

HON'BLE MR JUSTICE R. KANTHA RAO

Writ Petition NO.14987 OF 2014

DATE:01.06.2015

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BETWEEN:

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K.Rama Chandra

.. Petitioner

And

The A.P.S.R.T.C. rep. by its VC & MD, Hyderabad and three others

.. Respondents

HON'BLE SRI JUSTICE R. KANTHA RAO

Writ Petition NO.14987 OF 2014

ORDER:

This writ petition is filed by the petitioner under Article 226 of the Constitution of India seeking to issue a writ of Certiorari calling for the records relating to the office order No.Ef/606(107)/2013-PD, dated 23.04.2014 which was served to the petitioner on 16.05.2014 issued by the first respondent terminating the petitioner's probation as wholly illegal, unjust, arbitrary, in violation of Articles 14, 16 and 21 of the Constitution of India and also violation of Circular No.PD-09/2014, dated 28.02.2014 issued by the first respondent to quash the office order and to direct the respondents to continue the petitioner as Depot Manager of Kalyandurg Depot.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

3. The petitioner was initially appointed as Mechanical Chargeman in the respondents' corporation on 24.06.1988. Subsequently he was promoted as Assistant Mechanical Foreman in the year 1993.

Thereafter, he was again promoted as Assistant Engineer (Mechanical) in the month of January, 2003 and was posted as Assistant Engineer Mechanical at Wanaparthi Depot. Basing on the recommendations of the selection committee of the Board, the petitioner was promoted as Depot Manager, Kalyandurg Depot by office order dated 10.07.2012. on probation of one year period. Some other Assistant Engineers were also appointed as Depot Managers along with the petitioner. It is submitted that the petitioner is sincere and honest in discharging his duties. He was given several awards prior to his promotion. It is his version that when he took up the charge of Depot Manager of Kalyandurg Depot, he discharged additional duties and improved the performance of the Depot. Prior to his taking charge as Depot Manager, Kalyandurg Depot, there was loss of Rs.217.65 lakhs and the petitioner reduced the loss to Rs.216.07 lakhs and maintained 114th rank in the State out of 211 Depots. His Depot got 2nd rank in Anantapur District region.

4. It is further submitted that due to Seemandhra Bandh from 13.08.2012

to 13.10.2013 none of the Depots in Anantapur region has achieved traffic parameters, but Kalyandurg depot where the petitioner was working as Depot Manager registered the lowest loss in the region and got 3rd rank in the region out of 12 depots. Subsequently, some memos and charge sheet were issued to the petitioner on the ground that his performance was not satisfactory, but no action was taken against him. According to the petitioner, the 4th respondent who is the Executive Director was biased against him while he was working under him in Kurnool Depot by which time the 4th respondent was the Regional Manager, he transferred him within 4 months and tried to suspend him in collusion with the union leaders. He developed personal grudge against the petitioner and kept on issuing memos and charge sheets to him for unnecessary reasons. For all the memos and charge sheets, the petitioner submitted appropriate explanation and the action proposed was dropped. The petitioner submitted details of the memos and charge sheets issued to him and the explanation offered by him in the affidavit filed in support of the writ petition.

5. It is further submitted that three officers who were promoted along with the petitioner and were below in rank and the petitioner was asked to appear for the probation test from 04.07.2013 to 06.07.2013. The Corporation declared that the other three officers who are at Sl.Nos.2, 3 and 4 passed the probation test though their rank and performance was lower to that of the petitioner. But, on account of the false opinion sent by the 4th respondent against the petitioner, though the Depot of the petitioner stood at rank No.2 in the region and 114th rank in State level, the probation of the petitioner was terminated. The version of the petitioner is that the Controlling Officer shall review the performance of the probationer for every quarter, when the performance of the petitioner is not up to the mark, the probationer shall be apprised of lapses or shortcomings in writing with an advice to show improvement during the next quarter. If the performance of the probationer in the second quarter is also not up to the mark, the lapses or shortcomings on the part of the employee shall be apprised again in writing with an advice to

show improvement in the next quarter i.e. in the third quarter. At the end of the period of probation, the appointing authority shall take necessary action for declaration/extension/termination of the probation of the candidate. The aforesaid procedure has to be followed as per the circular, dated 28.02.2014 issued by the Corporation.

6. The grievance of the petitioner is that in his case the circular has not been followed and basing on the false report submitted by the 4th respondent, the probation of the petitioner was terminated. The petitioner pointed out several instances showing that though the performance of the other probationers is lower to that of the petitioner, they were promoted, but the petitioner's probation was terminated. According to him, his probation was extended for six months even without sending any information to him in writing and his probation was terminated within a period of one year six months though the maximum period is two years to declare the probation. Thus, the petitioner in this writ petition attributes *mala fides* to the 4th respondent who allegedly sent false reports against him and questioned the action of the respondent corporation in terminating his probation without properly verifying the charges and memos issued to him and the reports submitted by the 4th respondent. He, therefore filed the present writ petition.

