

CASE NO.:
Appeal (civil) 5064 of 2007

PETITIONER:
State of Haryana & Ors

RESPONDENT:
Navneet Verma

DATE OF JUDGMENT: 31/10/2007

BENCH:
Tarun Chatterjee & P. Sathasivam

JUDGMENT:
JUDGMENT
(Arising out of SLP (C) No. 23499 OF 2004)

P. Sathasivam, J.

- 1) Leave granted.
- 2) Whether the abolition of the post has been done in good faith or whether it is a camouflage to cover up and conceal the real intention of weeding out the respondent from service is the only question to be decided in this appeal.

BRIEF FACTS:

3) The respondent-herein was appointed as Accounts Executive in the Haryana Bureau of Public Enterprises (in short 'the HBPE') on 16.07.1993. While continuing so, his services were terminated on 31.12.1994 on the ground that the post of Accounts Executive has been abolished. According to the respondent-herein, the third appellant applied for the post of Financial Adviser. Even though she did not fulfill the prescribed requirement of three years experience after doing chartered accountancy, she had been appointed as Financial Adviser and the respondent-herein who was appointed as Accounts Executive was required to report to her due to which she wanted him to work as her personal staff. He did not carry out petty directions. When he brought these facts to the notice of the Member Secretary, HBPE, he wanted him to resign the job. The Member Secretary and the Financial Adviser seemed to have different attitude and started planning to eliminate him. Having no other option, on 26.07.1994, he made a representation to the then Chief Minister of Haryana. In the meanwhile, the Financial Adviser 'third appellant herein lodged a false and baseless complaint against him to the Member Secretary. Based on the complaint of the Financial Adviser, a preliminary inquiry was conducted. However, no action was taken against him on the basis of the report of the Inquiry Officer. But instead of taking any action, in accordance with law, his services have been dispensed with consequent upon the abolition of the posts of Accounts Executives.

4) According to the respondent, there is no justification for abolition of the posts of Accounts Executive and it was done with a malafide intention to dispense with his services without any basis. Though two posts of Accounts Executives were advertised, only one post was filled up by appointing him. Thus, according to him, the post was not abolished in good faith, but this was a device to weed him out from service. Therefore, the order of termination on the ground of abolition of post is liable to be set aside.

5) It is the case of Haryana Government and HBPE that the abolition of posts of Accounts Executives was not done with mala fide intention or extraneous reasons. According to them, in January, 1994, it was felt that the work of Bureau was not being performed as per official requirements and it required restructuring of the staff vis-à-vis the work load of the Bureau and it was observed that the contribution of two posts of Accounts Executives, especially, when there are two posts of Accountants were not result oriented and the work could smoothly be carried out even without the two posts of Accounts Executives. It was further stated that the Accountants can send their case directly to the Financial Advisor, who was the head of the financial wing in giving advice regarding financial offers. Consequently, two posts of Accounts Executives were abolished and services of the respondent were terminated as he was no longer required.

6) Though a complaint was received from the Financial Adviser regarding mis-behaviour by the respondent-herein, preliminary inquiry was conducted into the allegations made, but no action was taken and the preliminary inquiry has no relevance with regard to the decision taken on the abolition of the posts. The said decision was taken to abolish the posts of Accounts Executives after obtaining permission of the government.

7) The Learned Single Judge of the Punjab and Haryana High Court, after finding that the abolition of posts of Accounts Executives have not been done in good faith but only intended to get rid of the respondent-writ petitioner herein, quashed the order dated 30.12.1994 abolishing the posts of Accounts Executive and consequential termination of services of the writ petitioner. In the same order, the learned Judge issued direction for reinstatement with all consequential benefits. The said order was challenged by the Government of Haryana, HBPE as well as Smt. Kiran Lekha Walia, Financial Adviser, HBPE in Letters Patent Appeal No. 163 of 1999. The Division Bench, by impugned order, accepted the conclusion arrived at by the learned Single Judge and finding no merit in the appeal dismissed the same with no order as to costs. Questioning the order of the High Court, the appellants have filed the above appeal by way of special leave.

8) We have heard Mr. P.N.Misra, learned senior counsel, appearing for the appellants and Mr. M.K.Dua, learned counsel, appearing for the respondent.

9) As observed earlier, we have to find out whether the abolition of posts of Accounts Executive has been done in good faith or whether it is a camouflage to cover up and send out the respondent-herein from service.

