

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
&
HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

W.A.No.466 of 2017

Date : 15-12-2017

Between:

NMDC Limited,
Represented by its Chairman
and Managing Director,
Hyderabad and others

.. Appellants

And

Sagar Pani

.. Respondent

Counsel for appellant : Sri K. Raghavacharyulu, Standing Counsel
Counsel for respondent : Sri C.V. Mohan Reddy, Senior Counsel



The Court made the following :

JUDGMENT: (per Hon'ble Justice C.V. Nagarjuna Reddy)

This Writ Appeal is filed by the respondent in W.P.No.19721 of 2015 questioning order dated 18-1-2017 passed by the learned single Judge.

The facts relevant for the disposal of the Writ Appeal have already been set out in the order under appeal and therefore, they need not be repeated here. The only point argued by Sri K. Raghavacharyulu, learned Standing Counsel for the appellants is that the learned single Judge has committed an error in holding that the termination of the respondent is punitive in nature and that as no enquiry was held before such termination, the same was illegal. He has taken us through the termination order and submitted that nowhere in the order any allegation of misconduct was made against the respondent nor a stigma was attached to him and that therefore the order was in the nature of termination simpliciter and was not punitive.

Sri C.V. Mohan Reddy, learned Senior Counsel, submitted that the termination order referred to Clause Nos.1 to 9 of the appointment order dated 27-8-2014 and that the latter deals with the situation where the appointment of the respondent will be terminated if any declaration given or information furnished by

him is proved to be false, or if he was found to have wilfully suppressed any material information. He has further submitted that before the impugned order of removal was passed, a vigilance enquiry was conducted by the Vigilance Department of the appellants on 30-3-2015 during which the respondent was interrogated and coerced to give the statement that he worked in L & T Limited on adhoc basis in order to make him concede that he did not have the required experience of two years and that he has deliberately made a false representation regarding experience. He has submitted that in the context of the allegation of suppression/furnishing of false information or declaration regarding the respondent's experience, the appellants have quoted para-9 of the appointment order and that therefore the alleged misconduct is the foundation for termination of the services of the respondent and the appellants were bound to hold an enquiry before such termination. The learned Senior Counsel accordingly submitted that the learned single Judge has rightly set-aside the termination order as the same was not preceded by an enquiry.

As regards the question whether an order of termination of an employee must be preceded by an enquiry or not, the same is

no longer *res integra*. In **Parshottam Lal Dhingra Vs. Union of India**¹, the Supreme Court held as under :

“In short, if the termination of service is founded on the right flowing from contract or the service rules then, *prima facie*, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with.”

In **State of Punjab Vs. Sukh Raj Bahadur**² the Supreme Court held that if the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.

In **Shamsher Singh Vs. State of Punjab**³, a seven-Judge Bench of the Supreme Court considered the legality of the discharge of two Judicial Officers of the Punjab Judicial Service who were serving as probationers, and held:

¹ AIR 1958 SC 38

² AIR 1968 SC 1089

³ AIR 1974 SC 2192

“No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution.”

In Radhe Shyam Gupta Vs. U.P. State Agro Industries Corporation Limited⁴, Jagannadha Rao, J, speaking for the two judge Bench, referred to seven Constitution Bench judgments and a judgment of seven Judges which include judgments in **Parshottam Lal Dingra (1-supra)**, **State of Bihar Vs. Gopi Kishore Prasad⁵**, **State of Orissa Vs. Ram Narayan Das⁶**, and **Madan Gopal Vs. State of Punjab⁷** and various other subsequent judgments and summed up the legal position to the effect that where termination of a temporary employee or probationer is simpliciter and misconduct was the motive behind such termination, no enquiry is necessary, but where misconduct constitutes foundation of the termination order, regular departmental enquiry must precede such termination.

⁴ (1999) 2 SCC 21

⁵ AIR 1960 SC 689

⁶ AIR 1961 SC 177

⁷ AIR 1963 SC 531

Singhvi, J, speaking for a two-Judge Bench in **State Bank of India Vs. Palak Modi**⁸ has extensively referred to the case law reflected in the various Constitution Bench judgments, including those referred to above and reiterated the above settled legal position.