7. The respondents filed counter-affidavit contending *inter alia* as follows:

The petitioner whose probation was extended for a period of six months on account of poor performance as Depot Manager, Kalyandurg failed to concentrate and show interest in achieving targets and improve the performance of the depot in spite of personal counseling's and issuing of warning letters. Kalyandurg depot did not achieve targets in almost all parameters for the month of December, 2013, and January, 2014. There was drop in the performance of the depot in December, 2013 in all the key traffic parameters compared to corresponding period of last year. The depot incurred loss of Rs.31.88 lakhs in December, 2013 and a cumulative loss of

Rs.363.08 lakhs up to December, 2013. The petitioner failed to maintain the depot without any sense of involvement, commitment and loyalty to the Corporation. There are also reports from the second respondent that the petitioner is not putting his efforts to improve the performance of the depot. The Executive Director, Kadapa Zone finally recommended for termination of probation of the petitioner vide letter dated 10.02.2014 as the petitioner did not show any concern for the legitimate duties entrusted by the management in the last two years besides not improving his working habits.

8. Nextly, it is contended that mere clearing of probation test does not confer any right on a probationer for declaration of his probation. The Controlling Officer reviews the performance of the probationer periodically. The petitioner is thus intimated about his lapses and shortcomings, if any, noticed by the controlling officer with an advice to improve his performance. At the end of the period of probation, the appointing authority takes necessary action for declaration/extension/termination of the probation of such probationers depending upon their performance and suitability. Under no circumstances, the probationer shall be on probation beyond two years. According to the respondents in the instant case, the petitioner did not perform well as depot manager, with the result, the performance of the depot started showing downward trend in key traffic and maintenance parameters. His depot was inspected by his higher officials viz. Dy.Chief Traffic Manager, Anantapur, Dy.Chief Mechanical Engineer, Anantapur, Regional Manager, Anantapur and Executive Director, Kadapa on several occasions and the petitioner was counselled several times to improve his working habits and improve the performance of the depot. He was even issued memos and charge sheets by the above officials. However, there was no change in his attitude and the negative performance of the depot continued unabated. Therefore, his probation was finally terminated by the competent authority. He cannot equate the performance of his depot with any other depot for declaration of his probation. The action taken by the respondent corporation in terminating the probation of the petitioner is justified and in accordance with the instructions issued by circular dated 28.02.2014. The petitioner, as

seen from the report of Dy.CME-ATP dated 03.04.2013 could not maintain a depot with 64 schedules despite providing him sufficient maintenance staff. He was ineffective in controlling his subordinate staff and failed to carry out maintenance activities effectively. He had no control over garage staff in the night shift resulting in insufficient man power during the shift. Vehicles went unattended, were brought forward to the next days and there was insufficient supply of vehicles in the early hours every day. Only Kalyandurg depot in Anantapur region registered negative trend in HSD kmpl for the year 2012-13 compared to like period of last year. This is on account of petitioner's failure in identifying low kmpl vehicles and taking rectification measures thereon. When compared to the best performing depots of the Zone, the depot had the scope to earn profits had incurred losses during the period the petitioner worked as depot manager. The allegation made by the petitioner that the 4th respondent developed personal grudge against the petitioner and had sent up a false report has been denied by the respondents. It is contended by the respondents that nothing has been placed on record by the petitioner to substantiate the said allegation and that the petitioner did not mention the same in his replies sent to various letters and memos issued by the Executive Director, Kadapa Zone. All the memos and charge sheets issued to the petitioner were referred to the Vice Chairman and Managing Director by the Executive Director, Kadapa recommending extension of probation and accordingly his probation was extended for a period of six months and later on the recommendation of the Executive Director, Kadapa Zone he was terminated by the competent authority as per the rules in force.

9. It is submitted that the contention of the petitioner that the controlling officer did not review his performance every quarter is not correct. According to the respondents, various inspection reports and charge sheet issued to the petitioner based on which the probation of the petitioner was terminated by the competent authority clearly show that there were periodical inspections of the depot and suggestions to the petitioner. In the instant case, the petitioner was under probation from 13.07.2013 to 12.07.2013 and it was extended up

to 12.01.2014 and at the end of his extended period of probation, his probation was terminated on 23.04.2014 which falls within the two years period that an employee can be kept under probation. Various letters, memos and charge sheets which were issued to the petitioner during the period of probation have been mentioned in the counter affidavit. They are thirteen in number.

