

F.R. JESURATNAM

v.

B UNION OF INDIA & OTHERS

July 22, 1981

[R.S. PATHAK AND O. CHINNAPPA REDDY, JJ.]

C *Right to reinstatement to a post which is subsequently abolished due to the death of the project incharge—Even though the vires of the termination order, which was anterior to the closing of the project, is in issue, Supreme Court can adopt "non-liquet" and decide the case based on the subsequent events.*

D The appellant, a commissioned officer in the Indian Air-Force, on a General Court Martial was cashiered and sentenced to suffer rigorous imprisonment for six years. Later the Central Government remitted the unexpired portion of the punishment of rigorous imprisonment. Subsequently, he was appointed by the Indian Institute of Technology for a project work on a purely temporary basis and subject to verification of his character and antecedents from the Government and subject to the further condition that his services could be terminated on 24 hours notice in writing by either side. On a reference by the I.I.T., the Ministry of Defence by its letter dated November 19, 1977 invited attention to the Ministry of Home Affairs Memorandum dated May 14, 1965 to the effect that persons who were dismissed from service were disqualified from future employment under the Government but left it open to the I.I.T. whether it would follow that principle in the case of the appellant. The Professor under whom the appellant was working recommended the retention of the appellant in service. The I.I.T. did not accept the said recommendation and by its order dated January 21, 1978 terminated the appellant's services on the expiry of 24 hours. A writ petition filed by the appellant challenging the validity of the said order was dismissed *in limine* by the Delhi High Court and hence the appeal by special leave.

F Dismissing the appeal, the Court,

G HELD : The relief claimed by the appellant for reinstatement to his post in the Institute must be denied for the reasons, namely, (a) the appointment was temporary only and could be terminated on 24 hours notice; (b) the Professor incharge of the project passed away subsequently in June 1978 and, therefore, the project in which he was engaged was finally closed and (c) the period for which the appellant's post of Senior Research Assistant had been, created had come to an end. [43 D-E]

H CIVIL APPELLATE JURISDICTION : Civil Appeal No. 318 of 1978.

From the judgment and order dated 8th November 1978 of the High Court of Delhi at New Delhi in C.W. No. 786 of 1978.

Appellant in person

*P.A. Francis, Miss A. Subhashini and R.N. Poddar*, for Respondent No. 1.

*R.N. Sharma, R. N. Poddar and N.N. Sharma*, for Respondent Nos. 2 and 3.

The Judgment of the Court was delivered by

PATHAK, J. This appeal by special leave is directed against the judgment of the High Court of Delhi dismissing *in limine* the appellant's writ petition against an order of the Indian Institute of Technology, Delhi terminating his services.

The writ petition by the appellant was brought on the following allegations. The appellant, with a Master's degree in Aeronautical Engineering, was commissioned in the Indian Air Force on March 1, 1958 and in due course was promoted to the rank of Squadron Leader. During the years 1972 to 1975 he was an Assistant Director in the Rockets and Missiles Department of the Defence Research and Development Organization, New Delhi. In January 1975, the appellant was tried by a General Court Martial on four charges and was convicted on two : (1) under s. 45, Air Force Act, 1950 for behaving in a manner unbecoming of the position and character expected of him as an officer in meeting secretly on several occasion a foreign national, contrary to the existing order on the subject and (2) under s. 65, Air Force Act, 1950 for improperly accepting a gift from a foreign national. He was found not guilty on the remaining two charges. On March 4, 1975, the General Court Martial directed that he be cashiered and suffer rigorous imprisonment for six months. The findings and sentence of the General Court Martial were confirmed by the Chief of the Air Staff on April 8, 1975 and he directed that the sentence of rigorous imprisonment be carried out by confinement in civil prison. Subsequently, by an order dated May 24, 1975, the Central Government remitted the unexpired portion of the punishment of rigorous imprisonment.

The appellant was anxious to join the Indian Institute of Technology, Delhi and obtained a certificate to enable him to do so. The Air Headquarters, New Delhi issued the certificate reciting

**A** that he was commissioned in the Indian Air Force and was posted to the Defence Research and Development Organization, Ministry of Defence. It also stated that he was tried by General Court Martial in January, 1975 and in the result he was cashiered from service and also sentenced to rigorous imprisonment for six months. The fact of remission of the imprisonment was also stated. On **B** July 15, 1977, the appellant was offered appointment to the post of Senior Research Assistant in the Department of Applied Mechanics of the Indian Institute of Technology for the programme of writing a monograph on 'Large Deformation in Metallic materials' undertaken by Professor B. Karunesh of the said Department, and it was specifically mentioned that the appointment was purely temporary, **C** subject to verification of the appellant's character and antecedents from the Government, and could be terminated on 24 hours notice in writing by either side. The appellant accepted the appointment and joined the Institute the next day.

**D** The appellant alleges that unknown to him the Institute communicated with the Ministry of Defence in regard to his employment, and in reply the Ministry informed the Institute by letter dated November 19, 1977 of the appellant's conviction and sentence by a General Court Martial and also of the fact of remission of the unexpired period of his imprisonment. The letter also drew the attention of the Institute to an office memorandum dated May 14, **E** 1965 of the Ministry of Home Affairs that persons who were dismissed from service were disqualified from future employment under the Government and added whether the same disability would apply in the case of the appellant should be decided by the Institute. Professor Karunesh, under whom the appellant was working, was apparently apprised of the Ministry's letter but he recommended **F** that the appellant be retained in service. On January 21, 1978, the Institute issued an order stating that the appellant's services were no longer required and that they would stand terminated on the expiry of 24 hours. According to the appellant, the Chairman of the Board of Governors of the Institute noted that as the appellant had been dismissed for spying he should not be retained in service.

**G** The writ petition filed by the appellant was dismissed by the High Court of Delhi by an order dated November 8, 1978.

**H** In this appeal the appellant, who appears in person contends that the Institute had no ground for terminating his services as the effect of the order of remission passed by the Central Government was to acquit him of the charges on which he had been found guilty,

that the Institute did not apply its mind to the facts of the case when deciding to terminate his services, that there was no material to support the comment of the Chairman, Board of Governors, and in any event the appellant was entitled to an opportunity to be heard before his services were terminated. It was also contended that the Director of the Institute had abdicated his powers. Reference was also made to s. 73, Air Force Act, 1950 in support of the submission that the statute did not bar employment elsewhere.

We are of opinion that we need not be detained by these contentions. The fundamental relief claimed by the appellant is reinstatement to his post in the Institute. For the reasons which follow that relief must be denied.

It appears from the record before us that the appellant was appointed in the Institute in connection with the programme of writing a monograph on 'Large Deformation in Metallic materials' undertaken by Prof. B. Karunesh. The appointment was temporary only and could be terminated on 24 hours' notice. It is averred in the counter affidavit filed by the Institute that the post of Research Assistant, to which the appellant was appointed, was created for one year only. That was so, although according to the appellant the programme extended to two years. It has also been affirmed in the counter affidavit that on the death of Professor Karunesh in June, 1978 the project in which he was engaged has been dropped and finally closed, and the period for which the appellant's post of Senior Research Assistant was created has also expired. There is no reason why these averments should not be accepted.

In the circumstances, we do not see how the appellant can be granted the relief of reinstatement.

We consider it unnecessary to interfere with the order terminating the appellant's services in the Institute.

The appeal is dismissed, but we make no order as to costs.

S.R.

*Appeal dismissed.*