

A MADHYA PRADESH HASTA SHILPA VIKAS NIGAM LTD.

v.

DEVENDRA KUMAR JAIN AND ORS.

DECEMBER 7, 1994

B [S.C. AGRAWAL AND FAIZAN UDDIN, JJ.]

C *Service Law : Termination—Appointments made on temporary basis—Termination of services—Whether necessary to follow formalities contemplated by Art.311 of the Constitution- Held : No—Projects not economically beneficial and likely to result in loss—Govt. Corporation justified in not giving effect to the project and in issuing instructions not to appoint staff for such project without prior approval.*

D The Managing Director of the appellant— Company appointed the Respondents as Junior Managers. It was later on noticed that the appointments were made in contravention of Government order dated 1.4.89, without the approval of the Government. Therefore, the successor, Managing Director terminated the services of the respondents on 31.7.89. Respondents challenged their termination before the High Court and it quashed the termination order. It also directed that the respondents would continue in service till their services were not validly terminated. Hence this appeal by the
E appellant company.

Allowing the appeal, this Court

F HELD: 1.1. The order passed by the High Court quashing the termination of service of the respondents cannot be sustained. [349 D]

G 1.2 A plain reading of the two appointment orders would show that the appointments were made purely on temporary basis and their services were liable to be terminated at any time without notice or assigning any reason. In the case of appointment on temporary basis a servant who is so appointed does not acquire any substantive right to the post, even though the post itself may be permanent and it is an implied term of such appointment that it may be terminable at any time and without notice. A temporary Government servant does not become a permanent Government servant unless he acquires that capacity by force of any rule or he is declared or appointed as a
H permanent servant. [348 B, C]

1.3. In the present case there is no rule under which the respondents may be deemed to have become permanent by force of such rule nor they were so declared by any subsequent order of the appellant company to have acquired that status. On the contrary the respondents all along continued to be temporary. In such a case it is not necessary to follow the formalities contemplated by Article 311 of the Constitution. In these facts and circumstances, the High Court was not right in holding that the respondents were entitled for being heard before passing the said order of termination of their services and that the order of termination was bad in law on that account. [348 D, E]

2. The appellant corporation is a Government company fully financed by the State Government and that being so the Government would be very much concerned to see that any project which is not economically beneficial for the corporation and which is likely to result in any loss should not be given effect to. The Government, therefore, would be justified in issuing instructions that no appointments of any staff in connection with the said project will be made without the approval of the Board of Directors. It appears that the High Court ignored the said order of the State Government while observing that no material in support of the contention that the Government has issued instructions not to make appointment was produced by the appellant. [349 A to C]

3. It is noteworthy that the then Managing Director himself was retiring on 31.7.89 and in hot haste he issued the orders of appointment of the respondents on 6.7.89 and 8.6.89 inspite of the instructions of the State Government to the contrary. [349 D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8923 of 1994.

From the Judgment and Order dated 1.12.93. of the Madhya Pradesh High Court in M.P.No.3973 of 1989.

Shankar Lal and B.S.Banthia for the Appellant.

A.K.Chitale, Parkash Srivastava, Pratibha Jain and Sushil K. Jain for the Respondents.

The Judgment of the Court was delivered by.

FAIZAN UDDIN, J. 1. Leave granted

- A. 2. The appellant is a Government Company within the meaning of Section 617 of the Companies Act which is controlled and owned by the State Government and a subsidiary company of M. P. Laghu Udhog Nigam Limited which is carrying on business activities of development of handicrafts and handloom products. At the relevant time one Shri K. P. Thakur was the Managing Director of the appellant Company who by an order dated 6.7.89 Annexure -D appointed the respondents No.1 to 3, namely, Devendra Kumar Jain, Dilip Goel and Promod Mishra as temporary Jr. Manager and by subsequent two orders both dated 8.6.89 (Annexure-E/1 and 2), appointed the respondents No. 4 and 5, namely, Mehboob Hussain and Liaquat Mohd. Khilzi as temporary Junior Managers in the appellant company. Soon after their appointment the appellant company noticed that the aforesaid appointments of respondent No. 1 to 5 were made by the then Managing Director, Shri K. P. Thakur in contravention of the Government of the State Government and therefore, another managing Director successor Shri K. P. Thakur by order dated 31.7.89 terminated the services of the respondents No.1 to 5. The respondents challenged the aforesaid order of termination in the High Court of Madhya Pradesh in Miscellaneous Petition No. 3973/83 which was allowed by judgement dated 1.12.93 where by the order of termination of the respondents was quashed. It has been directed that the respondents will continue in service till their services are not validly terminated. It is this order which has been challenged in this appeal.
- E 3. The High Court quashed the order of termination of service of respondents mainly on two grounds: Firstly, the High Court took the view that the respondents services were terminated without giving them any opportunity of hearing in consonance with the rules of natural justice and, therefore, the order of termination of service was contrary to law and violative of Article 14 of the Constitution and ; secondly Government approval was not necessary for the appointment as contended by the appellant and that in any case no material was placed to show that the appointment was contrary to the Government instructions. In our considered opinion the High Court fell in serious error in taking the aforesaid view and, therefore, the order of the High Court could not be sustained in law.
- F 4. Admittedly the appointment of the respondents was made purely on temporary basis which is evident from the order of their appointment. The first order dated 6.7.89 Annexure-D by which the respondents No. 1 to 3 were appointed reads as follows :
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ORDER

