

PETITIONER:
STATE OF UTTAR PRADESH AND ORS.

Vs.

RESPONDENT:
EX. PILOT OFFICER ARUN GOVIL

DATE OF JUDGMENT 21/11/1989

BENCH:
VENKATARAMIAH, E.S. (CJ)
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VENKATARAMIAH, E.S. (CJ)
SINGH, K.N. (J)
KASLIWAL, N.M. (J)

CITATION:
1990 AIR 458 1989 SCR Supl. (2) 239
1989 SCC Supl. (2) 593 JT 1989 (4) 414
1989 SCALE (2) 1160

ACT:

Service Law--Appointment in the nature of contract and for a specified period--Termination of service before the expiry of specified period--Validity of--Appointee--Whether has a right to continue beyond the specified term of appointment.

Constitution of India, 1950: Article 226--Writ petition--Interim order by High Court--Effect of--Whether controls jurisdiction of the High Court to dispose the writ petition on merits.

HEADNOTE:

Pursuant to a scheme enacted for the benefit of ex-military officials the appellant-State appointed the respondent on 20.8.1979 as Secretary Zila Sainik Board on contract basis for a specified period which was further extended upto 30.8.1985. On 29.3.1985 the services of the respondent were terminated.

The respondent filed a writ petition before the High Court challenging the termination order. By an order dated 24.3.1988 the High Court set aside the termination order holding that the respondent was entitled to salary upto the period he was entitled to remain in service i.e. upto 30.8.1985.

The respondent preferred a Review Petition before the High Court contending that pursuant to the interim order dated 10.7.1986 passed by the High Court he was entitled to be reinstated in service even though there was no order of extension of service. By an order dated 26.7.1988, the High Court allowed the Review Petition directing the appellant State to reinstate the respondent in service. Hence this appeal by the State.

Allowing the appeal and setting aside the order passed on Review, this Court,

HELD: 1. In the instant case, the appointment of the respondent was indisputably in the nature of contract and under tile order of appointment he was entitled to continue in office in the post in question till 30th of August, 1985 and not beyond that date unless there was a further extension. Since no order of extension had been sanctioned by

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the Governor beyond 30th August, 1985 the respondent was entitled to the salary and allowances due to him till 30th of August, 1985 if tile order of termination of service was found to be an invalid one. [242B; 244C]

1.1 The High Court was right in disposing of the Writ Petition on 24.3.1988 declaring that the respondent was entitled to salary upto the period he was entitled to remain in service, i.e. 30th August, 1985. But it was not right in making an order on Review on 26.7.1988 relying upon the interim order dated 10.7.1986 which' in the circumstances could not have the effect of controlling the jurisdiction of the High Court to dispose of the Writ Petition on merits as it did on 24.3.1988. [245A-B]

2. The interim order passed by the High Court did not and could not amount to a direction that the respondent was entitled to be reinstated in service irrespective of the merits of the case and the extent of his right. The order passed on review is wholly unsustainable. [245C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4649 of 1989.

From the Judgment and Order dated 26.7.1988 of the Allahabad High Court in Review Application No. 27(W) of 1988.

Anil Dev Singh and Mrs. S. Dikshit for the Appellants.

Yogeshwar Prasad, Vijay Hansaria, Sunil K. Jain, S.K. Jain for the Respondents.

The Judgment of the Court was delivered by

VENKATARAMIAH, CJ. The Respondent, Arun Govil had been granted a permanent commission in the Indian Air Force and was working as a Pilot Officer. In the year 1972 he was declared unfit by a Medical Board and was, therefore, invalidated from I.A.F. The Government of India issued a scheme for the benefit of ex-military officials. The State of Uttar Pradesh also adopted the same scheme. Under that scheme the ex-military officials were appointed on Contract basis for a fixed term which could be extended from time to time subject to the suitability of the official concerned but not beyond 58 years of age. Pursuant to the said scheme the State of Uttar Pradesh appointed the respondent as the Secretary, Zila Sainik Board, Unnao on 20th of August, 1979. Paragraph 2 of the said order of appointment issued on 20th August, 1979 reads thus:

"The appointment shah be on contract for a period of one

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year w.e.f. the date of assumption if it is not terminated earlier by giving a one month's notice by the Hon'ble Governor or on paying one month's salary in lieu thereof or by giving one month's notice, by the Officer."

