

RAKESH KUMAR SINGH

v.

THE COMMITTEE OF MANAGEMENT, RAIBARALI

MARCH 20, 1996

[S.C. AGARWAL AND G.T. NANAVATI, JJ.]

U.P. Intermediate Education Act, 1921 : Section 16-C.

Regulation 25—Interpretation of.

Employee—Probation—Termination during—Provision for one month's salary or notice in lieu thereof—Mode and time of payment not prescribed—Termination without notice and salary in lieu not invalid—But employee held entitled to salary for period of notice.

The services of the appellant, a Lecturer in the College run by the Respondent-Committee, were terminated during the period of probation. The Deputy Director of Education held the termination invalid on the ground that neither one month's notice nor one month's pay in lieu of notice was given to the appellant as required by Regulation 25 framed under Section 16-C of the U.P. Intermediate Education Act, 1921. The High Court set aside the order of Deputy Director holding that (i) though giving of one month's notice or one month's pay in lieu thereof was necessary yet it was not a condition precedent to the exercise of power under Regulation 25; and (ii) termination of service without notice or salary in lieu thereof would not render the termination order invalid but would entitle the employee to one month's salary only. Against the decision of the High Court an appeal was preferred before this Court.

Dismissing the appeal, this Court

HELD : 1. The view taken by the High Court is correct. Regulation 25 gives an option to the management either to give one month's notice or one month's pay in lieu thereof. It does not provide for the mode or time for payment. It only entitles the temporary employee or the probationer to his pay for the period of notice. As Regulation 25 does not provide payment of one month's pay in lieu of notice as a condition precedent to the effective termination of service, the High Court was right in setting aside the order

of the Deputy Director who had taken a contrary view. [677-B-D]

2. Where the rule permits giving of pay in lieu of notice of termination and does not further provide as to when the payment is to be made, it only entitles the employee to get pay for the period of the notice and payment of notice pay cannot be regarded as a condition precedent to the valid termination of service. But where the rule provides even by implication that payment to the employee of whatever is due to him should be simultaneous with termination of his service then fulfilment of that requirement has to be regarded as a condition precedent to the valid termination. [676-G-H; 677-A]

State of U.P. v. Dinanath Rai, (1969) S.L.R. 647, relied on.

Managing Committee, Sohan Lal Higher Secondary School v. Sheo Dutt Gupta, (1974) A.L.J. 465 and *Senior Superintendent R.M.S. Cochin v. K.V. Gopinath*, [1973] 3 SCC 867 = AIR (1972) SC 187, distinguished.

Director of Technical Education v. Jan Mohammad, (1975) All L.R. 8, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2448 of 1978.

From the Judgment and Order dated 15.12.77 of the Allahabad High Court in C. Misc. W.P. No. 3171 of 1972.

Pramod Swarup Ms. Pareena Swrup and Prashant Choudhary for the Appellants.

R.B. Misra Adv. (NP) for the Respondents.

The Judgment of the Court was delivered by

NANAVATI, J. The appellant was appointed as a Lecturer on probation for a period of one year from 6th August, 1970 in the college run by Respondent No. 1. In May 1971, the Principal of the college submitted a report to the Management that performance of the appellant was not satisfactory and that he was not fit to be continued in service. The Management at its meeting held on 20th June, 1971, considered that report and passed a resolution for termination of service of the appellant. The

college being a recognised institution under the U.P. Intermediate Education Act, 1921, prior approval of the District Inspector of Schools was necessary for effectively terminating the service of the appellant and therefore, the resolution-cum-proposal of the Management was forwarded to the concerned District Inspector. After considering the same the District Inspector by his order dated 5th July, 1971, accorded approval. Thereupon the Management terminated the petitioner's service on 6th July, 1971. The appellant preferred an appeal to the Deputy Director of Education. By an order dated 15th March 1972 he allowed the appeal and held the termination invalid on the ground that neither one month's notice nor one month's pay in lieu of notice was given to the appellant as required by Regulation 25 framed under Section 16 C of the Act.

Against that order the Management filed a Writ Petition being Civil Misc. Writ Petition No. 3171 of 1972 in the Allahabad High Court. It was not disputed before the High Court that Regulation 25 which reads as under :

"25. The services of a temporary employee (other than a probationer) or of a probationer during the terms of his probation, may be terminated at any time by giving him one month's notice or one month's pay in lieu thereof."

was applicable. It was also not in dispute that neither one month's notice nor one month's pay in lieu thereof was given to the appellant. The High Court construing Regulation 25 held that though giving of one month's notice or one month's pay in lieu thereof is necessary that is not a condition precedent to the exercise of power under that regulation and therefore, even if one month's notice is not given or one month's pay is not paid at the time of termination that will not render termination of service invalid but will make the employee entitled to one month's salary only. The High Court took this view following its earlier decision in *Director of Technical Education v. Jan Mohammad*, [1975] All L.R. P. 8 and allowed the petition.

