

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

SPECIAL APPEAL NO. 238 OF 2023

26TH JULY, 2023

BETWEEN:

General B.C. Joshi Appellant.

And

Arun Kumar Chaudhary Respondent.

Counsel for the Appellant : Mr. Amit Kapri, learned counsel.

Counsel for the Respondent : Mr. Prabhakar Joshi, learned counsel.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

Issue notice. Learned counsel appears and accepts notice on behalf of the respondent.

2. The present special appeal is directed against the order dated 30.06.2023, passed by the learned Single Judge in Writ Petition (S/S) No.974 of 2023, staying the termination of the respondent- writ petitioner, *vide* order dated 02.03.2023.

3. The appellant is the employer. The admitted case of the respondent was that he was appointed on probation, and while his probation was still continuing- which was valid till 04.04.2023, he was terminated on 02.03.2023 by the letter of termination, which reads as follows:-

"Termination Order

1. Please refer para 5 of your appointment letter no.167/27-B(AKC)/APS dt 01 Apr 2021.

2. The School Management Committee has decided to dispense with your services with immediate effect. As per the terms & conditions mentioned at Para 5 of Agreement signed between Employee and the Employer made on 09 Apr 2021 "The services of the Party No.01 may be terminated during the probation period by giving one month notice or salary in lieu by Party No.2". The School Management has decided to give you one months' salary of Rs.43,793/- (Rupees Forty Three Thousand Seven Hundred Ninety Three only) vide Chq No.946326 dt 01 Mar 2023 in lieu of notice.

3. Your services, as PGT Fine Arts are hereby terminated with immediate effect. Therefore, you are directed to clear your dues by 04 Mar 2023".

4. The respondent- writ petitioner challenged the said termination by preferring writ petition in question. The learned Single Judge has stayed the said termination by passing the following order:-

"Heard Mr. Prabhakar Joshi, learned counsel for the petitioner and Mr. Amit Kapri, learned counsel for respondent nos.1, 2 & 3.

2. It is the case of the petitioner, who is aggrieved by the order dated 02.03.2023, passed by respondent no.2- Chairman, General B.C. Joshi, Army Public School (APS) Pithoragarh, whereby, regular appointment of the petitioner was brought to an end during the period of the probation extended by the respondent no.2 vide order dated 21.04.2022. The extended period of probation came to an end on 04.04.2023, but respondent no.2 in a pre-determine mind without awaiting for the probational period of the petitioner to come to an end, terminated his appointment by the impugned order dated 02.03.2023, which is annexure-1 to the writ petition.

3. *In the opinion of the Court this action of the respondent no.2 somehow de-hors to the service jurisprudence; it is only after a probation period is over, the assessment is to be done and then only, the authorities can pass any such order, that too, after giving an opportunity of hearing to the probationer.*

4. *The impugned order dated 02.03.2023 does not have an iota of reasons, as to why this harsh action was taken by respondent no. 2.*

5. *Per contra, learned counsel for the respondents tried to support the impugned order, by which the service has been terminated.*

6. *This Court's attention is drawn to Clause 5 of the appointment letter dated 01.04.2021 to substantiate his argument that even before the end of the probation period, the service of the petitioner could have been terminated. The language of Clause 5 of the appointment letter speaks otherwise and it is only at the end of probation period, the services of a regular Teacher shall be deemed to have been terminated.*

7. *Learned counsel for the respondents seeks and is granted four weeks' time to file counter affidavit.*

8. *Thereafter, two weeks' further time is granted to the learned counsel for the petitioner to file rejoinder affidavit.*

9. *In view of the reasons stated hereinabove, the impugned termination order dated 02.03.2023 annexure 1 to the writ petition, is hereby stayed, till the next date of listing.*

10. *List this matter on 17.08.2023."*

5. We have heard learned counsels for the parties.

6. With utmost respect, we cannot agree with the reasoning adopted by the learned Single Judge while passing the impugned order. The observation made in Paragraph No.3 of the impugned order is contrary to the settled legal position, that the services of the probationer can be terminated at any point of time during his probation, by an

order of termination simplicitor. The employer would be obliged to grant an opportunity to the probationer before termination of his services, if the termination is stigmatic, and not otherwise. There is no jurisprudence that the termination of the probationer cannot take place during the continuing of probation, and it can be undertaken only upon the expiry of the probation period.

7. For the aforesaid reasons, the impugned order cannot be sustained and, is accordingly, set-aside.

8. The appeal stands disposed of in the aforesaid terms.

9. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 26th July, 2023

NISHANT