

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

CWP No.5697 of 2014

Date of Decision:13.02.2017

Rajinder Singh

... Petitioner

Vs.

Punjab and Haryana High Court and another

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Suvir Sidhu, Advocate for the petitioner.

Mr. Suresh Monga, Advocate for the respondents.

P.B. BAJANTHRI J. (Oral)

The petitioner has questioned the validity of the order dated 30.7.2013 and order dated 3.1.2014 (Annexures P-1 and P-5 respectively).

The petitioner was appointed as a peon in the office of District and Sessions Court, Palwal. His services were drafted to the office of Civil Judge (Jr. Division), Palwal, headed by Ms. Neetu Nagar. On 30.7.2013, she has submitted complaint against the petitioner stating that his work and conduct is not good. The District and Sessions Judge after receipt of the complaint by Civil Judge (Jr. Division) Palwal against the petitioner on 30.7.2013 dispensed the services of the petitioner on the very same day. Thus, the petitioner is aggrieved by the order of District and Sessions Judge, Palwal dated 30.7.2013. The petitioner preferred an appeal before the Appellate Authority i.e. Registrar of Punjab and Haryana High Court, Chandigarh. The Registrar rejected the appeal of the petitioner being not maintainable. Thus, the petitioner has assailed the order of the District and Sessions Judge so also rejection of his appeal by the Hon'ble Punjab and Haryana High Court, Chandigarh.

Learned counsel for the petitioner submitted that services of the

petitioner have been dispensed with without hearing him. He being on probation, the order of termination/dispensing the service do not reveal a word that the work of the petitioner is unsatisfactory. Therefore, his services have been terminated/discharged/dispensed with. Thus, it is not a speaking order. Consequently, the same is liable to be set aside. Further it was contended by the learned counsel for the petitioner that rejection of his appeal by the Hon'ble Punjab and Haryana High Court at the behest of Registrar General that the appeal is not maintainable is incorrect for the reasons that under Section 14 of the Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Services), Rules 1997 (for short "1997 Rules"), the appeal is maintainable.

On the other hand, learned counsel for the respondents submitted that discharging a probationer, competent authority need not assign any reason. It is evident from the communication of the Civil Judge (Jr. Division), Palwal under whom the petitioner was working, his work and conduct is not good. He was not responding the calls of the courts due to which the court work also suffered and further having regard to the behaviour of the petitioner emits a smell of insubordination. These things have taken note by the District and Sessions Judge, Palwal while dispensing the service of the petitioner on 30.7.2013. Hence, no interference is called for insofar as Annexure P-1 is concerned. It was further submitted that rejection of the petitioner's appeal as it was not maintainable is in order for the reasons that there is no appeal against the order of dispensing the service when an employee is under probation. Section 14 of 1997 Rules is not applicable to probationer. Therefore, rightly Registrar General has passed an order that the appeal of the petitioner is not maintainable.

Heard learned counsel for the parties.

Rule 8 of Haryana Subordinate Courts Establishment (Recruitment and General Conditions of Services), Rules 1997 (for short “1997 Rules”) 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 service 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.

(3) On the completion of the period of probation of a person, the appointing authority may,-

(a) if his work and conduct has, in its opinion been satisfactory;

(i) confirm such person from the date of his appointment if appointed against a permanent vacancy;

(ii) confirm such person from the date from which a permanent vacancy occurs, if appointed against a temporary vacancy;

OR

declare that he has completed his probation satisfactorily if there is no permanent vacancy:

Provided that the total period of probation including extension if any, shall not exceed three years.”

Rule 14 of 1997 Rules reads as under:

14. Appeal-Appellate Authority.-(1) *An appeal shall lie to the High Court against order of a District and Sessions Judge imposing any penalty and such appeal may be disposed of by the Chief Justice or a Judge nominated by him in this behalf.*

(2) *An appeal shall lie to a Division Bench of the High Court against an order of the Chief Justice or of a Judge imposing any of the penalties on members of class II service.*

A. Orders against which no appeal lies.- *Notwithstanding anything contained in these rules, no appeal shall lie against;*

(i) *Any order of interlocutory nature to step-in-aid of the final disposal of a disciplinary proceedings.*

