

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

**CWP No. 18905 of 2015
Date of decision: 29.03.2017**

Rama Rani

...Petitioner

Versus

D.A.V. University, Jalandhar-Pathankot Highway, Village Sarmastpur,
Jalandhar

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. H.S.Sethi, Advocate,
for the petitioner.

Mr. Aman Chaudhary, Advocate,
for the respondent.

JAISHREE THAKUR, J.

1. The challenge in the instant writ petition is to order dated 04.08.2015 (Annexure P-8) by which the services of the petitioner have been terminated.

2. In brief, the facts are that the petitioner applied for the post of Assistant Professor in Computer Science & Engineering in D.A.V. University, Jalandhar and came to be appointed by an order dated 04.08.2014. The appointment order of the petitioner showed that she was placed on probation. On 12.03.2015, after lunch she became unwell and could not remain in the University and by informing her fellow teachers she left the University. Next day, the petitioner noticed that her presence had been marked, showing her to be present in the afternoon session also, whereas she was not present. She wanted to bring it to the notice of the

Dean, stating that somebody had inadvertently marked her presence. On

16.3.2015 when the petitioner was on earned leave, a notice was issued to Ms. Ridhi Kapoor as to why she had marked the presence of the petitioner, who denied doing the same. A notice was issued to the petitioner on 19.03.2015, stating therein that Ms. Ridhi Kapoor had marked her presence in the afternoon of 12.03.2015 and why action should not be taken against the petitioner under the Conduct Rules. The petitioner submitted a reply, but out of her sheer courtesy to save her fellow employees, mentioned in the reply that she herself had marked the presence, even though this was factually incorrect. Later on it transpired that one Ranjit Kaur admitted that she had marked the presence of the petitioner. The matter was eventually taken up before the Dean and other members present, wherein the petitioner reiterated her stand that she did not mark her presence in the register and in fact informed the authorities that someone had marked her presence. The probation period of the petitioner was extended by the University by a letter dated 27.07.2015 for a period of one year. The respondent-University issued an advertisement advertising the post of the petitioner and at the same time passed an order dated 04.08.2015 terminating the services of the petitioner by adverting to clause 5(a) of the appointment order which specifies that University could terminate the services of the petitioner without any notice, by giving three months' pay in lieu of three months' notice. Aggrieved against this action of the respondent, the instant writ petition has been filed.

3. Mr. H.S. Sethi, learned counsel appearing on behalf of the petitioner would contend that there was no justification in issuing the termination order of the petitioner and that too in without holding an inquiry into the incident of 12.03.2015 as to who was the person who had marked

the presence of the petitioner in the attendance register. It is further argued, that even though the petitioner was on probation, the petitioner's services could not be terminated without following any due process of law and by holding a departmental inquiry. It is argued that after the probation period of the petitioner was extended by an order dated 27.07.2015, thereby it would be deemed that the incident dated 12.03.2015 had been dealt with and the chapter closed. It is argued that the action is "punitive" in nature and unsustainable. In this regard, reliance has been placed upon a judgment rendered in ***Chandra Prakash Shahi vs. State of U.P. and others, (2000) 5 Supreme Court Cases 152***, and ***V.P. Ahuja vs. State of Punjab and others, (2000) 3 SCC 239, Registrar General, High Court of Gujarat and another vs. Jayshree Chamanlal Buddhhatti, 2013 (16) SCC 59***. Further reliance has been placed on a judgment rendered in ***Central Inland Water Transport Corporation Ltd. and another vs. Brojo Nath Ganguly and another, reported as 1986(2) SLR 345*** to contend that clause 5 of the appointment letter is to be adjudged void since the power conferred is arbitrary and enables the employer to discriminate between employee and employee

