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

+ W.P.(C) 6901/2010

% **26.07.2013**

S.K. JAIN

..... Petitioner

Through: Mr. Rajiv Bansal, Advocate

versus

GNCT OF DELHI AND ORS.

.... Respondents

Through: Mr. Amit Bansal, Advocate for
respondent Nos. 2 to 4.

Mr. Anurag Mathur, Advocate for respondent No.
5.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition one Sh. S.K. Jain, who was appointed by the respondent No. 4/College to the post of Administrative Officer on probation basis, impugns the order dated 4.10.2010 terminating his services during the period of probation.

2. The law with respect to services of termination of a probationer is now well settled and it has been held by the Supreme Court that a

probationer can always be terminated during the probationary period without complying with the principles of natural justice. It has also been held that even if the orders of termination of probation states that the services are 'not satisfactory' then the order of the termination will not for that reason be called stigmatic in nature. The relevant observations of the Supreme Court are contained in paras 44 and 45 of the judgment in the case of ***Muir Mills Unit of NTC (U.P.) Ltd. Vs. Swayam Prakash Srivastava & Anr. (2007) 1 SCC 491*** and which paras read as under:

“44. Also in the case of *Registrar, High Court of Gujarat and Anr. v. C.G. Sharma* it was observed that an employee who is on probation can be terminated from services due to unsatisfactory work.

45. This Court's decision in the case of *P.N. Verma v. Sanjay Gandhi PGI of Medical Sciences* can be referred to in this context, where it was held by this Court that, the services of a probationer can be terminated at any time before confirmation, provided that such termination is not stigmatic. This Court in *State of Madhya Pradesh v. Virendera Kumar Chourasiya* also has held that in the event of a non-stigmatic termination of the services of a probationer, principles of *audi alteram partem* are not applicable.”

3. In the present case, the facts which emerge are that though the petitioner was recommended for confirmation of appointment by the Principal of the College, however, the governing body of the college, and which is admittedly the final body which takes decision on continuing of

probation or confirmation or termination, in fact passed a resolution firstly giving one extension of probation period but subsequently passed a resolution not confirming the service i.e terminating the services of the petitioner during the period of probation. The letter informing the petitioner of terminating his services dated 4.10.2010 reads as under :

“CBS/PO/CONF./2010-11

OCTOBER 4, 2010

Mr. S.K. Jain
Administrative Officer
Shaheed Sukhdev College of Business Studies
University of Delhi
Delhi.

Dear Mr. Jain,

You were appointed as Administrative Officer with the Shaheed Sukhdev College of Business Studies vide letter dt. 19/05/2009. The appointment letter provided for a probation period of one year that expired on 19/05/2010. In view of the unsatisfactory performance, your period of probation was extended by a further six months to expire on 19/11/2010. However, your performance continues to be unsatisfactory even during the extension of the probationary period. Therefore, the Governing Body in its emergency meeting on 04/10/2010 has decided to terminate your services with immediate effect.

In compliance thereof your services are hereby terminated with immediate effect and you are directed to hand over charge to Shri S.K. Jairath, Section Officer (Accounts).

Yours faithfully,

Sd/-
(Poonam Verma)”

4. A reference to the aforesaid letter shows that services of the petitioner were unsatisfactory. As per the ratio laid down in the case of ***Muir Mills Unit of NTC (U.P.) Ltd.*** (supra) merely mentioning of services as unsatisfactory will not make the order stigmatic.

5. Learned counsel for the petitioner did try to passionately argue that it is the Principal who judges the performance of the probationer/petitioner, and since the Principal had recommended the confirmation of the petitioner, the governing body was bound to accept the recommendation of the Principal. I am unable to agree with this argument because neither any law nor any provision or statute of the University of Delhi or any rule of the respondent No. 4/College states that decision of the governing body is not final and it is the decision of the Principal which is final. Surely, a body will be governed by its Governing Council and Executive Council, and which is the final authority to decide the issues with respect to it/college. The relevant resolution of the governing body granting extension of probation period qua the petitioner is dated 17.05.2010 and the resolution of the governing body whereby petitioner's services as a probationer has been

decided to be terminated is dated 04.10.2010. Learned counsel for the petitioner sought to contend that Chairman is nobody to disapprove/override the recommendation of the Principal of the College on his own to either grant extension or to turn down the confirmation of an employee and which the Chairman has illegally done against the opinion of the Principal. This argument may appear to have some substance but this argument ignores the most important fact that we have to see the decision of the body which has the power either to give extension or to decide that the probationer should not be confirmed. Admittedly, this power vests in the governing body of the respondent No. 4, and which has decided firstly for extension of probation period and thereafter decided not to confirm the petitioner/probationer to the job of Administrative Officer.

6. Learned counsel for the petitioner also argues that having decided to extend the probationary period of the petitioner, then thereafter without giving reason and opportunity to the petitioner to improve, the probationary officer's services could not be terminated. I cannot agree with this argument because the Supreme Court has stated in the case of *Muir Mills Unit of NTC (U.P.) Ltd.* (supra), and the relevant paras of this judgment are reproduced above, that for termination of the services of a probationer

principles of natural justice are not to be followed. Therefore, there is no requirement of calling upon a probationer to improve by informing him that services are not satisfactory

7. In view of the above, the writ petition is, therefore, dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

JULY 26, 2013
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