

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No. 7228 of 2016

Date of decision:-22.04.2016

Khushbir

...Petitioner

versus

The High Court of Punjab & Haryana and others

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Anmol Pratap Singh Mann, Advocate
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI , J.

By way of the instant writ petition, petitioner is challenging order dated 09.10.2012 passed by the District and Sessions Judge, Ludhiana (P-7) whereby his services were dispensed with under Rule 8(2) of Chapter 18-A of the High court Rules and orders Volume 1; and order dated 01.05.2015 whereby the Administrative Judge, Ludhiana has dismissed the appeal filed by the petitioner.

Petitioner was appointed as Peon in the office of the learned District and Sessions Judge, Ludhiana on 03.08.2011 (P-1) and he joined his services on 12.08.2011. As per terms and conditions of the appointment letter, the petitioner was to remain on probation for a period of two years. Immediately upon his joining, the petitioner was

posted with learned Civil Judge (Jr. Divn.) Jarnail Singh and after the transfer of the said officer, the petitioner was posted with learned Civil Judge (Jr. Divn.) Kanwardeep Kaur up to 06.06.2012 and thereafter, petitioner was posted with learned Addl. District Judge Sh. Sant Prakash Sood on 07.06.2012.

Thereafter, District and Sessions Judge sought the work and conduct report of the Probationers including the petitioner and memo in this regard was sent to learned Civil Judge (Jr. Divn.) Kanwardeep Kaur and to learned Addl. District Judge Sh. Sant Prakash, vide letter dated 19.07.2012 (P-2 and P-4) respectively.

Learned Civil Judge (Jr. Divn.) Kanwardeep Kaur gave reply dated 27.08.2012 to the above said letter reporting the work and conduct of the petitioner to be satisfactory. On the other hand, learned Addl. District Judge Sh. Sant Prakash, in response to the above letter, gave his reply dated 28.08.2012 stating therein that the work and conduct of the petitioner was not at all satisfactory. Further petitioner denied the directions given to him and despite being pointed out specifically, he left station of his posting persistently without getting prior station leave.

The learned District and Sessions Judge, on receipt of the report from learned learned Civil Judge (Jr. Divn.) Kanwardeep Kaur and learned Addl. District Judge Sh. Sant Prakash, vide noting (P-6). recommended that the petitioner be proceeded against by giving him

personal hearing, an ample opportunity to improve himself and as a last resort, his services be dispensed with.

Subsequently, vide impugned order dated 09.10.2012 (P-7), the services of the petitioner were dispensed with by the District and Sessions Judge, Ludhiana under Rule 8(2) of Chapter 18-A of the High court Rules and Orders Volume 1 and the Administrative Judge, Ludhiana vide order dated 01.05.2015 dismissed the appeal filed by the petitioner.

Learned counsel for the petitioner submits that the impugned order has been passed without affording any opportunity of hearing to the petitioner. The order passed against the petitioner is totally stigmatic, punitive and adverse.

Learned counsel for the petitioner has further argued that the work and conduct of the petitioner was found satisfactory up to 06.06.2012 when the petitioner was posted with learned Civil Judge (Jr. Divn.) Kanwardeep Kaur and the learned Addl. District Judge who passed the adverse order against the petitioner was himself on leave for a substantial part of the two months when the petitioner was posted with him in the Court.

After hearing learned counsel for the petitioner at length and after going through the contents of the writ petition, the writ petition deserves to be dismissed.

Reference at this stage can be made to Rule 8 (2) of Chapter

18-A of the Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules 1997. The operative part of which reads as under:-

“8. Probation of Persons Appointed to service:

(1) Persons appointed to any post in the service shall remain on probation for a period of two years, if recruited by direct appointment and one year in the case of promotion, provided that-

(a) Period spent on deputation on a corresponding or a higher post shall count towards the period of probation;

(b) In the case of an appointment by transfer any period of work on an equivalent or higher rank period to appointment to the service may in the discretion of the appointing authority be allowed to count towards the period of probation; (c) Any period of officiating appointment to the service shall be reckoned as period spent on probation.