10) Before proceeding to ascertain the answer for the above question, it is useful to refer to the appointment order of the Government of Haryana dated 13.07.1993 wherein the respondent-herein was appointed as Accounts Executive in HBPE. Among the other terms, clause 2 of the said order is relevant which reads as under:-

“This offer of appointment is purely against temporary post which is liable to be abolished at any time and carries no promise of subsequent permanent employment. No offer of permanent vacancy can be made to him at present.

Consequently his services can be terminated without notice whenever there is no vacancy against which he can be retained.”

It is clear that the respondent-herein was appointed purely against temporary post and it is liable to be abolished at any time. The said clause makes it clear that the post has no

assurance or promise for a permanent employment. It also makes it clear that his services can be terminated without notice whenever there is no vacancy against which he can be retained. Now, with this background, let us consider the law laid down by this Court with regard to power of the Government in abolishing temporary/permanent post.

i) M. Ramanatha Pillai vs. The State of Kerala and Another, (1973) 2 SCC 650, a Constitution Bench of this Court held as under:

\02323. A post may be abolished in good faith. The order abolishing the post may lose its effective character if it is established to have been made arbitrarily, mala fide or as a mask of some penal action within the meaning of Article 311(2).\024

ii) Shri Kedar Nath Bahl vs. The State of Punjab and Others, (1974) 3 SCC 21, a three-Judge Bench of this Court held in para 11 as under:

\023\005 \005 \005.If, in the interest of the Administration, the temporary post is abolished, the question as to what were the personal relations between the appellant and his superiors was irrelevant. Moreover, all that the appellant has been able to say is that his immediate superiors in the Department were with the action of his immediate superiors but the action of the Government. The decision to discontinue the post was the decision of the Government and it is not alleged in the Writ Petition that in taking this decision the Government acted malafide. We, therefore, agree with the High Court that there is no substance in the allegation that the post was discontinued or abolished in order to punish the appellant.

iii) State of Haryana vs. Shri Des Raj Sangar and Another, (1976) 2 SCC 844, this Court, in para 8, has held:
\023\005. \005 \005 The fact that the post to be abolished is held by a person who is confirmed in that post and the post which is not abolished is held by a person who is not permanent would not affect the legality of the decision to abolish the former post as long as the decision to abolish the post is taken in good faith.\024

iv) Dr. N.C. Singhal vs. Union of India and Others, (1980) 3 SCC 29. Similar issue was considered in detail. Accepting the stand of the Government of India in abolishing the post, this Court held thus:

\02318. \005 \005 \005 The need for the post of the requirements of the hospital, or the need for an ad hoc or additional appointment is a matter which the Government is competent to decide and in the absence of requisite material the Court cannot interpose its own decision on the necessity of creation or abolition of posts. Whether a particular post is necessary is a matter depending upon the exigencies of the situation and administrative necessity. The Government is a better Judge of the interests of the general public for whose service the hospitals are set up. And whether a hospital catering to the needs of general public providing medical relief in different specialities has need for a particular post in a particular speciality would be better judged by the Government running the hospital. If Government is a better judge it must have the power to create or abolish the posts depending upon the needs of the hospital and the requirements of general public. Creation and abolition of posts is a matter of Government policy and every sovereign Government has this power in the interest and necessity of internal administration. The creation or abolition of post is dictated by policy decision, exigencies of circumstances and

administrative necessity. The creation, the continuance and the abolition of post are all decided by the Government in the interest of administration and general public (see M. Ramanatha Pillai v. State of Kerala.) [1974] 1 S.C.R. 515 at 520. The Court would be the least competent in the face of scanty material to decide whether the Government acted honestly in creating a post or refusing to create a post or its decision suffers from mala fide, legal or factual.\024

v) In the recent decision - Avas Vikas Sansthan and Another vs. Avas Vikas Sansthan Engineers Assn. and Others, (2006) 4 SCC 132, analyzing all earlier decisions, this Court has concluded:

\02359. It is well settled that the power to abolish a post which may result in the holder thereof ceasing to be a Government Servant has got to be recognized. The measure of economy and the need for streamlining the administration to make it more efficient may induce any State Government to make alterations in the staffing pattern of the civil services necessitating either the increase or the decrease in the number of posts or abolish the post. In such an event, a Department which was abolished or abandoned wholly or partially for want of funds, the Court cannot, by a writ of mandamus, direct the employer to continue employing such employees as have been dislodged.\024

11) We summarize the power of government in abolishing a post and role of the court for interference:

a) the power to create or abolish a post rests with the government;

b) whether a particular post is necessary is a matter depending upon the exigencies of the situation and administrative necessity;

c) creation and abolition of posts is a matter of government policy and every sovereign government has this power in the interest and necessity of internal administration;

d) creation, continuance and abolition of posts are all decided by the government in the interest of administration and general public;

e) the court would be the least competent in the face of scanty material to decide whether the government acted honestly in creating a post or refusing to create a post or its decision suffers from malafide, legal or factual;

f) as long as the decision to abolish the post is taken in good faith in the absence of material, interference by the court is not warranted.

