

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1483 of 2016 (O&M)

DATE OF DECISION: JANUARY 25, 2016

DR.JITESHWAR KUMAR PANDEY ...PETITIONER

VERSUS

UNION OF INDIA & OTHERS ...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE KULDIP SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. SUNIL CHADHA, SR.ADVOCATE
WITH MR. M.S.ATWAL, ADVOCATE
FOR THE PETITIONER.

M. JEYAPPAUL, J.

CM-962-2016

1. Heard the submissions made by learned senior counsel appearing for the writ petitioner.

2. For the reasons set out in the application, the application is allowed permitting the writ petitioner to place on record the additional documents Annexures P-1, P-3 to P-6 and P-10.

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3. Aggrieved by the termination of service during the period of probation passed by the official respondents under Annexure P-7 in terms of Clause 5 of the offer of appointment, the writ petitioner preferred Original Application before the Central Administrative Tribunal, Chandigarh Bench (for short 'Tribunal'). But having found that the order of termination passed

by the official respondents without attributing any stigma during the period of probation was in order, the Tribunal dismissed the Original Application.

4. Clause 5 of the offer of appointment found appended as Annexure as P-2 reads as follows:-

“5. Termination of service:

During the period of probation, the services can be terminated by either side with four month's notice. However if employee wants to leave before four month then he will be required to deposit four month's salary. In case, during the probation period, if the services are not found satisfactory, the services are liable to be terminated by serving four month's notice or forthwith on payment of salary in lieu of Notice period. After confirmation, the condition for termination/regularization of service shall be according to the Statutes/Rules of the Institute otherwise will be governed by the CCS (CCA) rules of Govt. of India.”

5. The above clause found in the order of appointment makes it clear that if the services of the writ petitioner were not found satisfactory, the same were liable to be terminated.

6. Let us now refer to the following impugned order Annexure P-7 which gave rise to the present litigation:-

“In exercise of the powers vested by Clause-5 of the offer of appointment, the services of Dr.Jiteshwar Kumar Pandey, Assistant Registrar, who is on probation, are no longer

required by NIFTEM. Therefore, his services are being dispensed with immediate effect. He is being paid four months' salary in lieu of notice period vide cheque No.148934 dated 31.12.2015 amounting to Rs.2,06,376/-. The salary for the month of December 2015 will be released separately on submission of No Due Certificate and after full and final settlement.”

7. The scope of the present writ petition is very limited. The issues that survive for determination in the writ petition are whether the impugned order passed by the official respondents under Annexure P-7 attributes any stigma to the writ petitioner and whether the official respondents were bound to conduct any inquiry before passing the order of termination during the period of probation.

8. Learned senior counsel appearing for the writ petitioner submitted referring to Annexures P-2 and P-7 that the services of the writ petitioner had been terminated under Annexure P-7, as the official respondents were not satisfied with the services rendered by the writ petitioner during the period of probation. According to the counsel such a termination embeds stigma and that, therefore, termination even during the period of probation should have been preceded by an inquiry. To buttress his statement, he referred to the decisions of the Hon'ble Supreme Court and the decision passed by a co-ordinate Bench of this Court.

9. It is a trite law that if the order of termination during the period of probation does not attribute any stigma to a probationer and it was only

an innocuous order of termination, no inquiry needs to be initiated and conducted, affording an opportunity to the probationer. But, in a case where the order of termination refers to the conduct of the probationer which would carry stigma or if the order of termination was founded on the basis of some informal enquiry touching upon the conduct of the probationer, a regular inquiry should be conducted giving an opportunity to the probationer before passing the order of termination even during the period of probation.

10. A co-ordinate Bench of this Court as early as in the year 1968 in the **State of Punjab and Another vs. Darshan Singh, 1968 SLR 734** held that when the work and conduct of the probationer was found not satisfactory justifying termination of his services, a departmental inquiry should have been conducted.

11. In the above case, it was found that not only the work of the probationer, but also his conduct was found not satisfactory. In other words, the services of the probationer were terminated with a slur on his future opportunity calling in question his conduct. But in the instant case, it is not the case of the writ petitioner that his conduct was ever challenged by the official respondents. Therefore, the above case will not apply to the facts and circumstances of this case.

12. In **Dipti Parkash Banerjee vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta, 1999(3) SCC 60**, the Hon'ble Supreme Court was pleased to quash the impugned order of termination of a probationer and directed his reinstatement in service with all back wages

having found that an informal inquiry as regards the work and conduct of the probationer was already conducted and the same was the foundation for passing an order of his termination from service.

