(FULL BENCH)

Before B. C. Verma, C.J., S. S. Sodhi & G. C. Garg, JJ.

SANT RAM BHAL,—*Petitioner.*

versus

THE STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 8381 *of* 1991.

4th December, 1991.

Constitution of India, 1950—*Arts.* 14 & 226—*Reversion—Appointment on* ad hoc *basis as Veterinary and Livestock Development Assistant for a fixed tenure*—Ad hoc *appointment terminated and Government servant reverted to post of Bull Attendant*—Ad hoc *appointment acquires no right to hold post—Action is neither arbitrary nor unreasonable nor violative of Art.* 14—*Reversion is not illegal—However,* ad hocism *in matters of public appointments deprecated.*

Held, that the petitioner's services in terms of the appointment order could be terminated without assigning any reason or without any notice. In terms of that order, the petitioner had no right to the post of Veterinary and Livestock Development Assistant and that appointment could be terminated on the expiry of nine months or on the joining of the recommendee of the S.S.S. Board and without assigning any reason. All the same, such appointments do not confer any right on the appointees for regular appointment to such posts. (Paras 4 & 5)

Held, that by no means, we should be understood to support the *ad hocism* in the matter of public appointments, which practice, as the Supreme Court has observed, must be deprecated. The State Government should take steps within reasonable time to fill up all such posts by the due process. (Para 12)

This case was referred to larger Bench by Hon'ble Mr. Justice S. S. Sodhi & Hon'ble Mr. Justice G. C. Garg on 1st *October,* 1991 *for decision of an important question of Law that the petitioner be permitted to continue in service till a regular incumbent arrives. The full Bench consisting of Hon'ble Chief Justice Mr. B. C. Varma. Hon'ble Mr. Justice S. S. Sodhi & Hon'ble Mr. Justice G. C. GARG decided the case by expressing that by no means we should be understood to support the* ad hocism *in the matter of public appointments. which practice. as the Supreme Court has observed, must be deprecated. The State Government should take steps*

within reasonable time to fill up all such posts by the due process. We also record our appreciation for the valuable assistance rendered by the learned counsel for the parties.

Civil writ petition under Articles 226/227 of the Constitution of India praying that the writ petition may kindly be allowed and:

(a) *a writ in the nature of Certiorari may kindly be issued in favour of the petitioner and against the respondents quashing the order Annexure P/3,*

(b) *a writ in the nature of* Mandamus *may kindly be issued in favour of the petitioner and against the respondents directing the respondents to promote/appoint the petitioner to the post of Veterinary & Livestock Development Assistant with all consequential benefits and to allow him to hold the said post in view of his eligibility, merit and seniority,*

(c) *issue any other appropriate writ, order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the case in hand,*

(d) *dispense with the requirement of serving advance notices to the respondents as the matter is of urgent nature,*

(e) *dispense with the requirement of filing certified copies of the Annexures.*

(f) *Costs of this writ petition may be allowed.*

It is further respectfully prayed that pending the decision of the present writ petition, the petitioner may be allowed to hold the post of VLDA as various regular posts are still lying vacant in the Department.

Surya Kant, Advocate, *for the Petitioner.*

Jagdev Sharma, Addl. A.G., Haryana, *for the Respondents.*

JUDGMENT

B. C. Varma, C.J.

(1) The petitioner, was initially appointed as Bull Attendant in the Animal Husbandry Department of the State of Haryana. On successful completion of two years' training course, he was appointed Venterinary and Livestock Development Assistant,—*vide* order dated June 12, 1990, Annexure P. 2, "on *ad hoc* basis for a period of nine months as per instructions issued by the Chief Secretary to Government Haryana or recommendee of the S.S.S. Board joins whichever

is earlier." According to the terms of that appointment order, his services could be terminated without any notice or assigning any reason. No selection of candidates was made by the S.S.S. Board and as the period of nine months expired, the petitioner was reverted to his original post of Bull Attendant,—*vide* order dated March 14, 1991, Annexure P.3. Aggrieved by this order the petitioner approached this Court through this writ petition. Several other writ petitions have also been filed in this Court against similar orders and a few have been disposed of. In Civil Writ Petition 7123 of 1991, a Division Bench of this Court passed following order :—

> "After hearing the learned counsel for the parties, we dispose of this petition with the direction (that) the petitioner shall be permitted to continue till regular incumbent arrives."