In **Ratnesh Kumar Choudhary Vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others**⁹, the Supreme Court held that if an ex parte enquiry is held behind the back of the delinquent employee and the order contains stigmatic remarks, the same would constitute the foundation for terminating the employee. The Supreme Court, however, drew a distinction between the said set of cases and cases where disciplinary proceedings were initiated and subsequent thereto an order of termination simpliciter was passed, and held that in the latter category of cases, misconduct could be said to be the motive and not the foundation for termination.

Bearing in mind the above discussed legal position, it has to be seen whether the impugned order of termination is punitive or is the one simpliciter.

⁸ (2013) 3 SCC 607

⁹ 2015(15) SCC 151

The unnumbered paragraphs 3 and 5 of the termination order which are relevant for the present purpose read as under :

“The Appointing Authority, keeping in view the ground realities, in the fitness of the circumstances and in terms of clause No.1(i) and clause 9 of the above referred appointment letter, hereby removes Shri Sagar Pani from his probationary services with immediate effect ie, from 24.06.2015.”

The probationary services of Shri Sagar Pani are terminated with immediate effect and in terms of clause no.1(ii) of the appointment letter no.2(42)/R/2012 dated 27.08.2014 and a sum equivalent to Sagar Pani's salary for one month ie Rs.41,303/- in lieu of notice is being credited to his bank account.”

Clauses 1(i), 1(ii) and 9 referred to in the appointment order read as follows :

1(i) Your appointment will be temporary for the present. You will be on probation for a period of one year from the date of your appointment, which may be extended or curtailed at the discretion of the Management. Failure to complete the period of probation to the satisfaction of the Management will render you liable to discharge from the service.

1(ii) During the period of your probation, your service will be liable to be terminated by giving you one month's notice in writing or by paying one month's salary in lieu of notice without any reason being assigned. However, if, during the period of probation you desire to resign from the service of the Corporation you will have to give one month's prior notice in writing of your intimation to resign or pay to the Corporation a sum equal to your salary for one month in lieu of notice. If your work is found to be satisfactory during the period of your probation, you will be continued in service and you may be confirmed in

service in the event of its being decided to absorb you in the permanent cadre of the NMDC Limited.

9. If any declaration given or information furnished by you proves to be false or if you are found to have wilfully suppressed any material information, you will be liable for removal from service and such other action as the Corporation may deem necessary.

Clause 1(i) of the appointment order enables the Management to discharge the services of the respondent if the latter fails to complete the period of probation to the satisfaction of the Management. Under Clause 1(ii) the appellants have reserved to themselves the power to terminate the respondent's probation by giving one month's notice in writing or by paying one month salary in lieu of notice without assigning any reason. Similarly, the respondent is also vested with the right to resign from the service by giving one month's notice in writing or by paying a sum equal to one month's salary in lieu of notice. Had the respondent's termination been either or under both the said Clauses, such a discharge could not have been termed as punitive. If the misconduct was not the foundation and was merely motive, the termination order would not have referred to condition No.9 of the appointment order, under which the respondent is liable to be removed if it is proved that he has given a false declaration or information or wilfully suppressed any material information.

Though the impugned termination order per se does not allege misconduct by referring to condition No.9, such allegation of misconduct gets incorporated into the termination order. Therefore, as rightly held by the learned single Judge, the alleged misconduct on the part of the respondent is the foundation for termination of his services. As held in a catena of decisions referred to supra, if misconduct is the foundation, the termination is punitive in nature, which requires holding of an enquiry. As the appellants have failed to hold any enquiry, the learned single Judge has rightly set-aside the termination order.

For the aforementioned reasons, we do not find any illegality or error apparent on the face of the order passed by the learned single Judge. The Writ Appeal is accordingly dismissed.

As a sequel to the dismissal of the Writ Appeal, WAMP No.981 of 2017 filed for interim relief is disposed of as infructuous.

Justice C.V. Nagarjuna Reddy

Justice Kongara Vijaya Lakshmi

Date : 15-12-2017

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