4. Per contra, Mr. Aman Chaudhry learned counsel appearing on behalf of the respondent-University submits that the institution is being run by a private body and is not amenable to writ jurisdiction. It is further submitted that unless and until a person is confirmed in service he would not be entitled to the protection of a regular hearing as argued by learned counsel for the petitioner. It would submit that the petitioner had been given a personal hearing and she had even submitted her apology. It is argued that

a three member Fact Finding Committee of Senior Professors was constituted by the Advisor to the Chancellor and both Ms. Ranjit Kaur and the petitioner were given an opportunity of hearing and after deliberating upon the issue, the Fact Finding Committee was of the opinion that action of both the teachers was unbecoming of a teacher and that suitable action should be taken thereon. After receipt of the report of the Fact Finding Committee dated 20.07.2015, the extension was granted to the petitioner on 20.7.2015. The Competent Authority sought a report of working of both the employees i.e. the petitioner and Ms. Ranjit Kaur and thereafter it was decided to dispense with their services in terms of clause 5 of their appointment letters.

5. I have heard learned counsel for both the parties and with their able assistance have gone through the record of the case. The sole question that needs to be addressed whether services of the petitioner who was admittedly on probation, could have been terminated without holding of an inquiry?

6. The law regarding terminating services of a probationer is well-settled. The termination is valid so long as it is not punitive or stigmatic. Employment is offered on probation to assess the suitability of an employee for the job. So long as an employee is on probation, continuing on the said employment is subject to the employer being satisfied that the employee is suitable. In the event, employer is not satisfied with the performance of an employee, the employer is free to terminate the services before the completion of the period of probation. In ***Progressive Education Society v.***

Rajendra (2008)3 SCC 310, the Hon'ble Apex Court held "*The law with*

regard to termination of the services of a probationer is well established and it has been repeatedly held that such a power lies with the appointing authority which is at liberty to terminate the services of a probationer if it finds the performance of the probationer to be unsatisfactory during the period of probation. Unless a stigma is attached to the termination or the probationer is called upon to show cause for any shortcoming which may subsequently be the cause for termination of the probationer's service, the management or the appointing authority is not required to give any explanation or reason for terminating the services".

7. In the instant case the petitioner was issued a termination letter which read as *"it is to inform you that your services are terminated in terms of clause No. 5 (a) of your appointment letter. The salary for three months Rs. 1,41,468/- in lieu of the notice period has been deposited in your bank account. Hence, you stand relieved from your duties with immediate effect"*.

A simple reading of the termination letter does not reflect it to be either punitive in nature or stigmatic. Clause 5(a) of the appointment letter was clear and unambiguous in which it was stipulated *"your services can be terminated by 3 months notice on either side or on payment of salary in lieu of notice period"*.

8. The judgment relied upon by counsel for the petitioner is distinguishable to the facts of the instant case. In ***Chandra Prakash Sahi*** case (supra) the termination order came to be challenged and the Apex Court reiterated that a temporary government employee or a probationer is also entitled to protection of Article 311(2) and the court can lift the veil to determine real character of termination. In the case referred to, a preliminary

inquiry was conducted by the Assistant Commandant and few Constables including the applicant, were found guilty of indiscipline and mis-behaviour and it was for this reason that the services of the appellant were terminated. The preliminary enquiry had been held to find out about the involvement of the appellant in the incident and not on account of whether he was suitable for further retention in service or for confirmation as he had already completed the period of probation a few years ago. While discussing various case law the apex court held as under:

“The important principles which are deducible on the concept of 'motive' and 'foundation', concerning a probationer, are that a probationer has no right to hold the post and his services can be terminated at any time during or at the end of the period of probation on account of general unsuitability for the post in question. If for the determination of suitability of the probationer for the post in question or for his further retention in service or for confirmation, an inquiry is held and it is on the basis of that inquiry that a decision is taken to terminate his service, the order will not be punitive in nature. But, if there are allegations of misconduct and an inquiry is held to find out the truth of that misconduct and an order terminating the service is passed on the basis of that inquiry the order would be punitive in nature as the inquiry was held not for assessing the general suitability of the employee for the post in question, but to find out the truth of allegations of misconduct against that employee. In this situation, the order would be founded on misconduct and it will not be a mere matter of 'motive'.”