A

"The following persons are appointed to the post of Junior Manager in the Pay Scale of 1290-30-1560-40-2040 from the date of taking over, till further orders temporarily and are posted to the Headquarters :—

1. Shri D. K. Jain

B

2. Shri Pramod Mishra

3. Shri Dilip Kumar Goyal

2. Employee has to submit Medical Fitness Certificate from Civil Surgeon of the District.

C

3. Dearness Allowance and other facilities according to the rules of the Corporation shall be payable.

Above appointments are purely temporary and are liable to termination without notice or assigning any reason.

D

By order of Managing Director

GENERAL MANAGER

Hastashilp Vikas Nigam Ltd., Bhopal"

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6.7.89

The Subsequent two orders both dated 8.6.89 with regard to the appointment of respondents No. 4 and 5 are identical one of which is reproduced here in below :-

6.7.89

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ORDER

"Shri Mohammad Hussain is appointed to the post of Junior Manager in the Pay Scale of 1290-30-1560-40-2040 from the date of taking over, temporarily and posted at Headquarters.

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Employee has to obtain Medical Fitness Certificate from Civil Surgeon and submit to office.

Dearness Allowance and other facilities according to the rules of the Corporation shall be payable.

H

- A Above appointment is purely temporary and is liable to termination at any time without notice or assigning a reason.

GENERAL MANAGER "

- B 5. A plain reading of these two order will go to show that the appointments were made purely on temporary basis and their services were liable to be terminated at any time without notice or assigning any reason. In the case of appointment on temporary basis a servant who is so appointed does not acquire any substantive right to the post, even though the post itself may be permanent and it is an implied term of such appointment that it may be terminable at any time and without notice. A
- C temporary Government servant does not become a permanent Government servant unless he acquires that capacity by force of any rule or he is declared or appointed as a permanent servant. In the present case there is no rule under which the respondents may be deemed to have become permanent by force of such rule nor they were so declared by any
- D subsequent order of the appellant company to have acquired that status. On the contrary the respondents all along continued to be temporary and according to the terms of the order of appointment their services could be terminated at any time without any notice or assigning any reasons. In such a case it is not necessary to follow the formalities contemplated by Article
- E 311 of the Constitution. In these facts and circumstances the High Court was not right in holding that the respondents were entitled for being heard before passing the said order of termination of their services and that the order of termination was bad in law on that account.

- F 6. As regards the second ground the learned counsel appearing for the appellant contended that the appellant-corporation had prepared a project in January 1980 (a copy of which is filed as Annexure-A in this appeal) for the development of handicrafts through Exhibitions and proposed that five officer's of junior manager rank and some sales-girls/sales-men be appointed in that connection. But when the Government came to know about the said project it disapproved the same by order dated 1.4.89
- G (Annexure-B) and directed that no appointments shall be made to the said post without obtaining prior approval of the State Government. The learned counsel for the appellant, therefore, contended that the appointment of the respondents was made against the directions of the State Government and while quashing the order of the termination the High Court did not take into
- H consideration the said directions of the State Government.

7. It may be pointed out here that the appellant-corporation is a Government company fully financed by the State Government and that being so the Government would be very much concerned to see that any project which is not economically beneficial for the corporation and which is likely to result in any loss should not be given effect to. The Government, therefore, would be justified in issuing instructions that no appointments of any staff in connection with the said project will be made without the approval of the Board of Directors of M. P. Hasta Shilpa Vikas Nigam Limited and passed the order to that effect which has been filed as Annexure-B in this appeal. But it appears that the High Court ignored the said order of the State Government while observing that no material in support of the contention that the Government has issued instructions not to make appointment was produced by the appellant.

8. It is noteworthy that Shri K. P. Thakur, the then Managing Director himself was retiring on 31.7.89 and in hot haste he issued the orders of appointment of the respondents on 6.7.89 and 8.6.89 inspite of the instructions of the State Government to the contrary. In these facts and circumstances the impugned order passed by the High Court quashing the termination of service of the respondents can not be sustained.

9. In the result the appeal succeeds and is hereby allowed. The impugned order dated 1.12.93 passed by the High Court in Misc. Petition No. 3973/89 is set aside and the said writ petition is dismissed but without any order as to costs.

G.N.

Appeal allowed.