12) With the above principles, let us consider whether the abolition of the posts of Accounts Executives are justified and consequential order of termination terminating the respondent-herein from the said post is sustainable.

13) The main grievance of the respondent herein was that since he was also equally qualified as that of Financial Adviser, appellant No.3 herein, she was not in favour of continuing him in HBPE as Accounts Executive. The other grievance was that appellant No.3 used to humiliate by insulting him. According to him, instead of taking any action against him under the service Rules, his services have been dispensed with by abolishing the post of Accounts Executive. In other words, it is his specific case that the abolition of post of Accounts Executive was done with a mala fide intention to dispense with his service without any basis. The materials placed before the High Court as well as this Court show that HBPE as well as the Financial Adviser denied those allegations. In the light of the complaint, allegations and counter allegations, we verified the relevant records which are

available in the paper book. The first complaint (Annexure R1) dated 15.09.1993 shows that there was some misunderstanding between the Accounts Executive and Financial Adviser, however, scrutiny of the said complaint clearly shows that only Personal Assistant to Financial Adviser was responsible for the alleged misbehaviour. In the complaint, Accounts Executive has specifically stated, "The P.A. attached to the F.A. grossly misbehaves and uses foul and abusive language on the instigation of the F.A." We also perused the letter of the Member Secretary, HBPE dated 21.09.1993 addressed to the Accounts Executive and subsequent correspondence which are available in the appeal paper book. As observed earlier, though certain misunderstanding arose between the Accounts Executive and the Financial Adviser, it is impossible to believe that for this reason the Government abolished the post of Accounts Executive and consequently terminated the service of the respondent herein.

14) Learned senior counsel appearing for the appellants, by placing relevant materials, submitted that taking note of lesser activities of HBPE and after assessing the work load as well as sanctioned staff and after full deliberations by responsible officers, it was recommended to the Government for abolition of two posts of Accounts Executives. On accepting the recommendations of the Committee constituted by HBPE, the Government passed an order according sanction to abolish two temporary posts of Accounts Executives sanctioned for HBPE from 31.12.1994 (A/N) vide order dated 30.12.1994 (Annexure R-13). The said Government Order was issued in the name of Governor of Haryana and with the concurrence of Finance Department. Based on the said decision of the Government and in view of Condition No.2 of the appointment letter of the respondent bearing No. 2/8/88-Estt-1 dated 13.07.1993, his services has been terminated from 31.12.1994 (AN). In paragraph supra, we already referred to Condition No.2 of the appointment order which makes it clear that the appointment of the respondent was fully against temporary post and the same is liable to be abolished at any time and without notice. In such circumstances, we are unable to accept the claim of the respondent that there was no bona fide in terminating his service and the High Court has committed an error in accepting the said claim.

15) It is also relevant to point out that by office order dated 05.08.1994 HBPE has earmarked various types of works/subjects to be handled by Financial Adviser, 3rd appellant herein, and Accounts Executive, respondent herein. A perusal of the said office order, filed as Annexure R-7 in the appeal paper book, clearly demarcates various types of work to be handled by the Financial Advisor and the Accounts Executive. Learned senior counsel appearing for the appellants has also brought to our notice various minutes of the meetings and the ultimate decision by HBPE for pruning their staff considering less work load and present position of the staff sanctioned. Proceedings dated 12.01.1994 (Annexure R-3) shows that in order to assess the work load and present position of the staff sanctioned for the HBPE a meeting of the officers of the Bureau was held by the Chairman, HBPE on 11.09.1994 in which the Member Secretary, Personnel Adviser, Financial Adviser and Assistant Research Officer of HBPE were participated. In the said meeting, the Chairman felt that the work of the Bureau was not being performed as per its mandate and suggested some restructuring of staff vis-à-vis the workload of the Bureau. He further observed that when there are three professional posts to handle the financial affairs, Management Affairs and Personnel Affairs of all the