10. Further, it is contended that the petitioner cannot claim that his probation be declared on par with the other depot managers who were put on probation basing on the performance and the ranks of their depots. It is the sole prerogative of the controlling officer to judge the performance of the depot manager depending upon the potentiality of the depot and it remains the foremost duty of a depot manager to maximize the recourses available at his disposal and achieve the best possible results/set targets. The Executive Director, Kadapa Zone while recommending termination of probation of the petitioner, observed that the petitioner did not adhere to the instructions issued by him from time to time to concentrate on the performance of the depot. He further observed that the petitioner failed to achieve the targets in vital operational and mechanical parameters, did not implement comprehensive strategies to improve the performance of the depot, did not aim to optimize the resources and maximize the profits of the depot, failed to exercise efficient control and supervision on the subordinate staff, was slack in discharging his legitimate duties, failed to increase performance of the depot in key parameters on par with regional growth and failed to reduce cost of depot operations. In their inspection reports, the Dy.Chief Traffic Manager and Dy.Chief Mechanical Engineer of Anantapur region too made it very clear about the non-performance of the depot and the Regional Manager, Anantapur also issued charge sheets to the petitioner over poor performance of Kalyandurg depot.

11. Nextly, it is contended that the appointing authority is at liberty to terminate the service of a probationer if it finds performance of a probationer to be unsatisfactory during the period of probation and issuing notice and

opportunity of hearing are not required before passing the termination order. An employee who is on probation can be terminated from services due to unsatisfactory work. The services of a probationer can be terminated at any time before confirmation provided that such termination is not stigmatic.

Contending as above, the respondents sought to dismiss the writ petition.

12. Now the question requires determination in the present writ petition is whether the order terminating the probation of the petitioner can be set aside in exercise of jurisdiction under Article 226 of the Constitution of India having regard to the facts and circumstances of the present case.

13. The contention of the petitioner is that the probation of other three candidates who were put on probation along with the petitioner as Depot Managers was approved even though there was under performance; whereas the probation of the petitioner was terminated in an arbitrary and illegal manner.

14. On the other hand, it is contended by the respondents that the performance of the depot cannot be considered as the individual performance of the probationer which has to be assessed objectively by the superior officials. According to the respondents, the performance of the probationer has to be judged basing on the potentiality of the depot and its resources in comparison with the tracks achieved. This apart, the version of the respondents is that the way in which the probationer discharges duties will be examined by the controlling officers and basing on the performance, a decision will be taken by the competent authority as to whether the probation can be approved or terminated.

15. In the instant case, according to the respondents, the case of the petitioner was examined in the light of the circular dated 02.07.2014 issued by the Corporation and as his performance was totally unsatisfactory, his probation was rightly terminated which cannot be called in question in the present writ petition.

16. In support of his contention, the learned counsel appearing for the petitioner relied on the following judgments:

- i) In **V.P. AHUJA v. STATE OF PUNJB AND OTHERS**^[1] the Supreme Court held as follows:

“A probationer like a temporary servant is also entitled to certain protection and his services cannot be terminated arbitrarily or punitively without complying with the principles of natural justice.”

17. The affidavits filed by the parties before the High Court and as also in this Court indicate the background in which the order, the services of the appellant, came to be passed. Such an order which, on the face of it, is stigmatic, could not have been passed without holding a regular inquiry and giving an opportunity of hearing to the appellant.

18. The judgment relied on by the petitioner is not applicable to the facts of the present case since the Hon'ble Supreme Court having regard to the fact before it held that the termination order is stigmatic and therefore, it could not have been passed without holding a regular enquiry.

- ii) **KENDRIYA IDYALA SANGATHAN AND OTHERS v. BUDH**

RAM AND ANOTHER^[2] - *In the said case, before the Division Bench of Rajasthan High Court (Jaipur bench) the employees' probation was extended for a further period of one year but just after two days his services came to be terminated which was found to be illegal. This judgment which was rendered with reference to altogether different set of facts cannot be made applicable to the facts of the present case.*

- iii) **MAHATMA PHULE KRIDA PRASARAK MANDAL, SOLAPUR AND ANOTHER v. SUMATI TUKARAM KASHID**

AND OTHERS^[3] - *In WP No.4716 of 2000 the learned single Judge of Bombay High Court took the view that when the services of the petitioner was*

terminated on ground of unsatisfactory performance, the confidential reports of the employee are necessary to ascertain the work or behaviour of the petitioner, the failure on the part of the petitioner to demonstrate assessment made by the head of school in respect of work and behaviour of the respondent, the termination order is liable to be set aside. This judgment is also not applicable to the facts of the present case since in the instant case it cannot be said that there is no material showing the assessment and behaviour of the petitioner.

