

Before R. S. Mongia & V. S. Aggarwal, JJ.

HARJOT KAMAL SINGH,—Petitioner.

*versus*

STATE OF PUNJAB & ANOTHER,—Respondents.

C.W.P. No. 8849 of 1996.

16th July, 1996.

*Constitution of India, 1950—Arts. 14 & 16—Ad hoc appointment—Ad hoc appointee is not higher in status than temporary employee—Services can be terminated in terms of appointment letter.*

*Held*, that there is no merit in this writ petition. Apart from the fact that in view of the Division Bench judgment of this Court in Kiran Bala's case concerning the same department and dealing with the similar type of an appointment order, the writ petition having been dismissed, we are of the opinion that in view of the judgments of the apex Court cited by the learned counsel for the respondents, the petitioner has no right to continue on the post and services can be terminated in terms of the appointment. The *ad hoc* appointee is in no way higher in status than a temporary employee. As observed above, in Kaushal Kishore Shukla's case, it has been observed by the apex Court that a temporary employee has no vested right to continue on the post and his services can be dispensed with in accordance with the terms of appointment.

(Para 8)

*Further held*, that the matter can be viewed from another angle. Supposing a person is appointed on *ad hoc* basis for a particular period and his work is just average and the employer is finding a much better person than him, is the employer barred from giving employment to the subsequent person who may be better than the earlier one or he is bound to continue the earlier *ad hoc* employee till a regular appointment is made? We are of the view that no fetters can be put on the powers of the employer to have the best person for the job. However, if in a particular case, it is alleged that this power has been exercised arbitrarily or *malafidely*, the Courts would certainly go into that.

(Para 9)

*Constitution of India, 1950—Arts. 226/227—Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959—If post is for more than 3 months and appointments made without requisition from employment exchange or without considering cases of other eligible persons by inviting applications would be bad.*

*Held*, that if the post to last for more than three months and the appointment having been made without sending requisition to the Employment Exchanges under the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, or without considering the cases of other eligible persons by inviting applications through short term advertisement the appointment of the petitioner would be bad on that short score alone. If the vacancy is for a period less than three months and the petitioner's services are being terminated in accordance with the terms of appointment, no fault can be found.

(Para 10)

Paramjit Ratta, Advocate, for the Petitioner.

M. M. Kumar, Addl. A.G. Punjab, for the Respondent.

#### JUDGMENT

R. S. Mongia, J.

(1) Briefly, the facts giving rise to the filing of the present writ petition may be noticed.

(2) As per the averments made in the writ petition, the petitioner had obtained Bachelor of Ayurvedic Medicines and Surgery degree. The posts of Ayurvedic Medical Officers are within the purview of the Punjab Subordinate Services Selection Board and in its absence, a Departmental Selection Committee constituted by the Government selects the person for appointment on regular basis. It has further been averred that no regular selection to the post of Ayurvedic Medical Officer has either been made by the Subordinate Services Selection Board or by the Departmental Selection Committee. However, respondent No. 2 i.e., the Director, Ayurvedic, Punjab, Chandigarh, appointed the petitioner as Ayurvedic Medical Officer against available vacancy in the Government Ayurvedic Medical Dispensary, Bedara, District Faridkot, on *ad hoc* basis for a period of 89 days only on August 11, 1995. After the expiry of the said term, he was reappointed as such again *ad hoc* basis for a fresh period of 89 days,—*vide* order dated October 31, 1995. The orders of appointment, however, have not been placed on record. After the expiry of the 89 days of the second appointment, he was again reappointed on *ad hoc* basis at Government Ayurvedic Dispensary, Lakhwaria, district Kapurthala, for a period of 89 days,—*vide* order dated April 16, 1996. A copy of the appointment order has been

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annexed as Annexure P-1. The terms of appointment may be noticed here :

- “(a) His services can be terminated at any time without notice and without assigning any reason ;
- (b) His services shall be deemed to have been dispensed with on the expiry of 89 days or on the appointment of a candidate regularly selected by the Subordinate Services Selection Board whichever is earlier ;
- (c) He shall be deemed to have been relieved on the expiry of term of 89 days.

This letter of appointment is signed by the District Ayurvedic Officer, Punjab. According to the averments made by the petitioner, his term of appointment expires on July 16, 1996. The petitioner apprehending that after the term of appointment as envisaged by Annexure P-1 his services would be terminated has filed the present writ petition.

