

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

+ **W.P. (C.) No.1132/2010 & C.Ms. 2370-71/2010**

% **Date of Decision:23.02.2010**

ALL INDIA COUNCIL FOR TECHNICAL
EDUCATION AND ANR.

.... PETITIONERS

Through Mr. Amitesh Kumar, Advocate

Versus

ROMINDER RANDHAWA & ORS.

....RESPONDENTS

Through Mr. Sapna Chauhan, Ms. Latika
Chaudhary, Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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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? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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1. The petitioner has filed this petition impugning the judgment and order dated 06.10.2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for short 'the Tribunal) whereby the Original Application No.2169/2000 filed by respondent No.1, Smt. Rominder Randhawa has been allowed and the office order dated 29.07.2009 terminating the services of respondent No.1 has been set aside by observing that "*be it a case of probationer, temporary employee or one appointed on contract basis, if the order may be punitive having been passed because of the employee indulging in misconduct, the same*

cannot be passed unless proper hearing is given to the employee concerned and he/she is held guilty of the alleged misconduct, as otherwise it would be violative of Article 14 and 16 of the Constitution of India.”

2. Briefly stating the facts of this case are that:

- i) Vide letter dated 03.05.2005 post of Deputy Director was offered to respondent No.1 on contract basis for a period of one year and extendable further for a total period not exceeding three years on year to year basis. Some of the terms and as relied upon by the petitioner of this employment were as follows:

“..4. The contract is liable to be terminated at one month’s notice on either side without assigning any reasons. Provided that the Council shall have the right to terminate the contract and discharge the concerned officer immediately on or before the expiry of the stipulated notice period, by making payment to the officer of a sum equivalent to the pay and allowances, if any, for the period of notice or the unexpired portion thereof, as applicable.

5. The Council and their designated officers may, without any previous notice, terminate the contract if the officer is found guilty of any insubordination intemperance or other misconduct or of any breach of non performance of any of the provisions of these presents or of any rules pertaining to the breach of the public service to which the officer may belong.

6. The Council may also terminate the contract if they are satisfied on medical evidence that the officer is unfit and likely to remain so for as considerable period, by reasons for ill health for discharge of his duties. The decision of the Council that the officer is likely to continue unfit shall be conclusively binding on the officers...”

- ii) The respondent No.1 accepted the aforesaid appointment and was appointed as Deputy Director with effect from 4th May, 2005 in the pay scale of Rs.12000-375-18000 and extendable for a period not exceeding three years on year to year basis. Her contract was renewed on year to year basis from time to time. Vide letter dated 16.04.2007 her contractual tenure was extended for a period of one year with effect from 04.05.2007 or till the regular appointment are made on the post of Deputy Director, whichever is earlier. Her services were further extended for a period of six months vide order dated 01-05.05.2008. Such extension continued from time to time and in fact, were in continuation even from 04.05.2009 or till the Court gave directions as per its order dated 13.07.2009.
- iii) However, her services were terminated without holding any enquiry after a complaint dated 08.07.2009 was received by the Central Bureau of Investigation from one Sh. Kidar Nath Bansal, Chairman, Echelon Institute of Technology, Faridabad alleging that *“the concerned AICTE authorities namely, **Shri Shriom Dala, R.O., Prof., H.C. Rai, Advisor (E&T) Mrs. Rominder Randhawa, Dy. Director, AICTE** willfully and purposely delayed the process of insurance of LOI, Letter of approval to start the institute for 2009, in 2007-08, approval for extension of the institute for the year 2008-*

09, increase in intake of seats for session 2008-09, again approval for extension of the institute for 2009-10, than approval for increase in intake of seats for the year 2009-10, etc., of EIT even since the year 2006 till 2009 with the intent to harass for ulterior considerations as we did succumbed to illegal demands of Shri Dalal and agents of Shri Ra and Smt. Randhawa. The raid at the premises of institute was apparently carried out in an uncalled and unparalleled manner in order to settle score with us for having lodged complaints against them with Ministry of HRD. The said acts of high handedness cannot be but for active support and connivance of Shr. R.A. Yadav, Chairman as despite issuance of ante-dated approval letter dated 06.08.2008, the fax copy of the approval letter was not given till 23.9.2008 and the AICTE website continued showing EIT intake as 60 students. He was also a party with an intent to protect them and damages.....

In view of aforegoing, it is requested that the matter may be dealt with as per law and action against the corrupt authorities of AICTE....”

