

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

1.SWP No. 755/2005
CMA Nos. 2900/2007 & 2383/2006

2.SWP No. 2266/2007
CMA No. 3292/2007

Date of Decision:

30.12.2013

Sh. Hanef.

vs.

Union of India and ors.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir, Judge.

Appearing Counsel:

For the Petitioner(s) : Mr. Navneet Dubey, Advocate.

For the Respondent(s) : Mr. Ajay Sharma, CGSC.

i) Whether approved for reporting
in Press /Media : Yes/No.

ii) Whether to be reported in
Digest/journal : Optional.

1. Admittedly, petitioner has been enrolled as Safai Karamchari in Station Headquarter Nagrota of 16 Corps C/o 56 APO on 10.11.1982. When his juniors were regularized, he filed SWP No. 1793/2001 seeking regularization of his services on completion of five years of his enrolment particularly, from the date his juniors have been declared permanent. Said writ

petition has been dismissed as withdrawn vide order dated 13.05.2008. In the reply filed by the respondents in the above referred two writ petitions, SWP No. 1793/2001 has been stated to be pending which is not correct.

2. Petitioner has filed one more writ petition, SWP No. 755/2005 with the same prayer as made in the disposed of writ petition, SWP No. 1793/2001. It is during the pendency of the said writ petition, order impugned dated 22.12.2007 has been passed, in terms whereof, his services have been terminated. As against the said termination order, petitioner has filed another writ petition, i.e., SWP No. 2266/2007, seeking quashment of the order of termination and reinstatement as Safai Karachari with effect from 22.12.2007 with all consequential relief as well as damages.
3. It is projected that the order of termination has been passed without holding any departmental enquiry or serving any charge sheet ignoring the fact that the petitioner by rendering 25 years of continuous service is deemed to have acquired the status of a permanent employee.

The order is in violation of the Central Civil Services (Temporary Service), Rules. Neither notice of one month, as required under Rule 5 of CCS (Temporary Service) Rules nor any pay and allowances has been paid in lieu of one month's notice.

4. It is further projected that the petitioner was the President of the Union under the name and style of M/s. Civilian Defence Workmen Union Nagrota, Jammu. His activities for ensuring welfare of the Civilian Defence Workers irked the respondents and in turn with the object of wrecking vengeance, so many methods have been adopted to deprive the petitioner of his livelihood. Rendering of twenty five years service has been set at knot in a manner which is not only illegal but unconstitutional as well.
5. Respondents in the reply, as filed, have stated that the petitioner was engaged as Conservancy Safaiwala (Casual Worker) with effect from 10.11.1982. Government of India, vide Office Memorandum No. 51016/2/90-Estt (C) dated 10th September, 1993, formulated a Scheme for grant of temporary status and regularization of

casual workers, copy of the Office Memorandum is placed on record.

6. On the basis of said Office Memorandum, case of the petitioner was considered but not recommended by the Board of Officers held on 16.09.2012 because of unsatisfactory shoddy antecedents. Case of the petitioner was considered for regularization again by the Board of Officers on 20.11.1996 and 12.03.2005 respectively. The petitioner was arrested by the Joint Interrogation Centre, Jammu under TADA on 16.9.1992. Since no incriminating evidence had emerged against him as confirmed by TADA Court, his suspension was revoked on 02.07.1996. In the year 1996, case of the petitioner for regularization was turned down on the plea of he being of casual status and that he should have been discharged from service immediately on his arrest instead of placing him under suspension, which needs to be regularized under the orders of the competent authority.
7. Board proceedings held on 28.01.2004 for his conversion into regular temporary were

forwarded to Headquarter Northern Command by HQ 16 Corps GS (SO) on 12.03.2005 for obtaining sanction of the competent authority. The case was under process. Meanwhile, petitioner filed writ petition seeking regularization which is pending adjudication. It is further stated that the petitioner has been paid pay and allowances for one month period.

8. The star question which emerged for consideration is as to whether order of termination impugned is valid or not. The respondents being disciplined Force cannot compromise on the security and a person working in Defence Force must be above suspicion.
9. It appears that the case of the petitioner has been brought within suspicion zone so as to pave the way for his exit. If the petitioner would have been so suspicious, respondents would not have permitted him to render service for twenty five years. He has been President of the Union, if on that basis, his activities have irked the respondents, that was not a valid ground for

showing exit to the petitioner and deprive him of his livelihood.