(3) The argument of the petitioner's counsel was that the term of appointment restricting the tenure of appointment to 89 days is wholly arbitrary and violative of Articles 14 and 16 of the Constitution of India and by ignoring this clause in the appointment order, he should be allowed to continue in service till the regular selectee by the Subordinate Services Selection Board/Departmental Selection Committee joins the post. Primary reliance in this regard has been placed on two Division Bench judgments in *Gordhan Singh Gulia v. State of Haryana and others* (1), and *Rajni Bala v. State of Haryana and others* (2). Both these judgments are by the same Division Bench. On the other hand, learned counsel for the respondents cited an unreported judgment of the Division Bench of this Court in *Kiran Bala and others v. State of Punjab and another*, (C.W.P. No. 7316 of 1996) rendered on May 22, 1996, concerning the very department to which the present petitioner belongs and the petitioners in that case had also been issued similar letters of appointment as the present petitioner. In the said judgment, it was held that the services of the petitioners could be terminated in terms of their letters of appointment. As observed above, in the case, the petitioners had been given appointment on *ad hoc* basis for 89 days and apprehending termination of their services after

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(1) 1996 (1) All Instant Judgments 226.

(2) 1995 (4) All Instant Judgments 394.

89 days, they filed that writ petition. Learned counsel for the petitioner also brought to our notice an order issuing notice of motion by a Division Bench in C.W.P. No. 9392 of 1996. In that case also, the argument of the learned counsel for the petitioner was that after having appointed the petitioner for 89 days and having continued him for another 89 days, the competent authority does not have the jurisdiction to bring to an end his appointment without the availability of regularly selected candidates. The Motion Bench while issuing notice of motion on July 8, 1996, had observed that from the averments made in the writ petition, it did not appear that the Director, Ayurvedic, Punjab, had adopted any mode for making selection for appointment on the post of Ayurvedic Medical Officer before giving 89 days' appointment. Further, it was also not clear from the record as to what was the life of the vacancy against which the petitioner had been appointed for 89 days. According to the Division Bench, two issues would require determination as to whether the Director, Ayurvedic, Punjab, had the jurisdiction to make such an appointment without sending requisition to the Employment Exchange concerned in view of the Employment Exchanges concerned in view of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 or without considering the case of other eligible persons by inviting applications through short term advertisement and whether on the basis of such an appointment, the petitioner had acquired any right to be continued in service till availability of regular appointees. We will advert to this order in the later part of this judgment.

(4) Learned counsel for the respondents argued that an *ad hoc* appointee had no right to continue on the post and his services could be terminated in accordance with the terms of his appointment and he could not insist that he may be allowed to continue till a regular selectee comes to replace him. He submitted that the status of an *ad hoc* employee cannot be better than an employee who is appointed temporary basis and cited a judgment of the apex Court in *State of Uttar Pradesh v. Kaushal Kishore Shukla* (3). In that case, the employee had been appointed purely on temporary basis and his services could be terminated by giving him one month's notice without assigning any reason. Even a preliminary enquiry was held against the employee but thereafter it was dropped

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and services terminated in accordance with the terms of appointment. The Hon'ble Supreme Court held that a temporary Government servant has no right to hold the post, and his services could be terminated by giving him one month's notice without assigning any reason either under the terms of the Contract providing for such termination or under the relevant statutory Rules regulating the terms and conditions of temporary Government servants. The learned counsel, on the basis of the above said judgment submitted, that if the temporary Government servant has no right to the post and his services could be terminated in accordance with the terms of appointment, can it be said that an *ad hoc* employee has a right to continue in service irrespective of the terms of appointment and he must be allowed to continue till a regular selectee comes to replace such an *ad hoc* employee.

(5) Learned counsel further cited *The State of Punjab and others v. Surinder Kumar and others* (4), in which case Surinder Kumar and others had filed a writ petition in this Court apprehending their termination of services. A Division Bench of this Court on April 4, 1991 disposed of the writ petition by passing the following order :

“On the facts and circumstances of the case, we are of the opinion that the just and fair order should be that the petitioners who have been appointed on part time basis should be continued until the Government make regular appointments on the recommendations of the Public Service Commission. Meanwhile the petitioners will get their salary for the period of the vacation.”

The State of Punjab took the matter in appeal before the apex Court. Facts of the case were that Surinder Kumar etc. in pursuance to certain instruction issued by the Director, Education Department of the State of Punjab, in 1990 were offered the posts as per the terms mentioned in the appointment orders. It was specifically mentioned in the appointment orders that they could be relieved at any time without notice and the payment would be made at the rate indicated therein on hourly basis. The employees accepted that offer of appointment. However, they filed writ petition in this Court contending that they were entitled to be regularised in their post as Lecturer with salary on regular pay scale. The

apex Court observed that it was not being suggested that the employees had accepted the terms set out in their appointment orders under any mistake and, therefore, it was observed. "We, therefore, do not find any reason as to why the specific terms on which the appointments were made could not be enforced." Learned counsel for the employees submitted before the Supreme Court that since the apex Court had earlier on issued directions for absorption of temporary or *ad hoc* Government servants on permanent basis in several cases, therefore, it was suggested that if the apex Court could pass such an order without assigning any reason, it was open to the High Courts as well to allow writ petition in similar terms. The Judges observed that they were not in a position to agree with such a contention.

