

Court No. - 30

Case :- WRIT - A No. - 8579 of 2023

Petitioner :- Ritesh Singh

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Gramya Vikas Lucknow And 5 Others

Counsel for Petitioner :- Sanjay Kumar Singh

Counsel for Respondent :- C.S.C., Dilip Kumar Pandey

Hon'ble Om Prakash Shukla, J.

1. Heard learned counsel for the parties.

2. By means of instant writ petition, the petitioner has sought following reliefs:-

"I. to issue a writ, order or direction in the nature of certiorari for quashing of the impugned termination order dated 30.06.2023 passed by the O.P. No.3 Chief Development Officer/Additional District Programme Co-ordinator (MGNREGA) District- Lucknow, as contained in the Annexure No.1 to the writ petition.

II. to issue a writ, order or direction in the nature of certiorari for quashing of the undated preliminary enquiry report, as contained in the Annexure No.2 to the writ petition.

III. to issue a writ, order or direction in the nature of certiorari for quashing of the impugned resolution/recommendation dated 05.04.2023 passed in respect of termination of service of petitioner by O.P. No.6 as depicted in Annexure No.1 itself.

IV. to issue a writ order or direction in the nature of mandamus thereby commanding and directing to the opposite parties to reinstate the petitioner in the service with all the consequential benefits."

3. It has been submitted that petitioner was initially engaged as Rozgar Sahayak (Gram Rozgar Sevak) on 19.12.2011 on contractual basis which was extended from time to time and as of now petitioner has rendered 12 years of continuous service as a contractual employee with the department. It is submitted that petitioner received a show cause notice dated 23.09.2022 indicating charges levelled against him. The said notice was replied to by petitioner vide letter dated 03.10.2022. Thereafter on 26.11.2022 without considering the reply of the petitioner, the Zila Adhikari directed to Programme Officer/B.D.O., Kakori to remove the services of the petitioner.

4. Learned counsel for petitioner has submitted that despite submission of petitioner's reply to show cause notice, the impugned order makes it evident that petitioner's reply has not

been considered at all while terminating his contractual engagement. Learned counsel has relied upon judgment rendered by a Division Bench of this Court in **Barun Kumar v. U.P. Caste Finance and Development Corporation Ltd.** in **Writ Petition No.14680(S/B) of 2017** which was decided by means of **judgment and order dated 06.07.2017** in turn placing reliance on another Division Bench of this Court in **Paras Nath Pandey v. Director, North Central Zone, Cultural Centre, Nyay Marg, Allahabad** reported in **2008 (10) ADJ 283**.

5. It is therefore, submitted that impugned order was not in the nature of termination simplicitor but was clearly punitive due to which respondents were under a bounden duty to hold an enquiry into charges leveled against petitioner.

6. Learned State Counsel has refuted the submissions advanced by learned counsel for petitioner with submission that a perusal of impugned order makes it evident that impugned order in fact clearly terminates contractual employment of petitioner and since petitioner was a contractual employee, he does not have any vested right to continue on his contractual engagement due to which respondents were very well within their jurisdiction to terminate his services by means of impugned order.

7. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is quite evident that a show cause notice was issued to petitioner on 23.09.2022 which was admittedly replied to by petitioner vide letter dated 03.10.2022 as would be evident from the covering letter of the Programme Officer of the Department who forwarded petitioner's reply. However, a perusal of impugned order dated 30.06.2023 will make it evident that petitioner's reply to show cause notice has not been considered at all and impugned order in fact is based on the charges levelled against him pertaining to his work.

8. The aspect as to whether a termination order is stigmatic or not has also been considered by Hon'ble the Supreme Court in **Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others** reported in **(1999) 3 SCC 60** in the following manner:-

"20. This Court in that connection referred to the principles laid down by Krishna Iyer, J. in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha [(1980) 2 SCC 593 : 1980 SCC (L&S) 197] . As to "foundation", it was said by Krishna Iyer, J. as follows: (SCC p. 617, para 53)

"[A] termination effected because the master is satisfied of the misconduct

and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case, the grounds are recorded in different proceedings from the formal order, does not detract from its nature. Nor the fact that, after being satisfied of the guilt, the master abandons the enquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service, the conclusion is dismissal, even if full benefits as on simple termination, are given and non-injurious terminology is used."(emphasis supplied)

and as to motive: (SCC pp. 617-18, para 54)

"54. On the contrary, even if there is suspicion of misconduct, the master may say that he does not wish to bother about it and may not go into his guilt but may feel like not keeping a man he is not happy with. He may not like to investigate nor take the risk of continuing a dubious servant. Then it is not dismissal but termination simpliciter, if no injurious record of reasons or punitive cut-back on his full terminal benefits is found. For, in fact, misconduct is not then the moving factor in the discharge." (emphasis supplied)