State Public Enterprises then there was no necessity of having two posts of Accounts Executives having the similar qualifications and experience as the Financial Adviser. It was also suggested that in the next officers' level meeting, the complete restructuring of staff vis-à-vis officers oriented nature of work of the Bureau and sanctioned staff may be put up with details. Thereafter on 11.04.1994 (Annexure R-4), a meeting was held. The minutes of the meeting shows that the details of the sanctioned staff, work load and re-structuring was discussed in detail. It further shows that the instructions on economy in expenditure issued by the State Government from time to time were also brought to the notice of the Chairman for which he desired that these should also be made applicable for the staff of the Bureau. The Chairman had also made clear that the Bureau should not have excess staff as compared to the work load. In the said meeting while assessing the work load and staff in the Financial Wing, it was observed that the contribution of two posts of Accounts Executives especially when there are two posts of Accountants was not result oriented and the work can smoothly be carried on even without the two posts of Accounts Executives. The Chairman desired that MS/HBPE should assess the work load and the staff strength of Finance and Accounts Wing and discuss in detail in the next officers level meeting. It is also relevant to point out that before taking final decision; the respondent herein by letter dated 26.07.1994 made a complaint to Hon'ble the Chief Minister of Haryana about his difficulty in working as an Accounts Executive with HBPE which is annexed as Annexure R-5. The complaint makes it clear that the Accounts Executive had some grievance against the Member Secretary and the Financial Advisor regarding the distribution of work. Further materials placed show that on the basis of the complaint, a preliminary enquiry was conducted and ultimately no action was taken based on the same. Finally, as stated earlier, after getting all the required details regarding the work load and sanctioned staff of HBPE and on the basis of the report of the Committee, a decision was taken by the Chairman that there was no requirement for two posts of Accounts Executives and can be abolished without affecting the work of the Bureau. Based on the said decision, the Government while accepting the same accorded sanction to abolish two temporary posts of Accounts Executives sanctioned earlier. In those circumstances, it is impossible to accept the stand of the respondent herein that the posts of Account Executives were abolished in order to terminate him from the said service. We are of the view that the High Court has committed an error in accepting the claim of the respondent herein.

16) Rejoinder affidavit filed on behalf of the HBPE before this Court clearly shows the various steps taken by the Committee and the ultimate decision of the Chairman for reduction of the staff strength. It is specifically stated in the reply that in accordance with the instructions of the Government, the requirement of posts for HBPE has been reviewed from time to time and various posts have been abolished even after the decision to abolish two posts of Accounts Executives. The information about the abolition of the various posts given in the rejoinder affidavit dated 20.07.2005 is relevant which reads as under:

S.No.

Name of the Post

No. of posts

Date of abolition

1.

Accounts Executive

2
31.12.1994

2.
Senior Research Officer

1
29.6.1999

3.
Assistant Research Officer

1
28.8.2000

4.
Asstt. District Attorney

1
1.3.2000

5.
Computer Operator

1
1.6.2001

6.
JSS/Steno Typist

4
31.12.94/22.10.2001

7.
Clerk

1
22.10.2001

8.
Peon

4
31.12.94/22.10.2001

9.
Personnel Advisor

1
14.5.2004

10.
Accountant

1
14.5.2004

It is clear from the materials placed in the rejoinder affidavit that the Government of Haryana has been making earnest efforts to control its non-planned expenditure. The rejoinder affidavit also shows that due to various efforts including the action taken by the HBPE non-planned expenditure has been substantially reduced. In the light of the particulars furnished, we are of the opinion that the decision to abolish the posts of Accounts Executives was taken on the basis of the overall assessment of the work load and staff requirement of the Bureau and the same was finally approved and sanctioned by the Government and consequent to the said decision, the service of the respondent herein was terminated. We hold that the entire action was taken in good faith and there is no substantial material to arrive at a conclusion that the abolition of the post was due to revenge against the respondent herein.

17) In the light of the above discussion, we are unable to accept the conclusion arrived at by the High Court and we are in agreement with the decision taken by the Bureau and the Government. Consequently, the orders passed by the High Court in L.P.A. No. 163 of 1999 dated 16.03.2004 and in C.W.P. No. 442 of 1995 dated 29.01.1999 are set aside. The appeal is, accordingly, allowed. There shall be no order as to costs.