- iii) Admittedly, without affording any opportunity to the respondent in relation to the aforesaid allegation, the petitioner repatriated Prof. H.C. Rai, Advisor I, AICTE to his parent department, i.e., Guru Gobind Singh Indraprastha

Universty, New Delhi with immediate effect; placed Shri Shriom Dalal, Assistant Director, AICTE under suspension with immediate effect. Further it is relevant to state that since Prof. R.A. Yadav, Chairaman, AICTE was also placed under suspension with immediate effect. **However, the petitioner terminated the contract of Smt. Rominder Randhawa as Deputy Director in AICTE with immediate effect in view of her involvement in a case in respect of a criminal offence being under investigation by observing that in the event of her continuation in office, there is every possibility of the investigation being influenced.**

- iv) Being aggrieved of the termination of her contract, Smt. Rominder Randhawa, respondent No.1 filed an Original Application No.2169/2009 challenging the said office order.

3. The Tribunal vide order dated 29.07.2009, however, set aside the impugned termination order by holding that since it was a punitive order passed without proper hearing given to respondent No.1, being order was violative of Article 14 and 16 of the Constitution of India. The Tribunal further observed that if respondent No.1 was involved in a criminal case, the petitioners were well within their right to place her under suspension and either await the decision of the criminal court or else hold a regular departmental enquiry against her before terminating

her services. The status of respondent No.1 was restored to what it was immediately before the impugned order was passed.

4. Learned counsel appearing for the petitioner has assailed the impugned order relying upon a judgment delivered by the Supreme Court in the case of *Pavanendra Narayan Verma Vs. Sanjay Gandhi PGI of Medical Sciences and Anr.*, **(2002) 1 SCC 520**. It has been argued that in order to constitute a stigmatic order necessitating a formal inquiry, it would have to be seen whether prior to the passing of the order, there was an inquiry into the allegations involving moral turpitude or misconduct so that the order of discharge was really a finding of guilt. If any of these three factors are absent, the order would not be punitive. The petitioner has also relied upon the following judgments:

- i) *State of W.B. & Others Vs. Tapas Roy* **(2006) 6 SCC 453**
- ii) *Jai Singh Vs. Union of India & Ors.* **(2006) 9 SCC 717**.
- iii) *Gurbachan Lal Vs. Regional Engineering College, Kurukshetra & Ors.* **(2007) 11 SCC 102**.

5. We have heard the submissions made on behalf of the petitioner and have also gone through the impugned order. Reasoning given in the impugned order which needs to be appreciated commences from paragraph 7 of the impugned order which is reproduced hereunder:

7. That the impugned order came to be passed because of involvement of the applicant in a criminal case is not in dispute. In fact, that is the only reason for terminating her services. We are of the considered view that be it a case of a probationer, a temporary employee or one appointed on contract basis, if the order may be

punitive having been passed because of the employee indulging in misconduct, the same cannot be passed unless proper hearing is given to the employee concerned and he/she is held guilty of the alleged misconduct, as otherwise it would be violative of Articles 14 and 16 of the Constitution. There is plethora of judgments on the issue as mentioned above, but we may refer to only some of the judgments, as otherwise it would be unnecessarily burdening the judgment. The Hon'ble Supreme Court in *Anoop Jaiswal v Government of India and Another* [(1984) 2 SCC 369], in the case of a probationer, held that court can always go behind the formal order of discharge to find the real cause of action, and if the order is actually based upon report/recommendation of the concerned authority indicating commission of misconduct by the probationer, it would be punitive in nature, which, in absence of proper enquiry, would amount to violation of Article 311(2) of the Constitution. The facts of the case aforesaid reveal that the order of discharge was passed in the midst of the probation period. An explanation was called for from the appellant regarding the alleged act of indiscipline, namely, arriving at the gymnasium and acting as one of the ringleaders. There were others also from whom explanation was called for, but it is only in the case of the appellant that the order discharging him from service was passed. On facts, it was found that even though the order of discharge may be non-committal, it could not stand-alone. The recommendation of the director was held to be the basis or foundation for the order. In *Nepal Singh v State of U.P. and Others* [(1985) 1 SCC 56], the Hon'ble Supreme Court held that mere allegations regarding unsuitability were not enough. In the case aforesaid, disciplinary enquiry to verify charge of contracting a second marriage in violation of the conduct rules was dropped. The real reason for terminating the services of the appellant who was a temporary SI of Police was found to be the delinquency of contracting a second marriage. In *Jagdish Prasad v Sachiv, Zila Ganna Committee, Muzaffarnagar and Another* [(1986) 2 SCC 338], in the case of a temporary employee when his services were terminated for concealment of the fact of his removal from previous service in another department, it was held that the order of termination would be illegal and in violation of audi alteram partem rule, if the same came to be passed without holding any enquiry. In *State of Haryana v Jagdish Chander* [(1995) 2 SCC 567], in the case of an employee whose services could be terminated under rule 12.21 of Punjab Police Rules, by virtue of which if a constable was found unlikely to be an efficient police officer, he may be discharged at any time within three years of enrollment, it was held by the Supreme Court that order under such a provision passed without affording opportunity on the basis of findings which would disentitle future employment, would be bad.