19. **In REGISTRAR, HIGH COURT OF GUJARAT AND ANOTHER v.**

C.G. SHARMA^[4] relied on by the learned counsel appearing for the respondents, the Supreme Court held as follows:

“It is seen from the record that the overall performance of the respondent was considered while assessing the suitability and continuing the respondent and that there is no similarity of situation and/or facts of the case of the respondent and eleven others named in the chart. In our view, each officer’s case has been evaluated on its own merits and decision has been taken in conformity with the norms settled. We are of the opinion that the contention put forward by the learned counsel for the respondent claiming parity with other co-officers has no merits and, therefore, the same is rejected.”

20. In the instant case also the performance of the petitioner as well as the performance of the other three officers who were put on probation was assessed independently and the authorities concerned arrived at the opinion as to whether the candidates are fit to continue in the promotional post or not. As rightly contended by the respondents it is the individual performance of the probationer is relevant but not the performance of the depot in which he was working. Therefore, basing on the performance of the depot, it is not open for the petitioner to claim parity with the other probationers.

21. **MUIR MILLS UNIT OF NTC (U.P.) LTD. v. SWAYAM PRAKASH**

SRIVASTAVA AND ANOTHER^[5] – The Supreme Court held as follows:

“The Supreme Court took the view that for unsatisfactory work, the termination of services of the petitioner during probation is permissible and such termination cannot be said to be stigmatic though the termination order may refer to probationer’s service as being ‘not satisfactory’, services of the petitioner can be terminated any time before confirmation, provided that such termination is not stigmatic and in case of non-stigmatic termination, principles of audi alteram partem are not applicable. “

In **P. USHA RADHEY MOHAN v. M.V. RAMU AND OTHERS**^[6] – it is held as follows:

“Employer terminating the services of the probationer, not having been satisfied with his performance, the Court cannot sit in judgment over the decision of the employer. The probationer has no right which can be enforced under Article 226 of the Constitution of India. As a matter of fact, the probationary period was once extended but with no effect. Law Courts cannot possibly supplement the views of the employer as regards the suitability of an employee and the interference of the law court cannot but be said to be very restrictive in nature and it is only in the event of there being departure from the known principles of law such an interference could be had and not otherwise. As a probationer the employee does not get any protection whatsoever and question of applicability of Article 311 does not and cannot arise.”

22. In the instant case, the petitioner attributed *mala fides* to the 4th respondent, but could not be able to place on record any material showing that the action of the 4th respondent in sending the reports against him is prompted by *mala fides*. As already said, the performance of each probationer would be separately assessed by the controlling officer. The performance would be assessed basing on the resources and the prevailing

conditions in the depot. Therefore, the performance of the depot in the region cannot be equated to the performance of the depot manager. As a matter of right, whenever probation is extended, the employer is not required to issue any notice to the probationer. Altogether 13 memos, letters and charge sheets were addressed to the petitioner. The particulars furnished in the counter affidavit filed by the respondents would clearly show that the petitioner was apprised that his work was not satisfactory and was advised to improve his performance. Ultimately, as the performance of the petitioner as per the reports of the controlling officer was found to be unsatisfactory, his probation was terminated. The respondents have submitted in their counter the details as to the non-satisfactory performance of the petitioner. Therefore, it is not possible to hold that the impugned order terminating the probation has been passed without proper assessment of the work of the petitioner. When the competent authority finds that the performance of the petitioner is not satisfactory, in the promotional post, he is entitled to terminate the probation.

23. In the instant case, the respondents furnished the details of the memos and charge sheets issued to the petitioner which obviously show that the performance of the petitioner is not satisfactory. The discretion as to whether the performance of a probationer is satisfactory or not, lies with the employer, and this Court is not supposed to substitute its opinion to that of the employer. In the instant case, the employer having found that the performance of the petitioner in the promotional post unsatisfactory terminated the probation. The order therefore, cannot be called in question in the present writ petition requiring interference in exercise of jurisdiction under Article 226 of the Constitution of India.

24. The writ petition, therefore fails and the same is dismissed without any order as to costs. Miscellaneous petitions, if any, filed in this writ petition shall stand closed.

R.KANTHA RAO, J

Date:01.06.2015

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THE HON'BLE SRI JUSTICE R.KANTHA RAO

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- [\[1\]](#) 2003 SCC 239
 - [\[2\]](#) 2010 (1) SLR 787
 - [\[3\]](#) 2011(8) 745
 - [\[4\]](#) (2005) 1 SCC 132
 - [\[5\]](#) (2007) 1 SCC 491
 - [\[6\]](#) 1998(3) ALD 268 (DB)