

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-292-1992 (O&M)

Date of Decision:-17.04.2018.

State of Haryana through Collector, Narnaul, District Mahendergarh and others

.....Appellants

Versus

Radhey Shyam Vasistha

.....Respondent

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

Present: Mr. Rohit Arya, AAG, Haryana.

Mr. Sharad Aggarwal, Advocate for the respondent.

P.B. BAJANTHRI, J. (Oral)

In the instant appeal, appellants have questioned the validity of the Appellate Court judgment dated 05.10.1991.

2.) Respondent was stated to have been appointed as a Block Publicity Worker at a fixed monthly remuneration of ₹ 400/- on 02.04.1985. His services were terminated by order dated 28.07.1987 and it has been given effect on 31.07.1987. Feeling aggrieved by the order of termination, respondent filed a suit insofar as challenging the validity of the termination order. Suit was dismissed on 31.10.1990. Thereafter, respondents preferred an appeal. Appeal was allowed on 05.10.1991. Hence, the present appeal by the State questioning the validity of the Appellate Court judgment dated 05.10.1991.

3.) Learned counsel for the appellants submitted that having regard to the conditions imposed in the order of appointment dated 02.04.1985 to the extent that respondent's appointment was purely temporary and his services can be terminated at any time without notice assigning any reason or remuneration. Respondent has not made out a case so as to interfere with the order of termination dated 28.07.1987. Thus, Appellate Court has exceeded its jurisdiction insofar as interference with the order of termination.

4.) *Per contra* learned counsel for the respondent submitted that order of termination dated 28.07.1987 is without notice and inquiry. No doubt order of appointment stipulates that appointment is purely temporary and services can be terminated at any time without notice assigning any reason or remuneration. At the same time, one has to apprise that selection and appointment is through proper procedure like interview. Respondent was interviewed on 28.3.1985 for the post of Block Publicity Worker. Thus, he has right to continue in the post. Merely mentioning that appointment is purely temporary and termination could be ordered at any time without notice would be highly arbitrary and illegal. Therefore, appellants have not made out a case so as to interfere with the Appellate Court's judgment dated 05.10.1991.

5.) Heard the learned counsel for the parties.

6.) Crux of the matter is whether order of termination dated 28.07.1987 is in accordance with law or not? No doubt order of appointment dated 02.04.1985 stipulates condition that respondent's appointment is purely temporary and his services can be terminated at any

procedure like issuance of show cause notice as held by the Supreme Court in the case of **D.K. Yadav Vs. J.M.A. Industries Ltd.** reported in (1993) 3 SCC 259. Para 14 and 15 reads as under:-

“14. It is thus well-settled law that right to life enshrined under Art. 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. In *D. T. C. v. D. T.C. Mazdoor Congress* the Constitution Bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without enquiry offended Article 14. The order terminating the service of the employees was set aside.

15. In this case admittedly no opportunity was given to the appellant and no inquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented to report to duty, nor he be permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Clause 13 of the Certified Standing Orders to terminate with the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the Standing Order No. 13 (2) (iv). Otherwise it would become arbitrary, unjust and unfair violating Article 14. When so read the

impugned action is violative of the principles of natural justice.”

The appellants have not disputed that order of termination dated 28.7.1987 is without due compliance of issuance of show cause notice or by holding of an inquiry. Supreme Court in the case of **Delhi Transport Corporation Versus D.T.C. Mazdoor Congress and others** reported in **1991 Supp (1) SCC 600** in para 332 and 335 held as under:-

“332. In an appropriate case where there is no sufficient evidence available to inflict by way of disciplinary measure, penalty of dismissal or removal from service and to meet such a situation, it is not as if that the authority is lacking any power to make Rules or regulations to give a notice of opportunity with the grounds or the material on records on which it proposed to take action, consider the objections and record reasons on the basis of which it had taken action and communicate the same. However scanty the material may be, it must form foundation. This minimal procedure should be made part of the procedure lest the exercise of the power is capable of abuse for good as well as for whimsical or capricious purposes for reasons best known to the authority and not germane for the purpose for which the power was conferred. The action based on recording reasoning without communication would always be viewed with suspicion. There-fore, I hold that conferment of power with wide discretion without any guidelines, without any just, fair or reasonable procedure is constitutionally anathema to Arts. 14, 16 (1), 19(1)(g) and 21 of the Constitution. Doctrine of reading down cannot be extended to such a situation.

335. It is undoubtedly true as contended by Sri Bhasin, learned counsel for the intervener, that it is open

to the authorities to terminate the services of a temporary employee without holding an inquiry. But in view of the match of law made, viz., that it is not the form of the action but the substance of the order is to be looked into, it is open to the Court to lift the veil and pierce the impugned action to find whether the impugned action is the foundation to impose punishment or is only a motive. A larger Bench of seven Judges of this Court in [Shamsher Singh v. State of Punjab](#), [1975] 4 SCR 814 elaborately considered the question and laid down the rule in this regard. The play of fair play is to secure justice procedural as well as substantive. The substance of the order, the effect thereof is to be looked into. Whether no misconduct spurns the action or whether the services of a probationer is terminated without imputation of misconduct is the test. Termination simpliciter, either due to loss of confidence or unsuitability to the post may be a relevant factor to terminate the services of a probationer. But it must be hedged with a bonafide over-all consideration of the previous conduct without tainted with either mala-fide or colourable exercise of power or for extraneous considerations. Such actions were upheld by this Court. The action must be done honestly with due care and prudence.”

Appellants have not apprised this Court relating to creation of the post of Block Publicity Worker. At the same time it was contended that no such post was existing as on the date of appointment order issued to the respondent on 02.04.1985. If it is so what action has been taken against the then Director of Public Relations in respect of recruitment of Block Publicity Worker is not made known to the Court so as to contend that the

Directorate of Public Relations, State of Haryana. Undisputedly order of termination dated 28.07.1987 is not in accordance with law. Accordingly, appellants have not made out a case so as to interfere with the Appellate Court's judgment dated 05.10.1991.

7.) Appeal stands dismissed.

(P.B. BAJANTHRI)
JUDGE

April 17, 2018.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.