

(2010) 08 DEL CK 0188

Delhi High Court

Case No: Writ Petition (C) No. 7568 of 2008

Gorakhnath

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Aug. 19, 2010

Acts Referred:

- Constitution of India, 1950 - Article 311

Citation: (2011) 1 LLJ 289 : (2010) 6 SLR 580

Hon'ble Judges: Pradeep Nandrajog, J; Mool Chand Garg, J

Bench: Division Bench

Advocate: Zakir Hussain, for the Appellant; R.V. Sinha and A.S. Singh, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.

It is urged by learned Counsel for the Petitioner that since an inquiry was held, no penalty could be imposed upon the Petitioner without supplying to him the report of the Inquiry Officer and giving an opportunity to rebut the same.

2. Vide impugned order dated September 4, 2008 O.A. No. 1687/2007 filed by the Petitioner has been dismissed.

3. The Petitioner was a casual labourer and having worked for more than 240 days, was accorded the status of Casual Labourer "Temporary Employee" as per a scheme dated September 10, 1993. The said scheme dated September 10, 1993 clearly stipulated that the confirmant temporary status would not mean that the casual labourers have to be treated on the permanent establishment. It simply said that temporary status would entitle the casual labourers to certain benefits. Clause 7 of the circular clearly stated that despite confirmant of temporary status, the services of the casual labourers may be dispensed with by giving a notice of one month in writing.

4. At a vigilance raid conducted, it got detected that the Petitioner and his Junior Engineer were indulging in objectionable activity of letting out vacant Government property to private individuals for personal gain. In fact, a CBI raid had been conducted and during the raid it was found that unauthorized occupants were occupying Government quarters in Pushp Vihar.

5. At the inquiry it was established that the Petitioner used to collect the rent from one Sh. Moti Lal Nagri. The rent was ` 1100/- per, month.

6. How this rent was shared inter se the Petitioner and the Junior Engineer is not known.

7. Be that as it may, the regular inquiry was necessitated on account of involvement of a Junior Engineer who was a permanent employee. There would have been no necessity to hold an inquiry qua the Petitioner who was not a permanent employee.

8. It is no doubt true that services of an employee on probation cannot be terminated without an inquiry on a charge of misconduct but on the condition that the termination of service is stigmatic.

9. We do not intend to write an essay, but suffice would it be to note that those who are inducted into service under the State against regular vacancies and are selected as per applicable recruitment rules are treated as employees acquiring a Status under Article 311 of the Constitution of India. A casual labourer does not acquire any such status even on acquiring a temporary status. Indeed, in the decision *UOI and Anr. v. Mohan Pal and Ors.* 2002 (2) ATJ 215 (SC) it was observed, with reference to para 7 of the scheme dated September 10, 1993, that if there is a serious misconduct it would be open to the employer to dispense with the service of a casual labourer who had acquired a temporary status.

10. We find no merit in the writ petition which is dismissed.

11. No costs.