

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 04.05.2023

Pronounced on: 29.05.2023

LPASW No. 38/2017 CM No. 3470/2022

UNION OF INDIA AND OTHERS

...Petitioner(s)

Through: Mr. Hakim Aman Ali, CGSC

Vs

ALTAF AHMAD MIR

...Respondent(s)

Through: Mr. M.A. Wani, Advocate with
Mr. Z. A. Wani, Advocate
Mr. S.S. Wani, Advocate

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

J U D G M E N T

Per Moksha, J

1. In the instant intra court appeal, appellants herein have challenged the judgment dated 25.10.2016, passed in SWP No. 1121/2012, titled "*Altaf Ahmad Mir Vs. Union of India & Ors.*", whereby the writ Court, while allowing the petition, has quashed the impugned termination notice of the services of the petitioner bearing No. DV-1/2012-DA.I dated 25.02.2012, issued under sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965 by the DIGP, ATC, CRPF, Bhopal, as well as the termination order No. DV-1/2012-DA.I dated 28.03.2012. However, it has been provided that the respondents-appellants would be free to hold such proceedings against the petitioner-respondent as are permissible under the provisions of the Central Reserve Police Force (CRPF) Act, 1965, and the rules framed thereunder, giving respondent herein an adequate and reasonable opportunity of hearing and to defend himself in any such proceedings.

BRIEF FACTS OF THE CASE

2. The respondent is stated to have been selected and temporarily appointed as a Constable in the Central Reserve Police Force (CRPF) in terms of order no. R-II-22/2011/Estt-5 issued in June, 2011 by the DIGP, GC, CRPF, Rambagh, Srinagar, Kashmir, on the terms and conditions detailed out in the said order of appointment. The respondent joined service against the post on 25.06.2011 and was deputed for undergoing training course at Bangrasla, Bhopal. While the petitioner was undergoing the training, he fell ill and was referred to a local hospital at Bhopal on 13.02.2012.

2.1) According to the respondent, he suffered severe pain and narrated his difficulties to the immediate officers who asked him to return to his home. The respondent went back to his home for better medical care.

2.2) Thereafter, in order to resume his training/duties, he states to have reported back at the training camp on 22.02.2012, but was not allowed to resume his training. Resultantly, he returned to his home where his health worsened and he was admitted in a local hospital. He left for Bhopal on 03.03.2012, along with his father and brother but, on reaching the training camp, he was again denied permission to resume his duties and training course. As per the respondent, he returned on 07.03.2012 and received the impugned notice No. DV-I/2012-DA.I dated 25.02.2012, issued by the DIGP, ATC, CRPF, Bhopal.

2.3) The respondent filed an appeal for reinstatement in service and thereafter, he received the impugned order No. DV-I/2012-DA.I dated 28.03.2012, by virtue of which his name from the strength of GC SNR/ATC GC CRPF, Bhopal, was struck off with effect from 28.03.2012. The termination order dated 28.03.2012 issued by respondent No. 03, for facility of reference, is reproduced hereunder:-

OFFICE ORDER: TERMINATION FROM SERVICE

“In continuation to this office one month’s termination notice of order dated 25/02/12.

2. Termination notice issued vide this notice *ibid*, a period of one month has already completed on 27/03/2012. Accordingly **No. 115343026 RT/GD Altaf Ahmed Mir**, who recruited at GC CRPF, Mokamehghat) and presently undergoing basic training at this institution struck off from the strength of GC SNR/ATC GC CRPF, Bhopal w.e.f. 28/03/12 (AN).”
- 2.4) The absence of respondent was neither deliberate, nor intentional, but had occasioned due to his health problems as he was operated upon on 21.03.2012, at Sub-District Hospital, Kupwara, where he remained under treatment, to which effect the Surgeon of the Hospital has issued a certificate in his favour.
3. The appellants, in their reply affidavit, filed in opposition to the writ petition, had taken three preliminary objections, the first one being that the respondent has alternative, efficacious remedy available to him which he has not invoked; the second being that he repeatedly deserted the service without any notice to the respondents, thus, his services were terminated on account of being a willful and intentional deserter; and the third being that the respondent has raised complicated questions of fact which cannot be adjudicated in the said writ petition.
4. The writ court disposed of writ petition with the following directions:

“The writ petition is allowed. The impugned termination notice of the services of the petitioner bearing no. DV-1/2012-DA.I dated 25.02.2012 issued to the petitioner under sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965 by the DIGP, ATC, CRPF, Bhopal, and the impugned order no. DV-1/2012-DA.I dated 28.03.2012 striking off the petitioner from the strength of GC SNR/ATC GC CRPF, Bhopal, w.e.f 28.03.2012 (AN) are quashed. Resultantly, the respondents are directed to reinstate, the petitioner in service. However, it is provided that the respondents would be free to hold such proceedings against the petitioner as are permissible under the provisions of the Central Reserve Police Force Act, 1945 and the Rules framed thereunder, giving him an adequate and reasonable opportunity of hearing and to defend himself in any such proceedings.

Since the petitioner was appointed pursuant to the order issued by the respondent No. 5, the DIGP, GC, CRPF, Rambagh, Srinagar, he shall submit his joining report for

reinstatement pursuant to this judgment to the said Officer at Srinagar. The DIGP, GC, CRPF, Rambagh, Srinagar, shall reinstate the petitioner and allow him to attend his duties till a decision is taken by the competent authority whether or not any departmental proceedings need to be initiated against him. The petitioner shall be paid his duties from the date he submits his joining report pursuant to this judgment before the DIGP, GC, CRPF, Rambagh, Srinagar. The wages of the petitioner for the intervening period would depend upon the outcome of any such departmental proceedings and the orders passed thereon, if initiated by the respondents. It is further provided that if no such proceedings are initiated or in case the petitioner is exonerated of any charge framed against him, the petitioner would be entitled to all the dues from retrospective date in the same manner as if the impugned notice/orders has not been issued.”

5. Appellants herein have filed an appeal *inter-alia* on the grounds that the writ court has not considered the fact that the respondent challenged only the notice of termination No. DV-1/2012-DA.I dated 25.02.2012 and not the order No. DV/1/2012-DA.I dated 28.03.2012, whereby the name of respondent was struck off from the strength of CRPF; the respondent, did not challenge the order bearing No. R.XIII-2/2012 EC, V dated 18.06.2012, by virtue of which his appeal against the order dated 25.02.2012 was dismissed by the IGP, Special Sector, CRPF, Raipur; the respondent chose not to file any rejoinder in the writ petition, as such, failed to explain as to why the order dated 18.06.2012, passed on his appeal was not challenged.
6. It is further stated that in terms of clause 3 sub-clause (a) of the appointment letter No. R.II-22/2011-Estt-5, the service of the respondent was liable to be terminated at any time on one month's notice during probation period, i.e., 02 years, by the appointing authority without assigning any reason in accordance with the provisions contained in CRPF Rules, 1955, Clause 3 (k) of the said appointment letter envisages that on joining, the respondent will maintain camp rules and guidelines strictly and in case he is found unfit during the course of training, his services are liable to be terminated.
7. Learned counsel for the parties have filed their submissions. The appellants in their written submissions have averred that the respondent, was still on probation. With regard to the issue of applicability of Rule 5 of the CCS

(Temporary Service) Rules, 1965, to CRPF employees, it is stated that both the rules are applicable to the service of the respondent, as a temporary employee. The said rules are applicable to all those persons who hold a civil post under the Government of India and who are under rule-making control of the President. It is also stated therein that the appellant-Department has not quoted wrong Rule in the notice dated 25.02.2012 or in the termination order 28.03.2012, as both have been passed under Rule 5 CCS (Temporary Service Rules) 1965. The services of the temporary employees working in CRPF are governed by CRPF Rules 1955 as well as CCS 1965, as such appellant-Department cannot be said to have passed the order of termination by application of a wrong Rule. Both set of Rules provide for termination of services of temporary employees by giving one month's notice. The order of termination passed by the appellants against respondent is not stigmatic in nature. Learned counsel for the appellants in support of his submissions has referred to and relied upon judgments passed by the Hon'ble Apex Court in case titled Union of India & Ors. Vs. A.P Bajpai and Others, 2003 (2) SCC 433, N. Mani Vs. Sangeetha Theartre, 2004 (12) SCC 278, High Court of Delhi in case titled Raju Chaudhary Vs. The Union of India & Ors 2015 SCC Online Del 6395, Rahul Kumar Mishra Vs. Union of India and Ors., passed in WP (C) 12282/2009.