(6) In the judgments cited by the learned counsel for the petitioner (*Gordhan Singh Gulia v. State of Haryana and others* (supra) and *Rajni Bala v. State of Haryana and others* (Supra), the judgment of the apex Court in *Surinder Kumar and other's case* (Supra) was not at all considered, whereas the judgment of the Supreme Court in *Kaushal Kishore Shukla's case* (Supra) was not considered in respect of the point as to whether an *ad hoc* employee has a right to continue on the post or whether the services can be terminated in accordance with the terms of appointment. Supreme Court in the latter case had held that temporary Government servant has no right to the post and his services can be terminated in terms of appointment.

(7) On the basis of the judgments in *Surinder Kumar and others case* (Supra) and *Kaushal Kishore Shukla's case* (Supra), learned counsel for the respondents argued that the petitioner as an *ad hoc* employee, had no right to continue on the post and the services could be terminated in accordance with the terms of appointment.

(8) After hearing the learned counsel for the parties, we are of the view that there is no merit in this writ petition. Apart from the fact that in view of the Division Bench judgment of this Court in *Kiran Bala's case* (Supra), concerning the same Department and dealing with the similar type of an appointment order, the writ petition having been dismissed, we are of the opinion that in view of the judgments of the apex Court cited by the learned counsel for the respondents, the petitioner has no right to continue on the post and services can be terminated in terms of the appointment. The *ad hoc* appointee is in no way higher in status than a temporary

employee. As observe above, in *Kaushal Kishore Shukla's case* (Supra), it has been observed by the apex Court that a temporary employee has no vested right to continue on the post and his services can be dispensed with in accordance with the terms of appointment. If we omit the term of appointment regarding the period of appointment. The end result will be that the letter of appointment would become similar to the order by which the writ petition of Surinder Kumar and others were disposed of by this Court, which order was set aside by the apex Court in *State of Punjab v. Surinder Kumar and others* (supra). We have our reservations regarding the observations made by the Division Bench of this Court in *Gordhan Singh Gulia's case* (supra) and *Kiran Bala and others' case* (supra) but in view of the judgments of the Supreme Court in *Surinder Kumar and others' case* (supra) and *Kaushal Kishore Shukla's case* (supra), by which we are bound under Article 141 of the Constitution of India, we are not inclined to refer the matter to a larger Bench. We hold that the petitioner had no right to continue on the post and his services can be terminated in accordance with the terms of appointment.

(9) The matter can be viewed from another angle. Supposing a person is appointed on *ad hoc* basis for a particular period and his work—is just average and the employer is finding a much better person than him ; is the employer barred from giving employment to the subsequent person who may be better than the earlier one or he is bound to continue the earlier *ad hoc* employee till a regular appointment is made? We are of the view that no fetters can be put on the powers of the employer to have the best person for the job. However if in a particular case, it is alleged that this power has been exercised arbitrarily or *malafidely*, the Courts would certainly go into that.

(10) So far as the order of the Motion Bench dated July 8. 1996. in C.W.P. No. 9392 of 1996, is concerned, it may be observed that if the post is to last for more than three months and the appointment having been made without sending requisition to the Employment Exchanges under the Employment Exchanges (Compulsory Notification of Vacancies Act, 1959, or without considering the cases of other eligible persons by inviting applications through short term advertisement the appointment of the petitioner would be bad on that short score alone. If the vacancy if for a period less than three months and the petitioner's services are being terminated in accordance with the terms of appointment, no fault can be found. It is not the case of the petitioner that any reference was made to the Employment Exchange or any advertisement was issued. The appointment itself would be bad on that score. Further even if there

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has been reference to Employment Exchange or there has been advertisement as we have held earlier, the petitioner does not get any vested right to continue on the post.

(11) For the foregoing reasons, we find no merit in this writ petition, which is hereby dismissed.

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J.S.T.

Before Swatanter Kumar, J.  
SATDEV SINGH,—Petitioner.

versus

SATWANT REDDY & OTHERS,—Respondents.

C.O.C.P. 338 of 1996.

The 12th September, 1996.

*Contempt of Courts Act, 1971—S. 10—Wilful disobedience—Proof of intentional disobedience is not to be beyond every possible reasonable doubt—Must be inferred from facts of case taken in its entirety.*

*Held*, that the wilful disobedience of an order of the Court necessarily does not mean that it must in all cases be designed, deliberate act. This has to be inferred from the facts and circumstances of each case. Every person ought to be aware of law and consequences of default to comply with the order of the Court. A civil contempt has to be finely distinguished from a criminal trial. The proof of wilful or intentional disobedience is not to be beyond every possible reasonable doubt. This must and has to be inferred from the facts of the case taken in their entirety.

(Para 9)

*Contempt of Courts Act, 1971—“Apology”—explained.*

*Held*, that the expression “apology” occurring in this Act was explained by Shri Jaspal Singh, J. in the case of Court of its own motion v. Mr. B. D. Kaushik and others in the following manner :—

“Apology is a speech of the heart. Remorse is its seed. It is nourished by atonement and sustained by some spiritual