10. The facts and circumstances, as emerged from the records available, reveal that the petitioner has not been dealt with in a fair manner. On the basis of verification of his credentials dated 2nd November, 2007, his services have been terminated. In the verification report, it has been recorded that the petitioner has been a temporary employee at the Station Headquarter Nagrota since 1982. Discreet investigation of his antecedents reveals that he is quite active among the conservancy staff and plays a lead role in minor instigation. Case has been registered against the petitioner. It has also emerged that the petitioner has registered a case in court against adhoc Station Headquarter Nagrota with regard to his regularization. He has been arrested by the Police under TADA(FIR No. 3/92 US $\frac{3}{4}$ TADA Act and 1/92 U/S $\frac{3}{4}$ TADA Act). He was under custody at JIC Jammu from 16th September 1992 to 2nd July, 1996. He is reported to have divulged that he was closely associated with the outfit "Akhwan-Ul-

Musalmeen” and used to send youth across the border to POK for subversive training. He is also stated to have admitted that he had planned a car bomb blast on the day of Janamashtami, details of the same could not be ascertained. The subject could not be convicted due to lack of evidence and released in the said case. Finally, he has been assessed to have dubious past and at present his involvement with ANE/terrorist organization cannot be ruled out. His employment may pose security threat. Then it has been recommended that local police shall be taken into confidence to monitor his activities and detect involvement in undesirable acts.

11. Petitioner, no doubt, is shown to have been involved in FIR Nos. 3/92 and 1/92 but fact of the matter is that nothing was established against him, i.e., during investigation, he has been granted the benefit of Section 169 Cr.P.C. Closure report of the case has been accepted by the TADA Court. The said registration of the case appears to have been with some object which fact is exposed, i.e., if in the year 1992,

petitioner was involved under TADA act why the respondents have permitted him to continue to work in the Headquarter Nagrota up to 2007. If the petitioner had any link with any terrorist organization or Anti National Elements, why same have not been exposed are established. Simply to give a name to a particular person and to punish him is not enough. If a person is involved in terrorist activities, he has to be dealt with iron hand. There can be no compromise on that. But only in the name of so called terrorist act, a person cannot be punished by depriving of his livelihood. If a person had dubious past, then the respondents would not have tolerated him for twenty five years. This shows that petitioner being President of the Civilian Defence Workers, has irked the respondents. When the petitioner has become the President, copy has been circulated to all the respondent-authorities in the year 2002. The Civilian Defence Workers Union, has been registered under the Indian Trade Union, Act, 1926 vide Registration No. LC/TU/1132 dated 27.06.2002

in the name and style of M/s. Civilian Defence Workers Union, Nagrota, Jammu.

12. The officer verifying the credentials of the petitioner has recommended on 22.12.2007 to take local police into confidence so as to detect involvement of the petitioner in undesirable acts, what follow up has been there. Nothing in this direction has been brought on record, instead, simply on 22.12.2007, his services have been terminated, which act of the respondents appears to be arbitrary.
13. Contention of counsel for the petitioner that as per Rule 5 of CCS (Temporary Service) Rules before terminating the services, one month's notice should have been given amount of his pay and allowances for the period of notice should have been paid to him, is answered, i.e., in the reply, it has been stated that his services have been terminated forthwith and the amount has been paid to him in keeping with the proviso to Sub-clause (b) of Sub-Rule 1 of Rule 5 of CCS (Temporary Service) Rules.
14. Contention of learned counsel for the respondents, Mr. Sharma that the petitioner was

a casual worker, therefore, is not entitled to the protection available to temporary services runs contrary to the stand taken by the respondents because in the order impugned, it has been recorded that in pursuance of proviso to Sub-rule (1) of Rule 5 of the CCS (Temporary Service) Rules, 1965, services of the petitioner are terminated. He shall be paid sum equivalent to the amount of his pay plus allowances for the period of notice, which means that the Rules are applicable.

15. In addition to the aforesaid position, an important position which has emerged is that the respondents in their reply have stated that Board proceedings held on 28.01.2004 for conversion of service into regular temporary service were forwarded to the Northern Command by 16 Corps on 12.03.2005 for obtaining sanction of the competent authority. His case has been stated to be under process but the petitioner has filed the writ petition for regularization, which means that respondents were considering regularization of the petitioner, that too, in the year 2005, which

means that the position of the registration of the case in the year 2002 was ignored, rightly so, because on own showing by the respondents, case had been closed by the Investigating Agency, as not proved.

16. No new facts and circumstances have emerged which would warrant termination of the services of the petitioner. The order of termination impugned appears to have been passed in hot haste and appears to have been passed in an arbitrary manner, which order offends the right guaranteed to the petitioner and also offends the principles of natural justice, as such, is unsustainable, so is quashed.
17. Since the case of the petitioner for regularization is pending consideration on own showing by the respondents, as referred to hereinabove, same shall be considered and appropriate orders thereon shall be passed.
18. Respondents shall also be at liberty to look into the desirability of the petitioner for continuance in the department which shall also be in-keeping with the Rules, twenty five years of

service rendered by the petitioner, in the process, shall be kept in view.

19. Both the two petitions are clubbed and disposed of as above with a further direction to the respondents to allow the petitioner to render his service.
20. SWP No. 1793/2001 seeking regularization of the services of the petitioner was called for from the Registry, wherefrom, it is found that same stands dismissed as withdrawn vide order dated 13.05.2008.
21. Record of the said writ petition be sent back to the Registry for follow up.

(Mohammad Yaqoob Mir)
Judge

Jammu:
30.12.2013
Tilak, Secy.