8. On the other hand, the learned counsel for the respondent, while narrating the events, submits that the appellants had full knowledge with respect to health conditions of the respondent which is why he was allowed to have four weeks' rest as advised by the doctors at Bhopal Hospital.
9. The learned counsel for the respondent submits that the respondent tried to resume his duties on two occasions but was not allowed to do so by the appellants. He submits that the receipts of the Railway tickets would indicate that he along-with his father and brother visited Bhopal on 04.03.2012 and when the respondent was not allowed to join his duties at Bhopal he returned to his home on 07.03.2012, where-after, he received a termination notice. A mercy petition against such termination was filed by the respondent, however, instead of reinstating him a termination order was sent to him

through post in the month of May 2012, in terms of Rule 5 of Central Civil Services (Temporary Service) Rules, 1965 w.e.f 28.03.2012.

10. It is further submitted that respondent challenged the termination order on the ground that CCS (Temporary Service) Rules, 1965, are not applicable to him, moreover the DIG had no competence to terminate the services of the respondent under CRPF Rules as it is only the Commandant who can terminate the services of the respondent, and the termination order is disproportionate to the offence committed.

11. It is also submitted that the counter affidavit filed by the DIG before the writ court was based on the official record, which clearly reflected that the services of the respondent have not been terminated on the basis of Over Stayed Leave (OSL) but on the basis of desertion; he being an undisciplined recruit; not taking interest in training and also for not having the ability to become a skillful Constable. It is submitted that the respondent repeatedly deserted the service without any notice to the appellants, therefore, the services of the respondent have been terminated on account of willful and intentional desertion, as such, the termination order, as per stand taken by the appellants, is not termination simplicitor but is punitive in nature. Learned counsel for the respondent in support of his arguments has referred to and relied upon judgment passed by the Hon'ble Apex Court in case titled as "Krushnakant B. Parmar Vs. Union of India (UOI) and Another", (2012) 3 SCC 178.

12. We have heard learned counsel for the parties and went through the material made available.

13. It appears that the writ court while allowing the writ petition filed by the respondent herein, had directed the appellants to reinstate the respondent and allow him to attend his duties till the decision is taken by the competent authority whether or not the departmental proceedings need to be initiated against him. The writ court appears to have accepted the writ petition of the respondent-petitioner on the ground that the appellants had resorted to and pressed into service the rules which were not applicable to the instant case.

The writ court had also taken note of the fact that it was only 11 days of desertion which formed ground for his termination.

- 14.** The challenge to the impugned judgment is laid *inter alia* on the grounds that the writ court has failed to appreciate that the respondent had filed an appeal against the notice of termination issued to him by DIGP Range, CRPF, Srinagar-respondent No. 6 therein, which was considered and rejected vide order dated 18.06.2012 by the IGP, Special Sector, CRPF, Raipur, therefore, judgment impugned is hit by the doctrine of merger; it did not appreciate that the petitioner /respondent herein had not challenged the order 28.03.2012 also whereby he was struck off from the CRPF strength; it did not appreciate that the respondent being a probationer was governed by the CCS (Temporary Services) Rules 1965, and had rightly been issued notice under Rule 5 of such rules vide letter No. DV-1/2012-DA.I dated 25.02.2012.
- 15.** The challenge made to the impugned judgment can be summarized in the following two points;
- i. Whether the CCS (Temporary Service) Rules, 1965 were applicable to the instant case or not.
 - ii. Whether the challenge laid to the impugned termination notice and the order of termination will stand in absence of any challenge to the order of rejection passed in the appeal filed by the respondent/petitioner therein before the IGP, Special Sector, CRPF, Raipur as also in absence of any challenge to the order by virtue of which he was struck off from CRPF strength.
- 16.** In the first instance Rule 16 of the Central Reserve Police Force Rules, 1955 and Rule 5 of Central Civil Service (Temporary Service) Rules, 1965, for facility of reference, are taken note of herein below:

“16. Period of Service—(a) All members of the Force shall be enrolled for a period of three years. During this period of engagement, they shall be liable to discharge at any time on one month’s notice by the appointing authority. At the end of this period those not given substantive status shall be considered for quasi-permanency under the

provision of the Central Civil Services (Temporary Service) Rules, 1965. Those not declared quasi-permanent under the said rules shall be continued as temporary Government employees unless they claim discharge as per schedule to the Act. Those who are temporary shall be liable to discharge on one month's notice and those who are quasi-permanent shall be liable to discharge on three months' notice in accordance with the said rules, as amended from time to time.