9. In the instant case, the incident regarding marking the presence of the petitioner was brought to the knowledge of the authorities concerned and both the parties were given a hearing. A apology statement which is

Annexure R1 on the record is dated 11. 4. 2005, the report of the Fact Finding Committee is dated 20th of July 2015, the services were extended on 27.7.2015 and the relieving order is dated 4.8.2015. After the apology had been accepted and report of the Fact Finding Committee received, the chapter was closed and extension granted. It is, thereafter, on review of the work, it was decided to relieve the petitioner, as was within the right of the employer. The whole idea of probation or of temporary employment is for the employer to gauge the character, conduct, compatibility etc. of the employee. Upon being dissatisfied, the employer without imputing any such charge on the employee is entitled to simply discharge him. The judgment in ***Chandra Prakash Shahi*** case (supra) is not found applicable. The discharge of the petitioner is not traceable to any inquiry conducted behind the back of the petitioner.

10. Counsel for the petitioner has placed reliance upon a judgement rendered in ***Central Water Inland Transport Corporation*** case (supra) to argue that clause 5 of the appointment letter is violative of Article 14 of the Constitution of India, since it gives a handle to the employer to adopt a pick and choose policy. It is argued that Rule 9 of the Central Inland Water Transport Corporation Ltd. Service Discipline and Appeal Rules of 1979 is similar in nature to clause 5 of the appointment letter which allowed the employer to terminate the services of the employee without holding a regular inquiry. The above noted cases are distinguishable since it pertained to dispensing of services of a **permanent employee** by giving one month's notice in lieu of pay while terminating the services. The case in hand pertains to a probationer and, therefore, the said judgment cannot be relied

upon to contend that clause 5 of the appointment letter is violative of Article 14 of the Constitution of India. A probation period is incorporated in the letter of appointment to enable the employer to judge the suitability of the employee for the work in hand, and services can be dispensed without holding a regular enquiry, in case, it is found that the employee is not suitable for the job.

11. The other two cases relied upon by the counsel for the petitioner is also distinguishable on facts. In the case of **V.P Ahuja** (Supra) an order was passed which reads as “*Sh. V.P. Ahuja, S/o Late Sh. H.N. Ahuja was appointed on probation for 2 years as Chief Executive of the Co-op. Spg, Mills Ltd., vide orders Endst. No. Spinfed/CCA/7844-45 dated 29-9-1998 and posted at Bacospin. However, he failed in the performance of his duties administratively and technically. Therefore, as per Clause-I of the said appointment order, the services of Sh. V.P. Ahuja are hereby terminated with immediate effect.*” This order was held to be stigmatic on the face of it which is not so in the instant writ petition. In the case in hand, there is a simplicitor order of termination by invoking clause 5(a) of the order of appointment. Even in the case of **Registrar General, High Court of Gujarat and another vs. Jayshree Chamanlal Buddhhatti** (supra) Jayshree Chamanlal Buddhhatti was selected in the Judicial service. Complaints were made by her regarding misbehaviour of the staff and harassment meted out to her by a section of the Bar, which was not heeded by the District Judge. On certain adverse remarks made against her, the District Judge conducted a preliminary inquiry against her in his capacity as a Vigilance Officer and without affording her any opportunity, the District

Judge held that she was unsuitable for the post she was holding. Accordingly, she was dismissed from service. The Apex Court set aside the inquiry by holding that no opportunity of hearing was given to her regarding her unsatisfactory work and services and she was not put to notice in that regard and, therefore, without any evidence, the High Court could not have terminated her services. The aforesaid case is distinguishable on facts, and hence the ratio is not applicable.

12. Therefore, by relying on the settled rule that there is no requirement of holding a departmental inquiry for a probationer, and the termination order should not be punitive or stigmatic, it is held that there is no infirmity in the orders passed by the respondents to warrant any interference by this court, hence, writ petition is dismissed.

29.03.2017

Satyawan

Whether speaking/reasoned

Whether reportable

(JAISHREE THAKUR)

JUDGE

Yes.

No.