When this writ petition came up for hearing before another Division Bench, it apparently did not appear to be agreeing with the aforesaid order dated September 19, 1991, passed by the other Division Bench and recommended the matter to be considered by a Full Bench for decision. This is how that matter has been placed before this Full Bench.

(2) Two quesions arise for consideration,—(i) Whether the appointment order, Annexure P.2, clothes the petitioner with any right to the post of Veterinary and Livestock Development Assistant to which the petitioner was promoted on *ad hoc* basis and on conditions specified thereunder; and (ii) whether the action of respondent No. 2 in terminating this appointment and in reverting the petitioner to his original post of Bull Attendant is arbitrary and unreasonable and consequenly is in breach of Article 14 of the Constitution of India.

(3) A temporary Government servant has no right to hold a post. His services can be terminated without assigning any reason, either under the terms of the contract providing for such termination or under the relevant statutory rules regulating terms and conditions of temporary Government servants. Termination of services *simplicitar* does not visit him with any evil consequences. In *Parshotam Lal Dhingra* v. *Union of India* (1), which still holds the field, the view expressed by the Constitution Bench is that evil consequences do not include the termination of services of a temporary Government servant in accordance with the terms and conditions of service. This view has been subsequently reiterated in *Jagdish Mitter* v. *The Union*

(1) 1958 S.C.R. 828.

of India (2), and *State of Punjab* v. *Shri Sukh Raj Bahadur* (3). All these authorities have again been referred to, considered and applied in a recent decision by the Supreme Court in the *State of Uttar Pradesh* v. *Kaushal Kishore Shukla* (4). The Hon ble Mr. Justice K. N. Singh (as his lordship then was), while delivering the judgment observed,—

> "Under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service."

We may also refer to a decision of a Division Bench of this Court in *Om Parkash Sharma* v. *State of Haryana* (5). In that case also, the appointment was for a period of six months and on *ad hoc* basis and the services were liable to be terminated without any prior notice. After referring to a decision of a Full Bench of this Court in *S. K. Verma* v. *State of Punjaab* (6), the Division Bench held that an *ad hoc* employee has no right to hold the post till the termination of his services for a valid justification and his services are liable to be terminated even otherwise without any prior notice in terms of his employment. In our opinion, the decision of the Supreme Court in *Kaushal Kishore Shukla's case* (supra) and the decision of this Court in *Om Parkash Sharma's case* (supra) furnish a complete answer to the first question.

(4) As we have seen above, the petitioner's appointment on promotion as Veterinary and Livestock Development Assistant,—*vide* Annexure P.2, was only on *ad hoc* basis and for a period of nine months or until such time as the recommendee of the S.S.S. Board joins, whichever is earlier. The petitioner's services in terms of the appointment order could be terminated without assigning any reason or without any notice. Apparently, therefore, in terms of the order, the petitioner had no right to the post of the Veterinary and Livestock Development Assistant and that appointment could be terminated on the expiry of nine months or on the joining of the recommendee of the S.S.S. Board and without assigning any reason. This is what exactly has been done,—*vide* Annexure P.3. The petitioner in our opinion, had acquired no right to hold that post.

(2) A.I.R. 1964 S.C. 449.
(3) 1968 (3) S.C.R. 234.
(4) 1991 (1) S.L.R. 606.
(5) 1981 (1) S.L.R. 314.
(6) A.I.R. 1979 P&H 149.

(5) We are aware of the Supreme Court decision in *Rattanlal* v. *State of Haryana* (7), wherein the policy of the State Government of *ad hocism* in public employment has been strongly deprecated. Nevertheless, circumstances may arise necessitating the appointment on *ad hoc* basis. It may be on account of the absence of necessary rules or non-availability of incumbents through due process of selection involving time; and exigencies of service may not allow the posts to remain unmanned meanwhile. All the same, such appointments do not confer any right on the appointees for regular appointment to such posts. Such appointments, as observed by the Division Bench of the Delhi High Court in *Kuldeep Chand Sharma* v. *Delhi Administration* (8), (a decision relied upon by the learned counsel for the petitioner), are in the nature of stop-gap arrangements. That decision itself is an authority for the proposition that an *ad hoc* appointee has no right to hold that post to which he is so appointed and may be reverted to the original position for valid reasons. As we have shown above, this stop-gap arrangement by *ad hoc* appointment can well be terminated in terms of the contract. The learned counsel for the petitioner relied on yet another decision in *Mrs. Anita* v. *State of Rajasthan* (9). This decision renders little assistance to the petitioner. In that case, the petitioner was appointed as a Lecturer in English and her appointment was terminated at the end of every academic session. She used to be reappointed at the beginning of the next academic session. Such process continued for long seven years. The Rajasthan Public Service Commission did not advertise the posts for regular appointment of Lecturers in English. It was under these circumstances that a division Bench of the Rajasthan High Court in that case directed that the petitioner be allowed to continue in service till the regularly recruited candidates became available by due process of selection by the Rajasthan Public Service Commission. The appointment in the present case is under entirely different circumstances. It is the terms of that appointment which govern the present case.