(b) Should the Central Government decide at any time to disband the Force or any part of it either before termination of the period for which a member of the Force is enrolled or at any time thereafter, he shall be liable to discharge, without compensation from the date of disbandment.

(c) No member of the Force shall withdraw from the duties of his office without the express permission of the Commandant or an accredited gazetted officer.

(d) The appointing authority may, during the period of initial appointment of a member of the Force appointed under [section 4 and 5] of the Act, permit him, for good and sufficient reason, to resign from the Force with effect from such date as may be specified in the order accepting his resignation.

Provided that on the acceptance of his resignation any such member of the Force shall be required to refund to the Government all the cost of training imparted to him in the Force or a sum equal to three months' pay and allowances, received by him prior to the date of his resignation whichever is less.

Explanation.---(1) For the purpose of this sub-clause "during the period of initial appointment" shall mean the period before a member of the Force is declared quasi-permanent.

(2) The appointing authority may refuse to permit a member of the Force to resign if any emergency has been declared in the country either due to internal disturbance or external aggression.

(e) The appointing authority may give substantive status to such members of the Force as are found suitable in all respect."

Rule 5 of CCS:

"5. Termination of temporary service- (1)(a) the services of a temporary Government Servant 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 allowance for the period of the notice 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.

Note- The following procedure shall be adopted by the appointing authority while serving notice on such Government Servant under clause (a)—

- (i) The notice shall be delivered or tendered to the Government Servant in person.*
- (ii) Where personal service is not practicable, the notice shall be served on such Government Servant by registered post acknowledgment due at the address of the Government Servant available with the Appointing Authority.*
- (iii) If the notice sent by registered post is returned un-served, it shall be published in the official Gazette and, upon such publication, it shall be deemed to have been personally served on such Government Servant on the date it was published in the Official Gazette.”*

17. The respondents’ service conditions, as a CRPF Constable (probationer), were admittedly governed by the CRPF Rules 1955. The CCS Rules can be made applicable in respect of a CRPF, Constable, when the Rules governing his service i.e., CRPF Rules, are silent over an issue sought to be dealt with. One would find that the exigency, as has occasioned in the present case, was very much covered by the CRPF Rules 1955, therefore, there was no occasion for the appellants to have pressed into service the General Rules i.e., CCS (Temporary Service) Rules, 1965, as the said rules are only supplementing and or providing an aid to the special set of rules-CRPF Rules only where the said Special Set of Rules are silent about a particular service exigency.

18. We are fortified in our view by the judgment of the Apex Court, passed in case titled “*Jose Paulo Coutinho Vs. Maria Luiza Valentina Pereira & Anr.*” (2019) 20 SCC 85. Paragraph No. 29 of the said judgment being relevant is taken note of herein:

“29. It is a well settled principle of statutory interpretation that which there is a conflict between the general law and the special law then the special law shall prevail. This principle will apply with greater force to special law which is also additionally a local law. This judicial principle is based on the latin maxim generalia specialibus non

derogant, i.e., general law yields to special law should they operate in the same field on the same subject. Reference may be made to the decision of this Court in “R. S. Raghunath Vs. State of Karnataka & Ors.”, Commercial Tax Officer, Rajasthan Vs. Binani Cements Ltd. & Ors,” and Atma Ram Properties Pvt. Ltd. Vs. The Oriental Insurance Co. Ltd.”

19. A reference here to the judgment of the Apex Court passed in case titled “*Maya Mathew Vs State of Kerala & Ors.*” (2010) 4 SCC 498, would be relevant to be noted herein:

“(ii) When two provisions of law – one being a general law and the other being special law govern a matter, the court should endeavor to apply a harmonious construction to the said provisions. But where the intention of the rule making authority is made clear either expressly or impliedly, as to which law should prevail, the same shall be given effect.”