The respondent was required to furnish his acceptance of the terms and conditions contained in the said order including the above term relating to the period of appointment and on his accepting the terms and conditions he was appointed as the Secretary in the District Soldiers Board in the district of Unnao in the State of Uttar Pradesh'. The said term was extended retrospectively, first upto 20th August, 1982 by an order passed in September, 1981 and it was again extended upto 31st March, 1983 by an order made in February, 1983. Again the term was extended upto 30th of August, 1985 by an order dated 1st June, 1983. All these orders of extension were couched almost in the same language. The relevant

part of the last of such orders, namely, the order dated 1st June, 1983 reads as follows:

"Sir,

With reference to your letter No. 1020/Sa. Pa.A.D.M./141, Dated 31.3.1982 on the above subject I am directed to say that the terms of the officers mentioned under para-2 who were appointed w.e.f. the date mentioned in para-4 (has expired). The Governor is therefore pleased to accord his sanction to extend the period of the contract upto the period mentioned under para 5 subject to the condition that their service tenure shall expire on completion of 58 years of age in case the same is completing earlier during the extended period.

Sl. No.	Name and place of appointment	Date of appointment	Date of expiry of contract	Recommendation to extend the contract
1 to 12	--			
13	Ex-Pilot Arun Govil, Unnao	21.8.79	31.3.83	1.4.83 30.8.85

14 to 21-
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2. During the extended period of the contract conditions of service of officers shall remain same as are mentioned under their Appointment Order. Letters of acceptance of relevant conditions of service to be obtained from these officers must be submitted to the Government at an early date."

It is thus seen that the appointment of the respondent was indisputably in the nature of contract and under the last order of appointment referred to above he was entitled to continue in office in the post in question till 30th of August, 1985 and not beyond that date unless there was a further extension.

But on 29.3.1985 the service of the 1st Respondent was terminated by the issue of a notice and payment of one month's salary. The order was to be effective from the date of receipt of termination order and no charges were mentioned therein against the 1st respondent.

The respondent aggrieved by the said order of termination filed a Writ Petition on the file of the High Court of Allahabad in Writ Petition No. 3 164 of 1985. A Division Bench of the High Court found that the order of termination that had been served on the respondent was an invalid one since it had been issued on the basis of Vigilance Report and no opportunity had been given to the respondent to show cause why such action should not be taken against him. It is not necessary to set out all the reasons given by the High Court for setting aside the order of termination. The High Court, however, held that the termination order could not be sustained and the Writ Petition was liable to be allowed. The High Court further issued a direction to the effect that the respondent was entitled to salary upto the period he was entitled to remain in service. In the instant case the respondent was entitled to be in service till 30th of August, 1985 unless there was a further extension. In the Penultimate paragraph of the judgment the High Court further stated:

"It is open for the opposite parties to consider the claim of the petitioner for continuation in service or of fresh appointment and no observations in this regard are being made by this Court."

The judgment was delivered on 24.3.1988.

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The respondent who was not satisfied by the order allowing the Writ Petition as stated above preferred a Review Petition before the High Court contending that he was entitled to be reinstated in service on the pronouncement of the Judgment on 24.3.1988 notwithstanding the fact that his term of office had come to an end on 30th of August, 1985 as stated above and no further order of extension had been passed by the Governor. In support of the Review Petition the respondent relied on an interim order which had been passed by the High Court during the pendency of the Writ Petition on 10th of July, 1986 which reads thus:

"The post will be kept vacant and in case the petitioner succeeds in his Petition it would be made available forthwith to the petitioner by way of an appointment."