(6) This takes us now to the consideration of the second question.

(7) Learned counsel for the petitioner was at pains to argue that the respondent's action in terminating the petitioner's services as the Veterinary and Livestock Development Assistant, was wholly

(7) A.I.R. 1987 S.C. 478.

(8) 1978 (2) S.L.R. 379.

(9) 1991 (4) S.L.R. 145.

arbitrary and unreasonable and consequently infringed the rule enshrined in Article 14 of the Constitution of India. It was rightly pointed out that the judicial review of action involving public element is permissible on the ground of arbitrariness or unreasonableness or irrationality, and may be invalidated. The considerations based on Article 14 of the Constitution may not be excluded in contractual matters, as was pointed out by the Supreme Court in *Kumari Shrilekha Vidyarthi* v. *State of U.P.* (10). It was observed in that case that this may be more so when the modern trend is also to examine the unreasonableness of a term in such a contract where the bargaining power is unequal so that these are not negotiated contracts, but standard form contracts between unequals. Nevertheless, the Supreme Court observed,—

> "The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters..."

In paragraph 35 of the judgment in the abovesaid case, the well settled view on the scope of Article 14 of the Constitution is stated in these terms :

> "It is now too well-settled that every State action, in order to survive, must not be susceptible to the view of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is *sine qua non* to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in mind."

At the same time, the Supreme Court also held in that case that it was for the person alleging arbitrariness to prove it and that whether the impugned action is arbitrary or not, is ultimately to be answered on the facts and circumstances of a given case. The true import of arbitrariness is more easily visualised than precisely stated or defined. In that case, the Government terminated the assignments of all Government Advocates in the State of Uttar Pradesh irrespective of the fact whether their terms of appointment had expired or not. Under the relevant rules, a District Government Counsel could be appointed for a period of one after due selection by the Government. His term could be renewed for a period not

(10) 1990 (6) S.L.R. 1

exceeding three years. The appointments of all such incumbents were terminated irrespective of the fact whether their tenures had expired or not. Considering the provisions of the relevant rules, it was held that the appointment and engagement of District Government Counsel is not the same as that by a private litigant of his counsel and there is obviously an element of continuity of the appointment unless the appointee is found to be unsuitable either by his own work, conduct or age or in comparison to any more suitable candidate available at the place of appointment. So interpreting the rules, the Supreme Court found in that case a total non-application of mind to individual cases before issuing a general circular terminating all such appointments and this fact itself appeared to the Court to be eloquent of arbitrariness writ large on the fact of the circular. On these premises, that circular was quashed and the action of the State in terminating the appointment of the District Government pleaders by one general order was held to be arbitrary and unreasonable offending Article 14 of the Constitution. The learned counsel for the petitioner very strongly relied upon this decision. In the present case, we have demonstrated that the petitioner, in terms of the appointment order, had not acquired any right to continue on that post. His tenure was specified to be nine months or even earlier if the persons duly selected and recommended by the S.S.S. Board were available. There was no question of extension of such a term as was under the rules which governed *Kumari Srilekha Vidyarthi's case* (supra). The action in terminating such appointment and reverting the petitioner to his original post also cannot be said to be suffering from the vice of non-applicability of mind and, therefore, arbitrary, as was found in *Kumari Srilekha Vidyarthi's case* (supra). Here, the impugned order, Annexure P.3, indicates the natural consequences flowing from the terms of the *ad hoc* appointment for a fixed tenure under Annexure P.2. We are, therefore, of the opinion that the impugned order, Annexure P.3, does withstand all the tests laid down in *Kumari Srilekha Vidyarthi's case* (supra) and the action of the respondent cannot be said to be arbitrary or unreasonable.