8. In view of the settled position in law as mentioned above, the order dated 29.7.2009 terminating services of

the applicant has to be set aside. We order accordingly. Inasmuch as, the applicant has been involved in a criminal case, the respondents will be well within their right to place her under suspension, and either await the decision of the criminal court or else hold a regular departmental enquiry against her before terminating her services. The status of the applicant would be restored to what it was immediately before the impugned order was passed.

6. The view taken by the Tribunal also finds favour from the other judgments delivered in the case of *Babu Lal Vs. State of Harayan & Ors. (1991) 2 SCC 335*, *Chandra Prakash Shahi Vs. State of U.P. & Ors. (2000) 5 SCC 152* as well as in the case of *Union of India & Ors. Vs. A.P. Bajpai & Ors. (2003) 2 SCC 433*.

7. In the case of *Babu Lal (Supra)*, it has been held:

8. Moreover, from the sequences of facts of this case the inference is irresistible that the impugned order of termination of the service of the appellant is of penal nature having civil consequence. It is well settled by several decisions of this Court that though the order is innocuous on the face of it still then the Court if necessary, for the ends of fair play and justice can lift the veil and find out the real nature of the order and if it is found that the impugned order is penal in nature even though it is couched with the order of termination in accordance with the terms and conditions of the order of appointment, the order will be set aside. Reference may be made in this connection to the decision of this Court in *Smt. Rajinder Kaur v. State of Punjab and Anr.*, [1989] 4 SCC 181 in which one of us is a party. It has been held that:

The impugned order of discharge though stated to be made in accordance with the provisions of Rule 12.21 of the Punjab Police Rules, 1934, was really made on the basis of the misconduct as found on enquiry into the allegation behind her back. Though couched in innocuous terms, the order was merely a camouflage for an order of dismissal from service on the ground of misconduct. This order had been made without serving the appellant any charge-sheet, without asking for any explanation from her and without giving any opportunity to show cause against the purported order of dismissal from service and without giving any opportunity to cross-examine the witnesses examined. The order was thus, made in total

contravention of the provisions of Article 311(2) and was therefore, liable to be quashed and set aside.

9. This case relied on the observations made by this Court in the case of *Anoop Jaiswal v. Government of India*,: (1984)ILLJ337SC wherein it has been observed that:

... Where the form of the order is merely a camouflage for an order of dismissal for misconduct it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the court holds that the order though in the form is merely a determination of employment is in reality a cloak for an order of punishment, the court would not be debarred, merely because of the form of the order, in giving effect to the rights conferred by law upon the employee.

10. Similar observation has been made by this Court in the case of *Hardeep Singh v. State of Haryana and Ors.* It has been held in this case as under:

In the instant case, it is clear and evident from the averments made in paragraph 3, sub-para (i) to (iii) and paragraph (v) of the counter-affidavit that the impugned order of removal/dismissal from service was in substance and in effect an order made by way of punishment after considering the service conduct of petitioner. There is no doubt the impugned order casts a stigma on the service career of the petitioner and the order being made by way of punishment, the petitioner is entitled to the protection afforded by the provisions of Article 311(2) of the Constitution as well as by the provisions of Rule 16.24 (IX)(b) of the Punjab Police Rules, 1934....

8. In the case of *Chandra Prakash Shahi (Supra)* where the employee was a probationer, it was held:

28. The important principles which are deducible on the concept of “motive” and “foundation”, concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry, the order would be punitive in nature as the inquiry was held not

for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employees. In this situation, the order would be founded on misconduct and it will not be a mere matter of “motive”.

9. Thus, in the aforesaid, case a distinction was made between the motive and foundation of an order. There may be a motive in the mind of the department to terminate the services of an employee but if the foundation is some misconduct as is the case in this case then such an order was held to be punitive in nature and required holding of an inquiry.

10. Coming to the judgment cited by the petitioner, it may be seen that in the case of *Union Public Service Commissioner Vs. Girish Jayanti Lal Vaghela & Ors. (2006) 2 SCC 482*, the issue before the Court was whether to continue the employment of a contract employee who was not granted age relaxation and was not a case where the termination was affected on account of some misconduct and thus, has no application to the facts of this case.

11. In the case of *Jai Singh Vs. Union of India (Supra)* the decision to do away with the services of the petitioner was on account of the disbanding the auxiliary battalion so it is not a case which helps the petitioner. In the case of *Tapas Roy (Supra)* the order of discharge was passed strictly in accordance with the Rule 10 of the West Bengal Recruitment Rules for Constables, 1999, so on facts this judgment is also not applicable.

