

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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WP(C) No.235/2000

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Date of decision: 3rd March , 2010

DULI CHAND

..... Petitioner

Through: Mr. Pravin Sharma, Advocate.

versus

P.O.LABOUR COURT-VIII & ANR.

..... Respondents

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The petitioner workman seeks a writ quashing the award dated 18th May, 1998 of the Labour Court answering the following reference –

“Whether the services of Shri Duli Chand have been terminated illegally and/or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect?”

against the petitioner workman *inter alia* for the reason of the petitioner workman being within the probationary period.

2. Though it was the case of the petitioner workman that he had been in employment of the respondent DTC on daily wages as a sweeper cleaner since 1st May, 1981 but the Labour Court found that such daily employment of the petitioner workman had been stopped in 1985 and which termination had not been challenged by the petitioner workman; that the petitioner workman was reemployed on 3rd April, 1986 and it is the termination of the said employment which was challenged and with respect where to the reference had been made. The petitioner in the present writ petition has also not claimed any rights on the basis of his employment on daily wages w.e.f. 1981.

3. It is not in dispute that (i) in terms of the appointment letter dated 3rd April, 1986 the appointment of the petitioner workman was temporary and on probation for a period of one year extendable to two years; (ii) the said probation was extended; (iii) that before the expiry of the probation period the services of the petitioner workman were terminated.

4. The wording of the letter of termination of employment would be relevant, thus the same is set out herein below:

“The services of Shri Duli Chand S/o Shri Handa Ram S/Cleaner B.No.11633 Pay token No.29073 are hereby terminated with immediate effect under clause 9(a) (i) of the D.R.T.A (Condition of Appointment & Services) Regulations 1952. A Cheque No. “602846” 110025021 dated 29-9-87 for Rs.1295.36 paise (Rs. One thousand two hundred ninety five and thirty six paise only) on account of one month pay and necessary compensation under I.D. Act, 1947 is attached herewith.

He is required to deposit all the D.T.C articles in his possession within 24 hours of the receipt of this memo. Non deposit of the D.T.C articles by him in accordance with the instructions as contained in office order No.21 dated 27.01.1954 will render him liable to pay a penalty of Rs.2/- per day for the days he keeps any of the articles in his possession after the specified period of 24 hours.”

It would thus be evident that the letter of termination does not impute anything whatsoever to the petitioner.

5. Upon industrial dispute being raised, the respondent DTC besides taking a plea that the petitioner workman being on probation, his services could be terminated, *inter alia* stated -

“During the probation period of one year the workman availed 42 days LWP and on account of excess leave availed by the workman the probation of the workman was extended for six months up to 3rd October, 1987. During the extended period of probation the workman availed 54 days LWP. Therefore the management terminated the services of the workman....”

6. The Labour Court has held in the aforesaid facts that the respondent DTC under its conditions of appointment and service regulations (framed under the statute) is competent to appoint its employee on probation and after satisfactory completion of the probation period the workman is to be confirmed in the sanctioned permanent strength of establishment; Regulation 9 (a)(i) provides that the “services of an employee of the Authority may be terminated without any notice or pay in lieu thereof during the period of probation and

without assigning any reason therefor". Therefore under the above said regulation, the management is competent to terminate the service during probation.

7. The counsel for the petitioner has contended that since the reason for terminating the service during probation was, the petitioner having availed of long leave without pay during probation, the petitioner ought to have been given a hearing and an inquiry ought to have been conducted, though it is not disputed that the petitioner did avail leave without pay as aforesaid during probation but it is pleaded that the same was owing to ailments in the family of the petitioner. The contention of the counsel for the petitioner is that even during probation, the services can be terminated only for the reason of the employee being not found fit for the job and if termination is sought to be done for any other reason, the same has to be preceded by an inquiry. It is contended that the termination in the present case is not for the reason of the petitioner being not found fit for the job of a sweeper but for the reason of his long absence without pay during probation. Reliance in this regard is placed on the judgment of Supreme Court in *Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta* 1999 1 LLJ 174. In the said judgment, during the period of probation the probationer was issued a letter recording the several counts on which his performance was not found satisfactory and other correspondence had ensued in this regard and the letter of termination also recorded the said letters issued to the probationer, the factum of the probation having been extended owing to the performance being not found satisfactory and the termination being affected owing to the probationer having not improved his performance. In these circumstances, it was held that if findings were arrived at in inquiry as to the misconduct of the probationer, behind the back of the probationer and without departmental inquiry, the simple order of termination is to be treated as founded on allegations and will be bad in law. It was further held that if the inquiry was not held, no findings were arrived at and the employer was not inclined to conduct an inquiry but at the same time did not want to continue the probationer, the order would not be bad even though the complaints may be the motive for termination. It was further held that it depends upon the facts and circumstance of each case and the language or

