

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.V.M.P.No.1147 of 2016 in W.P.No.7794 of 2016 & W.P.No.7794 of 2016
W.V.M.P.No.1186 of 2016 in W.P.No.7801 of 2016 & W.P.No. 7801 of 2016
W.V.M.P.No.1275 of 2016 in W.P.No.8137 of 2016 & W.P.No.8137 of 2016
W.V.M.P.No.1515 of 2016 in W.P.No.10450 of 2016 & W.P.No.10450 of 2016
W.V.M.P.No.1783 of 2016 in W.P.No.14341 of 2016 & W.P.No.14341 of 2016
W.P.No.17232 of 2016
W.P.No.27339 of 2016
&
W.P.No. 27376 of 2016

COMMON ORDER:

Heard the learned counsel for the petitioners and Sri A.K.Jayaprakash Rao, learned counsel for the respondents.

2. The issue which arises for consideration in this batch of cases is whether the termination of the services of the petitioners, who are probationers in the post of Junior Cotton Purchasers, having been appointed in March 2015, on the ground that they produced fake experience certificates, through separate orders passed in March 2016, is valid or not?

3. The facts in W.P.No.7794 of 2016 are referred to by way of illustration.

4. The 1st respondent issued a Notification on 21-10-2014 inviting applications for recruitment to the post of Junior Cotton Purchaser. The petitioner in W.P.No.7794 of 2016 applied, passed the written examination as well as interview and he was selected and appointed by an order dt.03-03-2015 as Junior Cotton Purchaser and posted at Adilabad Branch Office.

5. The appointment order stated that he would be in probation for a period of one year from the date of appointment/joining, which may be extended at the discretion of appointing authority at any time.

6. Clause 8 of the appointment order directed the petitioner to produce certificates about his educational qualifications, date of birth etc. at the time of joining the post. Clause 10 of the appointment order stated that the appointment is subject to verification of genuineness of Caste Certificate from appropriate authority and confirmation from competent authority about antecedents and character.

7. On 01-01-2016, the 1st respondent issued a show cause notice to the petitioners stating that for securing appointment of the post of Junior Cotton Purchaser, he produced a false experience certificate and to show cause why his services cannot be terminated on that ground and that the salary paid to him is also liable to be recovered. The show cause notice stated that a candidate should possess minimum one year of experience of dealing in any agricultural commodities in reputed organization or enterprise apart from possessing B.Sc., (Agriculture) qualification with an aggregate of 50% marks or he should be a Science Graduate in any Science stream with the experience of one year of dealing with agriculture commodities; that the petitioner had produced an experience certificate from M/s.Sree Raghavendra Swamy Cotton Traders,

Bellary; but on an enquiry, the said firm had informed 1st respondent that no salary was paid to the petitioner and they were not able to tell the duration of petitioner's work experience. The show cause notice stated that the petitioner had however stated that he was paid salary of Rs.8000/- per month in the said firm, and since the said firm has disputed the same, it is evident that the petitioner had produced a false experience certificate. The 1st respondent referred to clause 14 of the advertisement which stated that if information furnished by a candidate is found false, the appointment could be revoked or terminated without reference to the candidate.

8. Petitioner gave a reply on 09-01-2016 disputing these allegations and stating that he had not submitted any false experience certificate from the above named firm and that the said firm did pay salaries to him as well as other employees by way of cash without issuing receipts and without maintaining any account ledgers. He stated that the said firm is a small scale ginning mill, that many employees are daily wagers and he has documentary proof of experience with the said firm for the period June 2013 to May 2014.

9. Without conducting any further enquiry, on 01-03-2016, 1st respondent passed the impugned order terminating services of the petitioner stating that the explanation furnished by the petitioner was not convincing and satisfactory and that he had submitted a false experience certificate and also contravened the declaration given by him at the time of submission of his application. He was also directed

to immediately refund to 1st respondent the salary received by him from the date of his appointment till the date of his termination.

10. Assailing the same, the Writ Petition was filed.

11. On 10-03-2016, this Court admitted the Writ Petition and suspended the order of termination in W.P.M.P.No.9907 of 2016.

12. W.V.M.P.No.1147 of 2015 is filed by the respondents to vacate the said order.

13. The facts in the other writ petitions are also similar.

14. Learned counsel for the petitioner contended that the termination of his services as a probationer by the 1st respondent is not valid since the order terminating his services as a probationer is stigmatic and is the foundation for the termination of service. He placed reliance on the judgment of the Supreme Court in **Governing Council of Kidwai Memorial Institute of Oncology, Bangalore Vs. Dr. Pandurang Godwalkar and another¹, Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others², and Commandant, 8th Bn TSSP, Kondapur, Ranga Reddy District and others Vs. T.Venkata Sai Krishna and another³.**

15. In the counter affidavit filed by the respondents, the fact that the Writ Petitioner is a probationer is not disputed. However, it is

¹ (1992) 4 S.C.C. 719

² (1999) 3 S.C.C. 60

³ (2016) 4 ALD 297 (DB)

stated that his confirmation was subject to verification of genuineness of certificates submitted by him; that the petitioner had also given declaration that all statements made in the application are true, complete and correct and if information is found to be false, his candidature would stand automatically cancelled; and on discreet enquiry conducted by 1st respondent, it was found that the experience certificate produced by the petitioner from the above firm is a false experience certificate; that the said firm had informed the 1st respondent that though petitioner worked there, salary was not given to him; and that the owner of the firm was not able to inform the duration of the work experience or evidence about the employment. It is stated that the owner of the firm contradicted the petitioner's statement that he was drawing salary of Rs.8,000/- per month while he worked in that firm and since this amounts to submission of a false experience certificate, the 1st respondent was entitled to terminate his services after calling for his explanation and no further enquiry is warranted.