The contention of the respondent was that the said interim order entitled him to be reinstated in service irrespective of the fact whether the Governor had extended the period of his appointment beyond 30th of August, 1985. The High Court allowed the Review Petition on 26.7.1988 and made an order reinstating the Respondent in service which reads as follows:

"This is an application for review of our Judgment dated 24.3.1988 by which we allowed the Writ Petition filed by the Petitioner with certain directions. It seems that when the writ petition was decided, our attention was not drawn towards the interim order dated 10.7.1986 passed by learned single Judge in which it was provided that one post will be kept vacant and in case the petitioner succeeds in his petition it would be made available forthwith to the petitioner by way of his appointment. The petitioner has pointed out inaccuracy in the second paragraph of the operative part of the judgment which says that: "It is open for the opposite parties to consider the claim of the petitioner for continuation in service or of fresh appointment and no observations in this regard are being made by this Court.""

Aggrieved by the above order made on review which directed the State of Uttar Pradesh, the appellant herein, to reinstate the respondent in service, the State Government has filed this appeal by special leave.

It is not disputed that the scheme under which the respondent

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had been appointed provided for an appointment by contract for a specified term which could be extended from time to time and that the term of the respondent had been extended on different occasions after his first appointment and he was not entitled to continue in service beyond 30th August, 1985 unless there was a further extension. Clauses 6 & 7 of the first order of appointment stated that the respondent was entitled to the leave admissible for temporary employees and for other matters he was to be treated as a temporary Government employee during the tenure of his office. The appellant-government never accepted the position that the respondent was entitled to be treated as a regular employee who had a vested right to continue to hold the post till he attained 58 years of age. The true position that emerges from the material on record is that the respondent was employed only under a contract which specified the term of

his appointment which extended only upto 30th of August, 1985. Since it is admitted that no order of extension had been sanctioned by the Governor beyond 30th August, 1985, the respondent was entitled to the salary and allowances due to him till 30th of August, 1985 if the order of termination of service served on him on 29.3.1985 was found to be an invalid one. It is on this basis that the High Court had while setting aside the order of termination by its order dated 24.3.1988 directed that the respondent was entitled to salary upto the period he was entitled to remain in service and further observed that it was open for the opposite parties to consider the claim of the respondent for continuation in service or of fresh appointment and no observations in this regard were made by the Court. A reading of the Judgment of the High Court dated 24.3.1988 shows that the respondent had not urged before the High Court that the order of appointment issued in his case was not in the nature of a contract and the subsequent orders extending his period of appointment till 30th of August, 1985 were liable to be ignored and that he should be treated as a person regularly appointed in Government service entitled to continue till he completed the age of 58 years. Even the order passed on Review on 26.7.1988 does not make out that the respondent had put forward at that stage such a case. His only case was that the interim order that had been passed on 10.7.86 entitled him to be reinstated in service even though there was no order of extension of service. If the respondent was really aggrieved by the Judgment dated 24.3.1988 he should have preferred an appeal before this Court and that he did not do but on the other hand he proceeded to file a Review Petition claiming to be reinstated in service on the slender ground that the interim order conferred on him a right to continue in service beyond 30th of August, 1985 even though his service had not been extended by the Governor of Uttar Pradesh.

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In the circumstances, we feel that while the High Court was right in disposing of the Writ Petition on 24.3.1988 declaring that the respondent was entitled to salary upto the period he was entitled to remain in service, i.e., 30th August, 1985 it was not right in making an order on Review on 26.7.1988 relying upon the interim order dated 10.7.1986 which in the circumstances could not have the effect of controlling the jurisdiction of the High Court to dispose of the Writ Petition on merits as it did on 24.3.1988. We, therefore, set aside the order dated 26.7.1988 passed by the High Court on review and restore the Judgment dated 24.3.1988 passed in the Writ Petition. The interim order did not and could not amount to a direction that the respondent was entitled to be reinstated in service irrespective of the merits of the case and the extent of his right. The order passed on review is wholly unsustainable.

We, however, make it clear that what we have stated above does not affect in any way what the High Court has stated in the penultimate paragraph of the Judgment dated 24.3.1988 which reads thus:

"It is open for the opposite parties to consider the claim of the petitioner for continuation in service or the fresh appointment and no observations in this regard are being made by this Court."

The appeal is accordingly allowed. No costs.

T.N.A.
allowed.

Appeal

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JUDIS