



[2024:RJ-JP:32037]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 9460/2024

Mahesh Kumar S/o Late Sh. Shrikrishan Gurjar, Aged About 36
Years, R/o Plot No. 31, Mansa Nagar, Sirsi Road, Jaipur (Raj.)

----Petitioner

Versus

1. The State Of Rajasthan, Department Of Home (Group-1/police), Through Its Joint Secretary/ Secretary Address- Government Secretariat, Jaipur (Raj.) 302005
2. The Office Of Director, State Forensic Science Laboratory, Rajasthan Through Its Director Address- Rpa Road, Nehru Nagar, Jaipur - 302016
3. The State Of Rajasthan, Department Of Personal, Through Its Principal Secretary Address- Main Building, Secretariat, Jaipur (Rajasthan) 302005

----Respondents

For Petitioner(s) : Mr. Hemant Taylor
For Respondent(s) : Mr. Vinod Kumar Gupta, AGC with
Mr. Ajay Sharma, Director, FSL, Raj.
Through VC

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
Judgment / Order**29/07/2024**

This writ petition is directed against the order dated 03.05.2024 whereby, petitioner's services have been terminated.

Learned counsel for the petitioner submits that he was appointed as a Class IV employee in the office of respondent No.2 on probation; however, his services have been terminated invoking Rule 23A of the Rajasthan Service Rules, 1951 (for brevity, "Rules of 1951") which is meant for temporary employee. Relying upon a judgement of a co-ordinate Bench of this Court in the case of **Dinesh Kumar Meena vs. State of Rajasthan and**



Others: 2019 (2) RLW 1002, MANU/RH/0711/2018, he would submit that termination of his services, a probationer, invoking Rule 23A is bad in law. He, therefore, prays that the writ petition be allowed and the order impugned dated 03.05.2024 be quashed and set aside.

Although, learned counsel for the respondents admits that the petitioner was a probationer and they have erroneously invoked provisions of Rule 23A of the Rules of 1951 which is applicable in case of a temporary employee; he, however, submits that since, his services have been terminated on finding the same to be unsatisfactory, quoting of wrong provision would not render the order invalid. He, therefore, prays that the writ petition be dismissed.

Heard. Considered.

Indisputably, the petitioner was appointed on probation and was working as such when his services were terminated vide order impugned dated 03.05.2024 invoking Rule 23A of the Rules of 1951 which reads as under:

“Notice for termination of service of a temporary employee:

(1)(a) Except as otherwise provided in sub-rule (2), the service 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, and on such termination the Government servant shall



be entitled to claim a sum equivalent to the amount of his pay plus allowance for the period of the notice at the same rates at which he was drawing them immediately before the termination of the services or as the case may be for the period by which such notice falls short of one month."

It is not only in the order impugned wherein, the petitioner has been reckoned as the temporary employee and Rule 23A has been invoked; but in their reply filed to the writ petition, the respondents have defended the order stating that since, he was a temporary employee, his services were rightly terminated invoking Rule 23A of the Rules of 1951. The relevant extract as available on internal page 8 of the reply is quoted as under:

"The services of the petitioner were found dissatisfactory, in consequence to which, his services have been terminated by issuing one month's notice under Rule 23A of Rajasthan Service Rules, 1951 vide office order dated 03.05.2024. Since the petitioner has been a temporary employee and there are sufficient grounds to take action against the temporary employee under the Rajasthan Service Rules, 1951. Due to unsatisfactory services of the petitioner, in accordance with the powers enumerated under Rule 23 A(1) (A) of Rajasthan Service Rules, 1951, the services of the petitioner was terminated. If the petitioner would have been permanent, departmental action would have been initiated against him."

Thereafter, this Court has, vide order dated 23.07.2024, directed the respondent No.2 to file an affidavit to justify its action in reckoning the petitioner as the temporary employee and dismissing him from services invoking Rule 23A of the Rules of



1951; in pursuance whereof, an additional affidavit dated 26.07.2024 of the Director, State Forensic Science Laboratory, Rajasthan was filed wherein also, maintaining the same stand, it is submitted that till successful completion of the probation period, the employment is temporary. For ready reference, the relevant extracts of his affidavit are quoted hereinunder:



“It is pertinent to mention here that in the probation period of an employee, ‘temporary’ is being mentioned and after successful completion of the probation period, the Head of the Department/Appointing Authority issue order of regularization separately, after which the employee comes under the category of regular/permanent employee but before that the employee is like a temporary employee in the probation period. As the services of the petitioner were not regularized and he was in probation period, hence, he was kept in temporary category.

It is further submitted in this regard that as per Rule 23(A) of the Rajasthan Service Rules 1951, the services of a temporary state employee, shall be liable to be dismissed on giving written information by the employee to the appointing authority or written information given to the employee by the appointing authority. Such notice period shall be of one month. Therefore, action has been taken against the petitioner under Rule 23(A) by treating him like a temporary employee.

As per the abovementioned Rules, the services of the petitioner have been terminated, vide order dated 03.05.2024.”

Therefore, from the abovementioned stand of the respondents, it is apparent that they have consciously terminated services of the petitioner invoking Rule 23A of the Rules of 1951 treating him as a temporary employee and not on account of a



bona fide error. It is a well settled legal proposition that the Court has to take the case as set out by the parties in their pleadings and the Courts cannot make out a case of its own de hors the pleadings. Viewed from this angle also, the order impugned supported and defended by the reply and the additional affidavit dated 26.07.2024 filed by the respondent No.2 leaves no room for doubt that it was consciously and deliberately passed invoking Rule 23A of the Rules of 1951. In view thereof, contention of the learned counsel for the respondents is not acceptable.

A co-ordinate Bench of this Court in the case of **Dinesh Kumar Meena** (supra), held as under:

“The first issue is with regard to applicability of Rule 23-A of RSR to the probationers, this Court finds that a bare reading of Rule 23-A makes it clear that services of a temporary Government servant can be terminated by the employer at any time by a notice in writing and in case notice is not to be given and if the employer wants to terminate the services of temporary Government servant forthwith, notice pay can be given to such employee. This Court finds that Rule 23-A only applies to the temporary Government servants and not to the probationers.

This Court is of the opinion, that if the person is appointed after undergoing regular mode of selection, his service conditions are governed by statutory Rules (like in the present case, the service condition of petitioners are regulated after their appointment as per Rajasthan Police Subordinate Rules of 1989). Such person acquires a status of probationer and he is not temporary Govt. employee. The Court finds that once the petitioners were appointed on probation, they could not have been treated as a temporary



Government servant and respondents exercised power under Rule 23-A of RSR in a wrong and illegal manner. The definition given under RSR of Probationer and Probationer-Trainee makes it very clear that persons appointed on substantive basis against substantive post have been appointed on regular basis and they are not temporary Govt. employees.”

In the aforesaid case, it has been held that services of a probationer cannot be terminated invoking Rule 23A of the Rules of 1951.

In the backdrop of aforesaid precedential law and in the peculiar facts and circumstances of the case as narrated hereinabove, this Court deems it just and proper to allow this writ petition.

Resultantly, the writ petition is allowed and the order dated 03.05.2024 is quashed and set aside. Consequences to follow.

However, the respondents are at liberty to pass an order afresh in accordance with law.

Pending application(s), if any, also stands disposed of accordingly.

(MAHENDAR KUMAR GOYAL),J

DIKSHA /375-s