16. Therefore, the question for consideration in this batch of cases is whether the separate orders of termination imposed on the respective Writ Petitioners by 1st respondent on the ground that they had submitted false experience certificate is valid or not?

17. In **Governing Council of Kidwai Memorial Institute of Oncology, Bangalore** (1 supra), an order of termination *simpliciter* was passed against the respondent, who was appointed as a lecturer in

Surgical Oncology and who was on probation in terms of the order of appointment. This was questioned by the respondent on the ground that it is in fact an order of termination since some complaints had been made against him to the Director of the Institute who, instead of initiating a Departmental proceeding on the basis of charge leveled against him, put up the matter before the Governing Council of the Institute for termination of his service during the period of probation. A single Judge of the High Court held that the services of the petitioner were terminated because of the complaints made against him and it really amounted to his removal for the misconduct alleged in the note of the Director. He held that the Institute should have initiated a Departmental proceeding in respect of the alleged charges and only after due inquiry any action should have been taken. This was confirmed in Writ Appeal by the Division Bench of the High Court. On appeal by the Institution, the Supreme Court reversed the decision of the High Court. It held that whenever the service of an employee is terminated during the period of probation or while his appointment is on temporary basis, by an order of termination *simpliciter* after some preliminary inquiry, it cannot be held that as some inquiry had been made against him before the issuance of order of termination, it really amounted to his removal from service on a charge as such penal in nature. It held that if the decision is taken to terminate the service of an employee during the period of probation, after taking into consideration the overall performance and some action or inaction on the part of such employee, then it cannot be said

that it amounts to his removal from service as punishment. It explained that even if such employee, while questioning the validity of an order of termination *simpliciter* brings on record that some preliminary inquiry or examination of some allegations had been made, that will not vitiate the order of termination. It however observed that *if an employee who is on probation or holding an appointment on temporary basis is removed from service with stigma because of some specific charge, then a plea cannot be taken that as his service was temporary or his appointment was on probation, there was no requirement of holding any inquiry or, affording an employee an opportunity to show that the charge leveled against him is either not true or it is without any basis.*

18. In **Dipti Prakash Banerjee** (2 supra), the Supreme Court explained as to in what circumstances an order of termination of the probationer can be said to be punitive. It held that it depends upon whether certain allegations which are the cause of the termination are the *motive* or *foundation* for the termination/discharge of the employee. As to *foundation*, it relied on the decision in **Gujarat Steel Tubes Limited Vs. Gujarat Steel Tubes Mazdoor Sabha**⁴ wherein it was held that 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

⁴ (1980) 2 SCC 593

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 inquiry 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.

As to motive, on the contrary, it held that 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.*

It declared:

“21. *If findings were arrived at an enquiry as to misconduct, behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as ‘founded’ on the allegations and will be bad. But if the enquiry was not held, no findings were arrived at and the employer was not inclined to conduct an enquiry but, at the same time, he did not want to continue the employee against whom there were complaints, it would only be a case of motive and the order would not be bad. Similar is the position if the employer did not want to enquire into the truth of the allegations because of delay in regular departmental proceedings or he was doubtful about securing adequate evidence. In such a circumstance, the allegations would be a motive and not the foundation and the simple order of termination would be valid.*”

It held that:

“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 Vs. State of Punjab**⁵ 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 Vs. State of Haryana**⁶ 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.’”

19. In **T.V.Sai Krishna** (3 supra), a Division Bench of this Court dealt with the validity of an order of termination of services of a probationer and held that if misconduct is the *motive* behind such termination, no enquiry is necessary and in cases where misconduct constituted the *foundation* of termination, a departmental enquiry must precede such termination.

20. Keeping in mind the above principles, I shall next consider whether the misconduct alleged is the *motive* for termination or whether it is the *foundation* for termination of services of petitioners in the instant cases.

21. A reading of the impugned order passed against the petitioners clearly indicates that a finding is recorded that he submitted a false experience certificate for securing employment in the Corporation. Thus, it will have an effect on the petitioners’ future prospects of employment and makes them suffer a substantial loss of

⁵ (1974) 2 SCC 831

⁶ (1978) 1 SCC 202

reputation by casting a stigma. Thus, it is the *foundation* for terminating their services. There is a live nexus between the alleged misconduct and the termination of service. So the Corporation cannot take the stand that it is a termination *simpliciter*. Therefore, without conducting a departmental enquiry into the allegations leveled against the petitioners, it is not open for the Corporation to terminate their services by passing the impugned orders.

22. Accordingly, the Writ Petitions are allowed and the impugned orders terminating the services of the petitioners are all set aside. The Corporation shall reinstate the petitioners into service and pay salary and other benefits since the date of termination till the date of reinstatement. However, this will not preclude the Corporation from initiating a departmental enquiry against the petitioners after framing appropriate charges and then taking appropriate action in case, the petitioners are found guilty therein. This Court has not expressed any opinion on the innocence or guilt of the respective petitioners in regard to the charges leveled against them. Consequently the WVMPs are all dismissed. No costs.

23. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-01-2017
Kvr/Vsv