12. In the case of *Pavanendra Narayan Verma (Supra)*, the reason for termination of services of the petitioner was that he was not found fit for continuation in the service during the period of his probation which came to an end. In that context, it was held *"It cannot be held that the enquiry held prior to the order of termination turned the otherwise innocuous order into one of punishment. An employer is entitled to satisfy itself as to the competence of a probationer to be confirmed in service and for this purpose satisfy itself fairly as to the truth of any allegation that may have been made about the employee. A charge-sheet merely details the allegations so that the employee may deal with them effectively. The enquiry report in this case found nothing more against the appellant than an inability to meet the requirements for the post. None of the three factors catalogued above for holding that the termination was in substance 'punitive', exists in the present case."* The apex court further clarified this position by observing:

Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. In order to amount a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job.

13. To understand the facts of this case, it would also be relevant to take note of para-4 of the judgment which details the facts of that case:

4. The period of probation was extended on 23rd June 1997 for a period of six months w.e.f. 30th April 1997. This was subsequently further extended for a period of three months w.e.f. 30th October 1997. On 6th February 1998, the impugned order of termination was issued. The language used in the order reads:

"...During the period of our work (sic) and conduct was found satisfactory and therefore, your probation was extended for a period months (sic) w.e.f. forenoon of 30.4.1997 vide office order PG/DIR/DC/479/97 dated 23.6.1997. Again vide office order No. 811 PG/DIR/DC dated 27th October 1997 your probation period was further extended for three months w.e.f. the forenoon of 30th October 1997. Even during thus (sic) extended period of probation your work and conduct has not been found to be satisfactory.

Therefore, under terms & conditions No. 3 and 4 of the above referred appointment letter, dated services are hereby terminated with immediate effect and for the period a cheque No. VR/00/5856 dated 5.2.1998 for Rs. 11.070 (Rupees eleven thousand seventy only) in lieu of on (sic) months notice is enclosed."

14. However, in the present case, the termination of respondent No.1 is not on account of the petitioners having found her unfit to continue on her post but it is based upon allegations of criminal mis-conduct in a complaint made by M/s Echelon Institute of Technology, Faridabad. Thus, the aforesaid judgment has no application to the facts of this case as the motive of terminating her services is founded on the basis of alleged criminal mis-conduct without holding an enquiry.

15. In the case of *Gurbachan Lal (supra)* termination was affected after a decision was taken not to absorb the petitioner by way of regular appointment, which was not held to be a punitive transfer. Some facts of that case are relevant. In that case, the employee was continuing into work for 10 years or more but only as a temporary employee. He wanted regularization. It was held that continuous temporary

employment would not vest any legal right in the appointment so as to continue in service when the scheme on the basis of which he was appointed and was working itself came to an end. The legal position has been explained in paragraph 44 and 45 of the judgment which for the sake of reference is reproduced hereunder:

44. We may also note that observations made by the Constitution Bench in the case of Uma Devi (supra) to the effect that the sovereign government after considering the economic situation in the country and work to be got done, cannot be precluded from making temporary appointments or engaging temporary workers or daily wagers which clearly indicates that the power of the authority to appoint temporary employees was accepted by this Court but the fact remains that such appointment shall remain temporary in nature which can be terminated at any point of time.

45. In the present case the appellant continued to work for ten years or more but such continuous temporary employment of the appellant cannot vest any legal right in him to continue when the scheme on the basis of which he was appointed and was working itself came to an end. It is also incorrect to say that the court would direct continuity of the scheme for the purpose of keeping the appellant in service and in any view of the matter he could not be treated as a permanent employee of the Institution as he was appointed under a scheme and not in the mainstream of the Institution.

16. Taking all these facts into consideration, it is apparent that the respondent No.1, though was a contract employee but that contract was valid for a certain period. However, her services were terminated on account of the misconduct alleged against him in the report filed by Echelon Institute without holding an inquiry. It was not a termination when the contract of the employee came to an end or where any inquiry was held in her case.

17. Thus, from the aforesaid it will be seen that whether the order was in the case of a temporary employee, the probationer or a contract employee if the foundation of passing of the order of termination was misconduct without holding any inquiry, the order would be bad in law and would be contrary to the provisions contained under Article 311 sub-clause (2) of the Constitution of India and would be liable to be set aside.

18. We do not find any infirmity in the judgment delivered by the Tribunal subject matter of the present writ petition and hold that it is not a case where any interference is required to be made by this Court while exercising its power under Article 226 of the Constitution of India. The writ petition filed by the petitioner is thus, dismissed with no order as to costs. All the pending applications shall also stand disposed of.

MOOL CHAND GARG, J.

FEBRUARY 23, 2010

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ANIL KUMAR, J.