(ii) *any order passed by an inquiring authority in the course of an inquiry held under Haryana Civil Services (Punishment and Appeal) Rules, 1987.*

B. *Subject to the provisions of Rule 14-A, a member of service may prefer an appeal against all or any of the following orders, namely:*

(i) *an order of punishment passed by the District and Sessions Judge inflicting penalties mentioned in rule 12(2) IV A to IX.*

(ii) *an order of substantive appointment by promotion or otherwise to a permanent and pensionable post.*

(iii) *an order of temporary appointment which is to last more than 3 months or has in fact lasted more than 3 months.*

C. (i) *Persons appealing to the High Court under this rule shall do by petition, such petition, accompanied by a copy of the order complained against, shall be presented to the District and Sessions Judge who passed the order within 45 days of the date of such order (the period between the date of application of the copy and the date on which it is supplied being*

excluded):

Provided that the appellate authority may entertain the appeal after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

(ii) The District and Sessions Judge will forward the petition to the Registrar of the High Court without unnecessary delay along with his parawise comments thereon.

D. *After reading the petition, the High Court may either:-*

(i) reject it without hearing the petitioner after passing a speaking order;

or

(ii) hear the petitioner, and in cases where other persons are held to be concerned in the subject of the petition, such other persons, in open court.

E. *While disposing of an appeal against order under this rule or any penalty specified in Rule 12 of the High Court shall consider:-*

(i) Whether the facts on which the order was based have been established;

(ii) Whether the facts established afford sufficient ground for taking action; and

(iii) whether the penalty is excessive, adequate or inadequate and after consideration shall pass such order as it thinks proper:

Provided that no penalty shall be increased unless opportunity is given to the person concerned to show cause why such penalty should not be increased.

F. *The District and Sessions Judge from whose order the appeal is preferred under these rules shall give effect to any order made by the High Court.*

G. *Nothing in these rules shall debar the High Court from altering, if deemed fit, any order of punishment or appointment not provided for above which may be passed by the District and Sessions Judge in respect of member of service, when an*

aggrieved person, petitions or otherwise, District and Sessions Judge should not, therefore, withhold any petition addressed to the High Court whether an appeal lies to it in the case or not under these rules. In a case in which no appeal lies, the District and Sessions Judge should forward it without any comments and relevant documents unless he wishes to do so or is so required by the High Court. Petitioners are forbidden to attend personally at the High Court unless summoned to do so. Order on their petition will be communicated to them through the District and Sessions Judge concerned.”

Admittedly, the petitioner is on probation. He was working as a peon in the office of Civil Judge (Jr. Division) Palwal. The Civil Judge (Jr. Division), Palwal has not issued any memo to the petitioner about his work so also about his conduct. In the absence of giving memo or warning to the petitioner. Abruptly the petitioner's services cannot be terminated or his services can be dispensed while he was on probation. Moreover when sub-rule 2 of Rule 8 of 1997 rules mandates that “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 service or revert him to a post, on which he held lien prior to his appointment.” Whereas in the present case, District and Sessions Judge has not formed opinion and based on Civil Judge complaint proceeded to dispense petitioner's service. Dispensing petitioner's service is not in accordance with sub-rule 2 of Rule 8 of 1997 Rules. The allegations against the petitioner reads as under:

“I have the honour to submit that Sh. Rajender, Peon is posted in my court. His work and conduct is not good. He is not responding to the calls of the court. Due to this reason the court work also suffers. In fact, his behaviour emits a smell of insubordination. Therefore, the necessary information is

submitted for taking action in the matter.”

The above allegations are made on 30.7.2013 by Civil Judge (Jr. Division) Palwal. Allegations, ex-facie, is stigmatic. The District and Sessions Judge on the same day i.e. on 30.7.2013 passed the following order:

“The services of Shri Rajinder Singh, Peon in the court of Ms. Neetu Nagar, Civil Judge (Junior Division) Palwal are hereby dispensed with immediate effect as no longer required.”