20. Further, reference to the judgment of the Apex Court passed in “*E. Bapanaiah Vs. K. S. Raju Etc.*” (2015) 1 SCC, 451, would be appropriate wherein at para 27 following has been provided: -

“27. The present case relates to a civil contempt wherein an undertaking given to Company Law Board is breached, Normally, the general provisions made under the Contempt of Courts Act are not invoked by the High Courts for forcing a party to obey orders passed by its subordinate courts for the simple reason that there are provisions contained in Code of Civil Procedure, 1908 to get executed its orders and decrees. It is settled principle of law that where there are special law and general law, the provisions of special law would prevail over general law. As such, in normal circumstances a decree holder cannot take recourse of Contempt of Courts Act else it is sure to throw open a floodgate of litigation under contempt jurisdiction. It is not the object of the Contempt of Courts Act to make decree holders rush to the High Courts simply for the reason that the decree passed by the subordinate court is not obeyed. However, there is no such procedure prescribed to execute order of CLB particularly after proviso is added to Section 634A of the Companies Act, 1956, vide Companies (Second Amendment) Act, 2002.”

21. We have also come across Rule 102 of the CRPF Rules, 1955 which provides that any matter for which no provision is made in the said Rules i.e., CRPF Rules, such condition of service of the members of the Force shall be the same as are for the time being applicable to other Officers of the Government of India of corresponding status. This would mean that the CCS Rules in respect of respondent were to be made applicable only if there was no provision in the CRPF Rules to take care of such exigency. But since the issue in question is squarely covered by Rule 16 of the CRPF Rules, therefore, the appellants were not justified in any way to apply the General Law i.e., the CCS Rules. The action being not in conformity with law, had to be set right and has rightly been done so by the writ court.

22. Perusal of the Rule 16 of the CRPF Rules, *supra*, unambiguously, reveal that termination of a CRPF probationer, (as was the status of the respondent), is governed by such Rule providing that a probationer can be terminated within a period of three years service on one month's notice by the appointing authority, therefore, there was no justification for the appellants to have pressed into service the general law i.e., the CCS (Temporary Service) Rules 1965. This answers the first and main point of challenge to the impugned judgment.

23. Coming to the second point that the challenge made to the notice and order of termination in absence of any challenge to the order of the appellate authority and the order of striking off the respondent from the strength of CRPF was hit by the doctrine of merger, it would be worthwhile to mention here that the order of the appellate authority i.e., order dated 18.06.2012 and the order of striking of the respondent/petitioner therein from the strength of CRPF dated 28.03.2012 flow from and are an outcome of the notice and the order of termination challenged before the writ court. Once the basic notice as also the order of termination dated 25.02.2012 & 28.03.2012 respectively were issued in disregard of the applicable procedure, the off-shoot of such proceedings get nullified of its own. Having said that it needs to be pointed out that the respondent had challenged the order of striking off dated 28.03.2012, as the material made available would indicate, before the writ court, therefore, the

submissions made in that direction lose significance. However, if, for the sake of arguments, it is presumed that the respondent/petitioner therein ought to have challenged both these orders, yet the impugned judgment passed by the writ court cannot be upset, in that, the proceedings in the present LPA are continuation of the writ proceedings and if the court is of the opinion that the impugned judgment does not need to be disturbed or interfered with on the principle of law, the technicality as pointed out by the appellants cannot be allowed to override such principle of law.

24. Another ground of challenge in respect of the territorial jurisdiction of the writ court is also rejected for the reasons recorded by the writ court in the impugned judgment as the reasons supplied by the writ Court on the point appear to be well reasoned.

25. For all what has been said hereinbefore, the impugned judgment is maintained and the instant appeal, being without merit, is dismissed along with connected CMs. Interim direction, if any subsisting, shall stand vacated. It goes without saying that the appellants shall continue to have the liberty granted by the writ court in terms of the impugned judgment.

26. There shall, however, be no order as to costs.

(MOKSHA KHAJURIA KAZMI)
JUDGE

(N. KOTISWAR SINGH)
CHIEF JUSTICE

SRINAGAR

29.05.2023

ARIF

Whether the judgment is speaking Yes

Whether the judgment is reportable Yes