the petitioner in the new post, there is no reason why the same would not have been specifically mentioned in the appointment letter just as other conditions of service like the pay scale which appeared in the advertisement were repeated in the appointment letter. In our opinion, the appointment letter contained a comprehensive statement of the terms and conditions of the service of the

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petitioner and, in the circumstances of the case, the advertisement cannot be regarded as a part thereof. In this connection we may also note that the giving of a month's notice on either side would normally be a condition which would rule out a period of probation to be undergone by the appointee. This is not to say that the period of probation and a notice of the type mentioned cannot co-exist, but if that is what is intended, it must be made specific mention of. The learned Single Judge who acted upon the advertisement in holding that the petitioner had not satisfactorily completed the period of his probation, took the advertisement for granted as a document governing the conditions of the service of the petitioner without deciding that the appointment letter was issued subject to its contents and that is the error into which, in our opinion, he fell. In this connection he appears to have been influenced mainly by the fact that both the petitioner and the State Government had in the correspondence which took place between them subsequent to the petitioner's appointment, been referring to him as being on probation but that fact is irrelevant to the determination of the question whether the petitioner actually was on probation which is a matter of interpretation of the appointment letter, and of such interpretation only, so that although antecedent circumstances may perhaps throw light on the intention of the parties, subsequent events would not be germane to the issue.

(5) Faced with the above situation, learned counsel for the State contended that the impugned order was valid even if the petitioner was not on probation, inasmuch as he had been found guilty of misconduct and his services had been terminated in accordance with the last sentence of paragraph 1 of the appointment letter. That sentence states:

"In case of misconduct, inefficiency, neglect or failure of duty, the service shall be terminable after giving you an opportunity to represent in the matter."

(6) We are asked to interpret this sentence as meaning that all that was necessary for visiting the petitioner with the punishment of the termination of his services was that he should be given a notice of the misconduct with which he was charged, that he should be asked to submit his explanation and that such explanation should be considered and found to be unsatisfactory. We do not think that the sentence was either intended to rule out a regular enquiry into any

charges of misconduct which might be levelled against the petitioner or that it means any such thing. It does envisage an opportunity to the petitioner to represent his case and such opportunity would be an empty formality if he is not given a chance to demolish the charges levelled against him either by showing that the evidence relied upon by the Government in support thereof was false and worthless or by contradicting the same independently. Such opportunity must be a real opportunity so that it would be one akin to that envisaged by clause (2) of Article 311 of the Constitution of India. This is the interpretation we would have placed on the sentence even if it were ambiguous, for, the presumption would be that it was intended to be in conformity with the law and not to contravene it. In fact, learned counsel for the State does not urge that it derogated from the constitutional provision above cited.

(7) As the petitioner was not given a month's notice or a month's salary in accordance with the terms and conditions of his service as contained in the appointment letter and as no real opportunity to defend himself was afforded to him, the impugned order must be held to be illegal. Accordingly the appeal succeeds and is accepted and the impugned order is quashed. The parties are, however, left to bear their own costs.

H.S.B.

APPELLATE CRIMINAL

Before S. S. Sandhawalia and S. C. Mital, JJ.

M. M. PASRICHA,—Appellant.

versus

THE STATE OF PUNJAB —Respondent.

Criminal Appeal No. 220 of 1977

August 10, 1977.

Code of Criminal Procedure (2 of 1974)—Section 344—Accused denying the charge of giving false evidence—Court convicting the accused after recording his statement—Procedure prescribed for summary trials not followed—Such conviction—Whether sustainable.