13. In our considered view, the above case is factually distinguishable. That was a case where an informal inquiry was conducted on the allegation that the probationer prepared false bills, frequently absented himself from office premises and misbehaved with women academic staff members. In the above background, it appears that his services were terminated. Further, it is to be noted that not only his performance, ability and capacity, but also his conduct was subject to the informal inquiry conducted by the Department. Under such circumstances, the Hon'ble Supreme Court held in the above case that when such informal inquiry was the basis or foundation for the termination of the probationer, a formal inquiry should be conducted giving opportunity to the probationer to rebut the allegations.

14. In **V.P.Ahuja vs. State of Punjab, 2000(3) SCC 239**, it was held as follows:-

“6. A probationer, like a temporary servant, is also entitled to certain protection and his services cannot be terminated in a punitive manner without complying with the principles of natural justice.

7. The affidavits filed by the parties before the High Court as also in this Court indicate the background in which the order, terminating the services of the appellant, came to be

passed. Such an order which, on the basis of it, is stigmatic, could not have been passed without holding a regular enquiry and giving an opportunity of hearing to the appellant.”

15. We thoroughly adverted to the facts and circumstances of the above case. We are of the considered view that the facts of above case also does not squarely fit in this case. The order of termination in the above case reads “*However, he failed in the performance of his duties administratively and technically*”. In the above case, it was not mere unsatisfactory performance which was attributed for termination of his service, but also the failure on the part of the probationer in the performance of his duties administratively and technically had been pointed out in the termination order stigmatizing his ability in those areas. In other words, such a stigmatic observation in the order of termination would definitely pose a challenge to his future aspiration for any employment. In the above background, the Hon'ble Supreme Court found the order of termination *per se* leaves no doubt that it was not a termination on the ground of unsatisfactory performance, but on stigmatic attribution.

16. In ***Union of India and others vs. Mahaveer C. Singhvi, 2010 (8) SCC 220***, the Hon'ble Supreme Court has held as follows:-

“That being so, having regard to the consistent view taken by this Court that if an order of discharge of a probationer is passed as a punitive measure, without giving him an opportunity of defending himself, the same would be invalid and liable to be quashed, and the same finding would also

apply to the Respondent's case. As has also been held in some of the cases cited before us, if a finding against a probationer is arrived at behind his back on the basis of the enquiry conducted into the allegations made against him/her and if the same formed the foundation of the order of discharge, the same would be bad and liable to be set aside. On the other hand, if no enquiry was held or contemplated and the allegations were merely a motive for the passing of an order of discharge of a probationer without giving him a hearing, the same would be valid. However, the latter view is not attracted to the facts of this case. The materials on record reveal that the complaint made by Mrs. Narinder Kaur Chadha to the Minister of External Affairs had been referred to the Joint Secretary and the Director (Vigilance) on 8th February, 2002, with a direction that the matter be looked into at the earliest. Although, nothing adverse was found against the Respondent, on 19th February, 2002, the Joint Secretary (Vigilance) held further discussions with the Joint Secretary (Admn.) in this regard. What is, however, most damning is that a decision was ultimately taken by the Director, Vigilance Division, on 23rd April, 2002, to terminate the services of the Respondent, stating that the proposal had the approval of the Minister of External Affairs. This case, in our view, is not covered by the decision of this court in Dipti Prakash Banerjee's case (supra)."

17. That was a case where discharge simplicitor of the probationer was made by the President of India on the basis of the allegation made by Mrs. Narender Kaur Chadha that the probationer threatened and abused her daughter and also made sexually explicit remarks. In fact an informal inquiry as regards the above alleged misconduct of the probationer was conducted and the same formed the basis and foundation for termination of his services. Under such circumstances, the Hon'ble Supreme Court in the aforesaid case held that discharge of the probationer during the period of probation was not a discharge simplicitor, but an unceremonious discharge based on the inquiry conducted behind the back of the probationer with regard to the above allegation of abusive and sexually explicit remarks made by him. The Hon'ble Supreme Court also made an observation in the above case that when the services of a probationer were terminated by an innocuous order which did not cause any aspersion or stigma on him, it cannot be termed as a punitive termination and therefore, no inquiry need be conducted. But in the special facts and circumstances of this case, we are of the view that no inquiry was warranted before passing the order of termination during the period of probation of the writ petitioner.

18. In the instant case, the order of termination had been passed by the official respondents under Annexure P-7 as the services of the writ petitioners were not found satisfactory. The above order of termination in our considered view, is nothing but a termination simplicitor without attributing any stigma or aspersion which might have some adverse impact on the future prospects of the writ petitioner.

19. In view of the above facts and circumstances, we are of the considered view, that the order passed by the Tribunal does not call for interference. Accordingly, the writ petition stands dismissed.

(M. JEYAPPAUL)
JUDGE

January 25, 2016
Gulati

(KULDIP SINGH)
JUDGE