As to motive, one other example is the case of *State of Punjab v. Sukh Raj Bahadur* [AIR 1968 SC 1089 : (1968) 3 SCR 234 : (1970) 1 LLJ 373] where a charge-memo for a regular enquiry was served, reply given and at that stage itself, the proceedings were dropped and a simple termination order was issued. It was held, the order of simple termination was not founded on any findings as to misconduct. In that case, this Court referred to *A.G. Benjamin v. Union of India* [(1967) 1 LLJ 718 (SC)] where a charge-memo was issued, explanation was received, an enquiry officer was also appointed but before the enquiry could be completed, the proceedings were dropped and a simple order of termination was passed. The reason for dropping the proceedings was that "departmental proceedings will take a much longer time and we are not sure whether after going through all the foundation, we will be able to deal with the accused in the way he deserves". The termination was upheld."

"25. In the matter of "stigma", this Court has held that the effect which an order of termination may have on a person's future prospects of employment is a matter of relevant consideration. In the seven-Judge Bench decision in *Samsher Singh v. State of Punjab* [(1974) 2 SCC 831 : 1974 SCC (L&S) 550] Ray, C.J. observed that if a simple order of termination was passed, that would enable the officer to "make good in other walks of life without a stigma". It was also stated in *Bishan Lal Gupta v. State of Haryana* [(1978) 1 SCC 202 : 1978 SCC (L&S) 55] that if the order contained a stigma, the termination would be bad for "the individual concerned must suffer a substantial loss of reputation which may affect his future prospects."

"27. As to what amounts to stigma has been considered in *Kamal Kishore Lakshman v. Pan American World Airways Inc.* [(1987) 1 SCC 146 : 1987 SCC (L&S) 25] This Court explained the meaning of "stigma" as follows: (SCC p. 150, para 8)

"8. According to Webster's New World Dictionary, it (stigma) is something that detracts from the character or reputation of a person, a mark, sign

etc. indicating that something is not considered normal or standard. The Legal Thesaurus by Burton gives the meaning of the word to be blemish, defect, disgrace, disrepute, imputation, mark of disgrace or shame. The Webster's Third New International Dictionary gives the meaning as a mark or label indicating a deviation from a norm. According to yet another dictionary ?stigma? is a matter for moral reproach."

Similar observations were made in Allahabad Bank Officers' Assn. v. Allahabad Bank [(1996) 4 SCC 504 : 1996 SCC (L&S) 1037] ."

9. A perusal of impugned order makes it quite evident that not only work but even unsatisfactory conduct of petitioner during discharge of his duties forms the basis which is motive for termination of service of petitioner. Clearly, the nature of impugned order would be a great impediment in future employment prospects of petitioner and is therefore clearly stigmatic in nature.

10. Upon applicability of aforesaid judgment in the present facts and circumstances, it is quite evident that petitioner's termination is based on charges levelled against him pertaining to his work and conduct. The order quite clearly is punitive in its favour since it is based on misconduct of petitioner while discharging his duties even as a contractual employee. Hon'ble the Supreme Court has clearly held that in such circumstances where termination order visits the employee with civil consequence which are punitive in nature and pertaining to misconduct of such an employee, the termination order cannot be said to be simplicitor in nature as in the present case, and therefore it can clearly be ascertained that order of termination in the present case is punitive in nature and therefore the respondents were under a bounden duty to conduct an enquiry prior to dispensing with services of petitioner.

11. Although this Court is quite aware of the fact that the order of termination is being considered at the stage of admission itself but Hon'ble the Supreme Court in **Mohinder Singh Gill & others v. Chief Election Commissioner, New Delhi & others**, reported in **AIR 1978 SC 851** has clearly held that an order impugned before the Court has to stand on its own footing and cannot be supplemented by affidavits and therefore this petition is being decided at the admission stage itself in view of the reasoning indicated in the impugned order.

12. In view of aforesaid discussions made herein above, it is quite evident that impugned order of termination being punitive in nature has been passed without holding any enquiry regarding alleged misconduct of petitioner nor even considering his reply to show cause notice.

13. Consequently, the impugned order dated 30.06.2023 being clearly vitiated is quashed by issuance of a writ in the nature of Certiorari granting liberty to respondents to pass fresh orders, if they so desire, but only after holding an enquiry with regard to the charges levelled against him and affording opportunity of hearing to petitioner. The petitioner shall be reinstated in service forthwith.

14. Resultantly, the petition succeeds and is **allowed** at the admission stage itself. The parties to bear their own costs.

(Om Prakash Shukla, J.)

Order Date :- 8.1.2024
Shubhankar