(2) If, in the opinion of the appointing authority the work or conduct of a member of service during the period of probation is not satisfactory, it may

If such person is recruited by direct appointment dispense with his services, or revert him to a post, on which he held lien prior to his appointment. If appointed otherwise:-

(i) revert him to his former post; or deal with him in such other manner as the terms and conditions of the previous appointment permit.”

Thus, the above said Rule is very clear that if the Appointing Authority found the work or conduct of member of service not satisfactory during the period of probation, it may dispense with his services or revert him to a post on which he held lien prior to his appointment.

Hon'ble the Supreme Court in a case of **Bhujit Gupta v.**

S.N.B. National Centre, Basic Sciences & Ors, 2006(2) SCT 414 was

examining a case of order of termination of probationer. Hon'ble the Supreme Court dismissed the appeal filed by the appellant and observed in para 17 as under:-

"17. The High Court has carefully considered all the circumstances placed before it and arrived at the conclusion that the respondent's work was under observation during the probationary period and that he was given repeated opportunities to improve his performance for which purpose his probation was extended from time to time. The fact that the authority did not find him fit for confirmation was also brought to his notice several times and yet he was given opportunities of improving by extending his probationary service. The High Court has correctly found that the letter dated 7.4.1998 was not punitive in nature and stated, albeit in prolix fashion, that the service of the appellant were unsatisfactory. The High Court points out, and we agree, that detailed reference to all other correspondence was not necessary, but it did not reflect any malice or bias. Finally, as this Court pointed out in **P.N. Verma's case (supra)** "a termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, does not ipso facto become stigmatic."

Further reference can be made to a Division Bench judgment passed by this Court in a case of Arvind Kumar v. U.O.I and others, 2008 (3) SCT 244 wherein also an employee was on probation there were complaints against him of neglecting duty despite repeated warnings, committing serious irregularities. His services were dispensed with. He approached this Court and this Court dismissed his petition by observing in para 7 as under:-

7. The D.P.C unanimously recommended to discharge the petitioner from service as he failed to clear the probation period. The petitioner has not alleged any mala fides against the members of the D.P.C. We have no reason to doubt the correctness of the conclusion arrived at by the D.P.C. The members of the D.P.C had formed the opinion to recommend discharge of the petitioner from service on the basis of the record placed before them.

Since the discharge order of the petitioner is based on the recommendation of the D.P.C, the same cannot be said to be illegal or arbitrary at all. The contention of the learned counsel for the petitioner that the petitioner had successfully completed the probation period as he had joined the respondent-College on January 23, 1996 and the probation period of two years had expired on January 22, 1996, is not well-founded. The record shows that petitioner's case for clearing probation period was considered by the D.P.C on May 28, 1998 and a recommendation was made to extend his probation period for six months. On December 09, 1998, when a special report was received from the Head of the Radio-diagnosis Department that work of the petitioner was not satisfactory, his case was submitted before the D.P.C for consideration. In the meeting held on December 09, 1998 the D.P.C recommended for discharge of the petitioner from service. Merely because decision of the D.P.C dated May 28, 1998 whereby it was recommended to extend the probation period of the petitioner for six months was not conveyed to him, it cannot be said that he is deemed to have completed the probation period successfully. A positive order was required to be passed regarding the completion of probation period of the petitioner especially when the work and conduct of the petitioner was not satisfactory, as mentioned above. It is well-settled that if services of a probationer are to be dispensed with/discharged for his overall unsatisfactory work, there is no need to hold an inquiry. The very objective of the probation is to test the suitability and if the employee is not found suitable, the competent authority has the powers to terminate his services."

In view of the above, the present petition is dismissed, as the petitioner had rightly been dismissed from service after his work and conduct was not found satisfactory during the probation period.

(RITU BAHRI)
JUDGE

22.04.2016

G Arora