Learned counsel for the appellant relying upon a full bench decision of the Allahabad High Court in *Managing Committee, Sohan Lal Higher Secondary School v. Sheo Dutt Gupta*, (1974) A.L.J. P. 465 contended that Section 16-G(3)(a) of the Act applies to a probationer also and therefore the services of a probationer cannot be terminated unless notice of termination is served after obtaining approval of the Inspector. He further

submitted that Regulation 25 requires giving of one month's notice or one month's pay in lieu thereof. As one month's notice was not given to the appellant nor was he paid one month's pay, termination of his service ought to have been held as invalid. In *S.D. Gupta's* case two points which arose for consideration were whether the notice of termination of the services of the probationer teacher could be served before the according of approval by the District Inspector of Schools and secondly whether in the facts and circumstances of the case service of the notice of termination prior to the granting of the approval could be condoned. The Allahabad High Court held that Section 16-G(3)(a) which provides that no principal, Head Master or teacher may be discharged or removed or dismissed from service or reduced in rank or subjected to any distinction in emoluments or served with notice of termination of service except with the prior approval in writing of the Inspector, having been worded generally applies to every case of termination of service where prior to the termination some notice has to be given and therefor it applies to a probationer also. In that case notice of termination of service was given and therefore the High Court had not to consider the question as to what could be the effect of not giving the requisite notice. Therefore, reliance placed upon *S.D. Gupta's* case is really misplaced.

The learned counsel also drew our attention to the case in *Senior Superintendent R.M.S. Cochin v. K.V. Gopinath*, [1973] 3 SCC 867 = AIR (1972) SC 187 wherein this Court interpreting Rule 5(1)(b) of Central Services (Temporary) Services Rules 1965, dealing with termination of temporary service, has held that to be effective the termination of service has to be simultaneous with the payment to the employee of whatever is due to him. The Rule which fell for consideration in that case was as under:

Termination of temporary service. -

(1)(a) The services of a temporary Government servant who is not in quasi permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant :

(b) the period of such notice shall be one month;

Provided that the services of any such Government servant may

be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice falls short of one month." Interpreting the said Rule this Court observed as under :

"Rule 5(1)(a) gives the Government as well as the employee a right to put an end to the service by a notice in writing. Under Rule 1 (b) the period prescribed for such notice is one month. The proviso to sub-rule (b) however gives the Government an additional right in that it gives an option to the Government not to retain the service of the employee till the expiry of the period of the notice; if it so chooses to terminate the service at any time it can do so forthwith "by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rate at which he was drawing them immediately before the termination of his services, or as the case may be, for the period by which such notice falls short of one month." At the risk of repetition, we may note that the operative words of the proviso are "the services of any such Government servant may be terminated forthwith by payment". To put the matter in a nutshell, to be effective the termination of service has to be simultaneous with the payment to the employee of whatever is due to him. The Rule does not lend itself to the interpretation that the termination of service becomes effective as soon as the order is served on the Government servant, irrespective of the question as to when the payment due to him is to be made."

Before we consider whether Regulation 25 can be said to be similar to the Rule which fell for consideration in *K.V. Gopinath's case* it is necessary to refer to an earlier decision of this Court in *State of U.P. v. Dinanath Rai*, C.A. No. 1934 of 1968 decided on October 11, 1968, reported in 1969 Service Law Reporter 647). In that case also this Court had to construe a rule for termination of services of a Government servant in temporary service. It was as under :-

"(1) Notwithstanding anything to the contrary in any existing rules and orders on the subject, the services of a Government servant

in temporary service shall be liable to termination at any time by notice in writing given either by the Government servant to the appointing authority, or by the appointing authority to the Government servant.

(2) The period of such notice shall be one month given either by the appointing authority to the Government servant, or by the Government servant to the appointing authority, provided that in the case of notice of the appointing authority the latter may substitute for the whole or part of this period of notice pay in lieu thereof; provided further that it shall be open to the appointing authority to relieve a Government servant without any notice or accept notice for a shorter period, without requiring the Government servant to pay any penalty in lieu of notice."

Construing that Rule this Court observed as under :

"The Rule does not say that the pay should be given in cash or by cheque at the time the notice is issued. Knowing the way the Governments are run, it would be difficult to ascribe this intention to the rule-making authority. There is no doubt that the Government servant would be entitled to the pay in lieu of notice but this would be in the ordinary course.

This decision in *Dinanath Rai's* case was considered by this Court in *K.V. Gopinath's case* and distinguished by observing that :

"No doubt the language of that rule is somewhat similar to the words of Rule 5 but there is an essential difference. The rule only means that the pay for 30 days or less may be substituted for service for the period of the notice. In other words, the rule only entitles the employee to pay for the period of the notice without laying down any condition as to when the payments is to be given."

Thus the consistent view of the Court is that where the rule permits giving of pay in lieu of the notice of termination and does not further provide as to when the payment is to be made, it only entitles the employee to pay for the period of the notice and payment of notice pay cannot be regarded as a condition precedent to the valid termination of service. But where the rule provides even by implication that payment to the employee

of whatever is due to him should be simultaneous with termination of his service then fulfillment of that requirement has to be regarded as a condition precedent to the valid termination. In view of the words "terminated forthwith by payment" in the proviso to Rule 5(1)(b) this Court held that payment was intended simultaneously with termination and that was pointed out as the essential difference between Rule 5(1)(b) with which it was concerned in *Gopinath's* case and the rule which was considered in *Dinanath's* case.

A bare reading of Regulation 25 indicates that it is more similar to the rule which fell for consideration in *Dinanath's* case. It gives an option to the management either to give one months notice or one month's pay in lieu thereof. It does not provide for the mode or time for payment. Thus the rule only entitles the temporary employee or the probationer to pay for the period of notice. As we are of the view that Regulation 25 does not provide payment of one month's pay in lieu of notice as a condition precedent to the effective termination of service, the High Court was right in setting aside the order of the Deputy Director who had taken a contrary view. The view taken by the High Court is correct and, therefore, this appeal is dismissed.

However, in view of the facts and circumstances of the case, there shall be no order as to costs.

Appeal dismissed.