the words employed in the order of termination of the probationer to judge whether the words employed amount to stigma or not. It was yet further held that the material amounting to stigma need not be contained in the order of termination but may also be contained in an order or proceedings referred to in the order of termination or in an Annexure thereto and which would also vitiate the order of termination.

8. The aforesaid would show that the facts of the present case are entirely different. There was no inquiry and no reason whatsoever stated in the letter of termination. Thus there could be no question whatsoever of the termination being stigmatic to the petitioner. The reasoning given before the Labour Court, in reply to the statement of claim of the petitioner, for terminating the employment cannot be said to be stigmatic so as to make the order of termination bad. There is nothing to show that there was any such inquiry and/or of which the petitioner was not given any notice, before the issuance of the letter of termination.

9. The contention of the counsel for the petitioner, that the services of a probationer even, can be terminated only for the reason of the probationer being not found fit for the job and not for any other reason, also cannot be accepted. No distinction can be carved out between the two sets of reasons. Long absence without leave can also be a reason for the petitioner not being fit for the job. The test of whether a probationer is fit for the job or not cannot only be qua the skills required for the job. A worker may have the requisite skills but may still not be able to qualify as a good workman to be confirmed. One such reason can be frequent absence. Yet another reason can be incapacity to work in a team or incompatibility with the superiors or the others.

10. A three judge bench of the Supreme Court (the judgment in *Dipti Prakash Banerjee* (supra) is of a two judge bench) in *State of Punjab Vs. Sukhwinder Singh* AIR 2005 SC 2960 has held that a probationer does not have any right to the post and an inquiry conducted to obtain primary facts and mentioning absence from duty cannot qualify as termination punishment. It was held that where a superior officer, in order to satisfy him whether the employee concerned should be continued in

service or not makes inquiries for the purpose, it would be wrong to hold that the inquiry which was held was really intended for the purpose of imposing punishment. Yet further it was held that if in every case where some kind of fact finding inquiry is made, whether the employee is either given an opportunity to explain or the inquiry is held behind his back, it is held that the order of discharge or termination from service is punitive in nature, even a bona fide attempt by the superior officer to decide whether the employee concerned should be retained in service or not would run the risk of being dubbed as an order of punishment. A probationer is on test and a temporary employee has no right to the post. If mere holding of an inquiry to ascertain the relevant facts for arriving at a decision on objective considerations whether to continue the employee in service or to make him permanent is treated as an inquiry "for the purpose of imposing punishment" and an order of discharge or termination of service as a result thereof "punitive in character", the fundamental difference between a probationer or a temporary employee and a permanent employee would be completely obliterated and which would be wholly wrong.

11. I find that subsequently a two judge bench of the Supreme Court in *State of Punjab Vs. Constable Avtar Singh* (2008) 7 SCC 405 followed the judgment in *Sukhwinder Singh* (supra) for the reason of the same being of a three judge bench rather than other judgments of the Supreme Court of two judge benches to the effect that once there is stigma an opportunity has to be given before passing an order.

12. In view of the aforesaid facts of the present case, the different facts in *Dipti Prakash Banerjee* leading to the law laid down therein is not applicable to the present case. In fact the present case is covered by the exception carved out in the said judgment. The controversy is fully covered by the judgment of the larger bench in *Sukhwinder Singh*.

There is no merit in the petition. The same is dismissed.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

3rd March, 2010/pp