Perusal of the allegations and order passed by the competent authority while dispensing the services, it is evident that there were allegations against the petitioner in respect of his conduct and also behaviour. If the conduct of an employee is not in accordance with law and his services are required to be dispensed, in such a situation, it is necessary to hold an inquiry at least preliminary inquiry after giving due notice to the employee. Even perusal of the complaint/communication of Civil Judge (Jr. Division) Palwal to District and Sessions Judge, Palwal, it is evident that it is not verify specific for the reasons that no dates and events have been mentioned or furnished on what date the petitioner has not responded to the calls of the Court and what is the conduct which led to not good conduct so also behaviour emits smell of insubordination etc of the petitioner. These are the allegations amounts to misconduct and it is ex-facie, is stigmatic. Hence, it is necessary to hold an enquiry. In the absence of holding an enquiry, dispensing the services of the petitioner is highly arbitrary and illegal. Moreover, not even a single reason has been assigned by the competent authority while dispensing the services of the petitioner on 30.7.2013 as is evident from the extract of the order dated 30.7.2013 (supra). Supreme Court in number of cases held that if an employee is to be

terminated on misconduct or misbehaviour, memo/notice is required to be issued. In the present case, complaint was made by Civil Judge (Jr. Division) Palwal on 30.7.2013 and on the same very day, District and Sessions Judge passed an order of dispensing the services of the petitioner. He has not asserted that petitioner's work is not satisfactory. Supreme Court in the case of **V.P. Ahuja v. State of Punjab and others**; (2000) 3 SCC 239 held as under:

“8. The entire case law with respect to a “probationer” was reviewed by this Court in a recent decision in Dipti Prakash Banerjee v. Satyendra nath Bose National Centre for Basic Sciences, Calcutta and others, (1999) 3 SCC 60 : AIR 1999 SC 983 : JT 1999(1) SC 396: 1999 (1) SCT 861 (SC). This decision fully covers the instant case as well, particularly as in this case, the order impugned is stigmatic on the fact of it.”

In a recent decision of the Supreme Court reported in (2016) 2 SCC 627; **Veerendra Kumar Dubey v. Chief of Army Staff and others**; It is held as under:

“17. The procedure presented simply regulates the exercise of power which would, but for such regulation and safeguards against arbitrariness be perilously close to being ultra vires in that the authority competent to discharge shall, but for the safeguards, be vested with uncanalised and absolute power of discharge without any guidelines as to the manner in which such power may be exercised. Any such unregulated and uncanalised power would in turn offend Article 14 of the Constitution.”

In **Anoop Jaiswal v. Government of India and another**; AIR 1984 SC 636, the Apex Court pointed out that the form of order is not decisive as to whether it is by way of punishment or not and that even in innocuously worded order terminating the services may in the fact and

circumstances of the case establish that an enquiry into the allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311 (2). The Apex Court pointed out that the cause for the order cannot be sidetracked and the recommendations which is the basis or foundation for the order should be read along with the order for the purpose of determining its character. Para 13 of the aforesaid decision is relevant which reads as follows:

“13. In the instant case, the period of probation had not yet been over. The impugned order of discharge was passed in the middle of the probationary period. An explanation was called for from the appellant regarding the alleged act of indiscipline, namely, arriving late at the Gymnasium acting as one of the ring leaders on the occasion and his explanation was obtained. Similar explanations were called for from other probationers and enquiries were made behind the back of the appellant. Only the case of the appellant was dealt with severely in the end. The cases of other probationers who were also considered to be ring leaders were not seriously taken note of. Even though the order of discharge may be non-committal, it cannot stand alone. Though the noting in the file of the Government may be irrelevant, the cause for the order cannot be ignored. The recommendation of the Director which is the basis or foundation for the order should be read along with the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed then it is inevitable that the order of discharge should fall to the ground as the appellant has not been afforded a reasonable opportunity to defend himself as provided in Article 311 (2) of the Constitution.”

Therefore, the order dispensing the petitioner's service on

30.7.2013 is based on allegations and it is not in terms of sub-rule 2 of Rule 8 of 1997 Rules liable to be set aside.

Insofar as challenge to rejection of the petitioner's appeal is concerned Rule 14 do not attract in case of probationer whose services have been dispensed. Therefore, no interference is called for.

In view of setting aside of order dated 30.7.2013, the concerned respondent is directed to reinstate the petitioner with all consequential service benefits including monetary benefits. Arrears of pay shall be calculated and released within a period of three months from today.

Petition stands allowed.

13.02.2017
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No