(8) On behalf of the petitioner, it was submitted that after the petitioner was appointed as Veterinary and Livestock Development Assistant, a number of other persons have been similarly appointed. They, however, are continuing in service. The action of the respondent in terminating the petitioner's appointment and retaining his juniors is criticised as arbitrary on the principle of "last come first go." In our opinion, this argument is also misconceived. It could not be pointed out if any person so appointed has been retained after

the expiry of the term of his appointment mentioned in the appointment order. The petitioner, therefore, cannot be heard to make any grievance on this score. This contention is also rejected.

(9) Equally untenable is the argument that the petitioner has been deprived of a chance of being regularly selected to the post of the Veterinary and Livestock Development Assistant. No regular appointment so far has been made. If and when any such appointments are made, and if the petitioner does not get any chance or is deprived of his alleged right of being so selected for appointment, then and then alone, he may have a grievance to make on this account. (Indeed, a Division Bench of this Court in *Krishan Chand Goyal* v. *Punjab State* (11), has held that when the services of a temporary Government servant are terminated either in accordance with the conditions of appointment or service rules, while his juniors are retained in service, *per se*, it would not prove unequal treatment nor would it be violative of Articles 14 and 16 of the Constitution. No decision taking a contrary view has been cited before us. It is, therefore, futile to make any such contention).

(10) Learned counsel for the petitioner, however, urged that once a person was appointed to the post, the tenure expressed in the appointment order loses all significance and the person so appointed acquires a status which cannot be terminated except under the relevant law. The nature of the post and the intention to retain it should be ascertained. Learned counsel attemped to support such contention on the authority of the decision of the Supreme Court in *Union of India* v. *Arun Kumar Roy* (12). In our opinion, the reliance on this decision by the learned counsel, is completely misplaced. That decision is only an authority for the proposition that after an appointment, it is the rule governing the service conditions of the employee which shall prevail over the initial terms of the appointment. In the present case, as we have indicated above, the petitioner has not acquired any status as the Veterinary and Livestock Development Assistant by force of the appointment under Annexure P.2, which appointment was only for a fixed tenure and on *ad hoc* basis. This argument, therefore, holds no water and must be rejected.

(11) The last argument based upon the doctrine of estoppel has to be mentioned only and to be rejected. The learned counsel for the petitioner referred to a circular dated February 5, 1990, issued

(11) 1980 (2) S.L.R. 623.
(12) 1986 (1) S.L.R. 474.

by the Government of Haryana stating the policy and procedure for making *ad hoc* appointments against the posts which are within the purview of H.P.S.C./S.S.S. Board. Clause (ii) of first paragraph thereof *inter alia* says that *ad hoc* appointments should be made only for nine months or till such time the recommendees of the H.P.S.C./ S.S.S. Board join, whichever is earlier. Clause (iii) thereto requires that no *ad hoc* appointment should be continued beyond nine months in any case. Clause (v) postulates that *ad hoc* appointees will stand relieved at the expiry of the tenure or as soon as the recommendees of H.P.S.C./S.S.S. Board take their places whichever is earlier. No doubt, paragraph 2 of the circular certainly indicates that the recruiting agencies, i.e., H.P.S.C./S.S.S. Board must ensure that suitable candidates are recommended at the earliest possible so that regular appointments are made within the stipulated time as menioned in paragraph 1 (iii). We fail to see how this circular helps the petitioner. It cannot be spelt out from any of the clauses in the circular that so long as regular appointments are not made, the State Government was estopped from reverting such appointees as the petitioner to their original posts, in pursuance of the said circular, either on the expiry of their terms or on the recommendations being made by the H.P.S.C./S.S.S.B., whichever is earlier. The rule of estoppel is, not attracted by any stretch of, either on the terms of the above circular, or even otherwise. This contention is also, therefore, rejected. On the above analysis, we are of the opinion that the petitioner's claim for continuance of his appointment after the expiry of nine months or until such period when the recommendees by S.S.S. Board are appointed, per Annexure P.2, is baseless. His appointment has been rightly terminated by the impugned order, Annexure P.3. This writ petition is, therefore, liable to be dismissed, and is accordingly dismissed.

(12) Before, however, we part with this matter we express that by no means we should be understood to support the *ad hocism* in the matter of public appointments, which practice, as the Supreme Court has observed, must be deprecated. The State Government should take steps within reasonable time to fill up all such posts by the due process. We also record our appreciation for the valuable assistance rendered by the learned counsel for the parties. There shall be no order as to costs.

R.N.R.

3355 HC—Govt. Press, U.T., Chd.